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Table of Contents

I. Introduction 186
II. Legislative and Regulatory Developments............ 186
A. New Statutes and Bills............ 186
1. Clarification of Severance Tax Exemption Timing............ 186

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B. New Administrative Rules 187
1. Proposed Adoption of Federal Pipeline Safety Procedures.......... 187
2. Proposed Expansion of Inactive Well Assessments..................... 187
III. Case Law Developments.. 187
A. Court of Appeal Enforces Mineral Purchase Contract in *Springbok v. Cook* 187
B. Court of Appeal Revives Lease Cancellation Claim in *Smith Logging v. Indigo* 188
C. Additional Procedural Decisions 190
1. *State ex rel. Tureau v. BEPCO, L.P.* 190
2. *Hero Lands Company, L.L.C. v. Chevron USA, Inc., et al.* 191
3. *Cadle Company II Inc. v. Reserves Management LC, et al.* 191
IV. Conclusion 192

I. Introduction

As set forth below, there were several new appellate decisions, and a few legislative and regulatory updates, affecting oil and gas in Louisiana during the past year.

II. Legislative and Regulatory Developments

A. New Statutes and Bills

1. Clarification of Severance Tax Exemption Timing

House Bill 634 (now Act 431, effective June 27, 2023) amended La. R.S. 47:633(9)(d)(v) to clarify the start date for the severance tax exemption period on deep wells. This statute already provided an exemption from state taxes on oil and gas production from wells deeper than 15,000 vertical feet, for 24 months from the date of first production. Now, the section provides the start date of this exemption period as "the date commercial production begins," and clarifies that such is "the first day the well produces into the permanent production equipment and the facilities have been constructed to process and deliver natural gas, gas condensate, or oil or a sales point." The revised language also makes explicit that the exemption period is not triggered by well testing or other preliminary operations that result in less than 'commercial' production.[1]

1. *See* La. H.B. 634 (Act 431), 2023 Reg. Sess. (effective June 27, 2023).

B. New Administrative Rules

This year has produced two proposed rule changes from the Louisiana Department of Natural Resources' Office of Conservation ("DNR").

1. Proposed Adoption of Federal Pipeline Safety Procedures

The first proposed rulemaking (public comment period ended May 1, 2023) would amend various sections of Titles 33 and 43 of the Louisiana Administrative Code governing pipeline safety. The overall aim of these changes is to align the state's reporting requirements and other aspects of pipeline control procedures with existing federal law. For example, the new rules adopt federal categorizations for onshore and offshore gathering systems (Types A, B, C and R), streamline a number of state and federal reporting forms and submission schedules, and make several other procedural changes.[2]

2. Proposed Expansion of Inactive Well Assessments

The second proposed rulemaking (public comment period ending August 31, 2023) would expand the applicability of the DNR's inactive well assessments to impose annual charges on all wells that have remained inactive for five or more years.[3] These changes aim directly at minimizing the orphan well population by incentivizing operators to either return wells to production or expeditiously complete plugging and abandonment.[4]

III. Case Law Developments

A. Court of Appeal Enforces Mineral Purchase Contract in Springbok v. Cook

In *Springbok Royalty Partners, LLC v. Cook*,[5] the Court of Appeal of Louisiana (Second Circuit) affirmed the trial court's decision to enforce a

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2. *See* Notice of Intent (submitted March 8, 2023), *available at* dnr.louisiana.gov (Office of Conservation > Advanced Notices of Possible Rulemaking Actions). These changes are being proposed pursuant to an agreement between the DNR and US Department of Transportation to streamline their procedural rules.

3. *See* Notice of Intent (submitted July 7, 2023), *available at* dnr.louisiana.gov (Office of Conservation > Advanced Notices of Possible Rulemaking Actions).

4. *See* Notice of Intent (submitted July 7, 2023), *available at* dnr.louisiana.gov (Office of Conservation > Advanced Notices of Possible Rulemaking Actions). These charges increase according to total well depth and length of inactivity.

5. 351 So.3d 850 (La. App. 2 Cir. 2022).

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purchase contract and require the sale of oil and gas interests in Desoto Parish pursuant to the unambiguous agreement of the parties.

The Cooks owned an undivided one-half (1/2) interest in 222 gross acres of oil and gas and were approached by Springbok Royalty Partners, LLC ("Springbok") who sought to acquire that interest. The parties signed a letter agreement in 2020, wherein the Cooks expressly agreed to sell 'all of their right, title and interest in and to their 111.1277 net mineral acres;' Springbok, in turn, agreed to purchase all that interest at closing upon confirmation of title.[6] Springbok staff provided clear explanations, both in person and in writing, that the option contract covered all of the Cooks' interest in the property. However, when Springbok notified the Cooks that it would proceed with closing, the Cooks refused to sign a mineral deed conveying their interest, as required by the letter agreement.[7]

The trial court granted summary judgment in favor of Springbok and ordered specific performance under the contract. Here, the Court of Appeal affirmed. The Cooks argued they did not intend to sell all of their interest in the lands to Springbok, that the letter agreement was ambiguous, and/or the contract should be canceled for "unilateral error" (based on the Cooks' claim that they did not read the contract before signing it).[8] Not buying these arguments, the court found (i) "the Letter Agreement, as a whole, to be clear and unambiguous as to its terms and obligations,"[9] and (ii) the Cooks' alleged misunderstanding of the deal terms, which would have been resolved by reading the plain language of the contract, was inexcusable and not grounds to set aside the agreement.[10]

B. Court of Appeal Revives Lease Cancellation Claim in Smith Logging v. Indigo

In *Kim R. Smith Logging, Inc. v. Indigo Minerals, LLC*,[11] the Court of Appeal of Louisiana (Second Circuit) reversed the trial court's decision to

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6. *Id.*at 853.

7. *See id.* at 852-854. According to trial evidence, the Cooks' received a higher offer for their interest from a third party after they signed the Springbok contract.

8. *See id.* at 856-857.

9. *Id.* at 856.

10. *See id.* at 857-858 (citing La. C.C. art. 1949; *Peironnet v. Matador Res. Co.*, 144 So.3d 791 (La. 2013) ("Error vitiates consent only when it concerns a cause without which the obligation would not have incurred and that cause was known or should have been known to the other party. Unilateral error will not vitiate consent to a contract if the error was inexcusable.").

11. 349 So.3d 1112 (La. App. 2 Cir. 2022) (rehearing denied Nov. 9, 2022).

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dismiss a lessor's claim to cancel an oil and gas lease on procedural grounds.

Kim R. Smith Logging, Inc. ("KRSL") acquired mineral interests in the Haynesville Shale in October 2019. KRSL bought the interests subject to a 1994 oil and gas lease (the "Lease") to T.M. Hopkins, Inc. ("Hopkins"), the original lessee.[12] Indigo Minerals, LLC ("Indigo"), the operator of the units that include the Lease, hired Valor Petroleum, LLC ("Valor") to acquire interests in the area. In August 2019, Valor took an assignment of the Lease from Hopkins. Valor then assigned to Indigo that portion of the Lease within Indigo's unit(s) that December, making it effective as of August 1, 2019. These assignments of the Lease were not promptly recorded in public records.[13]

In November 2019, KRSL sent a written demand to Indigo, seeking past unpaid royalties.[14] Indigo acknowledged the underpayment of KRSL's interest and paid KRSL over $200,000 in production royalties between January and March 2020, but no other payments were made to KRSL before or after that time. KRSL did not notify or make any written demand from Hopkins or Valor.[15] In January 2021, KRSL sued Indigo, Hopkins and Valor seeking cancellation of the Lease.

Indigo filed a dilatory exception of prematurity and a peremptory exception of no cause of action, claiming that (i) KRSL's claims were premature because KRSL made no written, pre-suit demand on Valor or Hopkins as required by statute;[16] and, alternatively, (ii) KRSL asserted no valid cause of action against Indigo because Hopkins was the lessee of record when KRSL's demand for royalties was made in November 2019.[17] The district court agreed, sustaining both of Indigo's objections and dismissing KRSL's claims. The Court of Appeal reversed on appeal.

Because the assignment from Valor to Indigo was made retroactively effective (and evidence of agency relationships among Indigo, Valor and Hopkins), the court ruled that Indigo "is responsible directly to [KRSL] for

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12. *See id.* at 1114.

13. *See id.* at 1114-1115.

14. *See id.* In addition to purchasing the oil and gas interests at issue, KRSL was assigned all its predecessor's claims to unpaid royalties accruing prior to KRSL's ownership.

15. *See id.*

16. *See id.* at 1115-1116 (quoting La. R.S. 31:137: "'If a mineral lessor seeks relief for the failure *of his lessee* to make timely or proper payment of royalties, he must give *his lessee* written notice of such failure as a prerequisite to a judicial demand for damages or dissolution of the lease.") (emphasis added).

17. *See id.*at 1115-1117.

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performance of its obligations, to the extent of the interest acquired effective August 1, 2019. Consequently, we find the notice to [Indigo] was sufficient notice that there had been a nonpayment of royalties by [Indigo]."[18] Further, as the evidence established that Indigo was indeed an assignee/sublessee under the Lease at the time KRSL's demand was made, a fact not affected by the lack of recording, the court ruled that KRSL "allege[d] facts sufficient to state a cause of action against [Indigo]."[19]

C. Additional Procedural Decisions

There were a few more opinions delivered this year that addressed specific procedural questions in ongoing oil and gas related cases:

1. State ex rel. Tureau v. BEPCO, L.P.[20]

This citizen suit arose from alleged contamination of a lessor's property after an oil and gas operator failed to remediate unlined pits and other surface discharges from previous well operations. The landowner sued the operator in tort in 2013 for compensatory damages; years later, as cleanup remained incomplete, the landowner also sought injunctive relief under La. R.S. 30:16 to force compliance with applicable regulations.[21] In this appeal, the Supreme Court of Louisiana stepped in to resolve split decisions among lower courts and held that: (i) citizen suits under La. R.S. 30:16 are not subject to any period of liberative prescription[22] and (ii) the landowner sufficiently alleged a cause of action under that statute despite actual oil and gas operations having concluded years earlier.[23]

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18. *Id.* at 1118-1119. As the court noted, pursuant to La. R.S. 31:137 and *Massey v. TXO*, 604 So.2d 186 (La. App. 2 Cir. 1992), ". . . the notice of cancellation would have to had been sent to Hopkins to Valor *to affect them*. However, [Indigo], not Hopkins and Valor, is objecting to the improper notice."

19. *Id.* at 1119.

20. 351 So.3d 297 (La. 2022).

21. *See id.* at 302-303.

22. *See id.*at 304-306 ("In light of the unique qualities inherent in enforcement actions under La. R.S. 30:16, the intent and purpose of Louisiana's conservation law, and the limited equitable relief available, coupled with the failure of the legislature to provide a specific prescriptive period applicable to La. R.S. 30:16 enforcement actions, we find that citizen enforcement actions under La. R.S. 30:16 are not subject to liberative prescription.").

23. *See id.*309-315. The court rejected the argument that plaintiff's claims must be dismissed because citizen suits can only enjoin ongoing/future conduct, and defendant ceased oil and gas operations on the property years ago. Instead, the court explained that plaintiff properly alleged 'continuous' violations: unlike water or air pollution, "the violation continues until the proper disposal procedures are put into effect *or* the hazardous waste is cleaned up."

2. Hero Lands Company, L.L.C. v. Chevron USA, Inc., et al.[24]

This legacy litigation began in 2018 when a landowner sued various well operators in the state, alleging "environmental damage" under Louisiana Act 312, and violation of lease agreements for operating excessively or unreasonably. After a lengthy procedural history, the trial court relied on jury verdicts to rule in favor of the operators on all claims. This spring, the Court of Appeal (4th Circuit) addressed various procedural appeals and held that (i) the trial court properly denied the landowner's summary judgment motion because disputes of material fact existed as to whether the lessee operated unreasonably or excessively;[25] (ii) the trial court did not err in relying on the jury's reasonable and properly-instructed verdicts that the lessee did not operate unreasonably or excessively, and that no environmental damage occurred on certain lands in question;[26] and (iii) the trial court likewise did not err in denying the landowner's motions for judgment notwithstanding the verdict on the points in (ii) above.[27]

3. Cadle Company II Inc. v. Reserves Management LC, et al.[28]

This case presented competing claims to certain well site equipment between (i) a successor mortgagee and bankrupt estate purchaser, and (ii) a lease assignee and designated operator under Louisiana's orphan well program.[29] The courts have not yet decided the parties' respective rights to the equipment; this appeal concerned only the trial court's grant of a preliminary injunction to delay seizure of the equipment until those rights are determined. The Court of Appeal (3rd Circuit) considered trial testimony and agreed with the lower court that a preliminary injunction was proper under the circumstances, finding that the operator made a sufficient showing that irreparable injury would arise from proceeding with the foreclosure.[30]

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24. 359 So.3d 130 (La. App. 4 Cir. 2023).
25. *See id.* at 144-149.
26. *See id.* at 144-154.
27. *See id.*at 154-158.
28. 358 So.3d 238 (La. App. 3 Cir. 2023).
29. *See id.*at 239-240.
30. *See id.* at 242-244. In addition to finding adequate injury was demonstrated, the court also explained that plaintiff's counsel acknowledged a willingness to delay foreclosure without a preliminary injunction, but then argued to the contrary on appeal: "As the granting of the preliminary injunction effectively provides no greater relief than counsel for Cadle attested he was offering, we find no error in the trial court granting the preliminary injunction."

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IV. Conclusion

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