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ONE J

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LOUISIANA



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I. Introduction

The COVID-19 pandemic and the decline in the price of oil brought many changes to the oil and gas landscape in 2020. In response, the Louisiana Legislature and several regulatory groups sought to enact measures to provide relief to oil and gas operators and industry participants.

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II. Legislative and Regulatory Updates

A. State Legislative Developments

1. House Concurrent Resolution 11 (HCR 11): Removal of the Revenue Sharing Cap on the Gulf of Mexico Energy Security Act of 2006 (GOMESA) for Gulf Producing States

HCR 11, which passed in both the House and Senate in the 2020 First Extraordinary Session, memorialized the agreement between the United States Congress and the Louisiana congressional delegation to remove the revenue sharing cap on the Gulf of Mexico Energy Security Act of 2006 (GOMESA) for Gulf producing states and to take such actions as are necessary to rectify the federal revenue sharing inequities between energy producing states.

The Resolution first sets out recognizing that current laws regarding production of hydrocarbons on federal lands are disparate when it comes to how onshore production and offshore production are shared with the respective producing states. Currently, revenues from federal lands onshore are shared 50-50 with the host state, with no cap. Conversely, only 37.50% of revenues from federal lands offshore are shared with the adjacent state. Further, these revenues are capped at \$375 million per state. Louisiana is, according to most recent figures, the second largest oil *and* gas producer when also considering production from adjacent federal waters.

The Resolution recognizes Louisiana's importance to our energy infrastructure; pointing out that the state has caverns capable of storing nearly 300 million barrels of crude oil; they have more LNG facilities than any other state; their ports play an essential role in distribution of natural gas and crude oil, not only to the rest of the country, but also the world; and they also receive and transport a majority of oil and gas production from the Gulf of Mexico. All of this infrastructure is not only costly to develop, but it is also takes a toll on the coastal environment. In 2006 the people of Louisiana overwhelmingly approved a constitutional amendment dedicating revenues received from Outer Continental Shelf oil and gas activity through GOMESA to the Coastal Protection and Restoration Fund for the purposes of coastal protection. Although Louisiana has been successful in implementing plans to further the conservation of its coastal environment, they feel that, with the equitable distribution of offshore oil and gas revenues, more can be done to protect Gulf Coast Ecosystem, which the United States is dependent upon.

H.R. Con. Res. 11, 2020 First Extraordinary Sess. (La. 2020).

2. Proposed House Concurrent Resolutions 34 and 65 (HCR 34 and HCR 65): Suspension of Severance Taxes Levied on Oil, Natural Gas, Distillate, and Condensate

During the 2020 Regular Session, HCRs 34 and 65 were introduced. HCR 34, introduced by Representative Phillip DeVillier [R], would suspend severance taxes levied on oil, natural gas, distillate, and condensate until sixty days after final adjournment of the 2021 Regular Session of the Legislature of Louisiana.¹

HCR 65, introduced by Representative Stuart Bishop [R], also sets out to suspend severance taxes levied on oil, natural gas, distillate, and condensate. However, Representative Bishop's bill suspends the levy of said taxes through the final day of the last full month prior to sixty days after final adjournment of the 2021 Regular Session of the Legislature of Louisiana, or Thursday June 10, 2021.

Both bills state that the oil and natural gas industries are crucial to the strength of the State's economy. The bills go on to state that, due to the recent drop in oil and natural gas prices, as well as a drop in demand due to COVID-19, these industries "need immediate relief from severance taxes in order to make it financially feasible for oil and natural gas production to continue . . . which in turn will help boost the overall economic health of the state's budget."

These bills, apart from being introduced by different Representatives and having the terms of suspension worded differently, are verbatim.

H.R. Con. Res. 34, 2020 First Reg. Sess. (La. 2020).

H.R. Con. Res. 65, 2020 First Reg. Sess. (La. 2020).

HCR 65 has faced some opposition, however. Jan Moller—executive director of the Louisiana Budget Project, a nonprofit policy research and advocacy organization—argued that the suspension of the severance taxes in question would reduce available revenues by \$514 million in the 2020-21 state fiscal year. She further argued that this \$514 million, or approximately 18% of the entire "discretionary" general fund appropriations in Louisiana's 2020 budget, is necessary to keep struggling Louisianans afloat and that the Legislature's focus "should be on those who are in the greatest need, and on doing the greatest good." Jan Moller, *LBP testimony on HCR 65*, Louisiana Budget Project (May 11, 2020), <https://www.labudget.org/2020/05/lbp-testimony-on-hcr-65/>.

1. The Louisiana Legislature's 2021 Regular Session will conclude no later than 6:00 p.m. Thursday June 10, 2021.

3. Proposed House Bill 506 (HB 506): Severance Taxes Related to Oil and Gas

Another Bill, HB 506, aimed at reducing oil and gas severance taxes, but unrelated to HB 34 and HB 65, passed in the House during the 2020 Regular Legislative Session with 72 yeay votes to 25 nay votes and is now before the Senate.

The proposed Bill would gradually lower the severance taxes levied on oil production. The current rate is 12.50% of its value at the time and place of production. The proposed Bill sets out a schedule reducing the taxable rate starting at 12.50% of its value at the time and place of production from January 1, 2020 to July 1, 2020. The schedule then provides for a 0.50% rate reduction every year. The final stage of the proposed schedule sets the rate at 8.50% at the time and place of production starting July 1, 2028, and for all periods thereafter. Section 1. R.S. 47:633(7)(a).

The Bill also proposes different tax rates for wells depending on their ability to produce. For oil wells that are incapable of producing an average of more than twenty-five barrels of oil per producing day during the entire taxable month and that also produce at least 50% salt water per day, the taxable rate would be 6.25% of its value at the time and place of production. Section 1. R.S. 47:633(7)(b). For oil wells that are incapable of producing an average of more than ten barrels of oil per producing day during the entire taxable month, the taxable rate would be 3.125% of its value at the time and place of production. Section 1. R.S. 47:633(7)(c)(i)(aa).

One thing to note is that the present enacted Bill sets rates for Section 7(b) and 7(c)(i)(aa) at one half and one quarter, respectively, of the taxable rate stated in 7(a) (12.50%). The proposed Bill, which has the apparent goal of lowering severance taxes levied on oil production, would actually make the rates higher than the present law provides for wells in Sections 7(b) and 7(c)(i)(aa) once the rate is lowered below 12.50% on July 1, 2021.

H.B. 506, 2020 First Reg. Sess. (La. 2020).

4. Proposed House Bill 710 (HB 710): Proposed Increase in Hazardous Waste Fees

HB 710 was introduced by Representative Gary Carter [D] during the 2020 Regular Legislative Session.

The Bill, as proposed, would allow the Department of Environmental Quality (DEQ) to increase annual hazardous waste fees for small and large quantity generators. The fees for such generators, if enacted, would increase the maximum fee to \$600 per small generator and \$750 per large generator

and would be deposited into the Environmental Trust Dedicated Fund Account.

H.B. 710, 2020 First Reg. Sess. (La. 2020).

5. Proposed House Bill 187 (HB 187): Proposed Increase in Civil Penalties for the Violation of Environmental Laws

HB 187 was introduced by Representative Rodney Lyons [D] during the 2020 Regular Legislative Session.

The Bill, as proposed, would increase the maximum civil penalties that may be assessed by the DEQ or the court for each day of violation. The maximum penalty for violation of state environmental laws would increase from \$32,500/day to \$47,500/day.

In the event a cease and desist order is issued and the person fails to take corrective action, the proposed Bill would increase this civil penalty from \$50,000/day of noncompliance to \$75,000/day of noncompliance.

H.B. 187, 2020 First Reg. Sess. (La. 2020).

6. Proposed House Bill 724 (HB 724): Proposed Rule Regarding the Grant of Coastal Use Permits

HB 724 was introduced by Representative Mack Cormier [D] during the 2020 Regular Legislative Session.

The Bill, as proposed, would not allow an applicant seeking a coastal use permit for a project requiring a federal environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 431 to be granted said permit, unless the project and its environmental impact statement are fully reviewed by the federal permitting agency. Additionally, any waiver obtained for a federally required environmental impact statement would not be recognized by Louisiana when issuing a coastal use permit. Lastly, even if an application met all federal requirements, nothing would preclude the Louisiana Department of Natural Resources from conducting their own analysis.

H.B. 724, 2020 First Reg. Sess. (La. 2020).

7. Proposed House Bill 587 (HB 587): Proposed Rule Authorizing the Secretary of the DEQ to Establish a Voluntary Self-Audit Program

HB 587 was introduced by Representative Jean-Paul Coussan [R] during the 2020 Regular Legislative Session.

The proposed bill would amend Section 1. R.S. 30:2030(A). The proposed amendment provides that any information contained in a voluntary self-audit would be treated as confidential by the DEQ and would

be withheld from public disclosure for a limited period of time. Information required by state or federal statute, regulation, or permit, however, would not be treated as confidential.

The bulk of the proposed bill, however, comes in its addition of §2044. This would establish a program for voluntary environmental self-audits. The program also provides for: incentives for conducting self-audits in the form of reduction or elimination of civil penalties for violations disclosed to the DEQ; corrective action for violations discovered as a result of the self-audit; submission to the DEQ of the plans to correct violations during the self-audit; and fees for the review of self-audit reports and the actions taken to correct reported violations.

H.B. 587, 2020 Reg. Sess. (La. 2020).

8. Coastal Zone Bills

a) Senate Concurrent Resolution 7 (SCR 7): Urging and Requesting Certain Officials and Local Governments to Dismiss Coastal Lawsuits

SCR 7, which passed in both the House and Senate in the 2020 Regular Legislative Session, memorialized the Louisiana Legislature's request to certain parish and city officials to drop the forty-three lawsuits that they filed against oil and natural gas companies operating in Louisiana.

The Bill pointed out that from 1980, when the Coastal Zone Management Act (CZMA) was enacted, to 2013, local governments had never sought action over state issued coastal use permits under the CZMA, making the current lawsuits unprecedented. Not only are the lawsuits unprecedented, but the Bill also points out the importance that the oil and natural gas industries play in the state's economy and the effort to protect the coastal environment. Realizing the detrimental effect these lawsuits may have on oil and gas companies operating in Louisiana and the effect this could have on the state's economy, the representatives drafted this Bill as a request for these locales to drop the pending lawsuits.

S. Con. Res. 7, 2020 Reg. Sess. (La. 2020).

b) Proposed Senate Bill 490 (SB 490): Creating the State and Parish Coastal Zone Recovery Authority

SB 490, a bipartisan Bill introduced in the 2020 Regular Session, seeks to create the State and Parish Coastal Zone Recovery Authority (SPCZRA). The board of the SPCZRA would be composed of the following individuals: (1) a member from each settling parish appointed by the parish governing authority of that parish; (2) The executive assistant to the governor for coastal activities or his designee; (3) The chairman of the

Governor's Advisory Commission on Coastal Protection, Restoration, and Conservation; (4) The executive director of the Coalition to Restore Coastal Louisiana; (5) The executive director of the Louisiana Mid-Continent Oil & Gas Association; (6) The president of the Louisiana Oil and Gas Association; and (7) The president of the Louisiana Association of Business and Industry.

The Bill would also create a special permanent trust fund, funded by the proceeds of any settlement of actions instituted to enforce the State and Local Coastal Resources Management Act of 1978. The board will then approve use of trust funds, a majority of which will be used for the master plan and other coastal remediation, restoration, and protection purposes.

S.B. 490, 2020 Reg. Sess. (La. 2020).

c) Proposed Senate Bill 359 (SB 359): Providing for the Enforcement of Coastal Use Permits

SB 359, introduced during the 2020 Regular Session, would amend and reenact R.S. 49:214.36(D) and (E), relative to the Louisiana Coastal Zone Management Program.

The proposed Bill authorizes the secretary or the attorney general to bring actions necessary to ensure no uses of *state* concern and no uses of local concern are made in the coastal zone without the necessary permit or without being in accord with the terms and conditions of a coastal use permit. The proposed bill would also authorize the appropriate district attorney, unless otherwise precluded, and the local government, with an approved program, to bring such actions necessary to ensure that no uses of *only local* concern are made in the coastal zone without the required coastal use permit or without being in accord with the terms and conditions of a coastal use permit.

S.B. 359, 2020 Reg. Sess. (La. 2020).

B. Regulatory Developments

1. Commissioner of Conservation Letter: Emergency Measures to Help Oil and Gas Industry

2020 saw an unprecedented slowdown in the oil and gas industry as a result of stay-at-home orders related to the COVID-19 pandemic and a decline in oil prices. As a result, Richard Ieyoub, Commissioner of Conservation, addressed numerous concerns of operators in a March 26, 2020 letter. Conservation would adjust their procedures as follows.

Ieyoub first addressed plugging requirements. He stated that six-month extensions will be automatically granted for the 90-day regulation requiring

any inactive well, without future utility, to be placed on a schedule of abandonment or plugged within 90 days. For wells already on the schedule, operators are already allowed to delay plugging for up to one year without any adverse consequences. They may not, however, add any additional wells to the schedule of abandonment.

Ieyoub next addressed well test production reports. Currently, operators must submit well test reports every six months and production reports monthly. Failure to timely submit could result in a Compliance Order and civil penalty. Conservation stated in the letter that it will grant 60-day extensions in addition to the 60-day delay within which operators may submit their reports. Conservation also stated they would send a “Notice of Violation,” without penalty, prior to issuance of a Compliance Order. A caveat of this Notice of Violation is that the operator must remain responsive to Conservation. Conservation also stated it would take a similar approach with minor violations such as late filings, missing well signs, or overgrown vegetation too close to production equipment that creates a fire hazard.

Conservation lastly addressed financial security for inactive wells that have future utility. Ieyoub stated that although operators are already granted one year to obtain financial security, it will consider the current industry crisis a sufficient cause for an extension and will grant a request for an extension to any requesting operator.²

Letter from Richard Ieyoub, Commissioner of Conservation, La. Dept. of Nat. Res., to author (Mar. 26, 2020).

2. April 29, 2020 Special Meeting of the Louisiana State Mineral and Energy Board

At a special meeting of the Louisiana State Mineral and Energy Board (the “Board”), the Board approved two different resolutions to curb the effects of the current Covid-19 Pandemic and decline in oil prices.

The first of these, Resolution #02-04-001, created a “temporary moratorium on the enforcement of any and all lease maintenance obligations and conditions for all State Leases.” The moratorium was effective between March 11, 2020 and July 13, 2020. After July 13, 2020, the Board allowed lessees another 30-day period in which to “resume or begin operations, production, or lease maintenance payments sufficient to maintain the State Leases in effect.” Any obligations complied with prior to the end of these two periods will be deemed to have occurred retroactively

2. Letter did not state the duration of the extensions to be granted.

prior to the due date required under the terms of the Lease. Additionally, if any Lease would expire during the Moratorium but for a rental, shut-in, or other payment, the performance of certain operations, and/or the commencement or resumption of production before the end of the Moratorium would be sufficient to maintain the Lease.

The Board also pointed out that if lessee continues to obtain production during the moratorium, they would not be excused from paying royalties and interests due under the Lease.

The second of these resolutions, Resolution #20-04-002, postponed, delayed, suspended, and waived penalties assessed against State Lessees for lease and statutory obligations under La. R.S. 30:123.1(C) (registration of prospective leaseholders), 128(B) (transfer or assignment of lease), 136(A)(1)(b) (payment of bonuses, rentals, royalties, shut-in payments, or other sums payable to the state as lessor), 136(B)(1)-(3) (incorrect or incomplete filing of forms and failure to pay or underpayment of any sum), 144(A)(8) (prohibition on the exchange or resale of any royalty crude without the consent of the state), 213(B) (knowing or willful violations of a State Mineral and Energy Board rule or order), and 217(B)(5) (violation of filing requirements for conducting geological surveys) occurring before March 11, 2020, or allegedly occurring after March 11, 2020. The moratorium on these penalties was effective from March 11, 2020 through August 12, 2020. Two conditions to the effectiveness of this resolution are that (1) there must have been a good faith error or disagreement over lease obligations and (2) the penalties were directly cause by the COVID-19 pandemic.

Neither of these resolutions were extended.

III. Judicial Updates

A. Federal Court Cases

1. Requirement of In-Kind or Cash Payments for Delivery Shortfalls on Federal Leases

This case involves W&T Offshore, Inc., an Operator of federal offshore natural gas deposits (“Operator”), who brought an action against the Department of the Interior seeking judicial review of the Interior Board of Land Appeals' (IBLA) decision denying its appeal of Interior's demand for a final cash payment for under-deliveries of natural gas it was required to make to Interior as in-kind royalty payments in exchange for the lease. *W & T Offshore, Inc. v. Bernhardt*, 946 F.3d 227 (5th Cir. 2019).

Both parties to the case appealed after The United States District Court for the Western District of Louisiana adopted the report and recommendation of Kathleen Kay, United States Magistrate Judge, and granted partial summary judgment to Operator and Interior. *Id.* at 231.

As background of this case, the Outer Continental Shelf Lands Act (“OCSLA”) gives the Department of the Interior discretion to require royalties “in amount or value of the production saved, removed, or sold”—i.e., payment in kind or payment in cash. The leases at issue in this case required payment in kind. *Id.* However, in October 2008 after W&T had shortfalls in their payments to Interior, Interior required a final cash payment from W&T and would not accept payment in kind. *Id.*

W&T proceeded to request judicial review of this requirement to the IBLA. *Id.* at 232. After the findings of the IBLA were promulgated and the United States District Court for the Western District of Louisiana handed down its ruling, W&T appealed. *Id.* at 232-33. The arguments relevant to the appeal are that: (1) Interior could not require make-up cash payments for past months in which it had originally required payment in kind; (2) Interior’s decision to require retroactive payment-in-cash royalties—and its methodology for doing so—created a new substantive rule that should have been subject to notice and comment under the Administrative Procedure Act (“APA”); (3) Interior was obligated to comply with the valuation regulations, which generally value gas at the price the lessee receives rather than at the Interior’s contracted sales price; and (4) Interior should have credited its over-deliveries prior to February 2003, despite the statute of limitations. *Id.* at 232.

The Court first addressed whether Interior exceeded its statutory authority by changing its election from payment in kind to payment in cash for overdue royalties. *Id.* at 233. The Court did not find any of W&T’s arguments to be persuasive. It sided with Interior’s argument that nothing in OCSLA prohibits it from changing its election from payments in kind to cash. *Id.* at 234. This argument finds extra support given “Congress’s expressed intent to increase receipts and achieve effective collections of royalties by commanding lessees to make such payments in the time and manner as may be specified by the Secretary.” *Id.* at 233-36.

The Court of Appeals next addressed W&T’s second argument that the Interior’s decision to require retroactive payments in cash was a new substantive rule that should have been subject to notice and comment under the APA. *Id.* at 236. To this, the court said:

The Department of the Interior did not apply a pre-existing regulation to the specific facts of an industry entity's case. Rather, it followed up the development of a new policy with adjudications in which the new policy "controlled the adjudicative process" and was applied across the board to a number of industry entities. *Shell Offshore*, 238 F.3d at 628. The Department of the Interior may not cloak its development—and industry-wide application—of a new valuation methodology in the guise of simple adjudicative orders.

Id. at 238-39.

Therefore, the court found that Interior did create a new substantive rule that should have been subject to the notice and comment rules under the APA. *Id.* at 239. Further, this finding obviated the need to address W&T's third argument that Interior was obligated to comply with the valuation regulations, which generally value gas at the price the lessee receives rather than at the Interior's contracted sales price. *Id.* at 236-39.

Finally, the court addressed whether—whatever valuation methodology the Department of the Interior employs—the agency must credit all of W&T's prior over-deliveries in calculating the cumulative delivery shortfall, focusing on W&T's argument that doctrine of equitable recoupment applies and, therefore, overcomes the statute of limitations set out in 30 U.S.C. § 1724(b)(1) prohibiting them from crediting over-deliveries prior to the limitations period. The court, not finding any of Interior's arguments persuasive, held that Interior's actions with regards to the treatment of prior over-deliveries were "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *Id.* at 240. They found the magistrate judge's report persuasive when it stated that equitable recoupment is "never barred by the statute of limitations so long as the main action itself is timely." *Id.* Therefore, because the main action was timely and W&T asserted equitable recoupment as a defense to the Department of the Interior's orders to pay, the statute of limitations did not apply. *Id.* at 239-41.

2. Interpretation of Grant/Reservation Language in Oil and Gas Assignments

Apache Corporation assigned various mineral interests to Cheetah Gas Co. in a 1996 assignment. *Martin Acquisition, LLC v. Cheetah Gas Co.*, No. 18-CV-0754, 2020 WL 1181981, at *1 (W.D. La. Mar. 11, 2020). Exhibit A to said Assignment listed the four leases at issue in this case. *Id.*

The four leases covered land in both Section 26 and Section 27. *Id.* Apache later assigned to Martin Acquisition, LLC interests in the subject leases to the extent the leases cover Section 26 (excluding one formation). *Id.* Martin later assigned interests to others but reserved or repurchased some rights. *Id.* Martin currently claims ownership of an overriding royalty interest in Section 26 that traces back to the Apache-Martin Assignment. *Id.* Cheetah, however, argues that the Apache-Cheetah Assignment gave Cheetah all of the relevant interests in the leases with respect to Section 26. *Id.* Cheetah assigned those interests to USG Properties Haynesville, LLC, reserving an overriding royalty interest to Cheetah and PetroTiger IV, Ltd. *Id.* Both USG and Cheetah filed motions for summary judgment claiming that the Apache-Cheetah assignment unambiguously assigned to Cheetah the interests in Section 26. *Id.* Martin, however, claims that summary judgment should be denied because the Apache-Cheetah assignment is ambiguous with respect to the interests assigned. *Id.*

The Apache-Cheetah Assignment in question assigned, from Apache to Cheetah, “all of Assignors’ right, title and interest in and to the Properties,” Properties being defined as the Wells, Leases, and Land defined in the assignment. *Id.* at *2. The most relevant here are the Wells and Leases which are defined as “Those certain oil and/or gas wells (“Wells”) and those certain oil and gas leases described (“Leases”) on Exhibit “A,” only insofar as they cover the lands described on Exhibit “A” (the “Lands”).” *Id.* The leases were described in Exhibit A using Section references as well as Well references. *Id.*

Approximately five years after the Apache-Cheetah assignment, Apache assigned to Martin all of its interest in several leases, including the four at question here, less and except the Rodessa Hill Formation. *Id.* *3. Martin later conveyed interests in the Subject Leases but retained an overriding royalty interest in Subject Leases. *Id.* Cheetah and PetroTiger transferred certain depths from Section 26, from the Subject Leases, to USG. *Id.* Cheetah and PetroTiger reserved an overriding royalty interest on the depths conveyed to USG. *Id.* The issue is whether Apache had already assigned to Cheetah its interest in Section 26. *Id.*

Martin contends, at the very least, that because the Apache-Cheetah assignment used Well references, it is ambiguous whether the assignment conveyed all interest in Section 26 or only conveyed interests in the lease lands that were included in the Well unit. *Id.* at *5. The court agreed with Cheetah’s argument when it stated:

There was also nothing in the description that stated that the lease was assigned only insofar as the Flourney “A” #1 or related unit affected the leased property. If the parties had wanted to exclude land in Section 26, they could have easily done so by not including any reference to Section 26 or simply stating that the lease was assigned only insofar as it covered Section 27. Merely including a reference to a well that happens to affect only Section 27 would be, at best, a very poor way to imply that such an exclusion was intended.

Id. at *6.

Further, “[i]f the reference to the Flourney “A” #1 well were intended to limit the assignment to Section 27, it would have been meaningless to include the detailed information about what portions of Section 26 were excluded from the assignment.” *Id.*

USG also embraced Cheetah’s arguments and argued that Louisiana law states that ambiguities in an assignment should be construed in favor of grantees, or in this case, Cheetah. *Id.*

The court, finding Cheetah and USG’s arguments persuasive, granted their motions for summary judgment, hereby dismissing Martin’s complaint. *Id.* at *8. The court also declared Cheetah, PetroTiger, and USG the owners of the Section 26 interests at issue. *Id.*

B. State Court Cases

1. Good Faith Drilling of Wells Interrupting Mineral Servitudes

Cannisnia Plantation, LLC v. Cecil Blount Farms, LLC, 53, 252 (La. App. 2 Cir. 3/4/20); 293 So.3d 157, reh’g denied (May 14, 2020) addresses whether a well was drilled in good faith in order to interrupt the running of prescription on a mineral servitude.

Thomas Blount (“Blount,” hereinafter Thomas Blount and the other Blount entities will be referred to as the “Blounts”) sold the property at issue to Cannisnia via credit sale deed dated June 28, 1996. *Id.* at 160. In the deed, the Blounts reserved “one-half of the oil, gas and other liquid and gaseous hydrocarbon minerals, together with all rights of ingress and egress necessary and convenient to explore for, produce, save and transport said minerals.” *Id.* June 28, 1996, also started the 10-year prescription clock. *Id.* The Blounts, on January 27, 2006, submitted an application to drill a well, which was thereafter approved, and a permit was issued on February 23, 2006, almost 10 years after the servitude was created. *Id.* On March 28, 2006, the well was spudded but was plugged and abandoned shortly

thereafter on April 21, 2006. *Id.* at 162. On November 5, 2014, Cannisnia sent notice to Blounts that the mineral servitude had expired and requested a recordable acting stating as much. *Id.* Blounts did not do so. *Id.* Cannisnia filed this action stating that the March 2006 well was not drilled in good faith and, therefore, the Servitude had expired. *Id.*

At trial, testimony provided the following insights: Cotton Valley (where the March 2006 well was drilled) drilling activity was ramping up in 2005, other operators in the area had successfully drilled wells, and production volumes and gas prices at the time provided an incentive to drill and maintain the servitude. *Id.* at 164. Further, prior to drilling the March 2006 well, evidence showed that Blounts consulted with numerous industry professionals such as geologists and a drilling contractor. *Id.* at 167. The geologists testified that, based on the success of wells in the area and proposed well's location to said well, it would be possible for the well to produce in paying quantities. *Id.* The drilling contractor, who had decades of experience in the industry, testified that he knew when the purpose of the drill was solely to interrupt prescription. *Id.* at 165-66. He stated that a key indicator in this scenario is that operators would have a cement truck on standby to plug the well upon completion. *Id.* He testified that the present case did not fit with the usual conduct of a servitude owner attempting to interrupt prescription. *Id.* at 166.

The trial court found for the Blounts and concluded that the well was drilled in good faith. *Id.* at 167. On appeal, the Second Circuit examined whether the Blounts satisfied the requirements of Mineral Code Article 29, which states that for operations to be "in good faith," they must be: (1) commenced with the reasonable expectation of discovering and producing minerals in paying quantities at a particular point or depth, (2) continued at the site chosen to the point or depth, and (3) conducted in such a manner that they constitute a single operation although drilling or mining is not conducted at all times. Additionally, the courts could consider the nonexclusive list of 12 *Indigo* factors in determining whether the well was drilled in good faith.³ *Id.* at 170.

3. Factors include: geology of the drilling site and surrounding area based upon prior wells and seismic data; the expertise and experience of the geologists, petroleum engineers, and oil men making the recommendations and decisions; the depth of review of the available geology; the timing of the lease and its terms; the expenses incurred in the operation; the permit applications; the various types of testing performed; the analysis of formations encountered during drilling; the keeping of well logs; the time put into drilling; the depth drilled; and the size of pipes used.

As to the Article 29 elements, the Court focused on whether the operations were “commenced with reasonable expectation of discovering and producing minerals in paying quantities” at the location and depth chosen. *Id.* at 171. The court found this element was met, with much of the support for such conclusion being found in the fact that the Blounts declined a recommendation of one geologist to drill into shallower sands, which would be cheaper, because they did not to merely interrupt prescription but actually wanted to produce gas. *Id.*

As to the *Indigo* factors, the Court noted that the Blounts satisfied certain factors because they: (1) hired and consulted with geologists; (2) visited with other industry professionals; (3) hired a drilling contractor; (4) obtained the proper permits; (5) paid over \$160,000 to drill the well; (6) sent core samples for testing; (7) drilled to the desired depth; and (8) followed the advice of the industry professionals to plug and abandon the well. *Id.* at 172.

The court, taking all of this into account, concluded that the trial court did not manifestly err in finding the well was drilled in good faith. *Id.*