

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

December 18, 2020

Friday, December 18, 2020

Persons Present:

Bartholomew, Trey K.	Lovett, John A.
Block, Matthew F.	Maloney, Marilyn C.
Bowers, Clinton M.	Manning, C. Wendell
Braun, Jessica	Medlin, Kay C.
Breard, L. Kent	Miller, Gregory A.
Brister, Dorrell J.	Mire, Alaina R.
Carroll, Andrea B.	Nedzel, Nadia E.
Castle, Marilyn	Norman, Rick J.
Crigler, James C., Jr.	North, Donald W.
Cromwell, L. David	Ottinger, Patrick
Curet, Jourdan Elisse-Moschitta	Papillion, Darrel James
Curry, Robert L., III	Patton, Margaret
Davis, Monette M.	Peterson, Megan S.
Davrados, Nikolaos A.	Philips, Harry "Skip", Jr.
Duhe, Martin Bofill	Polozola, Kyle
Gaines, Randal L.	Price, Donald W.
Garofalo, Raymond E., Jr.	Riviere, Christopher H.
Gregorie, Isaac M. "Mack"	Robert, Deidre Deculus
Guidry-Leingang, Kansas M.	Simien, Eulis, Jr.
Hayes, Thomas, M., III	Sole, Emmett C.
Haymon, Cordell H.	Stevenson, Claire
Herring, Jimmie C.	Stuckey, James A.
Hogan, Lila T.	Talley, Susan G.
Holthaus, C. Frank	Thibeaux, Robert P.
Janke, Benjamin West	Title, Peter S.
Jones, Carrie LeBlanc	Ventulan, Josef Philip M.
Knighten, Arlene D.	Veron, J. Michael
Kunkel, Nick	Waller, Mallory
Lampert, Loren M.	Weems, Charles S., III
LaVergne, Luke A.	White, H. Aubrey, III
LeDuff, Taylor M.	Wilson, Evelyn L.
Lee, Amy Allums	Woodruff-White, Lisa
Lonegrass, Melissa T.	Ziober, John David

President Rick J. Norman called the Zoom meeting to order at 9:00 a.m. on Friday, December 18, 2020. After several administrative announcements concerning meeting procedures and other matters, the President called on Mr. Emmett C. Sole, Chairman of the Membership and Nominating Committee, to begin his presentation.

Membership and Nominating Committee

Mr. Sole began by first explaining that staff had restructured the Committee's report to clarify those appointments that needed approval by the Council and those appointments that were made ex-officio pursuant to the Law Institute's charter. He also thanked the President for his outstanding work despite the difficulties of the past year and for agreeing to serve for another year. The Chairman then announced the Committee's recommendations for the officers of the Law Institute and other members of the Council and Executive Committee, along with the recent honor graduates from each of the four Louisiana law schools. A motion was made and seconded to adopt the report as presented, and the motion passed with no objection. A copy of the Committee's report is attached.

At this time, the Chairman asked members to continue sending their recommendations as to attorneys who would be valuable additions to the Council, keeping in mind diversity, geography, and levels of experience, interest, and participation. Mr. Sole then concluded his presentation, and the President called on Mr. Patrick S. Ottinger, Reporter of the Risk Fee Act Committee, to begin his presentation of materials.

Risk Fee Act Committee

After screensharing a Keynote presentation, Mr. Ottinger explained that the Risk Fee Act Committee had been formed in response to Senate Resolution No. 31 of the 2016 Second Extraordinary Session, which asked the Law Institute to study the implications of Act 743 of the 2012 Regular Session amending Louisiana's Risk Fee Act. The Reporter noted that the Committee had submitted an interim report in response to that resolution, and since that time, had been drafting revisions to R.S. 30:10, the statute containing the Risk Fee Act. He then provided the Council with background information, including the state of affairs prior to the enactment of the Risk Fee Act in 1984, an overview of the Louisiana Supreme Court's decision in *Hunter Co. v. McHugh*, and an illustration of a unit with tracts that are leased – either to the drilling owner or to a nonparticipating owner – and unleased. Mr. Ottinger also explained the authority for reimbursing drilling costs, namely that oil and gas are products, not fruits, because their production results in the depletion of property. He discussed Civil Code Article 488 and the right of a good faith possessor to have his expenses reimbursed by the owner. He also discussed several relevant definitions and acronyms, including those pertaining to unleased owners, nonparticipating owners, units, operators or drilling owners, and even the Risk Fee Act itself, which contains the term “risk charge” rather than “risk fee.”

The Reporter then described the purpose and goals of the Risk Fee Act as enacted in 1984, namely, that owners in the unit other than the drilling owner had no personal obligation to share in the cost, risk, and expense associated with the drilling of a well and essentially acted as “free riders” in that they bore no risk if the well failed, but if the well was successful, they would assert a claim to their share of the well's production. Mr. Ottinger discussed the holding of the Second Circuit in *Arkansas Fuel Oil Corp. v. Weber* and noted that the Risk Fee Act was enacted to address the problem of the “free rider” by assessing an additional charge against an owner who elects not to participate in the cost, risk, and expense associated with the drilling of a well but later seeks his share of the profits of production. The Reporter noted that the intent behind the risk charge was to incentivize owners in a unit to participate in the cost, risk, and expense associated with the drilling of a well, and that if an owner elected not to participate, the drilling owner retained all proceeds allocable to the nonparticipating owner while recouping costs, and the applicable risk charge, and the nonparticipating owner remained responsible for paying lessor royalties “out of pocket.”

Mr. Ottinger then explained that the 2012 amendments to the Risk Fee Act reversed this obligation, requiring the drilling owner rather than the nonparticipating owner to pay the royalties to which a nonparticipating owner's lessor is entitled. He further explained that, as referenced in the resolution, these amendments have been viewed as controversial because they seem to frustrate the purpose of the Risk Fee Act by reducing the revenue stream to which the drilling owner is entitled and removing or diminishing the nonparticipating owner's incentive to participate in the drilling of a well by no longer requiring such owner to make “out of pocket” payments of royalties to their lessors.

Having explained the foundations for the Committee's work, the Reporter directed the Council's attention to the first proposed amendment to redefine “risk charge notice” and “lessor royalty” throughout the materials. A motion was made and seconded to approve these changes in terminology wherever they occurred throughout the materials, and the motion passed over one objection. Next, the Council considered the Committee's second proposed amendment concerning the definition of “net production proceeds” on lines 56, 64 through 66, and 68 through 74. Mr. Ottinger explained that these changes were intended to clarify existing law with respect to defining the revenue stream applicable to the repayment of the drilling owner, noting that the phrase “exclusive of” in existing law was ambiguous and could be misconstrued. A motion was made and seconded to adopt the proposed changes to Item (A)(2)(b)(i) as presented, and the

motion passed with no objection. The adopted proposal reads as follows:

R.S. 30:10. Agreements for drilling units; pooling interests; terms and conditions; expenses

A. * * *

(2) * * *

(b)(i) Should a notified owner elect not to participate in the risk and expense of the unit well, substitute unit well, alternate unit well, or cross-unit well or should such owner elect to participate in the risk and expense of the proposed well but then fail to pay his share of the estimated drilling costs determined by the AFE timely or fail to pay his share of actual reasonable drilling, testing, completing, equipping, and operating expenses within sixty days of receipt of detailed invoices, then such owner shall be deemed a nonparticipating owner, and the drilling owner shall, in addition to any other available legal remedies to enforce collection of such expenses, be entitled to own and recover out of net production proceeds from such well allocable to the tract under lease to the nonparticipating owner such tract's allocated share of the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the well, including a charge for supervision, together with a risk charge. For purposes of this Subparagraph, the payment of estimated drilling costs shall be deemed timely if received by the drilling owner within sixty days of the actual spudding of the well or the receipt by the notified owner of the risk charge notice required by this Subsection, whichever is later. The risk charge for a unit well, substitute unit well, or cross-unit well that will serve as the unit well or substitute well for the unit shall be two hundred percent of such tract's allocated share of the cost of drilling, testing, and completing the well, ~~exclusive of amounts the drilling owner remits to the nonparticipating owner for the benefit of the nonparticipating owner's royalty and overriding royalty owner.~~ The risk charge for an alternate unit well or cross-unit well that will serve as an alternate unit well for the unit shall be one hundred percent of such tract's allocated share of the cost of drilling, testing, and completing such well, ~~exclusive of amounts the drilling owner remits to the nonparticipating owner for the benefit of the nonparticipating owner's royalty and overriding royalty owner.~~ For purposes of this Section, "net production proceeds" shall mean the proceeds from the sale or other disposition of production, less severance or production taxes due thereon, and less any amounts paid by the drilling owner to the nonparticipating owner for the benefit of the lessor royalty owner and overriding royalty owner of the nonparticipating owner as provided in Subitems (ii)(aa) and (bb) of this Subparagraph.

Next, the Council discussed the Committee's third proposed amendment to clarify the amount of royalties to be paid by the drilling owner to the nonparticipating owner, beginning with Subitem (A)(2)(b)(ii)(aa) on lines 75 through 82 of the materials. Mr. Ottinger explained that the requirement imposed upon the drilling owner to pay royalties to the nonparticipating owner's lessor was the most controversial feature of the 2012 amendments to the Risk Fee Act. The Reporter noted that the formula for making such payments contained some ambiguities, particularly as to whether the drilling owner would be entitled to recoup these royalty amounts out of future production inuring to the nonparticipating owner. He then explained that the Committee's proposed clarifications include changing "portion of production, or proceeds thereof" to "portion of the proceeds of production" in order to negate any notion that the drilling owner could be required to make payment in kind. The recommended changes also add language subtracting severance or production taxes and delete "or referenced" on lines 81 and 82 as inappropriate under the Public Records Doctrine. Mr. Ottinger then noted that a similar change concerning production proceeds was made on line 273 of the materials.

At this time, a motion was made and seconded to adopt the proposed changes to Subitem (B)(2)(b)(ii)(aa), and one Council member questioned whether a difference was intended between this language and the "proceeds from the sale or other disposition of production" language in the definition of "net production proceeds." The Reporter responded that this was intended to serve as a shorthand version of the language in the definition and agreed to add "from the sale or other disposition" between "proceeds" and "of" on line 79, as well as in all other provisions in which this phrase is used. A motion was then made and seconded to adopt the provision as amended, along with the addition of "proceeds" on line 273 as presented, and the motions passed over one objection. The adopted proposals read as follows:

(b)(ii)(aa) During the recovery of the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the well, the charge for supervision, and the risk charge, the nonparticipating owner who has furnished the information set forth in Subitem (gg) of this Item, shall be entitled to receive from the drilling owner for the benefit of his lessor royalty owner that portion of the proceeds from the sale or other disposition of production, or proceeds thereof, less severance or production taxes due thereon, due to the lessor royalty owner under the terms of the contract or agreement creating the royalty between the lessor royalty owner and the nonparticipating owner reflected ~~or referenced~~ of record at the time of the ~~well-proposal~~ risk charge notice.

* * *

(e)(ii) Notwithstanding the provisions of Subparagraph (b) of this Paragraph, the lessor royalty owner and overriding royalty owner shall receive that portion of production proceeds due to them under the terms of the contract creating the royalty.

Next, the Council discussed the Committee's fourth proposed amendment concerning the payment of the nonparticipating owner's overriding royalty interest, which is set forth in Subitem (A)(2)(b)(ii)(bb) on lines 83 to 94 of the materials. Mr. Ottinger first noted that the same change had been made here with respect to adding "a portion of the proceeds of production, less severance or production taxes due thereon" and informed the Council that "from the sale or other disposition" would also be added in this provision. The Reporter then explained that the notion of a weighted average percentage of the total lessor royalty and overriding royalty burdens was added and that the amount was fixed as of the date of the risk charge notice so that the terms of the overriding royalty could not be changed to affect or increase the drilling owner's obligation after the issuance of the risk charge notice. A motion was then made and seconded to adopt the proposed changes with the addition of "from the sale or other disposition" on line 85, and the motion passed with no objection. The adopted proposal reads as follows:

(bb) In addition, during the recovery set forth in Subitem (aa) of this Item, the nonparticipating owner shall receive from the drilling owner for the benefit of the overriding royalty owner a portion of the proceeds from the sale or other disposition of production, less severance or production taxes due thereon, that is the lesser of: (I) the nonparticipating owner's total percentage of actual overriding royalty burdens associated with the existing lease or leases which cover each tract attributed to the nonparticipating owner reflected of record at the time of the ~~well-proposal~~ risk charge notice; or (II) the difference between the weighted average percentage of the total actual lessor royalty and overriding royalty burdens of the drilling owner's leasehold within the unit and the weighted average percentage of the total actual lessor royalty and overriding royalty burdens of the nonparticipating owner's actual leasehold royalty burdens within the unit reflected of record at the time of the ~~well-proposal~~ risk charge notice. Such payment of the amount due shall be made in accordance with the terms of the contract or agreement creating the overriding royalty.

Mr. Ottinger then directed the Council's attention to the Committee's fifth proposed amendment concerning the procedures for the payment of royalties and the rights of the lessor royalty owner. After noting that the Committee proposed no change to Subitem (A)(2)(b)(ii)(cc), the Reporter explained that certain language was moved from Subitem (dd) to Subitem (ee) and that the procedures and remedies set forth in the Mineral Code, R.S. 31:1 et seq., will apply, except that dissolution is not available with respect to the drilling owner because the drilling owner has no interest in dissolving the lease. Mr. Ottinger also explained that the drilling owner must be provided with a true and complete copy of the mineral lease or other agreement creating the royalty, which prompted one Council member to question the distinction between requiring a sworn statement in Subitem (gg) but not here. The Reporter explained that the Committee had determined that this heightened burden was not necessary with respect to the lessor and overriding royalty owners, whose lessees were likely to have provided the relevant information. Motions were then made and seconded to adopt Subitems (dd) and (ee) as presented. The motions passed with no objection, and the adopted proposals read as follows:

(dd) Nothing in this Section shall relieve any lessee of its obligations to pay, from the commencement of production, any lessor royalty and overriding royalty due under the terms of his lease, and other agreements during the ~~recovery of actual well~~ recoupment of recoverable costs and the risk charge, or shall relieve any lessee of his obligation to pay all lessor royalty and overriding royalty due under the terms of his lease and other agreements after the recovery of the actual well recoupment of recoverable costs and the risk charge. Except as provided in this Paragraph, the drilling owner's obligation to pay the royalty and the overriding royalty to the nonparticipating owner in no way creates an obligation, duty, or relationship between the drilling owner and any person to whom the nonparticipating owner is liable to, contractually or otherwise. The lessor royalty owner and overriding royalty owner shall follow the same procedure and have the same remedies provided in Part 6 of Chapter 7 of Title 31 of the Louisiana Revised Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the Louisiana Revised Statutes of 1950 against the nonparticipating owner.

(ee) Except as provided in this Paragraph, the drilling owner's obligation to pay the lessor royalty and the overriding royalty to the nonparticipating owner in no way creates an obligation, duty, or relationship between the drilling owner and any person to whom the nonparticipating owner is liable, contractually or otherwise. In the event of nonpayment by the nonparticipating owner of the lessor royalty and overriding royalty due, and as a prerequisite to a judicial demand for damages against the drilling owner, the lessor royalty owner and overriding royalty owner shall provide written notice of such failure to the nonparticipating owner and drilling owner ~~as a prerequisite to a judicial demand for damages.~~ The lessor royalty owner and overriding royalty owner shall follow the same procedure and have the same remedies, except dissolution, provided in Part 6 of Chapter 7 of Title 31 of the Louisiana Revised Statutes of 1950 or Part 2-A of Chapter 13 of Title 31 of the Louisiana Revised Statutes of 1950, ~~respectively,~~ against the ~~nonparticipating owner and the drilling owner.~~ The written notice provided to the drilling owner by the lessor royalty owner and overriding royalty owner shall include a true and complete copy of the mineral lease or other agreement creating any lessor royalty or overriding royalty. If the drilling owner provides sufficient proof of payment of the royalties to the nonparticipating owner then the lessor royalty owner and overriding royalty owner shall have no cause of action against the drilling owner for nonpayment.

Next, the Council considered Subitem (A)(2)(b)(ii)(ff) on lines 128 through 140 of the materials, and Mr. Ottinger explained that the "good faith estimate" language had been added because the nonparticipating owner may not have all of the information required to make an exact payment, so an estimate based on information that is made public is all that should be required. A motion was made and seconded to adopt this provision as presented, and the motion passed with no objection. The adopted proposal reads as follows:

(ff) In the event of nonpayment by the drilling owner of the lessor royalty and overriding royalty due to the nonparticipating owner for the benefit of the lessor royalty owner and overriding royalty owner, and payment by the nonparticipating owner of a good faith estimate of the lessor royalty and overriding royalty due, the nonparticipating owner shall provide written notice of such failure to pay to the drilling owner as a prerequisite to a judicial demand for damages. The drilling owner shall have thirty days after receipt of the required notice within which to pay the royalties due or to respond in writing by stating a reasonable cause for nonpayment. If the drilling owner fails to make payment of the royalties or fails to state a reasonable cause for nonpayment within this period, the court may award to the nonparticipating owner as damages double the amount of royalties due, interest on that sum from the date due, and a reasonable attorney fee regardless of the cause for the original failure to pay royalties. If the drilling owner provides sufficient proof of payment of the royalties to the nonparticipating owner, then the nonparticipating owner shall have no cause of action against the drilling owner for nonpayment.

With respect to Subitem (gg) on lines 141 through 151 of the materials, the Reporter explained that this provision sets forth the information required to be provided by the nonparticipating owner to the drilling owner, including a true and complete copy of the mineral lease and a sworn statement of ownership, along with any title opinions that may exist. The Council first agreed to add "from the sale or other disposition" on lines 141, 146, and 150, and one Council member then expressed concern with respect to the requirement that any title opinions be provided, noting that this language is broad and may include information that is privileged. After discussion as to whether a sworn statement alone would be sufficient, as well as whether language concerning "the relevant portion" of any title opinion should be added, the Council considered the language on lines 166 through 172 allowing the drilling owner to recoup the costs of obtaining a title opinion. Ultimately, the Council agreed to add a period after "production" on line 150 and to replace "along with" with "In its discretion, the nonparticipating owner may also provide to the drilling owner" before "copies" on the same line. A motion was then made and seconded to amend Subitem (gg) as indicated and to adopt the provision as amended, and the motion passed with no objection. The adopted proposal reads as follows:

(gg) Each nonparticipating owner entitled to receive a portion of the proceeds from the sale or other disposition of production as provided in Subitems (ii)(aa) and (bb) of this Item, shall furnish to the drilling owner both of the following:

(I) A true and complete copy of the mineral lease or other agreement creating any lessor royalty or overriding royalty for which the nonparticipating owner is entitled to receive a portion of the proceeds from the sale or other disposition of production.

(II) A sworn statement of the ownership of the nonparticipating owner as to each tract embraced within the unit in which the nonparticipating owner has an interest and the amounts of the lessor royalty and overriding royalty burdens for which the nonparticipating owner is entitled to receive a portion of the proceeds from the sale or other disposition of production. In its discretion, the nonparticipating owner may also provide to the drilling owner copies of any title opinions in its possession on which the statement of ownership is based in whole or in part.

After brief discussions concerning Subitems (A)(2)(b)(ii)(hh), (ii), and (jj), including the need to add "from the sale or other disposition" on lines 153, 161, and 169, motions were made and seconded to adopt all of these provisions as amended. The motions passed with no objection, and the adopted proposals read as follows:

(hh) Each nonparticipating owner who has received from the drilling owner a portion of the proceeds from the sale or other disposition of production for the benefit of a lessor royalty owner or overriding royalty owner, based only on the information furnished pursuant to Subitem (gg) of this Item, shall indemnify and hold the drilling owner harmless from and against any claims asserted against the drilling owner related to any amounts paid to the nonparticipating owner. The nonparticipating owner shall also restore to the drilling owner any amounts paid by the drilling owner to the nonparticipating owner in reliance on the information furnished pursuant to Subitem (gg) of this Item, if and to the extent determined to be incorrect.

(ii) No change or division of the ownership of a nonparticipating owner who is receiving a portion of the proceeds from the sale or other disposition of production from the drilling owner, shall be binding upon the drilling owner for any purpose until such new nonparticipating owner acquiring any interest has furnished the drilling owner at the drilling owner's address as reflected in the records maintained by the office of conservation, with a certified copy of the instrument or instruments, constituting the chain of title from the original nonparticipating owner.

(ii) In the event that the drilling owner secures a title opinion from a licensed Louisiana attorney covering a tract of land in a unit burdened by a mineral lease, or other agreement, that creates any lessor royalty or overriding royalty for which a nonparticipating owner is entitled to receive a portion of the proceeds from the sale or other disposition of production from the drilling owner, the actual reasonable costs incurred by the drilling owner in obtaining the title examination and the title opinion shall be chargeable as a unit operating cost recoverable by the drilling owner out of the tract's allocable share of net production proceeds.

At this time, the Council turned to the Committee's sixth proposed change concerning subsequent operations, beginning with Item (A)(2)(b)(iii) on lines 173 through 180 of the materials. Mr. Ottinger explained that the Committee had concluded that operations subsequent to the initial drilling of a well should also be included in the Risk Fee Act and subject to the risk fee charge. The Council agreed, and a motion was made and seconded to adopt the proposed changes in Item (iii) as presented. The motion passed with no objection, and the adopted proposal reads as follows:

(iii) Any owner not notified shall bear only his tract's allocated share of the actual reasonable expenditures incurred in drilling, testing, completing, equipping, and operating the unit well ~~or in connection with any subsequent unit operation~~, including a charge for supervision, which share shall be subject to the same obligation and remedies and rights to own and recover out of production in favor of the drilling ~~party or parties~~ owner as provided in this Subsection. ~~A participating~~ The drilling owner shall deliver to the owner whom has not been notified, for the benefit of his lessor royalty owner or overriding royalty owner, the proceeds attributable to his the lessor royalty and overriding royalty burdens as described in this Section.

The Council then considered the definitions in Subitem (A)(2)(b)(iv)(aa) on lines 181 through 206 of the materials, agreeing first to alphabetize these terms in accordance with legislative drafting conventions. Mr. Ottinger explained that all of these definitions are terms used in the industry and were drafted in a manner that is consistent with what is typically found in joint operating agreements. A motion was then made and seconded to adopt Subitem (aa), at which time one Council member suggested changing "under this Section" to "R.S. 30:9(B)" to be consistent with Subsection A, specifically line 3 of the

materials. The Reporter and the Council agreed to make this change, and a great deal of discussion then ensued with respect to the definition of "extension" and whether the concept of "depth" as opposed to "extent" is appropriate for horizontal wells. Although Mr. Ottinger ensured the Council that "depth" is still considered appropriate nomenclature for horizontal rather than vertical wells and is used by the office of conservation, he ultimately agreed that it would do no harm to add "or extent" after "total measured depth" on line 203. A motion was then made and seconded to adopt Subitem (aa) as amended, and the motion passed with no objection. The adopted proposal reads as follows:

(iv)(aa) For purposes of this Section, the following definitions shall apply:

(I) "Deepening" means an operation whereby an existing wellbore serving as a unit well, alternate unit well, substitute unit well, or cross-unit well is extended to a point within the same unit and unitized interval beyond its previously drilled total measured depth.

(II) "Extension" means an operation related to a horizontal well whereby a lateral is drilled in the same unitized interval to a greater total measured depth or extent than the lateral was drilled pursuant to a previous proposal.

(III) "Recompletion" means an operation to attempt a completion in a portion of the unitized interval in the existing wellbore different than the initial completion in the unitized interval.

(IV) "Rework" means an operation conducted in the wellbore after it is initially completed in the unitized interval in a good faith effort to secure, restore, or improve production in a stratum within the unitized interval that was previously open to production in that wellbore, including but not limited to acidizing, re-perforating, hydraulic fracturing and re-fracturing, sand or paraffin removal, tubing repair or replacement, casing repair or replacement, squeeze cementing, or setting bridge plugs, including any essential preparatory steps. Rework does not include routine maintenance, repair, or replacement of downhole equipment such as rods, pumps, packers, or other mechanical devices.

(V) "Sidetrack" means the intentional deviation of an existing wellbore serving as a unit well, alternate unit well, or substitute unit well from its actual or permitted bottom hole location within that unit and unitized interval to a different bottom hole location within the same unit and unitized interval.

(VI) "Subsequent unit operation" means a recompletion, rework, deepening, sidetrack, or extension conducted within the unitized interval for a unit or units created under R.S. 30:9(B).

(VII) "Unitized interval" means the subsurface interval defined in the office of conservation order creating the unit or units that the existing wellbore is serving as a unit well, alternate unit well, substitute unit well, or cross-unit well.

Turning to Subitems (A)(2)(b)(iv)(bb) and (cc) on lines 207 through 218, the Reporter explained that these provisions were structured similarly to the provisions imposing the risk charge with respect to the initial drilling of a well. Mr. Ottinger further explained that the main difference with respect to subsequent operations is that the risk charge is 100% rather than 200% because the associated risk is not as great since the well has already been drilled. A motion was then made and seconded to adopt these provisions as presented, and the motion passed with no objection. The adopted proposals read as follows:

(bb) Any owner of a well described in Subparagraph (a) of this Paragraph conducting, intending to conduct, or who has conducted a subsequent unit operation on such well, may notify all other owners in the unit of the conducting or the intent to conduct such operation in the form and manner of the risk charge notice described in Subparagraph (a) of this Paragraph, and in that event, all of the provisions of this Paragraph shall be applicable to that subsequent unit operation to the same extent, and in the same manner, in which they would apply to the drilling of a new well, subject to the following provisions.

(cc) The risk charge for any subsequent unit operation shall be one hundred percent of the tract's allocated share of the actual reasonable expenditures incurred in conducting the subsequent unit operation, including a charge for supervision, regardless of whether the wellbore on which such operations were conducted is a unit well, alternate unit well, substitute unit well, or cross-unit well.

Mr. Ottinger then directed the Council's attention to Subitem (A)(2)(b)(iv)(dd) on lines 219 through 231 of the materials concerning the notice that must be provided by the drilling owner to the other owners in the unit. With respect to Subsubitem (III), the Reporter explained that the time limitation is intended to ensure that the estimate is not outdated, and one Council member questioned whether the meaning of "AFE" was provided elsewhere in the statute. After Mr. Ottinger explained that the full term was used on line 28 of the materials, a motion was made and seconded to adopt Subitem (dd) as presented. The motion passed with no objection, and the adopted proposal reads as follows:

(dd) The notice to be provided by the drilling owner to the other owners in the unit pursuant to Subitem (bb) of this Item shall contain:

(I) A detailed description identifying the well to which the subsequent unit operation relates, the work associated therewith, and the new location and objective depth of the well if changed as a result of such work.

(II) A copy of the order of the commissioner creating the drilling unit to which the subsequent unit operation relates.

(III) An AFE that shall include a detailed estimate, or the actual amount, of the cost of conducting the subsequent unit operation and that is dated within one hundred twenty days of the date of mailing of the notice.

(IV) An estimate of the notified owner's approximate percentage of well participation.

(V) A copy of all available logs, core analysis, production data, and well test data with respect to the well that has not been made public.

Next, the Council considered Subitem (A)(2)(b)(iv)(ee) on lines 232 through 247 of the materials, which requires a nonparticipating owner who wishes to participate in a subsequent operation to pay its outstanding balance for all previous operations in connection with the well, including the risk charge; otherwise, the nonparticipating owner will also be subject to a risk charge on the subsequent operation. One Council member noted that "it" on line 241 seems to refer to the nonparticipating owner rather than the drilling owner, and the Reporter agreed to replace "it" with "the drilling owner." A motion was then made and seconded to approve Subitem (ee) as amended, and the motion passed with no objection. The adopted proposal reads as follows:

(ee) If on the date of the notice of the subsequent unit operation, there are still amounts uncollected on a risk charge from a nonparticipating owner for the drilling of, or a previous operation on, the wellbore for which the notice is sent, the drilling owner may recoup a risk charge from that nonparticipating owner on the costs of the noticed subsequent unit

operation only if the drilling owner sends that nonparticipating owner a notice of the subsequent unit operation. However, such notice may offer that nonparticipating owner the opportunity to participate in the subsequent unit operation only if that nonparticipating owner pays to the drilling owner, within sixty days of the date of receipt of the notice, its entire outstanding balance due for all previous operations on the wellbore, including any amounts uncollected on a risk charge. If the drilling owner sends such a nonparticipating owner this notice, the drilling owner may, in addition to recouping the costs of a subsequent unit operation, recoup a risk charge on the costs of the subsequent unit operation from the net production proceeds from such well attributable to the tract under lease to that nonparticipating owner if it fails to elect timely to participate in the subsequent unit operation, or if it fails to pay timely the entire outstanding balance due for all previous operations on the wellbore, or if it fails to pay timely its share of the estimated costs of the subsequent unit operation determined by the AFE.

The Council then considered the Committee's seventh proposed change in Subparagraphs (A)(2)(h) and (i) on lines 281 through 285 of the materials to clarify language pertaining to determining who must receive a risk charge notice along with the consequences of failing to properly notify an owner. A motion was made and seconded to approve these provisions as presented, and the motion passed with no objection. The adopted proposals read as follows:

(h) The owners in the unit to whom the risk charge notice provided for hereinabove may be sent, are the owners of record as of the date on which the risk charge notice is sent.

(i) Failure of the drilling owner to provide written to an owner a risk charge notice as required by Subparagraph (a) of this Paragraph ~~to an owner~~ shall not affect the validity of the written risk charge notice properly provided to any other owner in the unit.

Finally, the Council considered the Committee's eighth and ninth proposed changes to Paragraph (A)(3) and Subsection B, on lines 286 through 289 of the materials, which incorporate the "sell or otherwise dispose" language and make other technical corrections. A motion was made and seconded to adopt these provisions as presented, and the motion passed with no objection. The adopted proposal reads as follows:

(3) If there is included in any unit created by the commissioner of conservation one or more unleased interests for which the party or parties entitled to market production therefrom have not made arrangements to separately sell or otherwise dispose of the share of such production attributable to such tract, and the unit operator ~~proceeds with the sale of~~ sells or otherwise disposes of such unit production, then the unit operator shall pay to such party or parties such tract's pro rata share of the proceeds of the sale or other disposition of production within one hundred eighty days of such sale or other disposition.

B. Should the owners of separate tracts embraced within a drilling unit fail to agree upon the pooling of the tracts and the drilling of a well on the unit, and should it be established by final and unappealable judgment of court that the commissioner is without authority to require pooling as provided for in Subsection A of this Section, then, subject to all other applicable provisions of this Chapter, the owner of each tract embraced within the drilling unit may drill thereon. The allowable production therefrom shall be such proportion of the allowable for the full unit as the area of the separately owned tract bears to the full drilling unit.

At this time, a motion was made and seconded to approve all of the proposed revisions to R.S. 30:10 as agreed upon by the Council, as well as the report accompanying these revisions, and this motion passed with no objection. Mr. Ottinger then concluded his presentation, and after the President asked Council members to submit feedback concerning the Zoom meeting, the December 2020 Council meeting was adjourned.


Mallory C. Waller

MEMBERSHIP AND NOMINATING COMMITTEE REPORT
December 18, 2020

This committee respectfully makes the following nominations of officers and members to fill vacancies on the Council of the Louisiana State Law Institute for 2021 as follows:

Positions to be Approved by Council

<u>POSITION</u>	<u>NAME</u>	<u>CITY</u>	<u>TERM</u>
Chair	Susan G. Talley	New Orleans	12-31-21
President	Rick J. Norman	Lake Charles	12-31-21
Vice-Presidents	L. David Cromwell Thomas M. Hayes Leo Hamilton Kay Medlin	Shreveport Monroe Baton Rouge Shreveport	12-31-21
Director	Guy Holdridge	Baton Rouge	12-31-21
Assistant Director	Charles S. Weems	Alexandria	12-31-21
Secretary	Lee Ann Wheelis Lockridge	Baton Rouge	12-31-21
Assistant Secretary	Robert W. "Bob" Kostelka	Monroe	12-31-21
Treasurer	Joseph W. Mengis	Baton Rouge	12-31-21
Assistant Treasurer	John David Ziober	Baton Rouge	12-31-21
Executive Committee-at-Large	Amy Allums Lee Gregory A. Miller J. Randall Trahan	Lafayette Norco Baton Rouge	12-31-21 12-31-21 12-31-21
Practicing Attorneys	Amy Allums Lee Donald W. Price Christopher H. Riviere Zelda W. Tucker H. Aubrey White	Lafayette Baton Rouge Thibodaux Shreveport Lake Charles	12-31-24 12-31-24 12-31-24 12-31-24 12-31-24
Representative, Young Lawyers Section	Todd C. Taranto	Mandeville	12-31-22

Recently Appointed Positions

<u>POSITION</u>	<u>NAME</u>	<u>CITY</u>	<u>TERM</u>
Representative, Court of Appeal	Susan M. Chehardy	Gretna	12-31-24
President, LSBA	Alainna R. Mire	Alexandria	6-11-21
Chair, Young Lawyers Section	Carrie LeBlanc Jones	Baton Rouge	6-11-21
Observers, Young Lawyers Section	Kristen D. Amond Rachal Cox Cassagne	New Orleans Baton Rouge	12-31-21 12-31-21

Louisiana Member, Council of the American Law Institute	Sarah S. Vance	New Orleans	N/A
Louisiana Member, Board of Governors, American Bar Association	Judy Perry Martinez	New Orleans	8-21
Louisiana Member, House of Delegates, American Bar Association	Ashley L. Belleau Jeanne C. Comeaux Jacqueline M. Epstein Jan M. Hayden Richard K. Leefe Alainna R. Mire Frank X. Neuner, Jr. Megan S. Peterson H. Minor Pipes, III Deidre Deculus Robert	New Orleans Baton Rouge New Orleans New Orleans Metairie Alexandria Lafayette New Orleans New Orleans Baton Rouge	8-21 8-22 8-22 8-22 8-21 8-21 8-21 8-22 8-22 8-22
Louisiana Member, Board of Governors, National Bar Association	Christopher B. Hebert Deidre Deculus Robert	Greenwell Springs Baton Rouge	8-21 8-21
Louisiana Member, National Bar Association, Appointed by the President of the NBA	Arlene D. Knighten	Hammond	8-21
Two Louisiana Members of the National Bar Association to be Appointed by the President of the Louisiana Judicial Council of the NBA	Piper D. Griffin Pamela Taylor Johnson	New Orleans Baton Rouge	6-21-24 6-21-24
President, State Chapter Louis A. Martinet Society	Alejandro R. Perkins	Baton Rouge	N/A
Two Judges, Members of the Louisiana Council of Juvenile and Family Court Judges Appointed by the President of the Louisiana Council of Juvenile and Family Court Judges	Grace B. Gasaway Lisa Woodruff-White	Hammond Baton Rouge	12-31-24 12-31-24
President, Louisiana District Attorney's Association	Martin Bofill Duhe'	New Iberia	8-15-21
Representative, Paul M. Hebert Law Center	Melissa T. Lonegrass	Baton Rouge	12-31-24
Representative, Loyola University College of Law	John A. Lovett	New Orleans	12-31-24
Representative, Tulane University School of Law	Sally Brown Richardson	New Orleans	12-31-24

Honor Graduates

<u>POSITION</u>	<u>NAME</u>	<u>CITY</u>	<u>TERM</u>
Loyola University College of Law	Andrew C. Rayford Blake C. Donewar Eleanor L. Guidry	New Orleans New Orleans New Orleans	12-31-21
Paul M. Hebert Law Center	Emily M. Gauthier Michael C. Schimpf Claire E. Schnell	Baton Rouge Shreveport New Orleans	12-31-21
Southern University Law Center	Trey K. Bartholomew Taylor M. LeDuff Josef Philip M. Ventulan	Baton Rouge Baton Rouge Baton Rouge	12-31-21
Tulane University School of Law	Alix L. Duplechain Kansas M. Guidry-Leingang Patrick T. Isacks	New Orleans New Orleans New Orleans	12-31-21

Proxies and Designees

<u>POSITION</u>	<u>NAME</u>	<u>CITY</u>	<u>TERM</u>
Designee, State Public Defender (Remy Starnes)	C. Frank Holthaus	Baton Rouge	N/A
Proxy, Dean of Loyola University College of Law (Madeleine Landrieu)	Markus G. Puder	New Orleans	N/A
Proxy, Attorney General (Jeff Landry)	Angelique D. Freel	Baton Rouge	N/A
Proxy, Chancellor of Southern University Law Center (John Pierre)	Evelyn L. Wilson	Baton Rouge	N/A

Respectfully submitted:

L. David Cromwell
 Kevin C. Curry
 Leo C. Hamilton
 Thomas M. Hayes, III
 Emmett C. Sole
 Monica T. Surprenant
 Susan G. Talley
 John David Ziober
 MEMBERSHIP AND NOMINATING COMMITTEE

By: Emmett C. Sole

Emmett C. Sole, Chair
 December 18, 2020