

# Notices of Intent

## NOTICE OF INTENT

### Amite River Basin and Water Conservation District

#### Expropriation of Property

In accordance with the provisions of R.S. 38:3302 et seq., the Amite River Basin Drainage and Water Conservation District hereby gives notice of its intent to adopt the following Rule. The purpose of this Rule is to establish policies and procedures for the acquisition of property for the Comite Diversion Canal Project.

#### AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT

### Chapter 3. Expropriation of Property by a Declaration of Taking by the Amite River Basin Drainage and Water Conservation District

#### §301. Short Title

A. This Chapter shall be known as Expropriation of Property by a Declaration of Taking by the Amite River Basin Drainage and Water Conservation District.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

#### §302. Legislative Declaration

A. The board of commissioners for the Amite River Basin Drainage and Water Conservation District was created by La. R.S. 38:3302. Any rules or regulations for comprehensive drainage, flood control and water resources development, reservoir, and diversion canal systems shall be adopted in accordance with La. R.S. 38:3306. Therefore, prior to the adoption, amendment, or repeal of any rule or regulation by the board, the proposed rule or regulation shall be submitted to the House Committee on Transportation, Highways, and Public Works and the Senate Committee on Transportation, Highways, and Public Works. Oversight review of rules and regulations shall be conducted by the respective committees. The board shall have the authority to establish adequate drainage, flood control, and water resources development to include but not be limited to construction of reservoirs, diversion canals, gravity and pumped drainage systems, and other flood control works. It is further noted that under La. R.S. 38:3306, the board may expropriate property subject to and in accordance with R.S. 48:441-460, and this Chapter shall be construed to carry out those objectives and purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

#### §303. Statement of Purpose

A. It is the purpose of this Chapter to outline a procedure for expropriation of property by the Amite River Basin Drainage and Water Conservation District in order to

promote, preserve, and protect public safety by and through the effective control of all public drainage, flood control and water resources development, reservoirs, and diversion canals in the district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

#### §304. Property Defined

A. As used in this part, the term “property” means immovable property, including servitudes and other rights in or to immovable property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

#### §305. Authority to Expropriate and Acquisition of Property Prior to Judgment

A. Where the Amite River Basin Drainage and Water Conservation District cannot amicably acquire property needed for canal or bridge purposes, the board of commissioners may acquire the same by expropriation.

B. In any suit for the expropriation of property, including both corporeal property and servitudes, the board of commissioners may acquire the property prior to judgment in the trial court in the manner provided in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

#### §306. Contents of petition for expropriation; place of filing

A. The rights of expropriation granted by this Part shall be exercised in the following manner.

1. A petition shall be filed by the plaintiff in the district court of the parish in which the property to be expropriated is situated. However, where the property to be expropriated extends into two or more parishes and the owner of the property resides in one of them, the petition shall be filed in the district court of the parish where the owner resides, but if the owner does not reside in any one of the parishes into which the property extends, the petition may be filed in any one of the parishes. In all such cases, the court wherein the petition is filed shall have jurisdiction to adjudicate as to all the property involved.

2. The petition shall contain a statement of the purpose for which the property is to be expropriated, describing the property necessary therefor with a plan of the same, a description of the improvement thereon, if any, and the name of the owner or owners as shown in the public records.

3. The petition shall have annexed thereto the following.

a. A certified copy of a certificate of authorization to expropriate executed by resolution of the board of

commissioners, declaring that the taking is necessary or useful for the purposes of this Part.

b. A certificate signed by the executive director of Amite River Basin Commission or, in his absence, his principal assistant, declaring that he has fixed the right-of-way in a manner sufficient in his judgment to provide presently and in the future for the public interest, safety, and convenience.

c. A certificate signed by the executive director of Amite River Basin Commission, declaring that the location and design of the proposed improvements are in accordance with the best modern practices adopted in the interest of the safety and convenience of the public. In the absence of the executive director of Amite River Basin Commission, his chief assistant may sign for him.

d. An itemized statement of the amount of money estimated to be the full extent of the owner's loss for the taking or the damage, or both, as the case may be, the methodology used in the estimate, and all of the information required by R.S. 48:443 relative to estimators. It shall be signed by those who made the estimate, showing the capacity in which they acted, and the date on which it was made. The executive director of the Amite River Basin Drainage and Water Conservation District or his designated representative shall signify his approval on the face thereof. It shall not be grounds to dismiss the taking if it is shown that the estimate is or may be less than the full extent of the owner's loss.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

### **§307. Appointment of Estimators; Restrictions in Selection**

A. The executive director of the Amite River Basin Drainage and Water Conservation District shall select one or more persons to make the estimate of just compensation except when the estimate is expected to exceed the amount of thirty thousand dollars in which case he shall select two or more persons. However, when the board of commissioners cannot amicably acquire clear title to property solely for reasons unrelated to the amount of just compensation to be paid such as unopened successions, absentee defendants, or partial interests, one person shall be selected to make the estimate regardless of the amount. The estimate shall be performed by either a real estate appraiser or real estate specialist or a licensed Louisiana appraiser certified pursuant to the Louisiana Real Estate Appraisers Law. The person performing the estimate shall be familiar with land values in the vicinity of the property to be taken and shall conduct the appraisal in accordance with real estate appraisal guidelines.

B. Each estimator in determining the extent of the owner's loss shall consider the replacement value of the property taken.

C. Prior to filing its petition, the board of commissioners shall provide to the owner the following information with respect to each estimate of the owner's loss.

1. The name, address, and qualifications of the person or persons preparing the estimate.
2. The amount of the estimate.

3. A description of the methodology used in the estimate.

4. Upon request by the owner, a copy of the estimate prepared by each estimator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

### **§308. Minable Minerals**

A. Before exercising the rights of expropriation provided for in this Part, the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, except political subdivisions but specifically including levee districts and their boards, shall, upon request of the owner whose property is to be taken, provide the owner with the results of tests by the Louisiana Geological Survey that show whether or not sand or gravel is present in the property. The test shall be done at no cost to the property owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

### **§309. Prayer of Petition; Ex Parte Order of Taking**

A. The petition shall conclude with a prayer that the property be declared taken for the acquisition of right of ways or mitigation lands in connection with bridge or canal purposes. Upon presentation of the petition, the court shall issue an order directing that the amount of the estimate be deposited in the registry of the court and declaring that the property described in the petition has been taken for the acquisition of right of ways or mitigation lands in connection with bridge or canal purposes at the time of the deposit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

### **§310. Vesting of Title**

A. Upon the deposit of the amount of the estimate in the registry of the court, for the use and benefit of the persons entitled thereto, the clerk shall issue a receipt showing the amount deposited, the date it was deposited, the style and number of the cause, and the description of the property and property rights, as contained in the petition. Upon such deposit, title to the property and the property rights specified in the petition shall vest in the board of commissioners and the right to just compensation therefor shall vest in the persons entitled thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

### **§311. Notice to Defendant**

A. Upon receipt of the deposit, the clerk of court shall issue a notice to each defendant in the suit, notifying him that the property described in the petition has been expropriated for bridge or canal purposes.

B. This notice, together with a certified copy of the order, the petition, and the clerk's receipt for the deposit, shall be delivered by the clerk to the proper sheriff for

service on each defendant in the manner provided for the service of citations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

**§312. Contesting Validity of Taking; Waiver of Defenses**

A. Any defendant desiring to contest the validity of the taking on the ground that the property was not expropriated for a public purpose or on the ground that the petition and attached exhibits do not satisfy the provisions contained in R.S. 48:442 through 444 may file a motion to dismiss the suit within twenty days after the date on which the notice was served on him. He shall certify thereon that a copy thereof has been served personally or by mail on either the plaintiff or its attorney of record in the suit. This motion shall be tried contradictorily with the plaintiff to the judge alone and shall be decided prior to fixing the case for trial.

B. Failure to file the motion within the time provided constitutes a waiver of all defenses to the suit except claims for compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

**§313. Right of Possession; Limitation by Court**

A. If there are no buildings located wholly or partially upon the property described in the petition, the board of commissioners is entitled to enter upon and take possession of the property upon the deposit of the estimated compensation.

B. If any building is located wholly or partially upon the property described in the petition, the court may postpone the right of entry for any period not to exceed thirty days from the date on which the last of any parties defendant was served with the notice. However, the board of commissioners in its discretion, may request the court to order possession surrendered after a longer delay. The court may fix a reasonable rental to be paid to the board of commissioners by a defendant in possession of the property for each day he remains in possession after the withdrawal of any part of the amount deposited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

**§314. Withdrawal of Amount Deposited**

A. Upon the application of any party in interest, and upon due notice to all parties, the court may order that the money deposited, or any part thereof, be paid forthwith to the person entitled thereto for or on account of the just and adequate compensation to be awarded in the proceedings.

B. The court may make such orders as shall be just and equitable to direct the payments of taxes, encumbrances and other charges out of the money deposited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

**§315. Defendant's Answer; Requirements; Delay for Filing**

A. Where an entire lot, block or tract of land is expropriated, any defendant may apply for a trial to determine the measure of compensation to which he is entitled, provided:

1. he files an answer within ninety days from the date he is served with the notice;

2. his answer sets forth the amount he claims;

3. his answer has a certificate thereon showing that a copy thereof has been served personally or by mail on all parties to the suit who have not joined in the answer.

B. Where a portion of a lot, block, or tract of land is expropriated, any defendant may apply for a trial to determine the measure of compensation to which he is entitled, provided:

1. he files an answer within one year from the date he is served, in the same manner provided for service of the petition, with a copy of the board of commissioners' notice of acceptance, which has been filed with the clerk of court of the parish in which the action is pending, declaring that it has finally accepted the construction of the project for which the property was expropriated; provided however, that he may file his answer at any time prior thereto;

2. his answer sets forth the amount he claims, including the value of each parcel expropriated and the amount he claims as damages to the remainder of his property;

3. his damage claim is reasonably itemized;

4. his answer has a certificate thereon showing that a copy thereof has been served personally or by mail on all parties to the suit who have not joined in the answer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

**§316. Fixing for Trial; Notice**

A. After answer is filed, if no motion to dismiss the suit pursuant to R.S. 48:447 is pending before the court, either party may, upon ex parte motion, request that the matter be docketed for trial. The court shall fix the time for the trial of the suit not more than sixty days after the filing of the motion, and the trial shall be conducted with preference and with the greatest possible dispatch. The clerk of court shall thereupon issue to all parties a notice of the time fixed for the trial. This notice shall be served at least thirty days before the time fixed for the trial and in the manner provided by law for the service of citations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

**§317. Right to Trial by Jury**

A. In an expropriation proceeding pursuant to this Part any party has the right to demand a trial by jury to determine just compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

**§318. Time Limit for Demanding Jury Trial; Waiver of Demand for Jury Trial; Limitations**

A. A defendant may demand jury trial in his answer or by motion filed within the delays provided for the filing of his answer.

B. The board of commissioners may demand jury trial by motion filed no later than fifteen days after service upon the board of commissioners of an answer filed by a defendant.

C. For purposes of this Section, answers filed by attorneys appointed to represent absent or unknown defendants shall not cause these delays to begin to run, unless that answer indicates that the appointed attorney has been retained or employed by the owner to assert and prosecute a claim in his behalf.

D. Once any party has timely demanded a jury trial, that demand is effective against and binding upon all parties to the suit, and cannot thereafter be waived without the consent of all parties. With the consent of all parties, a demand for jury trial may be waived at any time prior to the swearing of the jury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§319. Deposit of Security for Jury Costs**

A. The court shall require any party, including the board of commissioners, who demands a jury trial, to post a bond or other security as may be required in ordinary similar jury cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§320. Trial of Less than all Issues; Stipulation**

A. The trial of all issues for which jury trial has been requested shall be by jury unless the parties stipulate that the jury trial shall be as to certain issues only, but in all cases there shall be but one trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§321. Qualification and Exemption of Jurors**

A. The qualifications and exemptions of jurors and the method of choosing and summoning the general venire in jury cases are provided by special laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§322. Procedure in General**

A. In cases to be tried by jury, six jurors summoned in accordance with law shall be chosen by lot to try the case. The method of calling and drawing by lot shall be at the discretion of the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§323. Swearing of Juror before Examination**

A. Before being examined every prospective juror shall be sworn to answer truthfully such questions as may be propounded to him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§324. Examination of Juror**

A. The court shall permit the parties or their attorneys to conduct the examination of a prospective juror and may itself conduct an examination, which shall be limited to ascertaining the qualifications of the juror.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§325. Peremptory Challenges**

A. Each side is allowed three peremptory challenges. If there is more than one party on any side, the court may allow each side additional peremptory challenges, not to exceed two. Each side shall be allowed an equal number of peremptory challenges. If the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocation shall be determined by the court before the examination on the voir dire.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§326. Challenges for Cause**

A. A juror may be challenged for cause based upon any of the following:

1. when the juror lacks a qualification required by law;
2. when the juror has formed an opinion in the case or is not otherwise impartial, the cause of his bias being immaterial;
3. when the relations, whether by blood, marriage, employment, friendship, or enmity, between the juror and any party or his attorney are such that it must be reasonably believed that they would influence the juror in coming to a verdict;
4. when the juror served on a previous jury which tried the same case or one arising out of the same facts;
5. when the juror refuses to answer a question on the voir dire examination on the ground that his answer might tend to incriminate him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§327. Time for Peremptory Challenge**

A. After the entire jury has been accepted and sworn, no party has the right to challenge peremptorily.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

**§328. Challenging or Excusing Jurors after Acceptance**

A. Although the entire jury may have been accepted and sworn, up to the beginning of the taking of evidence, a juror may be challenged for cause by either side or be excused either for cause or by consent of both sides, and the panel completed in the ordinary course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

**§329. Swearing of Jurors; Selection of Foreman**

A. When the jury has been accepted by all parties, the jurors shall be sworn to try the case in a just and impartial manner, to the best of their judgment, and to render a verdict according to the law and the evidence. When the jury has retired, the jurors shall select a foreman to preside over them and sign the verdict which they may render.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

**§330. Alternate Jurors**

A. The court may direct that one or two jurors in addition to the regular panel be called and empanelled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict. If one or two alternate jurors are called, each side shall have an equal number of peremptory challenges. The court shall determine how many challenges shall be allowed and shall allocate them among the parties on each side. The additional peremptory challenges may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternate jurors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

**§331. Time for Charging the Jury; Recordation of Charge**

A. After the trial of the case and the presentation of all the evidence and arguments, the court shall charge the jury in accordance with law. This charge shall be in writing or recorded in the same manner as testimony taken in the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

**§332. Contents of Charge to Jury**

A. In his charge to the jury, the judge shall instruct the jurors on the law applicable to the cause submitted to them, but he shall not recapitulate or comment upon the evidence

in such manner as to exercise any influence upon their decision as to the facts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

**§333. Instruction to Jury; Objections**

A. At the close of the evidence or at an earlier time during the trial as the court reasonably directs, a party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury.

B. A party may not assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

**§334. Taking Evidence to Jury Room**

A. In reaching a verdict, the jurors should rely upon their memories, and when they retire to the jury room to deliberate, they shall not be allowed access to any written evidence or to any notes of the testimony of any witness, with the following exceptions.

1. The judge may permit the jury to take into the jury room a concise summary of the property affected containing only the following: the size of the owner's affected property immediately before the expropriation; the size of the area expropriated; the size of the owner's remaining affected property immediately after the expropriation; a list of any improvements expropriated, and a list of any improvements not taken but which may have been affected by the expropriation, provided said summary has been admitted into evidence.

2. The judge may permit the jury to take into the jury room a statement of the relevant value conclusions reached by each expert witness, if applicable, provided said statement has been admitted into evidence. Such statements shall not contain any corroborative or persuasive material and should consist solely of the name of the witness, the effective date of the value estimate, and a recitation of the pertinent value conclusions, and unit value conclusions, if applicable, testified to by the witness.

3. The jury may take with them into the jury room any object or document received in evidence which requires a physical examination to enable them to arrive at a just conclusion.

4. The parties may stipulate that appraisal reports or summaries of appraisal reports testified to by expert witnesses may be taken into the jury room.

5. The jury shall be permitted to take into the jury room an itemized statement of the loss the owner alleges he has suffered if testimony has been presented as to each item of loss, and if such statement has been admitted into evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

### **§335. Number Required for Verdict**

A. In order to reach any verdict, five of the jurors trying the case must concur therein.

### **§336. Special Verdicts**

A. With the consent of all parties, the court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the court may submit to the jury written questions susceptible of categorical or other brief answer, or may submit written forms of the several findings which might properly be made under the pleadings and evidence, or may use any other appropriate method of submitting the issues and requiring the written findings thereon. The court shall give to the jury such explanation and instruction concerning the matter submitted as may be necessary to enable the jury to make its findings upon each issue. If the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to trial by jury of the issue omitted, unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding, or, if it fails to do so, it shall be presumed to have made a finding in accord with the judgment on the special verdict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

### **§337. General Verdict Accompanied by Answer to Interrogatories; Objection**

A.1. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict.

2. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers.

3. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict, or may order a new trial.

4. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment, but may return the jury for further consideration of its answers or may order a new trial.

B. At any time prior to argument, a party may file written requests that the court submit to the jury written interrogatories as set forth in this Section. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury.

1. A party may not assign as error the submission or failure to submit a written interrogatory unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

### **§338. Remittitur or Additur as Alternative to New Trial; Reformation of Verdict**

A. If the trial court is of the opinion that the verdict is so excessive or inadequate that a new trial should be granted for that reason only, it may indicate to the party or his attorney the time within which he may enter a remittitur or additur. This remittitur or additur is to be entered only with the consent of the plaintiff or the defendant, as the case may be, as an alternative to a new trial, and is to be entered only if the amount of the excess or inadequacy of the verdict or judgment can be separately and fairly ascertained. If a remittitur or additur is entered, then the court shall reform the jury verdict or judgment in accordance therewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

### **§339. New Trial on Showing of Misconduct by Jury**

A. A new trial shall be granted if it is proved that the jury was bribed or has behaved so improperly that impartial justice has not been done.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

### **§340. Laches by Defendant Forfeits Defenses; Judgment**

A. If a defendant fails to file his answer timely, the board of commissioners shall thereafter give affirmative notice, by certified mail, to such defendant of the pendency of the proceedings. If an answer is not filed within ten days after the date on which such notice is mailed, the court shall render final judgment fixing just compensation in the amount deposited into the registry of court and awarding that sum to the defendant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

### **§341. Abandonment in Trial and Appellate Court**

A. An owner's claim for an increase in the compensation is perfected when he timely files his answer as provided in R.S. 48:450 and is thereafter abandoned when he fails to take any step in the prosecution of that claim for a period of three years. This provision shall be operative without formal order, but on ex parte motion of the board of commissioners the trial court shall render final judgment fixing just compensation in the amount deposited in the registry of the court and awarding that sum to the defendant and dismissing with prejudice any claim for any increase in compensation.

B. An appeal is abandoned when the parties fail to take any step in its prosecution or disposition for the period provided in the rules of the appellate court, which shall be not less than one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

**§342. Measure of Compensation; Burden of Proof; Extent of Loss**

A. The measure of compensation for the property expropriated is determined as of the time the estimated compensation was deposited into the registry of the court, without considering any change in value caused by the proposed improvement for which the property is taken.

B. The measure of damages, if any, to the defendant's remaining property is determined on a basis of immediately before and immediately after the taking, taking into consideration the effects of the completion of the project in the manner proposed or planned.

C. The owner shall be compensated to the full extent of his loss. The court shall include in its consideration the difference between the rate of interest of any existing mortgage on an owner-occupied residence and the prevailing rate of interest required to secure a mortgage on another owner-occupied residence of equal value.

D. The defendant shall present his evidence of value first.

E. Reasonable attorney fees may be awarded by the court if the amount of the compensation deposited in the registry of the court is less than the amount of compensation awarded in the judgment. Such attorney fees in no event shall exceed 25 percent of the difference between the award and the amount deposited in the registry of the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§343. Replacement Compensation According to Amite River Basin Drainage and Water Conservation Statute**

A. The owner of residential property or commercial property, including homes, businesses, barns, outbuildings and churches, shall be paid the replacement cost of any such property expropriated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§344. Trial According to Code of Civil Procedure and the General Expropriation Laws**

A. Except as provided in this Part, these suits are tried in accordance with the provisions of the Code of Civil Procedure and general expropriation laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§345. Judgment to Provide Interest**

A. If the amount finally awarded for compensation exceeds the amount deposited, the judgment shall include legal interest on the excess from the date the defendant files an answer as provided in R.S. 48:450 until paid, but such interest shall not accrue on any award made for expert fees or attorney fees prior to judgment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§346. Judgment as to Difference Awarded; Payment of Judgment**

A. If the amount finally awarded exceeds the amount so deposited, the court shall enter judgment against the board of commissioners and in favor of the persons entitled thereto for the amount of the deficiency. The judgment shall not be an in globo award, but shall list separately the amounts awarded, but not deposited, for:

1. an increase in the fair market value of the part taken;
2. an increase in severance damages;
3. attorney fees;
4. expert witness fees; and
5. any other type of loss or damage.

B. Those portions of the final judgment which award an increase in the value of the part taken, an increase in severance damages, compensation for any other type of loss or damage, together with interest payable on those sums not deposited, attorney fees, and expert witness fees shall be paid within ninety days after becoming final. Thereafter, upon application by the owner or owners, the trial court may issue a writ of mandamus to enforce payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§347. Estimate Less than Deposit**

A. The plaintiff shall not be required to amend its petition in order to obtain judgment in an amount less than that originally deposited into the registry of the court, but the plaintiff may not introduce evidence as to any special benefits unless specially pleaded. If severance damages are pleaded by the defendant, the plaintiff shall have the opportunity to plead special benefits twenty days prior to trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§348. Distribution of Final Award**

A. The court also has the power to make such orders as are just and equitable with respect to distribution of the amount finally awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

**§349. Grant as Additional Authority**

A. The right to take possession and title in advance of final judgment, as provided herein, is in addition to any right or authority conferred by the laws of this state under which expropriation proceedings may be conducted, and shall not be construed as abrogating, eliminating, or modifying any such right or authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

**§350. Devolutive Appeal; Effect of Appeal**

A. A devolutive appeal shall lie from expropriation suits tried pursuant to this Chapter without any additional deposit by the plaintiff, and no appeal from any expropriation suit brought under the provisions of this Part shall operate to prevent or delay the vesting of title in the plaintiff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

**§351. Divesting of Title**

A. The plaintiff shall not be divested by court order of any title acquired under these provisions except where such court finds that the property was not taken for a public purpose. In the event of such findings, the court shall enter such judgment as is necessary to compensate the defendant for the period during which the property was in the possession of the plaintiff and to recover for the plaintiff any award paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

**§352. Right of Way and Mitigation Acquisition Activities**

A. Where it is necessary for the Amite River Basin Drainage and Water Conservation District to acquire a right of way and/or mitigation property for the purpose of the Comite River Diversion Canal Project, said right of way acquisition activities shall be subject to and in accordance with the Louisiana Department of Transportation and Development Office of Right of Way Operations Manual, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

**§353. Prohibition of Expropriation of any Mitigation Property**

A. Where it is necessary for the Amite River Basin Drainage and Water Conservation District to acquire mitigation property for the purpose of the Comite River Diversion Canal Project, said acquisition activities shall be subject to and in accordance Act 734 of the 2010 Regular Legislative Session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

**Public Comments**

Interested persons should submit written comments on the proposed Rule to Dietmar Rietschier, Executive Director, Amite River Basin Drainage and Water Conservation District, through the close of business October 5, 2011 at 3535 S. Sherwood Forest Blvd, Suite 135, Baton Rouge, LA 70816.

Dietmar Rietschier  
Executive Director

1109#015

**NOTICE OF INTENT**

**Department of Agriculture and Forestry  
Horticulture Commission**

Retail Florist Exam (LAC 7:XXIX.107, 109, 111, and 113)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3801, the Department of Agriculture and Forestry, Horticulture Commission is intending on amending these rules and regulations (“the proposed action”) to provide the correct name of the commission in the title of this Part and to remove provisions regarding the demonstration of actual floral design work by persons taking the retail florist examination. The legislature by Acts 2010, No. 1040, §1 repealed the requirement in R.S. 3:3807(B)(2) that applicants for the retail florist examination demonstrate actual floral design work as part of the examination and revoked the authority of the Horticulture Commission to adopt rules and regulations regarding the demonstration portion of the retail florist examination. The proposed action implements the changes made by Act 1040 to the retail florist examination.

**Title 7**

**AGRICULTURE AND ANIMALS**

**Part XXIX. Horticulture Commission**

**Chapter 1. Horticulture**

**§107. Application for Examination and Licensure or Permitting**

A. Each applicant must complete the application form prescribed by the commission for the area in the practice of horticulture for which the license or permit is sought.

**B. Landscape Architect**

1. Applicants who desire to take the examination for landscape architect must file the completed application, together with any supporting evidence, official transcript(s), and affidavit(s) as may be necessary, and with the fee required under §109.B at the commission's state office in Baton Rouge. The application must be postmarked or received by the deadline date established for applying for examination, which date shall be published in a prior issue of the *Louisiana Register*.

2. Any applicant for licensure as a landscape architect who successfully completes one or more of the different sections of the examination but does not successfully complete all sections of the examination will not be required to submit to re-examination in any section which was successfully completed. In such cases, the applicant may apply to re-take only the section(s) of the examination which were not successfully completed.