

MINUTES

PUBLIC RECREATION ACCESS TASK FORCE

August 29, 2019

A public meeting of the Public Recreation Access Task Force was held on Thursday, August 29, 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 9:37 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:

Sen. Bret Allain
Mr. Mike Bengé
Mr. Blake Canfield
Mr. Daryl Carpenter
Mr. David Cresson
Mr. Taylor Darden
Ms. Cynthia Duet
Mr. Duncan Kemp (*alternate for Cole Garrett*)
Mr. Joseph LeBlanc
Mr. Charles Marshall
Rep. Jack McFarland
Mr. David Peterson
Mr. Lucas Ragusa
Mr. Sean Robbins
Mr. Jonathan Robillard
Mr. Jay Schexnayder
Mr. Anthony Simmons
Mr. Harry Vorhoff

The following members of the task force were absent:

Rep. Beryl Amedee
Mr. Rex Caffey
Sen. Norby Chabert
Mr. John Lovett
Mr. Jeff Schneider

Mr. Canfield announced that eighteen (18) members of the task force were present and that a quorum was established.

III. APPROVAL OF MINUTES FOR June 26, 2019 MEETING

A motion by **Mr. Simmons** to approve the minutes for the June 26, 2019 task force meeting was approved unanimously.

IV. PRESENTATIONS AND DISCUSSION ITEMS

- a. Presentation by Bren Haase, Executive Director of CPRA, and Stuart Brown, CPRA's Coastal Resources Scientist – Assistant Administrator, on the 2017 Coastal Master Plan and the 2019 Annual Plan. Their presentation is attached as **Attachment A**.
 - i. **Mr. Canfield** asked whether State mineral revenues mentioned as being a part of the funding source included royalties as well as severance tax. **Mr. Peterson** stated it includes all mineral revenues.
 - ii. **Mr. Carpenter** asked how water and land access are handled post-project for CPRA projects. **Mr. Peterson** stated that CPRA essentially gets land rights from both the landowners and the state to construct their projects. We leave access issues to the State Land Office on State property and landowners of private property. CPRA has always gotten land rights at no cost to avoid purchasing them outright. We restrict some of the activities landowners can undertake on these properties. **Mr. Haase** stated we acquire the rights to construct, maintain, and then monitor the project. **Mr. Carpenter** followed up by asking about the Caminada Headlands project including everything from Belle Pass to Caminada Pass and on Elmer's Island, specifically, once the project was completed access was restricted to disallow driving on the beach; but yet as part of the same project, when you cross the line to the Fourchon side it is considered a private beach and there is motorized access across the beach. How is that justified? **Mr. Peterson** stated that the new beach built out from the existing beach is a public beach and that is not private. Once you get landward of that line it is private. If there are people on that beach that should be enforced by both the Dept. of Wildlife & Fisheries and local police. The same rule applies there as on Elmer's Island. **Mr. Carpenter** stated there is motorized traffic on that beach every weekend. **Mr. Peterson** stated that if you are out there and see it, then it needs to be reported to the local police or Wildlife or even the Port Commission. **Mr. Carpenter** also asked about the Bayou Liard project. He stated he was less familiar with that location, but based on things reported to him, there were improvements to waterways with the project. He continued that the Bayou Liard area had always been accessible to recreational fishing. After the restoration the area was leased out to a company with plans for a large private duck hunting lodge and all of a sudden the waterways became posted. **Mr. Carpenter** stated that he supports restoration, but you have large amounts of public money being

spent on waterways and then after the improvements are completed, access is blocked. He asked whether CPRA had any access rights included in the agreements over property for these projects. Mr. Peterson stated if someone is building lodges on areas that are part of the project, then that should be negotiated with CPRA to ensure it doesn't negatively impact the project. As far as waterways, if it was a private waterway before a project, it remains a private waterway afterwards. Our agreements make it clear that our projects don't change the private or public nature of that waterway. It is a requirement included in statute. If there is a dispute over the waterway, then we don't typically address it and it is left to the State Land Office to address.

- iii. **Mr. Cresson** asked if there is any difference regarding the ownership of land rebuilt over years from a diversion project and land rebuilt more quickly through a dredge project. Mr. Peterson stated that CPRA is assessing that issue now; how is land ownership going to be affected by diversions. He continued that there are cases in a lot of different areas of Louisiana and how courts deal with these may or may not be in accordance with black letter law. In the inland areas we kind of leave that issue to the State Land Office. If you look at the black letter law regarding land that erodes, it becomes state owned property (some would disagree with that). But when you start looking at the impacts of manmade action, I'm not sure how the courts will deal with that. Mr. Cresson stated there will be places around the State over the next 20 years, State projects will lead to the creation of new land and it will be interesting to see how the law handles it. Mr. Peterson agreed that the law is a bit clearer in dealing with natural processes, but not as much with manmade processes. Maybe that is something the task force could look into and help us to get in front of it. He stated that he'd rather have the legislature determine how we are going to deal with it than with the courts.
- iv. **Sen. Allain** asked Mr. Haase whether who owns the land has any impact on the decisions made by CPRA for which projects to recommend and undertake. Mr. Haase stated that no consideration is given to ownership, we strictly look to the ecological and environmental benefits of proposed projects. Sen. Allain, summarized that CPRA primarily looks to the benefits to the environment and to the people we are trying to protect behind the land we are trying to build to stop the storm surges, correct? Mr. Haase, stated yes. Sen. Allain then asked about Wax Lake outlet, which is one of the few areas with major land growth created by man, kind of by accident. Sen. Allain asked whether everything built out from the Wax Lake Outlet is publically owned and managed by DWF for the benefit of the people to go down there and have access to fish or duck hunt? Mr. Haase agreed it is. Sen. Allain asked if he had mentioned all of the sediment there and that he'd like to see it given to CPRA for areas in Terrebonne and Lafourche Parishes? Mr. Haase said yes he thinks the Senator has mentioned that a number of times.

- v. **Mr. Marshall** asked whether, if a CPRA project on private property builds land and the private landowner allows for public boat access that leads to erosion of that land, who does CPRA look to in order to prevent further erosion. Does CPRA look to the landowner to make it right or would CPRA make it right? Mr. Peterson stated that he's unaware of a situation like that, however, CPRA's agreements with private landowners state that the landowner should not allow any activity that is inconsistent with the project. So, under that provision we would have to look at the facts to see how we would handle it. He stated that he can't tell today how that would be handled. Mr. Marshall stated that it could be a problem and it seems to me that the landowner in order to allow the public to access his private waterways needs a get out of jail free card where such increased activity might cause land loss. I don't know how to handle that, but it seems it is relevant to what this task force is looking into. Mr. Peterson says it needs to be looked at. It is similar to the Caminada Headlands where CPRA restricts vehicular traffic because studies show increased vehicular traffic can cause damage to those beaches. So, here CPRA would rely on its technical staff to look at those situations to see if it needs to limit access to protect a specific project. Mr. Marshall asked whether or not recreational access issues should be run by CPRA prior to access being granted? Mr. Peterson stated that he's not sure it is something CPRA needs to look at from a regulatory perspective but it is something this task force might want to look at. Because this is a type of balancing we need to look at, maybe it is something CPRA can assess going forward to see how things go from here. Mr. Haase stated that CPRA has projects now that are near public waterways and CPRA takes the potential impact from recreational use into account when it is designing these projects so that they can sustain boat wake for the life of the project. Mr. Haase stated that he wouldn't anticipate that this situation would be any different than that and he wouldn't expect that CPRA would look to a private landowner to be liable in such a situation.
- vi. **Mr. Simmons** asked how important submerged aquatic vegetation is to the protection of the coast. Mr. Haase says while difficult to quantify, he could say qualitatively that it is very important with its effects on wave dampening and silt capturing to help rebuild the coast. It is also important as habitat. So it is very valuable; nearly as valuable as vegetative marsh. Mr. Simmons asked whether significant degradation of submerged aquatic vegetation would have a significant impact on coastal restoration and protection. Mr. Haase stated it would not help. Mr. Simmons asked how much submerged aquatic vegetation is privately owned versus publically owned. Mr. Haase said he did not know but he imagined quite a lot of it is. Mr. Simmons said that some of the numbers he has heard is that nearly 80% is privately owned. He asked if Mr. Haase thought that was accurate. Mr. Haase said that was reasonable. Mr. Simmons stated that since somewhere near 80% of these wetlands are managed by private landowners instead of the state, wouldn't taking away the ability of private

landowners to manage these wetlands in order to restrict damage from boat activity essentially prevent protection of these wetlands. Mr. Haase said he thought it would.

- vii. **Mr. Carpenter** asked whether in all of the projects existing or under construction CPRA restricts boat traffic by the private landowner. Mr. Haase stated he is not aware of any such restrictions. Mr. Peterson stated that the agreements have a general requirement that the landowner not allow any activity inconsistent with the project but nothing specific to boating. He stated landowners often prohibit the use of certain types of boats and equipment by CPRA. The landowners are pretty diligent about managing their property in this way and he assumes that the types of limitations they place on CPRA they would also place on other folks as well. Mr. Carpenter asked whether CPRA is considering planting subaquatic vegetation as a part of its planning. Mr. Haase stated it has in the past at places such as the Chandeleur Islands, but most of our projects are designed to promote natural establishment of aquatic vegetation. Mr. Carpenter asked whether CPRA has restricted boat traffic in the Chandeleur Islands or other projects near subaquatic vegetation. Mr. Haase stated not so far as he is aware.
- b. Discussion by Ricky Babin, District Attorney for the 23rd Judicial District (Ascension Parish, St. James Parish, and Assumption Parish), Bo Duhé, District Attorney for the 16th Judicial District (Iberia Parish, St. Martin Parish, and St. Mary Parish), and John Belton, District Attorney for the 3rd Judicial District (Lincoln Parish and Union Parish) and current President of the Louisiana District Attorney's Association, on criminal trespass prosecution.
 - i. **Mr. Babin** stated that something as seemingly simple as criminal trespass has become a complicated issue. The statute is relatively simple. La. R.S. 14:63 says "No person shall enter upon immovable property owned by another without express, legal, or implied authorization." He stated that when he was a young lawyer criminal trespass required proof that the property was posted. Now that the law has been changed and that requirement no longer exists, criminal trespass has become almost a strict liability crime. If you are on the immovable property of another without permission then you may be committing criminal trespass. There is some case law that says it is up to the person on the property of another to know who owns it. However from a prosecutor's standpoint we have to use discretion because it is often not that simple. How do I as a prosecutor, he asked, prove where that person was, who owns the property they were fishing on. If someone throws a bait into an interior pond or into the mouth of a pond, it is for just a split second and happening out in the marsh. So, he stated that he uses discretion when deciding to prosecute. If someone happens onto a canal that isn't posted and it is a guy and his son fishing that drifted in there; I don't make a living prosecuting those types of cases. Now if someone comes in and cuts someone's gate to get onto someone's property, then that is a different matter. How much proof do we have to garner to show who owns the property to seek a \$100 fine? The

fine is a minimum of \$100 and up to 60 days in jail. He stated he didn't recall putting anyone in jail for two months for this.

- ii. **Mr. Duet** stated he has a lot of commercial fisherman, recreational fisherman, and a lot of landowners in his district. Some of the landowners don't post their canals where they become private and some are very diligent about gating and marking their private canals. Prosecutors use a lot of discretion. My experience, he said, is that sometimes people end up in that canal and don't know it is private, but once they are aware of it they back out of the canal and stay out. But sometimes you have people that are insistent that it is a navigable waterbody and regardless they can fish it because they have always fished it and their grandfather fished it. A lot of landowners are cognizant of how these things happen, but many of them recognize that this is how people can access their property to damage their property, including farmland and farm equipment. So, we use our discretion, he said. It is a misdemeanor offense so we have to balance the resources we spend on it, he continued. There is a certain level of intent I always look at to see if somebody intentionally did this as opposed to accidentally happening upon a canal they didn't know was private, he concluded.
- iii. **Mr. Robbins** stated that during previous testimony before the task force some fishermen have stated that they have been harassed by people with and without weapons forcing them off of waterways that are being claimed as being private property. How is that enforced as a potential aggravated assault charge on the person threatening the fishermen? As a follow up to that, does the landowner on whose property such threat occurs have any culpability? Mr. Babin stated that from his standpoint if someone threatens or assaults someone, regardless of whether the other person is trespassing or not and unless it is a self-defense situation, then that is assault. If someone pulls a firearm on somebody else just because they are trespassing, then that is assault. Being run off of property by someone who doesn't own it does happen. That's why it is incumbent upon us to do our best to verify that the person claiming they own the property does in fact own the property before pressing charges. Another common occurrence is where the property is owned by an estate with 30 co-owners and one or two of the co-owners give permission. That's not trespass. So, Mr. Babin stated, what you described does happen and that's why we have to take it case by case and prosecute it on both sides fairly. Mr. Duhé added that it is such a fact specific scenario that it is difficult to speak generally about any situation. Also, let's remember that we don't investigate the crime, we are given the file after law enforcement has made a decision about whether they think a crime has occurred. While prosecutors often have a good relationship with law enforcement, who will often contact us to get our opinions on things, it is very fact specific so it is kind of hard to give a blanket answer.
- iv. **Mr. Carpenter** asked if it would be helpful to the district attorneys if Louisiana had a statutory definition of what "navigable" waterways are.

Mr. Duhé stated that any guidance the Legislature can give is helpful. Since my district includes the basin, one of the cases from Iberia Parish, *State vs. Barras* about a dispute over whether a crawfisherman had the right to fish on land that flooded 6 months out of the year and was dry the rest of the year, shows that applying a definition to facts can be difficult. Mr. Carpenter stated that his understanding of how the world of district attorneys works is that you will always have to deal with court interpretations of statutory language; but currently Louisiana has no statutory definition of what a navigable waterway is, correct? Mr. Duhé stated there was none that he was aware of. There is interpretation in the case law of what is navigable based upon specific facts. Mr. Carpenter stated that essentially Louisiana has relied on judges to make law as to what a navigable waterway is, correct? Mr. Duhé stated that he didn't think he'd go that far. He stated that we are always going to rely on case interpretation as that is what we do as attorneys. Mr. Babin stated he was unaware of a general statutory definition of navigability used for criminal trespass, but he couldn't go so far as to say there was no definition of navigability anywhere in statute that perhaps applied to specific regulations or other areas of law. That forces us, he said, to spend a lot of time and resources to determine who owns what. Mr. Carpenter stated he believed that the federal code has a definition, but not for state court. Mr. Duhé stated that just because a canal is navigable doesn't make it public. If a canal is dug on private property with private money, then it remains private even if it is navigable. Mr. Carpenter said that gets to an issue we've been looking into. Mr. [Emory] Belton stated at our last meeting that even if they dug them on private property, how did they flood them? But to bring it back to my original question, if Louisiana had a definition of navigability it would be helpful to you? Mr. Duhé stated anything that gives us more guidance on how to interpret the law is helpful, but it will also depend on the facts and how they apply to that definition.

- v. **Sen. Allain** stated that most of the court decisions were made fact specific and so a decision in one case may not necessarily apply in another case. A lot of the discussion has been around dual claimed land where the title in the court house says an area is owned by a private landowner, but now that the area is underwater the State claims it as state-owned. Has that scenario occurred before? Mr. Duhé says he had not personally handled a case like that. I'm sure it has occurred before. At some point before we prosecute, we want to have some idea that the defendant knew what they were doing was wrong, regardless of what is required by statute. Sen. Allain asked if they had an opinion of a situation where a person is on a waterbody multiple times and has been told that the property is private but they claim it is dual claimed state-owned water bottom. Mr. Babin stated he has not dealt with a situation where dual claimed riparian ownership has come up as a defense but that he had worked on a case where neighboring property owners disagreed over where their property boundary was and sought prosecution for trespass against their neighbor. My opinion in those

situations is that I'm not going to act as a civil court judge to settle those disputes, he said, and I'm going to refuse to prosecute in that situation. Sen. Allain stated that the State Land Office doesn't get into changing ownership, they just make a claim. Mainly when it deals with an oil and gas lease do they sit down and settle or take it to court. Sen. Allain asked what defenses come up? Mr. Babin says a common one is permission, or confusion about where someone was, and a dispute over the location of where a person was. There are several areas for a defense attorney to exploit. The statute further outlines additional defenses. There are also title mistakes where certain tracts on paper don't exist on land. Sen. Allain thanked them for their help and stated the situation needs help.

- vi. **Ms. Duet** asked how many cases have been prosecuted against fishermen for fishing in private waterways. And, if you don't have a sense of the numbers, do you sense an uptick in numbers. Mr. Babin said he didn't have the exact numbers, but said that very few are prosecuted in his district, perhaps less than ten a year and they are your frequent fliers who cut gates, damage property, etc. Ms. Duet stated that those numbers would be helpful in our discussions and for us to be able to share with groups that are thinking about coming to Louisiana but are needlessly afraid. Mr. Babin stated he will search his database to see what he can find and send it to the task force. The information will probably be pretty short as we do not keep misdemeanor records for very long.
- vii. **Mr. Benge** asked how many cases Mr. Babin had of weapons charges where people have threatened people with weapons while fishing. Mr. Babin stated for fishing, probably a couple that I can recall and an additional four or five involving hunting on land. Mr. Benge asked how many total prosecutions he has. Mr. Babin stated that his office prosecutes about 3,000 felonies annually and 25,000 misdemeanors and for traffic tickets the sky is the limit.
- viii. **Mr. Carpenter** asked Mr. Belton about an incident in Lake D'Arbonne where an individual poured gasoline on folks fishing because he presumed they were fishing on a private waterway or were too close to his dock. Where is that case? Has it concluded? Mr. Belton stated his office did not close that case and he believes the defendant did plead guilty, but he wasn't 100% sure. He offered to find out and let him know. Mr. Carpenter asked why this incident wasn't a felony charge and only charged as simple battery. Mr. Belton stated the case came to his office as a misdemeanor from the Dept. of Wildlife & Fisheries and we prosecuted it as such. He mentioned talking with the prosecutor who told me some additional facts that most don't not know and I don't want to go into them here. But, he said, if the incident included aggravating circumstances then he would have increased the charge to a felony. He stated that all of the D.A.'s take their cases very seriously and if this case warranted a felony charge then we would have charged it as such. Mr. Carpenter stated that the majority of our issues are coastal ones concerning erosion in South Louisiana and the numbers of criminal summonses in Cameron, Lafourche and

Terrebonne are increasing. Mr. Belton stated that he is a fisherman and he takes it seriously.

- ix. **Mr. Robbins** wanted to point out that the jurisdictions of both Mr. Babin and Belton don't include the marsh areas further south where we are hearing most of the cases of fishermen being charged with trespass. Further most of the tournaments that aren't coming to South Louisiana are doing so because our laws are unclear and ambiguous and that uncertainty makes it impossible for there to be a level playing field. Until we can fix that gray area and solidify those property boundaries, these groups won't come back and that is what I think this committee needs to focus on.
- c. Follow up discussion of assigning task force members to draft proposals on areas of common agreement to be presented to the task force at future meetings and next steps – Mr. Canfield stated that the task force had two options legally as it concerns forming working groups. (1) It can create a formal working group to discuss the policy issues associated with the task force's mandate. This would require the task force to formally create sub-committees which would be required to provide public notice and hold public hearings that allow for public comments in accordance with the open meeting's law. Or (2) it can on issues where there is no real discussion left as to policy considerations, assign an informal group to work on drafting a proposal for the task force's consideration at a subsequent meeting. He mentioned that he had not heard much disagreement on the proposal of limiting liability in the past, for instance, and so that may be an item open to the second option. The other two topics the task force discussed at its last meeting sounded more like discussion of policy issues and would require creation of sub-committees (1-what the constitution currently allows and 2 – discussion of a definition and establishment procedures for “sanctuaries”), he said. So, if anyone wants to create a subcommittee on one of these topics or on another topic, please contact me prior to the next task force meeting so I can put the creation of such a subcommittee on the agenda.
- d. Discussion of Next Task Force Meeting – Scheduling and Agenda Items
 - i. Mr. Canfield stated that it looked like the next Task Force meeting will be scheduled for September 24th at 9:30 a.m. in the same location. He stated he will confirm that and send out a notice.
 - ii. Mr. Canfield stated that he planned to have on the next meeting's agenda, one speaker from the Louisiana Assessor's Association to describe some of the use valuation done for tax assessment purposes. He stated that for the remainder of the meeting he plans to discuss the proposals already presented to the task force.

V. PUBLIC COMMENT

- a. **Mr. A.J. Landry** stated he did not agree with previous statements he heard that this issue is a hard one to resolve. He stated he didn't understand the problem. Everyone has said that the water is the property of the public. And so if we can't all use that water I have a proposal for the task force. Make the water off limits to

everybody – no hunting and no fishing. If the public can't use it the rich can't use it either.

- VI. CONSIDERATION OF ANY OTHER MATTERS THAT MAY COME BEFORE THE TASK FORCE
- VII. ADJOURNMENT – the meeting adjourned at 11:11 a.m.