

# Settlement of Mineral Disputes on Dual Claimed Waterbottoms

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BLAKE CANFIELD, LDNR

PUBLIC RECREATION ACCESS TASK FORCE

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# State Mineral and Energy Board

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The board administers the state's proprietary interest in minerals – La. R.S. 30:121(D).

The board has authority to lease for the development and production of minerals, oil, gas, or alternative energy sources, on any lands belonging to the state or the title to which is in the public, including road beds, *water bottoms*, vacant state lands, and lands adjudicated to the state at tax sale – La. R.S. 30:124(B)

# Process of Settlement Negotiations

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Learn of dispute from Office of State Lands, private landowner, operator, or lessee.

DNR coordinates with Attorney General's Office and State Land Office

Review specific situation

- Strength of State's case
- Amount of production at stake
- Cost of litigation
- Precedential value

Recommendation made to State Mineral and Energy Board

State Mineral and Energy Board makes final decision regarding whether to negotiate and settle dispute or litigate

# Characteristics of Most Settlements

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Title is not decided and boundaries are not drawn

Allocation of production between State and private landowner is agreed to for a limited time (life of a lease, unit, or operating agreement)

Mineral and Energy Board's primary purpose is getting best deal for the State as to mineral allocation in light of potential risks, costs, and benefits; so most settlements do not address other issues such as public access

# Constitutional Articles

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Art. VII, § 14 – Property, or things of value of the state shall not be loaned, pledged, or donated to or for any person, association, or corporation.

Art. IX, § 3 – The Legislature shall neither alienate nor authorize the alienation of the bed of a navigable water body (except for reclamation by the riparian owner to recover land lost through erosion).

Art. IX, § 4 – The mineral rights on property sold by the state shall be reserved. The mineral rights on land, contiguous to and abutting navigable waterbottoms reclaimed by the state through the implementation and construction of coastal restoration projects shall be reserved (except when the state and landowner having the right to reclaim or recover the land have agreed to the disposition of mineral rights)

# Art. IX, § 3 - alienation of waterbottoms prohibited

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Is an agreement by the State to recognize a private party as the mineral owner of submerged land alienation of a waterbottom?

Art. IX, § 3 recognizes legality of State leasing water bottoms for mineral exploration and production, but obviously not the same as recognizing mineral rights being owned by a private person

Several Supreme Court and Appellate Court cases deal with transfers of ownership of water bottoms to a private party. But none directly consider transferring only the minerals. See *Gulf Oil Corp. v. State Mineral Board*, 317 So. 2d 576 (La. 1975); and *Sid-Mar's Rest. & Lounge v. State*, 142 So.3d 188 (La. App. 5<sup>th</sup> Cir., 2014).

# Art. VII, §14 – Donation Prohibited

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*Board of Directors of the Industrial Development Board of the City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of the City of Gonzales, et al.*, 2005-2298 (La. 9/6/06) 938 So.2d 11:

- Art. VII, § 14 “is violated when public funds or property are gratuitously alienated.”

AG Opinion 15-0134 states that in order for a transfer of public funds to be permissible under La. Const. Art. VII, § 14(A), the public entity must have the legal authority to make the transfer AND show:

- 1) a public purpose for the transfer that comports with the governmental purpose for which the public entity has legal authority to pursue;
- 2) that the expenditure or transfer does not appear gratuitous; and
- 3) the public entity has demonstrable, objective, and reasonable expectation of receiving at least equivalent value in exchange for the expenditure or transfer

“State must calibrate the scope of mineral rights transferred in favor of the riparian or littoral owner to the value of the surface rights obtained by the State.” *AG Opinion No. 15-0134*

# Art. IX, § 4 - *American Lung Assoc. vs. State Mineral Board*

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Concerns a settlement between American Lung Assoc. and State of a suit over revocation of donated property in EBR Parish

Issue was whether Art. IX, § 4 by itself reserved the minerals to the State in portion of property received by American Lung Assoc. in settlement.

Split decision with majority determining settlement of that suit was not a sale (or exchange) of property by the State and therefore Art. IX, § 4 was not implicated.

Are all settlements “compromises” for purposes of Art. IX, § 4?

- “Needless to say this constitutional interpretation is restricted to a good faith compromise of competing claims to real property.”



# Settlements of Dual Claimed Minerals for Public Access - Considerations

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Constitutional limitations on alienation of waterbottoms, reservation of minerals, and donations

Legislative directive to State Mineral and Energy Board is focused on management of State's minerals for proprietary purpose

Limitations on agreements over minerals not currently in dispute – not a good faith compromise of competing claims to real property

Valuation – how do we value public access in settling a dispute over mineral ownership?