

## MINUTES

### PUBLIC RECREATION ACCESS TASK FORCE

Thursday, December 19, 2019

A public meeting of the Public Recreation Access Task Force was held on Thursday, December 19, 2019 at 9:30 a.m. in House Committee Room 5, Ground Floor, Louisiana Capitol, Baton Rouge, Louisiana.

#### I. CALL TO ORDER

**Mr. Blake Canfield** called the meeting to order at 9:33 a.m.

#### II. ROLL CALL

**Mr. Canfield** then called the roll for purposes of establishing a quorum. The following members of the task force were recorded as present

**Rep. Beryl Amedee**

**Mr. Blake Canfield**

**Mr. Taylor Darden** (*arrived at 9:39 a.m.*)

**Ms. Cynthia Duet**

**Mr. Richard Fisher** (*alternate in place of Mr. Carpenter*)

**Mr. Cole Garrett**

**Mr. Joseph LeBlanc**

**Mr. John Lovett**

**Mr. Charles Marshall**

**Mr. Sean Robbins**

**Mr. Cheston Hill**

**Mr. Anthony Simmons**

**Mr. Ryan Seidemann** (*alternate in place of Mr. Harry Vorhoff*)

**Mr. Ryan Vivian** (*alternate in place of Mr. David Peterson*)

The following members of the drafting subcommittee of the task force were recorded as absent

**Sen. Bret Allain**

**Mr. Robert Michael Bengé**

**Mr. Rex Caffey**

**Sen. Norby Chabert**

**Mr. David Cresson**

**Rep. Jack McFarland**

**Mr. Lucas Ragusa**

**Mr. Jay Schexnayder**

**Mr. Jeff Schneider**

**Mr. Canfield** announced that fourteen (14) members of the drafting subcommittee of the task force were present and that a quorum was established.

III. APPROVAL OF MINUTES FOR NOVEMBER 18, 2019 MEETING

On motion by **Mr. Simmons** the minutes for the November 18, 2019 meeting were unanimously approved.

IV. PRESENTATIONS AND DISCUSSION ITEMS

- a. 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

**Mr. Canfield** stated that the latest draft from the Drafting Subcommittee is before the Task Force today and is marked Draft 4.0. (Attached as Exhibit A) The biggest changes since the last time that the whole Task Force met are the addition of a section outlining “Shared Values” and a section marked “Alternative Pathways.” Additionally, a new alternative pathway, titled “Combination Proposal” was added. Mr. Canfield then asked for Mr. Lovett to discuss the Shared Values and Alternative Pathways sections and stated that he (Mr. Canfield) would then discuss the Combination Proposal.

**Mr. Lovett** stated he drafted a section titled Shared Values, which he hopes summarizes areas of consensus held by all the Task Force members (pp. 2-4). The five Shared Values it includes are: 1) Preservation of our coast and the natural environment, 2) Respecting private property rights and investments in land, 3) Preserving and enhancing the local tax base to support vital public services, 4) Preserving the culture of outdoor recreation, and 5) Encouraging and developing the recreational economy. Mr. Lovett explained that he tries to use these values throughout the report to refine our understanding of proposed solutions and see how each of these values are dealt with by the various proposals so far presented. Mr. Lovett mentioned that there are minor changes regarding the remaining exceptions up until the sections on recommendations on page 25, most has stayed the same. He stated he did his best to work in the State’s comments into the section on the Louisiana Landowner’s proposal. Mr. Lovett mentioned that he has added a new section on page 35 covering the Act 626 model based upon the presentation by Mr. Mark Davis. He stated that on page 38 through 43 is the Combination Proposal from the various State representatives, which Mr. Canfield will discuss in greater detail. Finally, Mr. Lovett stated the report ends with a section titled “Alternative Pathways” beginning on page 43. He went on to mention that because he is not sure the entire task force agrees with any one pathway, he has laid out alternative pathways forward, some of which may be better in certain situations than others. These pathways are not meant to be exclusive. This section attempts to consolidate or condense the full proposals and

to consider them in light of the Shared Values. He mentioned that all of the pathways have not changed much since the last Drafting Subcommittee with the exception of the 7<sup>th</sup> pathway which is built on the comments from the State actors. **Mr. Canfield** stated that there were not really changes to the State comments on the LLA proposal, they were just re-stated within the LLA proposal and he also mentioned the additional fact that 10% of mineral income from State leases go to the parish in which the production occurs. Mr. Canfield then went on to describe the Combination Proposal as based on these comments and the comments of the Sportsmen. This proposal is for the Task Force's consideration and he stated that comments and thoughts of the other Task Force members were encouraged. The Combination Proposal takes portions of the other proposals that have previously been presented. Mr. Canfield stated that the Combination Proposal (pp 38-43) begins with a voluntary agreement between the State and private landowners establishing what is called a servitude area in which the State would be granted the surface rights and the mineral rights would stay with the private landowner, both of these being perpetual. When speaking of the servitude area, it needs to be made clear that this is an area submerged beneath subtidal or intertidal waters, is hydrologically connected and lying between the emergent land and the historic shoreline boundary. Because the State would then have all surface rights there would no longer be a requirement for sportsmen to determine legal navigability within a servitude area in order to determine where recreational access is allowed. This servitude area would move with the land water interface. So if there is erosion it would move inland with the erosion, if there is land building the inland boundary of the servitude would move out with the land. Mr. Canfield stated the plan also considers establishing a time period in which to opt-in or opt-out and those landowners who either opt-out or fail to opt-in prior to that deadline, would be required to post their opted out areas and to register these waterways areas with the State as not being subject to recreational access and State surface ownership. So, essentially for these waterways the non-posting exception to trespass that was amended out of R.S. 14:63 in 2003 would return. Additionally, the proposal envisions any revenues gained by the State from surface leasing and servitude granting that the State Land Office currently does on State lands could go towards offsetting State management costs and also help to offset lost revenue to the Parishes. The proposal also discusses having some small fraction of mineral income from these areas going to the Parishes to offset potential lost mineral income that would otherwise be due on State mineral production. Mr. Canfield stated that current case law states that private canals, dredged on private property with private funds are private and subject to public access restrictions. Based on this the proposal envisions the State looking to purchase rights for access in those canals identified as important for recreational access. Finally, Mr. Canfield mentioned that this proposal should greatly limit concerns about liability on the part of private landowners as the State would now own the surface rights and it maintains some of the purposes for Civil Code art. 450.

**Mr. Robbins** asked what the level of participation would be. Also, asked whether limited access in LLA's proposal was defined. How would it be defined? **Mr. Canfield** stated that his understanding of LLA's proposal is that the types of

limitations would be worked out through a rulemaking process identifying what types of access would be allowed. **Mr. Darden** mentioned that this was correct and the limitations were mostly dealing with time restrictions and boat/motor types that would be allowed. He also stated that he polled LLA's membership to determine interest with LLA's proposal and there was not a single member who said they would not be interested. So it has broad support amongst our membership. Mr. Robbins asked whether Mr. Marshall had agreed to peeling off a percentage point of production to cover management costs of the State. **Mr. Marshall** stated while they had discussed it, he didn't recall their being agreement on behalf of other landowners.

**Mr. Garrett** asked whether the combination proposal would have an affirmative requirement for those landowners who opt-out to post and register their waterways in order to deny access. **Mr. Canfield** stated that was the case and that this issue was a key one for the group to discuss. He mentioned that this requirement would not just affect those landowners that opt in as to a portion of their property but opt out as to another. Under the Combination Proposal, Mr. Canfield clarified, the requirement to post and register would apply to all landowners statewide as to waterways they intend to keep private. But it is still voluntary and allows landowners to not enter into these agreements. Mr. Garrett asked whether this applies only to running waters and those waterways subject to intertidal waters and not to land. Mr. Canfield stated that this is correct it does not apply to land, but only to the "servitude area" which is defined as being submerged by intertidal and subtidal waters. Mr. Garrett asked whether it allowed for individualized limitations or just any universal limits placed across the board. Mr. Canfield stated that it envisions only universal restrictions and requirements. **Mr. Marshall** asked whether a constitutional amendment would be needed for this proposal. **Mr. Canfield** stated that a constitutional amendment would be needed for the decoupling of minerals and surface rights for the same reasons LLA and you have brought up previously. Mr. Marshall also suggested that a table of contents be added to the draft. **Mr. Lovett** agreed that this needed to be done.

**Mr. Lovett** mentioned that he reads the Combination Proposal as having more in common with the decoupling proposal than with the LLA proposal. **Mr. Canfield** stated he believes it borrows from both proposals and as to the posting requirements it borrows from the Sportsmen's proposal. But generally, he sees it as being most similar to Mr. Marshall's proposal with adding more benefits to the landowners. **Mr. Hill** stated that it would require a Constitutional Amendment to allow for the alienation of minerals out to the historical boundary. **Mr. Marshall** also mentioned that the giving away State assets are involved. **Mr. Hill** stated that his understanding is that this proposal would not require an amendment to alienation of waterbottoms provisions for this proposal though the LLA proposal would require an amendment there too. Mr. Marshall stated that if we are leaving all of these options out there, then I think you would need to amend them both at one time.

**Mr. Darden** asked what the State's position would be if a private landowner put a marker out in a dual claimed area. Will that provoke the litigation we are trying to

avoid here. **Mr. Marshall** asked whether it is clear that the posting requirement would only apply to recreational access for purposes of trespass. **Mr. Canfield** stated the intent is that this would only apply as to recreational use, but it sounds like it needs to be clarified. **Mr. Hill** stated that the reintroduction of affirmative defense of posting for trespass is that it would only apply to recreational access on water. As to Mr. Darden's concern about the placement of buoys, the State would treat it the same it does today. The proposal envisions registration with the State as well not to support the landowner's claims of trespass but to reassure the public that the posted markings are legitimate and placed there by someone claiming the right to do so. It would also mitigate against persons tearing down markings they feel shouldn't be there. Mr. Marshall stated that again his concern is outside the area of agreement. Mr. Hill mentioned that under the proposal a lack of posting could not be used as a defense against trespass by a commercial fishermen or anyone on land. **Mr. Garrett** stated that a landowner demonstrating possession of the property by telling people they are trespassing is already raising a potential conflict between the landowner and the State. Whether the landowner does this by a marker/buoy or by a land manager verbally telling people the land is private doesn't affect that potential conflict. I think we are already there, Mr. Garrett stated.

**Mr. Darden** asked how with the legal requirement of specific description of property in donations, the servitude area can run with the erosion and mitigation. How does this affect things from a title examiners perspective? **Mr. Canfield** stated that with mineral leasing by the State, there is generally a property description with a geographical boundary drawn and a statement that the lease covers all State waterbottoms within the boundary area. He wondered if something similar could be done here. **Mr. Hill** stated that from a title examiners perspective they would have a disclaimer that would state it is subject to on the ground surveys which would disclose the land-water interface. So the public record property description would describe the servitude area which would need to be surveyed to ascertain the current land-water interface and areal contents.

**Mr. Marshall** stated he has some confusion in his mind speaking of a servitude area in light of a donation. Since it is a donation it is really not a servitude concept. He suggests a different name should be found for this area. **Mr. Hill** agreed, stating the name came from Mr. Darden's proposal. **Mr. Lovett** stated from a drafting perspective he suggests paying homage to the force of this thing and call it a "donation and mineral reservation area." **Mr. Hill** agreed stating that because the intent is that these areas remain perpetual calling it the "servitude area" may cause problems as by law servitudes are often limited in time.

**Mr. Marshall** mentioned that in the section dealing with the recreational immunity statutes, it speaks of providing immunity to landowners, but because these statutes also provide immunity to those who derive their rights from a landowner I think a footnote there would be helpful. Additionally, he stated that this is one of the areas of the immunity statutes he thought needed to be clarified, because they do not apply to mineral servitude owners. **Mr. Lovett** agreed.

- b. Discussion of next Task Force Meeting – Scheduling and Agenda Items **Mr. Canfield** stated that he reached out to the Dean of LSU’s Law School to talk to the task force about maritime law and preemption as it relates to the state tort immunity statutes. Mr. Tom Galligan agreed to come speak. Subsequently he has been named interim President of LSU and so Mr. Canfield stated he will reach back out to see if Mr. Galligan is still available to speak to the Task Force. Aside from that most of our remaining meetings will be about finalizing the report and coming to agreements where possible. As for dates Mr. Canfield mentioned that January 13-15 may not work because of inauguration day on the 13<sup>th</sup> and Legislative Organizational Session. January 6-9 are a possibility for our next meeting and again a date around January 21<sup>st</sup> -24<sup>th</sup>.

V. PUBLIC COMMENT

No public comments were made.

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

No other matters came before the task force.

VII. ADJOURNMENT

Upon motion by **Mr. LeBlanc** unanimously approved, the task force meeting adjourned at 10:20 a.m.