

## MINUTES

### PUBLIC RECREATION ACCESS TASK FORCE

Monday, November 18, 2019

A public meeting of the Public Recreation Access Task Force was held on Monday, November 18, 2019 at 9:30 a.m. in House Committee Room 5, Ground Floor, Louisiana Capitol, Baton Rouge, Louisiana.

I. CALL TO ORDER

**Blake Canfield** called the meeting to order at 9:35 a.m.

II. ROLL CALL

III. APPROVAL OF MINUTES FOR OCTOBER 18, 2019 MEETING

IV. PRESENTATIONS AND DISCUSSION ITEMS

- a. Remarks by Mark S. Davis, Director of the Tulane University ByWater Institute and the Institute on Water Resources Law and Policy
  - i) Mr. Mark S. Davis stated that the law is unsettled, Louisiana's hydrology and ecology is changeable and the law does not like change. Land right regimes are not common, most other states do not handle the control of surface rights and subsurface rights how Louisiana does. When the state wanted to do restoration work on Isle Dernière questions of who could do work, who benefited from that work, and what rights were implicated were encountered. This created notions of the need of having surface rights became clear. In 2006, Mr. Davis became involved in Act 626 to allow the state to do programmatically what it did individually on Isle Dernière with LLE to set perpetual mineral boundaries to protect their rights and mineral land owner rights. Louisiana does recognize a right for riparian land owners seek reclamation permits and to restore land boundaries, although it is rarely done, it is an important right. Since 2006, the effort to get new rules written is because public access and the interest of the land owners and state in clarifying the ownership of rights in the coast are not the same, but they do overlap. The idea of ownership of land beneath navigable waters is difficult to ascertain, when something becomes navigable is difficult to ascertain, what is navigable as a matter of law is difficult to ascertain. What statehood got through the equal footing doctrine is difficult to ascertain because it was a year of statehood, not survey. There are at least 6 different definitions for navigability under the law. Mr. Davis stated that he believed the reason it is worth explaining the useful connection between mineral boundary agreement is because as long as navigability is a key factor in determining ownership, then the presence of people in boats is complicating because navigating boats demonstrates navigating, as seas rise and coasts diminish will not make it any easier. Those in Act 626 were seeking ways forward to create workable answers. They were

seeking ways to get adequate security and avoid the costs that landowners incur, taxes for areas that are determined yours. There are various landowners who spend millions of dollars a year to administer diminishing resources, for whom the principle is asset is what is beneath, not on the surface. There are land owners whose investments in the coast have changed to where they are not interested in paying taxes, insurance, and paying landowners, and the value in their investment is not what it was 20 years ago. Act 626 was not designed as a public access vehicle. Act 626 was designed to make coastal restoration work more harmoniously with coastal land owning and to help the state avoid making millions of dollars of investing that it may otherwise have to make. In the late 1990's and early 2000's, there was an effort that culminated, in the Water Resources Act that had a \$14 billion investment to conserve as much of our wetlands as possible. Based on the Army Core of Engineer's math, 20% of the \$14 billion cost was real estate. Real estate is a nonfederal responsibility for the Core of Engineers. Louisiana does not have that money. The State of Louisiana needed to make a way so that interested landowners would be willing to donate, but retaining those things that made their investments critical in the first place. The federal rules as what is considered an in-kind donation are complicated. Act 626 looked at ways to speed up the process. If it takes 14 months to come to a degree of consensus, time is our most precious resource on the coast. Finding ways to bring time and money together for purpose was what Act 626 was about. Mr. Davis stated that it was understood that if people felt could not live and work on the coast as they customarily did, then the public support would not be there. Finding ways to diffuse conflicts between land owners, mineral claimants is a conflict driven by law. People think they have rights and they have no way to resolve them, not in a predictable and time effective manner. Act 626 was remarkable because there was harmony in the purpose between local governments, because of financial interests because when private land turns into public, they lose that tax base. Act 626 ensured that it would address the stability of local tax bases before the approval of any deals. It is completely voluntary; it is a vehicle to do what the state did with LL&E, on a broader and more comprehensive basis. Resolving one set of issues is not possible without addressing the others. The state must get the rights to do the work that needs to be done in an affordable manner. Targeted changes should be done jointly.

ii) Mr. Ragusa asked Mr. Davis to further explain Act 626

iii) Mr. Davis responded Act 626 was designed to allow coastal mineral boundary agreements between private land and mineral claimants and the State of Louisiana, if you know where your mineral boundary is and you are entitled to keep it, then the issue of who owns land that becomes eroded, who owns land that may be added through coastal restoration projects and who has rights to the minerals beneath them. Right now. When your boundary line retreats and what was once private land becomes public land the rights shift to the state. Where water and land meet, the law is more flexible because you never had complete private rights or public rights. Erosion has always been an exception. Act 626 was designed to allow donations or transfers of surface rights to a qualified conservation organization, a government entity or a private charitable land trust

that meets qualifications. The idea is to maintain as much of the collective value that the land and waters play. There are land trusts and philanthropies that are interested in playing a role.

b) Ms. Duet asked Mr. Davis if he could expand on when will Round 1 be and how that may develop. She also asked what some potential schemes of allowable access.

c) Mr. Davis stated that the finalization of the rules has given land owners something to talk to their shareholders about, something for land trusts to talk to their boards. It will likely require an endowment. Until the rules were finalized, it was hypothetical. Land owners are interested in this as a vehicle. A coinciding event was on the North shore of Lake Pontchartrain there was a wildlife refuge that was contentious. The conservation fund was persuaded to the realization that developing in the traditional way was not the only way to get value. The money to fund the refuge was through private donations. It was a way to bring an asset base to the table that we don't otherwise have. There must be land holding vehicles. If you are going to change landownership give the opportunity for land ownership to go into the hand of someone whose mission is to conserve. This is completely voluntary and a tool that did not exist before

d) Mr. Vorhoff stated that the rules will become finalized on November 20th.

e) Mr. Canfield stated that when trying to solve the issues of recreational access we need to make sure that it does not negatively impact restoration, Mr. Canfield asked if Mr. Davis saw potential pit falls or dangerous spots to look out for

f) Mr. Davis stated that is beneficial to think of actual deals to determine what you need. The first thing is for people to think of this as an option of the table, it was not designed to create or solve the access issue for anyone. You have to expect people to react when there is a shift in ownership. As the coast changes so does public and private rights. He cited Vaughn v. Vermillion Corp. which is the case noted that there may be times when the natural conditions change to the point where the canal replaces the public access previously afforded by the natural waterways thus allowing public rights to shift. It was not an absolute win for anybody. Anytime you have landowners and boaters raising issues that the state needs to resolve is what Act 626 is a tool to help deal with those issues.

g) Mr. Marshall stated that he understands the concern over the tax effect because if it donated it becomes state property and their tax base shrinks. On the management side, does Mr. Davis think the obstacles to management still exist, if they come to a consensus on the Access issue

h) Mr. Davis stated that he does believe it to be an issue because we have a range of land ownership. It is getting towards the point where it is not worth the trouble, the land owners hope to do something that can fit with the state's coastal restoration process. The management capacity and interests are changing. There is a shared stewardship objective. The ultimate goal of Act 626 was to improve land stewardship and compatible and affordable mineral development.

- b. Report of the Drafting Subcommittee of the Public Recreation Access Task Force, review and discussion of most recent draft of the legislative report and any proposed revisions
  - a) Mr. Canfield stated that they will review the report of the Drafting Subcommittee of the Public Recreation Access Task Force, review and discussion of the most recent draft of the legislative report and any proposed revisions. Mr. Canfield stated that there have been substantial additions to the Draft.
  - b) Mr. Lovett stated that he would like to know if he successfully captured the main idea of those who sent in new material. Mr. Lovett stated that he would like to further discuss points of agreement and disagreement
  - c) Mr. Cresson asked if Mr. Lovett could summarize his additions
  - d) Mr. Lovett stated his changes include: an addition to references on Seashore, but no substantive change (pg. 3), additional material on Phillips Petroleum Company v. Mississippi and additional material on the Public Trust Doctrine (pg. 4), additional discussion of other definitions of navigability (pg. 6-7), addition of new material on the rules of trespass law, defined as a criminal action and as a civil action (pg. 10-12), additional background on the background of trespass law, an additional section on Louisiana Oil and Gas Association and Mid-Continent Oil and Gas proposal based on conversations and feedback from Mr. Marshall (pg. 22)
  - e) Mr. Marshall stated that is technically not a proposal
  - f) Mr. Lovett responded that he will discuss with Mr. Marshall what it should be called.

Mr. Lovett stated his additions include a section on the Use Value Taxation and the framework of Mr. Carpenter's discussion. There were additions on page 24 and 25 from the contributions of Ms. Duet, that is similar to what Mr. Davis discussed. Mr. Lovett stated that
  - g) Mr. Darden stated that Mr. Lovett that on the areas of disagreement he has the LLA proposal limited to dual claim lands. Mr. Darden stated that the LLA proposal does embrace dual claimed land; however, if a constitutional amendment is passed, land owners and the state would have the opportunity to set a boundary and is not limited to dual claim.
  - h) Mr. Vorhoof said he will continue to provide legal analysis, but will not weigh in favor of or against one proposal.
- c. Discussion of next Task Force Meeting – Scheduling and Agenda Items Mr. Canfield stated that December 2nd will likely be the next Subcommittee meeting, the Full Task Force will meet Thursday, December 19th at 9:30. There will likely be two task force meetings in January. The subcommittee can determine the number of meetings needed. The plan is to go through areas of agreement and disagreement to work those out and bring that forward to the Task Force for discussion.
- d. Mr. Lovett stated that he will add a section for Act 626 and the rules Mr. Davis described. Mr. Lovett stated he would like to hear ideas or feedback from anyone on Mr. Davis' ideas becoming a possible model.
- e. Mr. Darden stated that the proposal for is an expansion on Act 626, so it would be beneficial to elaborate of Act 626

- f. Mr. Canfield stated that there will be a report from the subcommittee and he will determine what other presentations or speakers present at future meetings.

V. PUBLIC COMMENT

VI. CONSIDERATION OF ANY OTHER MATTERS THAT MAY COME BEFORE  
THE TASK FORCE

VII. ADJOURNMENT