

# Book Review

## ***Louisiana Mineral Leases: A Treatise***

By Patrick S. Ottinger

Reviewed by Lawrence P. Simon, Jr.

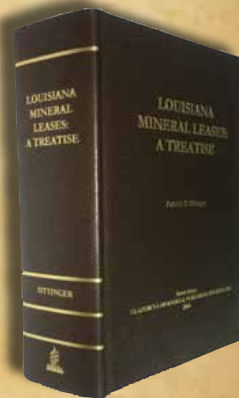
Patrick S. Ottinger has made a significant contribution to the field of mineral law, and all people interested in this field will want to review his superb new book, *Louisiana Mineral Leases: A Treatise* (Claitor's Law Books & Publishing Division, Inc. 2016).

Whatever you want to know about Louisiana mineral leases, you will find in this Treatise or make a substantial start on finding it. The book is a remarkable achievement and will be a source for mineral law research for years to come for scholars, students and practitioners. Ottinger's credentials are impressive and his vast experience is reflected throughout the work, offering sound legal analysis and practical advice on the full range of legal issues surrounding mineral leases.

The book contains numerous references to Ottinger's own scholarly Law Review articles and to papers delivered at the Institute on Mineral Law and other respected seminars, as well as citations to many cases in which he himself was an advocate. He has given Louisiana an invaluable work on mineral law and mineral leases. The book deserves close attention and detailed analysis, and, in that regard, this writer has four principal observations.



Patrick S. Ottinger



### Observation #1

The scope of the work includes virtually every issue affecting mineral leases. It also treats numerous “non-legal” areas that are helpful, if not necessary, to understanding the practice of mineral law. A review of the table of contents is instructive in demonstrating the broad array of subjects covering nearly every topic that an oil and gas lawyer could encounter in practice. There are chapters that strike this writer as legal background and foundational material, *e.g.* Chapters 1, 6, 7, 8 and 9. Several chapters have great practical import and should serve as a guide in the practice of mineral law, *e.g.* Chapters 4, 5 and 11. Finally, there are a group of chapters that present the core issues and their pertinent legal analysis. These would constitute the essence of mineral law practice for any serious practitioner: Chapter 2, Freedom of Contract and Principles of Contract Interpretation; Chapter 3, Louisiana Laws Pertinent to Mineral Leases; Chapter 10, Transfers of Mineral Leases; Chapter 12, Secured Interests; and Chapter 13, Remedies for Breach. These three classifications are very broad and parts of each chapter could easily be considered in one of the other two classes.

The thoroughness of Ottinger’s treatment of the subject is evident. He intends to both lead the reader through the many aspects of the subject matter of mineral leases and provide a clear path by which the reader can gain a grasp of the fundamental issues. He has provided a helpful Index, a Table of Cases, and a Table of References to the Mineral Code articles, which makes locating specific issues quick and easy.

Because of the broad scope of Ottinger’s treatment and his own extensive experience in mineral law, many of his observations, conclusions and statements will provide guidance as to industry custom and practice, as well as the state of the law. The one caveat noted by this writer is that some of the statements are only the author’s opinion or personal conclusion and, as such, should not necessarily be treated as established industry custom and practice. But, the

differences are fairly easy to distinguish and reconcile.

Ottinger has organized this vast material into useful groupings. For example, he devotes a single chapter to an all-inclusive treatment of common clauses in oil and gas leases. A non-practitioner will want to study this area extensively when dealing with mineral leases because it gives excellent guidance and insight and is very thorough in terms of the listing and treatment of these various clauses. He also gathers a complete listing and consideration of all forms of relief relevant for breach of a lease into the last chapter (Chapter 13). For the practicing litigator, he has saved the best for last, and this chapter is where many practitioners will spend much of their time when reviewing the Treatise. The gathering of the forms of relief available — and unavailable — for breach of a lease is an extremely valuable addition to the book.

Finally with respect to scope and organization, the reader will note that the book constitutes an excellent update on all pertinent law, including the history of that law, an exposition of recent cases and footnotes to numerous authorities that accompany discussion of the law.

### Observation #2

Ottinger’s scholarship and the solid legal methodology he employs are evident throughout the Treatise. He shows himself to be a true civilian scholar in those areas where a code applies, such as the Louisiana Civil Code or the Louisiana Mineral Code. He always starts with the basics, *i.e.* what are the words of the statute. He is also a textualist in that his statutory construction is precise and consistent. He looks to the specific words of the statute and gives meaning to each word and clause. His resulting analyses are consistently thorough, and sometimes arresting. At times, this writer ceased reading for purposes of a review, and simply became an entertained student of the law under the author’s tutelage.

The same is true of his treatment of lease clauses, evident in the comprehensive analysis of the printed forms and

the comparison of those forms, and by his original research in the public records to help explain or understand individual cases.

This is not to say that the reader should merely accept on face value all of the conclusions drawn or even the analyses in the treatment of cases. In some instances, Ottinger does not treat a couple of the trickiest issues, and, in other instances, he provides his own conclusion, sometimes without extensive discussion. The latter is most frequent where there simply is not sufficient authority on which to base a reasoned discussion. Nevertheless, it is always instructive to see the manner in which he articulates his disagreement with a court, accomplished in a clear and nuanced way that allows the reader to understand his specific point of disagreement with the treatment of the law within the case. There also are open questions in mineral law where he, as a scholar, shows respect for the state of the debate, including the understanding of the penalty provisions for nonpayment of royalties and the date of the dissolution of a lease.

### Observation #3

There are numerous instances where Ottinger offers tips or “soundbites” that are reminders to the experienced mineral lawyer and give keen insight to the neophyte. Examples are the fact that an operator’s lien under a JOA is unenforceable, or the distinction between lease dissolution and lease cancellation. Further, he states more or less matter-of-factly that no notice is required under Article 137 of the Mineral Code for a lawsuit seeking payment of underpaid or nonpayment of royalties, and the plaintiff or lessor is not seeking any of the penalty provisions that might be afforded by the Mineral Code as a form of relief for nonpayment of royalties. Another example is that, as a matter of law, the assignment of state leases without Mineral Board approval is not valid. Still another is the paragraph in which he explores the rule of contractual interpretation that words that are stricken from a contract are “deemed not written,”



which has profound effects in contract interpretation. These, and many others, will assist any practitioner in escaping avoidable errors.

#### Observation #4

The many useful aspects of the book and the “tips,” while valuable, all take a secondary position to the keen core insights and overall organization of the Treatise. The underlying premise of the work is that the mineral lease is a contract, and Louisiana law affords contractual freedom to lessors and lessees. He devotes a full section to the principles of contract interpretation, and the sequencing of the application of those principles envisioned by the Civil Code. He discusses extensively the distinction between real and personal rights and the role and effect of the public records doctrine. He likewise provides a complete catalog of the laws affecting or pertinent to mineral leases. It is highly valuable

to the reader to have these collections of cases organized by subject matter and presented together in single chapters.

Some of the most impressive and helpful chapters are those dealing with the transfer of interests in leases, secured interests in leases, and remedies for breach. All three of those areas require a broad understanding of the law and Ottinger successfully collects and explains the rules and the law pertaining to each of those subjects. This writer recommends the review of those chapters to any practitioner or student of mineral law for background, explanation and insight.

#### Conclusion

It is difficult to be thorough about a work that is itself so thorough. The points of disagreement by this reviewer with the Treatise are few, and its weaknesses are even fewer. Ottinger has given the Louisiana Bar an invaluable work

on mineral law and mineral leases. It is a major work and a significant achievement in the study of Louisiana law. This reviewer highly recommends the Treatise to all who have an interest in Louisiana mineral law and particularly Louisiana mineral leases.

The Treatise is available for purchase at Claitor's and at [www.amazon.com](http://www.amazon.com). It is noteworthy that Ottinger is donating 100 percent of the royalty proceeds from the sale of the book to the Alzheimer's Association.

*Lawrence P. Simon, Jr. has practiced mineral law for more than 40 years in the Lafayette office of Liskow & Lewis, A.P.L.C. He is a senior counsel with the firm and currently serves as the chair of the Institute of Energy Law. ([lpsimon@liskow.com](mailto:lpsimon@liskow.com); 822 Harding St., Lafayette, LA 70503)*



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