

## MINUTES

### PUBLIC RECREATION ACCESS TASK FORCE

June 26, 2019

A public meeting of the Public Recreation Access Task Force was held on Wednesday, June 26, 2019 beginning 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 9:31 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. Mike Bengé**

**Mr. Rex Caffey**

**Mr. Blake Canfield**

**Mr. Richard Fisher** (*alternate for Daryl Carpenter; left at 11:05 a.m.*)

**Sen. Norby Chabert**

**Mr. David Cresson**

**Mr. Paul Frey** (*alternate for Taylor Darden*)

**Ms. Cynthia Duet**

**Mr. Cole Garrett**

**Mr. Joseph LeBlanc**

**Mr. John Lovett**

**Mr. Charlie Marshall**

**Mr. David Peterson**

**Mr. Lucas Ragusa**

**Mr. Sean Robbins**

**Mr. Jonathan Robillard**

**Mr. Jay Schexnayder**

**Mr. Tony Simmons**

**Mr. Harry Vorhoff**

The following members of the task force were reported as absent:

**Sen. Bret Allain**

**Rep. Jack McFarland**

**Mr. Jeff Schneider**

**Mr. Canfield** announced that twenty-one (21) members of the task force were present and that a quorum was established.

### III. APPROVAL OF MINUTES

A motion by **Mr. Tony Simmons** to approve the minutes for the April 2, 2019 task force meeting was approved unanimously.

### IV. PRESENTATIONS AND DISCUSSION ITEMS

- a. Presentation by Emory Belton, titled *Historical Review and Possible Solutions for Recreational Public Access*. His presentation and handouts are attached as **Attachment A**.
  1. **Rep. Amedee** asked what is the Pugh Clause that Mr. Belton mentioned. Mr. Belton stated that they are clauses in oil and gas leases developed over time to address a situation where all of the acreage covered by a lease were maintained by production from one well on only a portion of the lease. Pugh clauses release acreage from a lease not under production. Rep. Amedee stated regarding the “freeze statute” it was difficult to follow who was the mineral owner, the lessee, and lessor in the case where the land is taken over by water. Mr. Belton stated that the freeze statute protects the lessee (the oil company) in the event that the surface ownership changes by operation of law, so that the lessee only has to deal with the original landowner and not get another mineral lease from the State and deal with two mineral leases. Rep. Amedee stated, “so, in layman’s terms...the lease remains even if the ownership changes. Mr. Belton stated that is correct. Rep. Amedee then stated as regards La. R.S. 9:1115.1 where it says it is not the intent of the Legislature to affect who can fish and where, they were saying passing that law was not intended to change what’s customary. Mr. Belton, stated the express purpose of the statute was to make sure nothing changed because the *Phillips* case potentially opened some things up. So the Legislature was trying to say that *Phillips* changes nothing here. They weren’t acknowledging what the law was, but saying whatever it was it didn’t change. Rep. Amedee stated in regards to the figures Mr. Belton provided for the three Parish property tax rates, if I don’t know what the other property tax rates are, I don’t know if the rates you cited are good, bad or otherwise. So we are talking about the marsh land use rate. How does that compare to other use rates like agriculture, commercial, etc? Mr. Belton stated he didn’t have those numbers. It was obviously based on policy considerations and the Constitutional language gives the Legislature the authority to revisit how it is handled. Rep. Amedee asked whether the Legislature has the ability to change classification of lands and how they are grouped for use tax purposes. Mr. Belton suggested that Rep. Amedee speak with the AG or Legislative counsel, but his opinion was probably yes.
  2. **Mr. Simmons** asked for clarification on Mr. Belton’s comments on the *LL&E* case. Did that case allow the State to take land as a donation from a private landowner in exchange for giving that landowner mineral rights in perpetuity to the 1921 boundaries? Mr. Belton

stated that was how he read the second sentence of Const. Art. 9, Sec. 4 and that is also my recollection of what happened in that LL&E donation. Maybe Mr. Marshall can help me on that. Mr. Simmons then asked that if in fact that is the case, whether Mr. Belton believed a landowner with an eroding seashore could donate their property to the State in exchange for receiving their mineral rights in perpetuity? Mr. Belton then read Const. Art. 9 Sec. 4 and stated at least in the case of LL&E there was an active and ongoing reclamation project and LL&E stated the Constitution allows us to reclaim the land and get back minerals and by the State performing reclamation they would be denying the private landowner the right to reclaim the land and minerals themselves. **Mr. Marshall** stated he thinks that it was limited to a Coastal Restoration project on a barrier island and I don't think there is application to all property anywhere. There is a general constitutional right to reclaim any eroded property but you have to get a reclamation permit and that is limited to the 1921 line wherever it may be. The problem we are dealing with here and why Mr. Darden and I brought up the constitutional issue, was that if you open up your property to public access and increase the vessel traffic it is possible you could have further erosion of your property with the mineral rights eroding to the State as well. So my concern is that if a landowner is going to consent to public access for recreational fishing the landowner deserves to be protected from further erosion in exchange for that consent for the benefit of the public and the only way you can assure that is through a constitutional amendment. He continued that he was disappointed to hear Mr. Belton's skepticism of the north vs. the south of the State because it would obviously be in coastal Louisiana where the focal point would be because that's where the majority of the problem is. But I would assume there is erosion along certain rivers and streams and so it would be of benefit for property owners in both the northern and southern parts of the state.

3. **Sen. Chabert** stated the deltaic nature of the state makes it different than the majority of the coastal states and areas. We are really the only place on the planet dealing with this type of erosion and subsidence. Further, the liability portion of this is tremendous; you have pipeline exposure due to erosion and the more access you let the more potential liability you may have. Mr. Belton stated I thought I would be able to provide my thoughts based on all of my experience and help sift through the information presented to the task force so far and put together my thoughts on how to address this issue. Sen. Chabert asked that Mr. Belton provide a white paper putting forth his thoughts in a bullet point format.
4. **Mr. Lovett** wanted to note that while Mr. Belton was correct that the U.S. has always protected property rights, the content of those property rights have changed over time. Particularly in the American South we had a public servitude of use over most of the land. We essentially had an open range. Meaning if you had cattle and your cattle went onto a neighbor's property to graze, that was ok if your neighbor's property wasn't fenced in. That only changed in the second half of the 19<sup>th</sup> century. So keeping that in mind we may be going back to where we were with something like what you proposed. Second, on the technical point regarding the freeze statute, I understand your point that it was maybe designed to protect the mineral lessee, but it clearly does protect the rights of

mineral lessors. So, if ownership changed to the state then the private landowner lessor's mineral rights would be protected. Mr. Belton agreed.

5. **Mr. Frey** asked Mr. Belton to clarify what he said regarding the maps he showed and his statement that anybody who launches from either Cannons launch and Bob's Bayou Black Marina is trespassing, but I think I am correct that both of those are leased from private landowners and over waterbodies that those private landowners claim and own. Mr. Belton stated that Mr. Frey may be correct, but with Bob's my understanding is that the Shell canal is not leased and as for Cannons the lease covers the area right around the launch but you have to use Miner's canal which is subject to a private claim. Mr. Frey asked whether Mr. Belton knows of anyone cited for trespassing on the Shell canal or any other canals? Mr. Belton stated he did not and that was the good news. But there is an issue that needs to be addressed.
6. **Mr. Garrett** asked if Mr. Belton had a specific recommendation for a revision to the trespass laws and specifically noted that Mr. Belton stated that Act 802 of 2009 might have been an overreach and asked for a recommendation on that. Mr. Belton stated he did not; because landowners had a problem prior to that Act where their signs were being torn down and folks felt like they could trespass with impunity. But there are waters out there that no one knows who owns them. That's a challenge, but Mr. Belton stated he didn't have a solution. Mr. Garrett asked if Mr. Belton had specific recommendations regarding strengthening landowner immunity, which he also mentioned in his presentation. Mr. Belton stated he would just be clear there is no right or cause of action in any case (recreational use or otherwise) unless there is gross negligence or willful misconduct. Close the door on it and let the fishing community know they enter those areas at their own risk. Mr. Garrett mentioned that Mr. Belton suggested a permitting process for allowing private landowners to block private canals, he asked what authority does the executive branch have to mandate such a program? Mr. Belton stated it goes back to the civil code articles there is a gap in the law where running waters are a public thing, and there are decisions and AG Opinions the State owns it, my thought is that these landowners (especially where you have these location canals) weren't forced to dredge those canals and they invited the public waters onto their property. So based on all of these laws, Mr. Belton thinks the landowner has to concede certain rights by inviting that public resource onto his land. Mr. Belton stated he thought the way to address this is how he described in his presentation, if the private landowner invites the public waters onto their land there has to be some limitation on their right to prohibit public access. And if that is too difficult to address, Mr. Belton said we can address the marsh land use tax as another possible approach. Mr. Garrett then stated that currently trespass is enforced by the sheriffs or local law enforcement, so if you are going to take that property off the tax rolls either by donation or changing the tax laws, how do we expect parishes to pay for enforcement or coastal restoration/protection for that matter? Mr. Belton stated that in the short term he wasn't sure, but in the long term you take things like the Bassmaster Classic, the lost economic impacts would come back and could help support the local areas.

7. **Mr. Robbins** stated that by leaving the use taxes as they are that could still fund local law enforcement and any change to the tax laws that we are discussing would increase local tax revenues, correct? Mr. Belton agreed. He stated that he was looking for a vehicle to address this and perhaps changing the tax laws was one day to do it.
- b. Presentation by by Rob Parkins, Public Waters Access Coordinator for BackCountry Hunters & Anglers. His presentation is attached as **Attachment B**.
1. **Sen. Chabert** asked whether Mr. Parkins' organization would be involved when the task force put forth recommendations and whether his group would go through those recommendations stating what they agreed with or didn't agree with? Mr. Parkins stated that is something they would like to be involved with and they certainly planned to voice their concerns. Without having recommendations it is difficult for us to say what we agree with and don't. Sen. Chabert asked, if hypothetically we have a ten-point plan that forms the backbone of a bill, is your organization going to go point by point and either endorse, oppose, or stay neutral on the bill based on how many points your organization agrees with? Mr. Parkins stated it is hard to say without specifics. So it depends on what is in there. We definitely understand that there will be some compromise in there. Personally and from our organization I don't think we will say it is either all access or nothing. We are here to compromise so that we can maintain and increase access to this marshland. Sen. Chabert agreed, said as a landowner I wouldn't have a problem with a bunch of paddle boaters and piroguers coming onto my property to fish, but I would have a problem if they came on my property with a very high powered vehicle that destroys marshland. Mr. Parkins said he understood that and said it is probably something the fish and game department and private landowners need to work on through regulation. Sen. Chabert then asked, since Mr. Parkins has dealt with water access issues in other jurisdictions, are there any other deltaic plain areas dealing with systemic erosion like this? Mr. Parkins said no. Sen. Chabert asked if there was any place he had dealt with where there was significant erosion caused by actions taken by the federal government over 100 years ago requiring a coastal protection authority to spend literally billions of dollars on restoration projects. Mr. Parker said he wouldn't throw the federal government under the bus, but there were states along the Eastern Seaboard with restoration programs such as in North Carolina, South Carolina, and Florida. Sen. Chabert asked if Mr. Parker would agree that the issues that exist in the Eastern States from normal wave action and storms leading to restoration are different than the systematic erosion problems we are dealing with in Louisiana. Mr. Parker agreed stating that Louisiana is unique.
  2. Mr. Frey wanted to point out that there are National Wildlife Refuges and State Wildlife Management Areas in coastal Louisiana that are burdened by restrictions regarding motor access and times of access. Where there is publically owned property restrictions of use are enforced to maintain the habitat and resources. So, we need to keep that in perspective as we deal with this. Mr. Parker agreed that this needed to be kept in perspective and regulations worked out through public rulemaking considering public comments and viewpoints of the interested parties. This is similar to something I am working on in my backyard concerning a piece of land. It is the same thing here, where there are sensitive areas needing protection. But if we don't have access here then we

don't have anything to work on regarding these protections. Mr. Frey asked if he was speaking of total or controlled access? Mr. Parker mentioned he was talking about controlled access, but reiterated that first we need access. Those waters subject to the ebb and flow of the tides should be open to public access. Once there is access – where landowners are not totally restricting access – then, if we are talking about restrictions to that access, then that is certainly a possibility. Mr. Frey stated it is not totally restricted, from LLA's perspective there are thousands of lessees that have paid for access rights. That all has to be considered as we work towards compromise.

- c. Presentation by Sean Robbins, task force member appointed by the Louisiana Sportsmen's Coalition, titled Louisiana Sportsmen's Coalition's Responsible Public Access Proposal, which is attached as **Attachment C**.
  1. **Mr. Robillard** stated that he was a bit confused by the statements in Mr. Robbin's presentation regarding Mr. Darden's proposal presented at the last meeting, but his memory was that Mr. Darden's proposal was more expansive than just covering dual claimed waterbottom areas. Mr. Robbins stated that he specifically asked Mr. Darden that question, and Mr. Darden responded that it only covered dual claimed property. Obviously, if Mr. Darden or Mr. Frey disagree with that I would ask that they correct the record.
  2. **Mr. Garrett** asked Mr. Robbins to define the scope of access, which differentiates the proposals of the LSC and Mr. Darden's. He noted that Mr. Robbins mentioned that surface waters that are to remain private and closed to public access that those needed to be posted and marked. So, Mr. Garrett, asked what remains private? Mr. Robbins stated that part of the presentation was more in regards to the Wildlife Management Areas needing to be posted so as the public goes out there they can recognize it as a WMA and gives hunting season dates and provides the statutes and tells you when you are out on the water that you can't be in this area with an internal combustion engine during those times. Mr. Robbins continued that he wants to see more pervasive access. Comparing what was there in 1812 to what is out there now with the expansive canal system and the change in hydrology there are a lot of locations where you cannot get from point A to B without traversing a manmade canal to get to a natural bayou that was navigable in 1812. Mr. Garrett asked to clarify that LSC's proposal would include man-made canals and the running waters in those canals? Mr. Robbins said yes, and to address the point made earlier by Mr. Marshall, we do need to compensate the landowners for any erosion that is caused by the public access. We don't want the public access to put the landowners at risk of losing their mineral rights. Mr. Garrett asked how do we deal with the conflicts that may arise with leases that these private landowners have entered into for the same recreational opportunities that the public is seeking. Mr. Robbins stated that it was his understanding that with the exception of duck hunting a lot of those leases were for a commercial purpose such as crabbing and shrimping. Mr. Robbins stated LSC's proposal would not change those leases or the rights surrounding them in any way.

3. **Mr. Simmons** stated that he asked Mr. Darden whether his proposal would include all land not just dual claimed property and that Mr. Darden replied that it could. Mr. Robbins stated he did not have a problem with that.
  4. **Mr. Caffey** asked Mr. Robbins to clarify that when he said access should be expansive and mandatory, did he mean that voluntary options should not be on the table. Mr. Robbins stated that his statement was in response to Mr. Darden's proposal. Specifically, if the public is going to give up its rights to minerals, then the access to the public should be mandatory. We are certainly willing to discuss voluntary access, but if mineral rights are on the table then the access should be much more expansive than Mr. Darden's proposal and should be mandatory. Mr. Caffey asked, so in the case of a landowner who has mineral rights as an incentive based access option, not across the coast but just that parcel of land that is off the table? It sounds like the Coalition's position is that mineral rights as a token for access should not be allowed, is that correct? Mr. Caffey continued that one of our recommendations on this type of proposal was that it may be better to start small and see what landowners would be willing to take some sort of incentive based option. So, does the Coalition support some sort of voluntary based option that would include minerals on a smaller scale? Mr. Robbins responded that he thinks the Coalition would support consideration of such an option depending on the requirements of the landowners and how expansive the ask of the State's minerals would be. To further clarify, Mr. Robbins stated that LSC is willing to have everything on the table to discuss, my only concern based on previous discussion of this task force is the limits on what the State can give up as far as mineral rights and especially if it would be in exchange for very little in the way of public access.
  5. **Mr. Lovett** mentioned regarding the scope of access specifically as to canals, it is possible that the courts have gotten this wrong when they analogized canals to private roads. As you've pointed out what made these canals possible is that they invited public waters onto private property. And what it seems you want is surface water access in things such as canals where they would otherwise be navigable since they are capable of sustaining commerce, but you would not want access to say a small irrigation canal whose only purpose is providing water for farming. So, what we are talking about is fixing a mistake made by a few courts that did not see the consequences of decisions that allowed private landowners to make canals a private thing. Mr. Robbins agreed and stated there are many instances of canals diverting public waters and thereby the previously navigable bayous are silted in and no longer navigable. It is the Coalitions position that members of the public should be able to access those canals to get from point A to point B to recreate, because the act of a few took away that resource from the public.
- d. Discussion and possible vote on assigning task force members with drafting proposals on areas of common agreement to be presented to the task force at future meetings.

**Mr. Canfield** stated because we have a fast approaching deadline and a common refrain from this past legislative session on bills dealing with recreational public access has been there is a task force studying the topic, I wanted to discuss a few ideas I had for speeding things along. The

first one was for the low-hanging fruit items whether we could create groups to come up with proposals to bring back to the task force for its consideration. The one issue that comes up again and again is liability immunity issues. I know Mr. Marshall presented on the two statutes and the clarity that might be brought to those. In addition to probably combining these two statutes, I know the presentation also suggested broadening the definition of owner in those statutes and also addressing liability from erosion caused by the public access. That was the low-hanging fruit issue I had in mind. And instead of having multiple proposals having to be drafted all at once at the end of the process, I thought it might be a good idea to have a working group address this item outside of the task force meetings to bring back to the task force for consideration.

1. **Mr. Marshall** stated that he knows we have to start somewhere, but in my mind that issue is the tail of the dog. The major issue we need to address is recreational access that is going to require an element of consent otherwise you will have a constitutional challenge right out of the gate. He thought it was a relatively straightforward issue. Mr. Canfield stated he recognized that, and his thought was that we address items like this where there already appears to be agreement amongst the task force so that we wouldn't be rushing to draft all the recommendations at once. So if there are other low-hanging fruit, we could address those as well.
2. **Mr. Marshall** stated he wanted to correct his earlier statement that the constitutional provision that Mr. Belton had mentioned was limited to a barrier island restoration project. I think it has application to any coastal restoration project. **Mr. Simmons** asked whether a working group could be put together of attorneys to see whether that Constitutional amendment Mr. Marshall mentioned could be utilized for landowners who would be willing to donate property to the State in exchange for the minerals to the 1921 line. Thereby access would be guaranteed. **Mr. Marshall** stated that the problem with donating the property in exchange for minerals is that if you donate the property and it erodes the State will claim the mineral rights. So, to change that you will need a new bill (and possibly a Constitutional Amendment) to keep minerals in perpetuity. **Mr. Simmons** stated that he didn't understand the *LL&E* case then. Didn't *LL&E* get to keep their minerals? **Mr. Marshall** stated they did, but only because there was a constitutional amendment passed saying they could keep their minerals because of the coastal restoration project. But here we aren't talking about a coastal restoration project we are talking just about a donation with retention of minerals. **Mr. Simmons** asked why the landowner couldn't say they were going to do a coastal restoration project. Shouldn't we put together a working group to see if the constitutional provision could be used for our purposes? **Mr. Marshall** agreed stating he couldn't remember all of the specifics of the amendment. **Mr. Robbins** asked whether instead of discussing the opinions of the task force members could we get an official opinion of the AG's office or the State Land Office? **Mr. Canfield** stated that Mr. Vorhoff had discussed possibly doing a presentation in the near future about what kind of potential solutions are out there not requiring a constitutional amendment. **Mr. Vorhoff** stated that he would be happy to put together a presentation or as a working a group to consider sort of a freeze statute for a

- donation. **Mr. Robbins** proposed it be done within a working group as we have been presented to to death and we only have limited time before February 1<sup>st</sup>.
3. **Mr. Canfield** stated that as for putting together the working groups perhaps it's best for those who are interested to let him know after the meeting. The two topics we have discussed having working groups on are 1) the potential solutions already available without a constitutional amendment and 2) limitations on liability for landowners allowing recreational access. My goal is that these groups be kept small, 3-5 people at most. **Mr. Cresson** agreed with the idea, but was interested in the mechanics of how a working group would function as the task force is a legislatively created public body. Mr. Canfield stated the intent is to have private discussions with no decisions being made. Ultimately the group would come to the task force to present their ideas for public discussion and consideration. Mr. Cresson stated he was willing to serve and to help coordinate if that was needed.
  4. **Rep. Amedee** wanted to clarify that with the previous discussion of the freeze-like statute that we are talking about protecting landowners from losing their mineral rights due to erosion from recreational access by agreeing to let the landowner maintain their mineral rights in perpetuity? **Mr. Marshall** stated we are talking about two concepts: Taylor Darden's concept was that if a landowner participates in public access then the landowner gets the minerals in dual claimed waters and other water bottoms back to 1812. The concept I was talking about was much more narrow, it was the problem of public access causing erosion and that the landowner would not lose minerals as to that eroded property. Mr. Canfield stated then on the liability working group we are talking about the narrower concept. Then as to what does the constitution currently allow, you might be looking at the broader concept.
  5. **Ms. Duet** on the issue of donation and reclamation and minerals I would suggest including someone on the State side who can discuss the cost of managing large private donations. Operating costs money and having someone to help with drafting a fiscal note before filing legislation would be a good idea. As far as other low-hanging fruit topics, the sanctuary issue seems to not be controversial listening to both sides and Rep. Pearson's bill has included it the last two sessions. When the time is right, I would suggest looking at the language in Title 36 on the Rainey property to further define what constitutes a sanctuary and to define the establishment procedures for sanctuaries. Ms. Duet suggested looking into subcommittees and speaking with Su King as to procedures. Mr. Canfield agreed to speak with Su King and to look into sanctuary definitions and establishment requirements as a possible working group.
  6. **Mr. Peterson** stated we really need someone to explain the constitutional amendment and what it says and doesn't say. Mr. Vorhoff has done a recent opinion on CPRA's rules for mineral agreements. There appears to be some misconceptions of what the constitution currently allows and what changes would be needed on our issue of recreational access.
  7. **Mr. Frey** are these subcommittees limited to members of this task force or can members of the public be involved? Mr. Canfield stated that I've envisioned the

members of the task force reaching out to non-members, but I will look to the task force members to bring things back to the task force. Mr. Frey stated that secondly he volunteered Mr. Darden for the working groups.

e. Discussion of more frequent task force meetings.

**Mr. Canfield** stated we should consider more frequent meetings with a February deadline looming. He proposed to having meetings either monthly or every month and half.

f. Next Task Force Meeting – **Mr. Canfield** stated he was looking at the next meeting being held at the end of July or beginning of August and that he would send out polls to get everyone's availability for the next two meetings. He further mentioned that he heard back from the LDAA and they have committed to sending a DA to one of the task force's upcoming meetings and I am waiting on hearing back who that will be. Scheduling wise they told me it would probably be early fall. Similarly, Mr. Canfield said he spoke with the general counsel for the Louisiana Tax Assessor's Association who also offered to present to the task force at an upcoming meeting. Mr. Vorhoff has offered to do a presentation on what the constitution currently allows. I will check in on whether that will be available for next month. **Mr. Garrett** suggested that we get the Sheriff's Association and local representation all on the same day. Mr. Canfield stated that is his hope and he will continue to work on that. He also stated that CPRA presenting on the Master Plan is a possibility.

## V. PUBLIC COMMENT

a. **Mr. Richard Cantrelle** stated that I wouldn't limit the working groups to attorneys. He stated there are already too many laws written by lawyers in a way that common people can't understand. He also stated that he was trying to get Rep. Amedee and the gentleman filming the meeting to come with him to shoot some film of the posted signs and everything. Landowners don't have to put up posted signs; so how can you know if you are on private property or public waters. He concluded there are entirely too many laws on the books. We need to get our laws up to date and delete the old and out-of-date laws.

## VI. CONSIDERATION OF ANY OTHER MATTERS THAT MAY COME BEFORE THE TASK FORCE – There were no additional items for consideration.

## VII. ADJOURNMENT – the meeting adjourned at 12:37 p.m.