

MINUTES

**PUBLIC RECREATION ACCESS TASK FORCE
DRAFTING SUBCOMMITTEE**

Thursday, December 19, 2019

Upon Adjournment of the Public Recreation
Access Task Force Meeting

I. CALL TO ORDER

Mr. Canfield called the meeting to order at 10:39 a.m.

II. ROLL CALL

Mr. Canfield then called the roll for purposes of establishing a quorum. The following full members of the Drafting Subcommittee of the Public Recreation Access Task Force were recorded as present:

Mr. Blake Canfield
Mr. Taylor Darden
Mr. John Lovett
Mr. Sean Robbins

The following full members of the Drafting Subcommittee of the Public Recreation Access Task Force were recorded as absent:

Mr. David Cresson

Mr. Canfield announced four (4) members of the drafting subcommittee of the task force were present and that a quorum was established.

III. APPROVAL OF MINUTES FOR DECEMBER 2, 2019 MEETING

IV. PRESENTATIONS AND DISCUSSION ITEMS

a. Review of Draft Report – c. Consideration of the Subcommittee’s next submission to whole Task Force

- 1) **Mr. Canfield** stated that review of the draft report was just done in the full task force meeting. Mr. Canfield stated there were items brought to his attention between meetings, the first is the definition of recreational access under LLA’s

proposal and whether that would cover charter boat captains that take out recreational fishermen for hire. It sounds like it might need some clarity in the definition. The second item brought up to Mr. Canfield was a question about how this applies outside the coastal areas, currently discussing the definition of the servitude area in the Compromise proposal, includes the area from the water-land interface including intertidal waterways and land submerged by intertidal waters. The question becomes what affect the proposal would have elsewhere in the state outside those areas that are tidally influenced and specifically the Atchafalaya Basin and other areas in North Louisiana. Mr. Canfield stated there certainly are some issues that may exist in North Louisiana and in the Basin that do not exist in coastal Louisiana.

- 2) **Mr. Lovett** stated that on the first item, it is clearly a policy decision that he can't make as drafter, but would like to get feedback from the committee. Mr. Lovett stated that it is easy enough to include charter boat operators in a definition of recreational access. For example, legislation in Scotland says recreational access includes people who are operating who are engaged in a business for profit that basically builds on traditional recreational access. Mr. Lovett stated he is unsure if that would be acceptable. Mr. Lovett stated he thinks it's easy to fold that into recreational access, pure commercial fishing would be completely different.
- 3) **Mr. Darden** stated that he understands folding it in would be easier, but the restrictions would be in the regulations that are passed pursuant to that. So while you may allow a commercial fisherman you're certainly not going to be able to bring your 46 ft. Bertram in the middle of the marsh if the regulations limit the size of the boat or the horsepower of the vessel. Mr. Darden stated he thinks you can accommodate it that way, but expand it to include something broader than just purely recreational use.
- 4) **Mr. Garrett** stated that the Department of Wildlife and Fisheries considers charter boats as a commercial endeavor that is a commercial license; however, it is a recreational opportunity, so it is the commercial practice of taking people upon a recreational trip. So, he can certainly understand that to be a recreational activity. Mr. Garrett stated that his question is if this is really a distinction without a difference. Under the schemes that we've kind of talked about as potential solutions here were talking about either servitude or donations of the surface and then you're leaning on the state to regulate that activity whether it be recreational or commercial in nature. Mr. Garrett stated that Wildlife and Fisheries has the ability to set time limits, seasons, area limitations where commercial or recreational activity can occur in and certain restrictions on it. That is available through a regulation.
- 5) **Mr. Canfield** asked the committee to think more about how the proposals affect North Louisiana and the Basin. Mr. Canfield stated that one question is whether or

not there is the same type of incentive structure that you have along the coast regarding if what is being offered is the clarity, as to ownership boundaries for minerals and service use. Is there that same issue in North Louisiana? Mr. Canfield stated he is unsure if that exists outside coastal areas. Mr. Canfield stated that there are historical disputes regarding the Red River, but in many cases those disputes concern areas that are dry nine-tenths of the year.

- 6) **Mr. Lovett stated** that he recently did a CLE (continuing legal education) presentation on recent developments in Louisiana property law and reported on a couple of cases in North Louisiana and sometimes there are still dispute about whether a particular small water body is navigable or not, but we know how to deal with those. Mr. Lovett stated that he does not know if it needs to be addressed. Mr. Lovett stated that there is a big problem with Catahoula Lake being reclassified as a river as opposed to a lake, but that seems to be an anomalous situation.
- 7) **Mr. Seidemann** stated that he would like to echo Professor Lovett's observation about Catahoula Lake and his hope that it is an anomaly as one of the counsel of record on the case for the state. Mr. Seidemann stated that his point is more along the lines of drawing a distinction between north and south Louisiana. Mr. Seidemann stated that the Attorney General's office works on the Red River cases and they are completely different scenarios, probably 90% of them are directly related to Oxbow lake/river issues and new-cut channels, as opposed to former natural channels of the Red River. Mr. Seidemann stated that he wonders if a graphic boundary wouldn't serve us well; consider saying that above this latitude this report is not intended to apply. **Mr. Canfield** stated that the committee must consider the political realities trying to get the Constitutional Amendment(s) passed. If this only affects one third of the state geographically, what kind of impact does that have on reaching a solution politically. **Mr. Seidemann** stated that one of the things to be mindful of in regards to a constitutional amendment, is what the implications of these amendments might be for the non-coastal areas because we currently have a fairly workable mechanism for resolving these land disputes and mineral disputes in North Louisiana and they do not follow the model of the ones in South Louisiana because of the different history and contractual backgrounds to the waterways up there but a broadly cast Constitutional Amendment may upset that again. **Mr. Darden** asked what the amount of acreage that the state dually claims in North Louisiana was. **Mr. Hill** stated that he is not sure of the exact amount but it is far less than it is in Coastal Louisiana. They do not have coastal erosion, subsidence, and sea level rise in North Louisiana. Mr. Hill stated that he understands the difficulties of a Constitutional Amendment that has to be voted on by voters in the entire state if it's only going to affect portions of parishes that are in coastal areas. In North Louisiana the only similar issues Mr.

Hill is aware of involve artificially elevated water and seasonally contingent water bottoms that flood privately owned land. Mr. Hill stated he could see how an issue trying to reinstitute affirmative defenses for trespass in the law only asked to these areas in the coastal zone or whatever boundary and say that this does not apply to water recreational accessing and other areas outside the zone, it is important to consider that when trying to implement that. **Mr. Seidemann** stated that 95% of the settlements that the State has done along the Red River cover mineral boundaries and similar things; one of the regular things that we reserve out is recreational access to these former oxbows and the cuts. It's something that we just built into the resolutions of those disputes up there. It is not as easy to resolve on the coast, but those are things built in over time. (North Louisiana). **Ms. Duet stated** that she agrees with the comments made about the coastal areas versus the different issues in North Louisiana; however, before setting out the task of defining an area, there was a piece of legislation crafted either through Louisiana Coastal Area Study [LCA] in 2004 or CPRA Bill in 2009 or Cleanup Bill in 2010. There's a definition of the coastal area that is broader than the CZM (coastal zone) boundary for certain reasons. The CZM boundary was updated in 2011. The broader CPRA created coastal area boundary may be a good starting point.

- 8) **Mr. Canfield** asked if there are any other comments or suggestions at this time. **Mr. Darden** stated that the criminal penalties are going to have to be redone, substantially increasing penalties for those who remove posted signs, gates, and markings if we are contemplating reintroducing trespass defenses requiring posting. **Mr. Robbins** stated, that in his original proposal, it mentioned strengthening penalties. Mr. Robbins stated he would be in favor of increased penalties and fines, and possibly tying it to licensing. **Mr. Garrett** stated as to the point about tying licensing to destruction of property or trespassing, he does not have any objections but it should say the person was in the act of hunting or fishing when the person trespassed or was involved in the destruction of property; otherwise, it is potentially an expensive endeavor.
- 9) **Mr. Marshall** stated that in the context of the donation alternative, it is up to the state and landowner who is willing to make a donation. The donation would include water and land, the state and land owner would make a settlement on the mineral rights issues, which would be fixed forever. It would not matter if there was a stream, bayou, or lake because it would be considered by the parties before coming to an agreement. Mr. Marshall stated his concept is that it would not require a survey of each water feature. **Mr. Canfield** stated that he agrees that it is simpler than the LLA Proposal and the combination proposal, you do have to have some decision on what the servitude area is going to include, but a survey or boundary drawing wouldn't be necessary. Mr. Marshall stated he believes the LLA proposal is a great approach in most instances, and a donation by a landowner may

be more isolated in the application, but if it is there it can be very beneficial to everyone.

- 10) **Mr. Lovett** stated that he understands there needs to be tweaking to the report in various places, but asked whether the committee still endorses the basic approach that there is not one pathway, but how legislation can help facilitate each pathway. **Mr. Darden** stated that the report can include a statement that the list does not reflect any favoritism over one pathway or another.
- 11) **Mr. Darden** stated that he would like to see in the appendix a proposed Constitutional Amendment that would embrace his proposal last meeting and the state's combination approach. Mr. Darden stated that if you give them an appendix of a proposed legislation that may facilitate a more robust discussion. Mr. Lovett stated that he believes it should include the proposed constitutional amendment as an exhibit. In terms of legislation, Mr. Lovett stated he is not sure if it is practical to create some model legislation in four weeks. **Mr. Marshall stated** that if you don't have legislation for each of the proposals, then you favor the proposals you have legislation for. Mr. Marshall stated that the Constitutional amendment is important for each alternative proposal and should be included.
- 12) **Mr. Lovett** stated that in regards to the term "limited right of recreational access" the committee may need to clarify the term of "limited," does it mean negotiated, limited in time, limited in kinds of vessels, the committee needs to clarify.

e) Discussion of Next Subcommittee Meeting – Scheduling and Agenda Items:

Mr. Canfield stated that there will be revisions, members should provide feedback on the compromise alternative. Mr. Lovett could list feedback from members. There should be at least two task force meetings in January. **Mr. Lovett stated** he does not think there needs to be two separate meetings. **Mr. Canfield stated** there will be a full task force meeting on the 6th or 7th to discuss the drafting of the report and problems mentioned.

V. PUBLIC COMMENT

There was no public comment

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

There were no other matters that came before the subcommittee.

VII. ADJOURNMENT

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