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I. Introduction

The following is an update on Louisiana's legislative activity and case law relating to oil and gas, and mineral law from August 1, 2015 to July 1, 2016.

II. Case Law

A. Local Government Ordinances

In 2014, the Commissioner of the Office of Conservation of the State of Louisiana approved a drilling unit to be located in a residential area designated as the "A-3 Suburban District" in St. Tammany Parish.[1] Previously in 2007, St. Tammany Parish had adopted the St. Tammany Parish Unified Development Code, and in 2010, Ordinance No. 10-2408 was passed that rezoned unincorporated areas of the parish.[2] The property in question fell within that zoned area and had been used as a tree farm for the last thirty years with no structures within a mile radius of the proposed well site.[3] The Parish filed suit against the Commissioner alleging that the zoning designation made drilling illegal.[4]

The trial court ruled in favor of Helis Oil finding that La. R.S. 30:28F preempted any local zoning ordinance insofar as it applies to oil and gas activity.[5] The state law in question specifically prohibited other

1. St. Tammany Parish Gov't v. Welch, 2015-1152, 2016 WL 918361, at *1 (La. App. 1 Cir. 3/9/2016).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.* at *2.

governmental agencies from interfering with drilling in the exploration of minerals.[6] The appellate court looked to the Louisiana Constitution, which stated that the legislature may enact laws regarding natural resources in ways that protect the health and safety of its citizens.[7] As a result, the legislature has enacted laws that extensively regulate oil and gas exploration and has created the Office of Conservation to be responsible for that regulation.[8]

St. Tammany Parish argued that Article VI of the Louisiana Constitution allowed local governments to designate land for specific purposes and that the La. R.S. 30:28F did not preempt their authority to do so.[9] The appellate court found that a state law will preempt local law when it is the "clear and manifest purpose of the legislature to do so." [10] Unless expressly forbidden, local government's law will prevail. La. R.S. 30:28F specifically prohibits another political agency from interfering with drilling.[11] The court also stated that because the legislature has created an extensive regulation of drilling, to allow conflict could possibly be dangerous.[12] The Court went on to state that the Commissioner of Conservation's powers are police powers and cannot be undermined.[13] Accordingly, the appellate court affirmed the grant of summary judgment in favor of Helis Oil.[14]

B. Depth Limitation Language

At issue in *BRP LLC v. MC Louisiana Minerals LLC* was depth limitation language contained in an assignment from International Paper Company ("IP") to Chesapeake Royalty, LLC ("Chesapeake").[15] IP owned land in Louisiana and sought to sell the mineral holdings in that land. Chesapeake approached IP to buy those interests and entered into a letter of intent to purchase with IP on June 30, 2008.[16] On July 24, 2008, the purchase and sale agreement was finalized, in which the assets sold were defined as:

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6. *Id.*
7. *Id.*
8. *Id.*
9. *Id*. at *3.
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at *5.
15. BRP LLC v. Louisiana Minerals LLC, 50,549-CA, 2016 WL 2903566, at *1 (La. App. 2d Cir. May 18, 2016).
16. *Id.*

> [A]ll of Sellers' right, title and interest in and to (a) the oil, gas and other minerals in, to and under the land described in the attached Exhibit A, and any and all oil and gas leases covering such lands, INSOFAR AND ONLY INSOFAR as such oil, gas and other minerals are located below that depth which is the stratigraphic equivalent of the base of the Cotton Valley Formation and the top of the Louark Group defined as correlative to a depth of 10,765' in the Winchester Samuels 23 #1 well (API #1703124064) located in Section 23-14N-13W, DeSoto Parish, LA, and correlative to a depth of 9,298' in the Tenneco Baker #1 well (API #1701320382) located in Section 12-16N-10W, Bienville Parish, LA…[17]

IP then assigned its interests to BRP, LLC ("BRP"), who argued that IP had only intended to sell rights in the Haynesville Shale and lower depths to Chesapeake.[18] BRP maintained that IP retained the interests above the top of the Louark Group, which contained the Haynesville Shale.[19] Chesapeake believes that it owned rights in the Haynesville Shale and the Bossier Shale.[20] Both BRP and Chesapeake filed for summary judgment arguing that the language contained in the purchase and sale agreement was unambiguous.[21]

According to David Liebtreu, the vice-president of IP, Chesapeake and IP only spoke of assigning rights to the Haynesville Shale.[22] However, according to the letter of intent between IP and Chesapeake, Chesapeake offered to buy rights below the Cotton Valley Formation, which Liebtreu believed only included the Haynesville Shale.[23] According to geology experts for BRP, the language contained in the agreement identified four different horizons that did not correlate to one another.[24] One expert for BRP stated that the Bossier Shale was sometimes contained within the Louark Group.[25] According to another expert for BRP, the base of the Cotton Valley Formation and the top of the Louark Group formation were separated by the Bossier Shale, with the Bossier Shale being part of the

17. *Id.*
18. *Id.* at *2.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at *3.
24. *Id.*
25. *Id.*

Cotton Valley Group and the Haynesville Shale being a part of the Louark Group.[26]

John Sharp, a geoscience manager for Chesapeake, stated that the Bossier Shale was below the Cotton Valley Formation and above the Haynesville Formation and that in certain areas of Louisiana, the Bossier Formation falls into the Cotton Valley Group and in other areas, is in the Louark Group.[27] According to an expert for Chesapeake, he believed that the wells correlated and that the Bossier Shale would fall below the horizon created by the depth limitation language in the agreement.[28] The trial court agreed with Chesapeake that the language was not ambiguous and that the intent of IP was to retain its interest in the Cotton Valley Formation.[29] The court found that the wells referenced in the description should be given consideration and found that those wells were located in the middle of the Bossier Shale Formation.[30] The court also found that the well descriptions would include the Bossier C, which was the producing part of the Bossier Formation.[31]

BRP appealed the judgment and argued that the language contained in the purchase and sale agreement was ambiguous, and as such, the correct interpretation would be that IP conveyed all interest in the minerals below the lowest depth listed, which is the top of the Louark Group.[32] BRP maintained that the description was ambiguous as the base of the Cotton Valley Formation and top of the Louark Group were two different lines, separated by the Bossier Shale.[33] The appellate court found that IP was only concerned with reserving the rights in the Cotton Valley Formation and affirmed the trial court's decision.[34]

C. Offers to Purchase Mineral Rights and Fraud

The Supreme Court of Louisiana was asked to review a case wherein the plaintiffs, owners of a one-eighth royalty interest, brought suit against Evolution Petroleum Corporation ("Evolution"), the Lessees, seeking damages and rescission of a sale of their royalty interest, alleging fraud on

26. *Id.* at *4.
27. *Id.* at *5.
28. *Id.* at *7.
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.* at *9-10.
33. *Id.* at *10.
34. *Id.* at *12.

Evolution's part.[35] Evolution entered into a purchase agreement with Denbury Resources, LLC ("Denbury"), in which Denbury would use CO2 enhanced oil recovery technology that would increase productivity in its wells.[36] Denbury believed that by using the CO2 technology, it could increase production from 145 barrels per day to potentially 30 to 40 million barrels.[37] Evolution then made offers to purchase the plaintiffs' royalty interest offering an amount equal to sixteen years of previous royalties, totaling $41,773.[38] The plaintiffs believed that they were preyed upon by Evolution as they were elderly and not familiar with oil and gas matters.[39] They argued that there was a "relation of confidence" between the operators of the past and themselves, which led them to rely on Evolution's statements and omissions, which amounted to fraud.[40]

The district court and appellate court found that there was no cause of action; however, the appellate court allowed the plaintiffs to amend their petition and found that "the lessee's duty to act as a reasonably prudent operator for the parties' mutual benefit might require disclosure of the Denbury deal," which in turn would be a cause of action for fraud and fraud by silence.[41] The plaintiffs relied on Mineral Code art. 122, which stated that a lessee does not have a fiduciary obligation to the lessor, but must operate as a reasonably prudent operate to mutually benefit both himself and the lessor.[42] What constitutes a reasonably prudent operator may be stipulated.[43]

The Supreme Court disagreed with the appellate court that the language contained in the statute created a cause of action for fraud by silence.[44] The plaintiffs argued that a duty arose for Evolution to disclose information about the sale to Denbury and recovery of reserves through operating the property.[45] The Court found that Article 122 did not impose a duty to disclose information about that type of transaction, but rather imposed four obligations: an obligation to develop known formations, an obligation to explore and test all of the leased premises after discovering minerals in

35. McCarthy v. Evolution Petroleum Corp., 180 So. 3d 252, 254 (La. 2015).
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *Id.* at 254-55.
42. *Id.*
43. *Id.*
44. *Id.* at 258.
45. *Id.* at 259.

paying quantities, an obligation to protect the leased property from drainage, and an obligation to produce and market those minerals.[46] The Supreme Court stated that Article 122 dealt with the obligation of the lessee to develop a field, and not with the purchasing and selling of mineral assets.[47]

The Supreme Court also disagreed with the appellate court's finding for a cause of action for fraud.[48] The appellate court found that Evolution had distracted the plaintiffs by using the assessment value on past production and that Evolution knew the minerals were more valuable than what they offered.[49] The Supreme Court found that Article 17 of the Mineral Code prohibited rescission of a sale of a mineral right for lesion beyond moiety, which occurs when the agreed upon price is less than one half of the actual value of an immovable.[50] Accordingly, the Supreme Court reversed the appellate court's finding of a cause of action for fraud and fraud by silence.[51]

D. Production in Paying Quantities

In the early 1980s, three identical mineral leases were taken from Eva Mae Whorton, Henry Whorton, Wade Whorton, Hattie Flem, and others, covering 300 acres of land, which provided for a three-year primary term and a secondary term that called for "production of minerals or additional operations to maintain the leases beyond their primary term."[52] In 1983, the Louisiana Office of Conservation established a 480-acre unit, of which the Whorton leases contributed thirty acres.[53]A well was drilled within the unit, but was not located on the Whorton's 300-acre tract.[54] The leases in question contained no Pugh clause and were maintained as to the entire 300 acres.[55] In 2011, the well stopped producing and was subsequently plugged in 2013.[56]

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46. *Id.*
47. *Id.* at 260.
48. *Id.* at 261.
49. *Id.*
50. *Id.* at 261, 264.
51. .*Id.* at 265.
52. Middleton v. EP Energy E & P Co., 188 So. 3d 263, 264 *reh'g denied* (2d Cir. 2016).
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*

The current lessors asserted that the Whorton leases terminated for failing to produce in paying quantities and demanded a release of the lease from the working interest owners, which the defendants denied.[57] As evidence, they asserted that between January 1990 and January 1994, the well produced no more than 1,000 MCF of natural gas and less than 100 barrels of oil.[58] The plaintiffs asked for a partial summary judgment terminating those leases. The trial court found that "operating a well at or a minimal profit for forty-one months is not sufficient to induce a reasonably prudent operator to continue production," and ruled in the plaintiffs favor, ordering the leases had terminated on December 1, 1994.[59]

The defendants asserted that in determining whether a well is producing in paying quantities, the court should take into account the production that occurred seventeen years after the period of alleged disruption of production. The defendants then argued that a reasonably prudent operator would continue to develop the well, despite the forty-one month reprieve.[60] The Second Circuit Court of Appeals found that in determining paying quantities, the court must take into account all factors that would influence a reasonable and prudent operator, including reservoir depletion, market price, relative profitability of other surrounding wells, operating costs, and net profit.[61] The test is whether there is "a reasonable basis for the expectation of profitable returns from the well."[62] The defendants produced evidence showing that the well expenses at the time of the slow period of production were extraordinary and nonrecurring expenses, which are not considered operating expenses in the determination of producing in paying quantities.[63] The appellate court found that there was a question of material fact as to whether or not a reasonably prudent operator would continue to operate that well and reversed the judgment in favor of the plaintiffs that terminated the mineral leases in 1994 and remanded the issue to the district court.[64]

57. *Id.* at 265.
58. *Id.*
59. *Id.*
60. *Id.* at 266.
61. *Id.*
62. *Id.*
63. *Id.* at 267.
64. *Id.* at 267-68.

E. Conveyance Language

At issue in *Keystone Energy Co. v. Denbury Onshore, LLC*, is whether a 1904 notarial act conveyed a right of way or a fee interest in a 6.29 acre tract.[65] In 1904, Southwestern Rice and Canal Company conveyed an interest to Louisiana Western Railroad Company, pursuant to a notarial act, in 6.29 acres, which at the time of the conveyance, was located in Calcasieu Parish.[66] A typed copy of the instrument was filed in Calcasieu Parish and Jefferson Davis Parish, a county that was later carved out of Calcasieu Parish.[67] A handwritten copy of the instrument also existed and was later recorded in Jefferson Davis Parish in 2010.[68] The handwritten and typed copies of the documents are similar in all regards, except that the typed versions contain a caption at the top of the document that states "Right of Way."[69] The term "Right of Way" does not appear in the handwritten version or anywhere in the body of both versions of the documents.[70]

In 1999, Union Pacific, the successor of Louisiana Western Railroad Company, conveyed the property to the Dabovals in a quitclaim deed, reserving the minerals under the property.[71] Union Pacific and Keystone entered into a lease covering the 6.29 acre tract, which was recorded in 2010.[72] The Dabovals also executed a lease with Suncoast Land Services, Inc., recorded in 2004.[73] Suncoast then assigned the lease to Denbury and Hilcorp.[74] Denbury spudded a well on the subject property in 2005.[75]

Denbury and Hilcorp argued that Southwestern Rice intended to grant a right of way, and not an interest in fee to Louisiana Western Railroad Company, and accordingly, the Dabovals acquired the property through prescription.[76] The trial court granted partial summary judgment in favor of Keystone, finding that the 1904 instrument transferred title in fee and did not convey a mere right of way.[77]

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65. 188 So. 3d 458 (3d Cir. 2016).
66. *Id.* at 460.
67. *Id.* at 461.
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.* at 462.
73. *Id.*
74. *Id.*
75. *Id.*
76. *Id.*
77. *Id.* at 464.

The Second Court of Appeals found that there was conflicting evidence as to whether the 1904 instrument conveyed a fee interest or a right of way. The recitals in the document stated that the purpose of the conveyance was to allow for a railroad to "pass through" Southwestern's land and "give an enhanced value to its Lands," which shall be considered partial consideration.[78] Due to the ambiguity in the language of the conveyance, the court considered extrinsic evidence, which included conveyances between the parties on the same date, a 2004 correspondence in which Union Pacific suggested they only had a right of way, and inconclusive evidence as to whether Southwestern or Louisiana Western Railroad Company were assed for property taxes.[79] As a result, the court of appeals reversed the trial court's partial summary judgment and remanded the issue to the lower court.[80]

F. The Perpetual Nature of the Habendum Clause

In *Regions Bank v. Questar Exploration & Production Corp.*, mineral rights owners sued Exxon Mobil Company, the current owners of the three oil and gas leases, for failure to reasonably develop the leases.[81] The plaintiffs filed suit declaring that the 1907 leases had terminated by operation of law pursuant to La. C.C. art 2679, which provides that a lease may not exceed ninety-nine years.[82] The trial court found that La. C.C. art 2679 did not apply to mineral leases.[83]

The leases provided for a primary term of ten years and continued "as much longer thereafter as gas or oil is found or produced in paying quantities."[84] There were several hundred wells drilled pursuant to those leases; however, the mineral rights owners wanted a cancellation and release of the leases as to depths below six thousand feet alleging that the defendants did not reasonably develop the leases as to deeper depths.[85] The owners later amended their petition and stated that the leases were terminated by operation of a Louisiana statute that states that leases may not exceed ninety-nine years.[86]

78. *Id.* at 466–67.
79. *Id.* at 468.
80. *Id.*
81. 184 So. 3d 260, 263, reh'g denied (2d Cir. 2016).
82. *Id.* at 261.
83. *Id.*
84. *Id.* at 262.
85. *Id.*
86. *Id.*

The mineral owners appealed lower court's ruling. The appellate court affirmed the lower court's decision and held that the leases were not perpetual, but rather were governed by the terms of the Louisiana Mineral Code, La. R. S. 31:115, which provided for a maximum secondary term based upon continuous drilling or operations or production.[87] The court further found that Article 2679 of the Civil Code, which provides for a maximum lease term of ninety-nine years, does not apply to mineral leases because mineral leases are governed by the maximum term provided in the Mineral Code.[88] As such, the appellate court affirmed the district court's judgment in favor of the defendants.[89]

G. Use of Lift Gas

Red Willow Offshore, L.L.C. and Medco Energy US, L.L.C. were co-working interest owners in a natural gas well.[90] Not possessing the means to process the gas produced, they partnered with Palm Energy Offshore, L.L.C. ("Palm"), which had a production processing facility located approximately four miles away from the well.[91] They entered into a Production Processing Agreement ("PPA") in which Palm would allocate the gas volume to Red Willow and Medco based on a meter reading of the amount of gas that left the Palm processing facility and entered into the Tennessee Gas Sales Pipeline.[92] Red Willow and Medco hired an auditing firm to audit the gas allocations.[93] The auditing firm found that Palm was diverting a percentage of the gas allocation as "lift gas" to help Palm's low-pressure wells, which resulted in a financial loss of $1,163,587.90.[94] The trial court ruled in favor of the Red Willow and Medco finding that Palm breached the PPA, which Palm then appealed.[95]

The appellate court found that the PPA was silent on the use of processed gas as lift gas.[96] The court found that the purpose of the PPA was to take the gas, process it, and deliver it for sale, and that the use of lift gas

87. *Id.* at 264-65.
88. *Id.*
89. *Id.*
90. Red Willow Offshore, LLC v. Palm Energy Offshore LLC, 185 So. 3d 293, *reh'g denied* (4th Cir. 2016).
91. *Id.*
92. *Id.*
93. *Id.*
94. *Id.* at 295-96.
95. *Id.* at 296.
96. *Id.* at 298.

was an operational function, and not a processing function.[97] The court cited to the American Petroleum Institute Manual, Section 6.2 and Statewide Order No. 29-D-1, which adopted the API manual, that states that "[m]ethods to account for fuel gas, lift gas, flare gas, and the like must be included in the design of an allocation program" and that once a number is adjusted for the lift gas, then a sales value may be found.[98] The court also cited the Council of Petroleum Accountants Societies' ("COPAS") Gas Accounting Manual, which stated that lift gas can be purchased or transferred from other sources, but those sources are to be paid for the use of the gas, evidencing that lift gas is usually accounted for and allocated to producers for the value of that gas.[99] The Fourth Circuit affirmed that trial court's judgment that Palm's use of the gas as lift gas was a breach of the PPA.[100]

H. Lease Division

In *Guy v. Empress, L.L.C.*, the owners of a 140 acre-tract sought the release of the shallow rights of an oil and gas lease.[101] The lease contained a continuous drilling clause, a vertical Pugh clause, a horizontal Pugh clause, and an assignment clause.[102] The Lessors claimed that the lease was "horizontally divided" by an assignment in which the lessee, Long Petroleum, L.L.C. assigned to Empress, L.L.C., all right, title, and interest in depths from the surface to the base of the Cotton Valley formation.[103] Long spudded a well, the Edwards No. 1, in the shallow depths before the expiration of the primary term. Empress spudded a well, the Yarbrough No. 1, after the expiration of the primary term.[104]

The lessors claimed that the deep rights assignment divided the lease into two independent leases and that because the well drilled in the deep rights was commenced after the expiration of the primary term, the lease had expired as to the deep rights.[105] Further, they argued that the lease also expired as to the shallow rights because the lessees did not engage in operations for the drilling, completion or reworking of a well ninety days

97. *Id.* at 299.
98. *Id.*
99. *Id.* at 300.
100. *Id.* at 303.
101. 193 So. 3d 177, *reh'g denied* (2d Cir. 2016).
102. *Id.* at 178–79.
103. *Id.* at 179.
104. *Id.* at 179–80.
105. *Id.* at 181.

after the Edwards No. 1 was shut in on December 31, 2011, pursuant to the continuous drilling operations clause.[106]

The district court found that the working interest owners developed the premises according to the terms of the lease and that the question of whether the assignment created a sublease was immaterial.[107] The Second Court of Appeals found that the lease was not divided by the assignment of the deep rights, citing the Mineral Code, which allows for the transfer of interest by assignment unless the lease specifically prohibits the assignment.[108] Further, they found that the Lessees had complied with the continuous drilling clause in the lease. The Yarbrough No. 1 was spudded within the ninety-day period allotted by the continuous drilling clause.[109] Accordingly, the court affirmed the district court's summary judgment in favor of the defendants. [110]

I. Tax Deed Property Descriptions

In 1929, the heirs of A. V. Loftus came into possession of a 117-acre tract of land described as being the "North half of the Northeast Quarter, and the Southeast Quarter of the Northeast Quarter, Section 8, Township 14 N, Range 13 W; less three acres."[111] The tax assessment for the property described the tract as the "N ½ NE, Sec 8, SW NE Sec 8 Less 3 a . . . ."[112] In 1939, after failing to pay taxes, the State of Louisiana sold the property and reserved the mineral interest.[113] The tax adjudication deed described the property as "N ½ of NE 1/4 (less three acres in SW Corner) and SE 1/4 of NE 1/4 of Sec 8…".[114] The State executed several oil and gas leases covering this property. Subsequently, numerous wells have been drilled on the property.[115]

The current surface owners filed a petition to annul the 1939 tax deed stating that notice was not properly given to the Loftus heirs and that the property description in the deed did not properly describe the property so much so that identifying the land was impossible.[116] The trial court found

106. *Id.*
107. *Id.* at 182.
108. *Id.* at 184.
109. *Id.* at 184–86.
110. *Id.* at 187.
111. Webb v. State, Dep't of Nat. Res., 194 So. 3d 41.
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.* at 44.
116. *Id.*

that the property descriptions were sufficient enough to place the interested parties on notice.[117]

The appellate court stated that a tax sale is void when the tax deed does not identify the property.[118] The plaintiffs argued that the language "less three acres in the SW corner" made the property unidentifiable since the shape of the reserved acreage could not be determined by the description.[119] The court found that the property description described the specific quarters and sections of the land and did not attempt to convey acreage in corners of the larger tracts.[120] As such, the court found that the description contained in the assessment was reasonable enough so that the land could be identified and affirmed the district court's judgment.[121]

III. Legislative Activity

A. Orphaned Wells

Acts 2016, No. 342 amends Louisiana Revised Statute 30:91(B)(1) with regard to notice of a decision to declare an oilfield site orphaned and enacted R.S. 30:28(J).[122] R.S. 30:28(J) requires the Commissioner of Conservation to give notice to the surface owner of a piece of property on which a well is located when an amended permit is issued to transfer ownership of a well from one operator to another within thirty days of issuing that permit.[123] The "Surface Owner" is defined as the person that is currently on the tax assessor's roll. [124]

Before R.S. 30:91(B)(1) was amended, the law only required the Assistant Secretary of the Department of Natural Resources to notify the last operator of record and publish a notice in the Louisiana Register when an oilfield site was determined to be orphaned.[125] As amended by Senate Bill No. 165, the assistant secretary must continue to notify the last operator of record, publish notice in the Louisiana Register, and also notify the current surface owner.[126] The surface owner will be found by the name on

117. *Id.*
118. *Id.* at 46.
119. *Id.*
120. *Id.* at 47.
121. *Id.*
122. 2016 La. Acts 342.
123. *Id.*
124. *Id.*
125. *Id.*
126. *Id.*

the tax assessor's roll. If the assistant secretary fails to notify the surface owners, then the decision to declare a site orphaned will be invalidated.[127]

Acts 2016, No. 583, which began as Senate Bill No. 428, enacts Louisiana Revised Statute 30:88.1, which provides for the use of funds coming from orphans wells for oilfield site restoration.[128] R.S. 30:88.1 defines an orphan well as an oil and gas well that is part of an oilfield site determined as being orphaned as of August 1, 2016 and thereafter, and has no production for longer than two years.[129] A portion of the money derived from tax on the oil, gas, and condensate from an orphan well shall be given to a site-specific trust, which once fully funded shall be given to the state secretary.[130] If there is new production from orphaned wells, then another account will be established to provide a source of funds for restoration of the oilfield site.[131] An assessment by an approved assessment contractor will be made to determine the site restoration requirements and costs.[132]

B. Financial Security

Acts 2016, No. 634, which began as House Bill 632, provides for the amount of financial security required by drilling permit applicants.[133] R.S. 30:4 requires a party requesting or amending a drilling permit to provide financial security to the Commissioner of the Office of Conservation.[134] The amount of financial security for an individual well that is three thousand feet or less is two dollars per foot.[135] Otherwise, the amount of financial security will be in accordance with the Administrative Procedure Act.[136] There is no financial security required for wells declared to be orphaned, which are subsequently transferred to another operator or wells that have an agreement to be plugged or have been declared orphaned by the commissioner.[137]

127. *Id.*
128. 2016 La. Acts 583.
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id*.
133. 2016 La. Acts 634.
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.*

C. Imprescriptible Servitudes

Acts 2016, No. 60 amends R.S. 31:149(B) dealing with mineral rights reserved by people in land acquired by governments or agencies.[138] R.S. 31:149(B) stated that land acquired by a governmental agency through "act of sale, exchange, donation, or other contract, or by condemnation, or expropriation" with a mineral reservation subject to the prescription of nonuse, that mineral right is not subject to the prescription as long as the land remains with the government or an agency thereof.[139] The instrument by which the government acquires the land must reflect the intent to reserve the mineral right and their imprescriptibility.[140] House Bill No. 634 adds "appropriation" as to the ways the government entity can obtain the land.[141]

D. Mail Solicitation Act

Acts 2016, No. 179 is a newly created law that regulates the solicitation of offers for mineral rights through the mail.[142] This act, however, does not apply if there was a "meaningful exchange" between the purchaser and the seller.[143] In the event that there is a sale by mail solicitation, the act requires that the transferring document state that it is a sale of mineral rights by solicitation through the caption.[144] If the document contains the disclosure, then the seller of the mineral rights can rescind the agreement after sixty days on the date the document is signed.[145] If the document does not contain the disclosure required by the act, then the purchaser can rescind after three years from the signature date.[146] Further, the purchaser will be liable for attorney and court costs if the disclosure is not noted on the instrument.[147] If the option to rescind is exercised, the seller must return any royalties and other payments received within sixty days of the rescission.[148]

138. 2016 La. Acts 60.
139. LA. REV. STAT. ANN § 31:149 (2000).
140. *Id.*
141. 2016 La. Acts 60.
142. 2016 La. Acts 179.
143. *Id.*
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. *Id.*