



LOUISIANA STATE LAW INSTITUTE

PAUL M. HEBERT LAW CENTER, ROOM W127

UNIVERSITY STATION

BATON ROUGE, LA 70803-1016

OFFICE OF  
THE DIRECTOR  
(225) 578-0200

FAX: (225) 578-0211

EMAIL: LAWINSTITUTE@LSLI.ORG

February 10, 2014

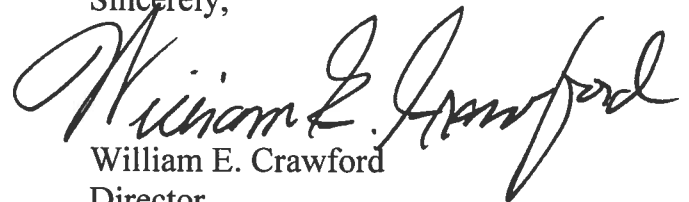
Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

RE: SR NO. 84 of 2013

Dear Mr. President:

The Louisiana State Law Institute respectfully submits herewith its interim report to the legislature in response to 2013 Senate Resolution No. 84, relative to mineral law-legacy disputes.

Sincerely,



William E. Crawford  
Director

WEC/puc

Enclosure

cc: Senator R.L. "Bret" Allain, II

email cc: David R. Poynter Legislative Research Library  
[drplibrary@legis.la.us](mailto:drplibrary@legis.la.us)  
Secretary of State, Mr. Tom Schedler  
[admin@sos.louisiana.gov](mailto:admin@sos.louisiana.gov)

**LOUISIANA STATE LAW INSTITUTE**

**MINERAL LAW – LEGACY DISPUTES COMMITTEE**

**INTERIM REPORT TO THE LOUISIANA LEGISLATURE  
IN RESPONSE TO SR NO. 84 OF THE  
2013 REGULAR SESSION**

**(Utilizing Alternative Dispute Resolution to Resolve "Legacy" Disputes)**

Prepared for the Louisiana Legislature on

**February 10, 2014**

Baton Rouge, LA

**LOUISIANA STATE LAW INSTITUTE**  
**MINERAL LAW – LEGACY DISPUTES COMMITTEE**

Paul M. Adkins, Shreveport

R.L. "Bret" Allain, II, Franklin

George Arceneaux, III, Lafayette

Daniel J. Balhoff, Baton Rouge

Bernard E. Boudreaux, Jr., Baton Rouge

Robert L. Cabes, Lafayette

M. Taylor Darden, New Orleans

David M. Ellison, Jr., Baton Rouge

L. Victor Gregoire, Baton Rouge

James C. Gulotta, Jr., New Orleans

Kevin E. Huddell, New Orleans

Colleen C. Jarrott, New Orleans

R. Michael Lyons, Baton Rouge

Victor L. Marcello, Baton Rouge

Loulan J. Pitre, Jr., New Orleans

J. Michael Veron, Lake Charles

Keith Hall, Reporter

Lynette Roberson, Staff Attorney

James J. Carter, Jr., Staff Attorney

February 10, 2014

To: Senator John A. Alario, Jr.  
President of the Senate  
P.O. Box 94183  
Baton Rouge, LA 70804

### **INTERIM REPORT TO THE LEGISLATURE IN RESPONSE TO SR NO. 84 OF 2013**

Senate Resolution 84 of 2013 (copy attached as Appendix ) urges and requests the Louisiana State Law Institute, in consultation with the Director of the Louisiana Mineral Law Institute, to "study the feasibility and constitutionality of utilizing alternative dispute resolutions as a means of resolving 'legacy' disputes and report its recommendations to the Senate on or before February 24, 2014."

In fulfillment of the Senate's request, the Louisiana State Law Institute has formed and appointed the Mineral Law—Legacy Disputes Committee, composed of both individuals with significant experience representing plaintiffs in legacy litigation cases, as well as individuals with significant experience representing defendants, and individuals with experience in alternative dispute resolution. The Committee has undertaken the study and response to the resolution, under the guidance of the newly-appointed Reporter, Professor Keith Hall of the LSU Paul M. Hebert Law Center. Professor Hall is also the Director of the Louisiana Mineral Law Institute.

The Committee held its first meeting on January 17, 2014 at the Louisiana Law Institute Conference Room at LSU Law School in Baton Rouge. The Committee reached a tentative consensus on the following issues.

- (1) The Committee should draft a proposal for mandatory, nonbinding mediation of legacy litigation disputes. The proposed mediation should be mandatory in the sense that parties would be compelled to mediate. It would be nonbinding in the sense that it would be mediation, not arbitration. That is, the mediation would be mandatory settlement discussions, facilitated by a mediator. If the parties did not reach a settlement, the claimants would be free to pursue, or continue pursuing, litigation.
- (2) The rules governing the mandatory mediation should be structured to protect claimants against the running of liberative prescription (a statute of limitations) during the period that the parties are pursuing the mandatory mediation, and also should be structured to avoid prejudicing the rights, if any, of defendants to remove claims from state court to federal court in individual disputes.

- (3) The Committee should work on a set of proposed rules for a voluntary, binding arbitration system. The arbitration system would be voluntary in the sense that the law would not require parties to arbitrate. An arbitration would require the consent of all parties who would participate in the arbitration. If the parties agreed to arbitrate, that decision would be binding in the sense that a party who agreed to arbitrate would be obligated to do so. Further, the arbitration would substitute for litigation in the courts. The parties' agreement to arbitrate would waive their right to litigate the dispute. Finally, the decision of the arbitrator or panel of arbitrators regarding resolution of the dispute would be conclusive, and not subject to appeal or challenge, except on the narrow grounds on which arbitration decisions generally can be challenged. Parties already have a right to arbitrate, but if there existed a set of arbitration rules that have been crafted in advance, outside of the context of specific disputes, and which are particularly designed with legacy litigation in mind, the availability of such rules might make it more likely that parties in legacy litigation disputes would choose to arbitrate.
- (4) The Committee should meet again to consider written proposals to implement the decisions noted above.

Respectfully submitted,  
Keith B. Hall, Reporter  
Mineral Law—Legacy Disputes Committee

# APPENDIX

Regular Session, 2013

ENROLLED

SENATE RESOLUTION NO. 84

BY SENATOR ALLAIN

## A RESOLUTION

To urge and request the Louisiana State Law Institute, in consultation with the director of the Louisiana Mineral Law Institute, to study the feasibility and constitutionality of utilizing alternative dispute resolutions as a means of resolving "legacy" disputes and report its recommendations to the Senate on or before February 24, 2014.

WHEREAS, Article IX, Section 1 of the Constitution of Louisiana mandates that the natural resources and the environment of the state, including air and water, are to be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people, and requires the legislature to enact laws to implement this policy; and

WHEREAS, "legacy" lawsuits are lawsuits filed by a landowner claiming that oil and gas operations caused his property or groundwater located beneath his property to become polluted and contaminated; and

WHEREAS, it is the duty of the legislature to set forth procedures to ensure that damage to the environment is remediated to a standard that protects the public interest; and

WHEREAS, Act 312 of the 2006 Regular Session of the Legislature of Louisiana and Act 779 of the 2012 Regular Session of the Legislature of Louisiana established judicial and administrative procedures relative to "legacy" lawsuits, environmental remediation and protection of the public interest; and

WHEREAS, the legislature should be fully informed as to the legal aspects of all alternative dispute resolution methods to expedite the resolution of "legacy" disputes.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute, in consultation with the director of the Louisiana Mineral Law Institute, to study the feasibility and constitutionality of utilizing alternative dispute resolutions as a means of resolving "legacy" disputes and report its recommendations to the Senate on or before February 24, 2014.

**SR NO. 84**

**ENROLLED**

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute and the director of the Louisiana Mineral Law Institute.

---

PRESIDENT OF THE SENATE