

24TH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 732-768

DIVISION "N"

FILED

THE PARISH OF JEFFERSON

CODED

AUG 1 - 2016

VERSUS

[Signature]
DEPUTY CLERK

ATLANTIC RICHFIELD COMPANY, CHEVRON U.S.A. INC.,
EXPERT OIL & GAS, L.L.C., LANOCO, INC., LASTRADA OIL & GAS LIMITED,
CHEVRON U.S.A. HOLDINGS INC., GOODRICH OIL COMPANY,
EXXON MOBIL CORPORATION, AND BRAMMER ENGINEERING, INC.

FILED: _____

DEPUTY CLERK

REASONS FOR JUDGMENT

This matter came before the Court on the Dilatory Exceptions of Prematurity For Failure to Exhaust Administrative Remedies filed by Defendants pursuant to La.C.C.P. article 926.

The Parish of Jefferson filed suit against nine oil and gas exploration and production companies for alleged violations of the State and Local Coastal Resources Management Act of 1978 (La. R.S. 49:214.21 et seq) ("SLCRMA") and the applicable regulations, rules, orders and ordinances promulgated or adopted thereunder which govern activity and development in Louisiana's coastal zone through the issuance of coastal use permits. The Parish of Jefferson's claims are based on the Defendants' oil and gas exploration and production activities within certain oil and gas fields in Jefferson Parish including both permitted and unpermitted activities in the Coastal Zone allegedly resulting in damage to land and waterbodies located in the Coastal Zone. The Parish of Jefferson limits its claims to enforcement of the applicable laws pursuant to La.R.S. 49:214.36(D), which the Parish claims provides it with authority to bring such injunctive, declaratory or other actions as are necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit.

In response to the Parish of Jefferson's Petition, the Defendants filed several exceptions including Dilatory Exceptions of Prematurity For Failure to Exhaust Administrative Remedies. Subsequently, a Petition For Intervention and a First Amended, Supplemental and Wholly Restated Petition for Intervention were filed by The State of Louisiana ex rel Jeff Landry Attorney General. The State of Louisiana, through the Department of Natural Resources, Office of Coastal Management and its Secretary, Thomas F. Harris also filed a Petition in Intervention.

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Both Interventions request that any parties found to be liable for violations of SLCRMA be assessed damages, the payment of restoration costs or actual restoration of the coastal area, in addition to any other relief authorized under SLCRMA. Neither the State nor the Parish have invoked or sought to enforce the criminal or quasi-criminal provision of SLCRMA's enforcement scheme. La. R.S. 49:214.36(F).

Defendants filed exceptions to the Petitions for Intervention which adopted and incorporated their original exceptions including the Dilatory Exceptions of Prematurity For Failure to Exhaust Administrative Remedies. The dilatory exception of prematurity may raise the issue that the judicial cause of action has not yet come into existence because a prerequisite condition has not been fulfilled. *Steeg v. Lawyers Title Insurance Corporation*, 329 So.2d 719 (La. 1976). The exception of prematurity may be utilized in cases where the applicable law provides a procedure for a claimant to seek administrative relief before resorting to judicial action. *State ex rel. Dep't of Soc. Servs. v. Baha Towers Ltd. P'ship*, 2004-0578 (La. App. 4 Cir. 12/1/04), 891 So. 2d 18, 20 (citing *Jones v. Crow*, 633 So.2d 247, 249 (La. App. 1 Cir.1993)).

It is well established in Louisiana that the failure to pursue and exhaust administrative remedies precludes judicial relief. *Taylor v. S. Cent. Bell*, 422 So.2d 528, 529 (La. App. 5 Cir. 1982) (citing *Amato v. Bernard*, 618 F.2d 559 (9th Cir.1980); *Steeg v. Lawyers Title Insurance Corporation, id.*). The person aggrieved by an action must exhaust all administrative remedies before being entitled to judicial review. *State ex rel. Dep't of Soc. Servs. v. Baha Towers Ltd. P'ship, id.* When failure to exhaust administrative remedies is raised by an exception pleading prematurity, the defendant pleading the exception has the initial burden of showing that an administrative remedy is available, by reason of which the judicial action is premature. *Steeg v. Lawyers Title Ins. Corp., id.* at 720. When such a showing is made, the burden shifts to the plaintiff to show that the present case is one of the exceptional situations where the plaintiff is entitled to judicial relief because any administrative remedy is irreparably inadequate. *Steeg v. Lawyers Title Ins. Corp., id.* (citing *O'Meara v. Union Oil Co., id.* at 510).

The doctrine of exhaustion of administrative remedies has been applied to protect the administrative coastal use permitting process at issue in this case. *Pardue v. Gomez*, 597 So.2d 567 (La. App. 1st Cir. 1992). Uses of state concern and uses of local concern "which directly and significantly affect coastal waters and which are in need of coastal management" are subject to the coastal use permitting program. La. R.S. 49:214.25. The statutory scheme provides that "[n]o

person shall commence a use of state or local concern without first applying for and receiving a coastal use permit. Decisions on coastal use permit applications shall be made by the secretary, except that the local government shall make coastal use permit decisions as to uses of local concern in areas where an approved local program is in effect." La.R.S. 49:214.30(A)(1). Before issuing a coastal use permit, "the secretary shall ensure that the activity for which application is being made is consistent with the state's master plan for integrated coastal protection." La.R.S. 49:214.30(A)(2).

La. R.S. 49:214.36(A) provides in part that "[t]he secretary and each local government with an approved program shall initiate a field surveillance program to ensure the proper enforcement of the management program." Furthermore, the permitting body, whether the Secretary or the local government with an approved program, "shall have the authority to issue cease and desist orders against any person found to be in violation of this Subpart or the rules and regulations issued hereunder." La. R.S. 49:214.36(B). The permitting body also "shall have the authority to suspend, revoke, or modify coastal use permits if the user is found to have violated any of the conditions of the coastal use permit." La. R.S. 49:214.36(C).

Additionally, La. Admin. Code tit. 43, pt. I sec. 723(D)(1-4) sets forth the administrative process:

D. Modification, Suspension or Revocation of Permits

1. Modifications

a. The terms and conditions of a permit may be modified to allow changes in the permitted use, in the plans and specifications for that use, in the methods by which the use is being implemented, or to assure that the permitted use will be in conformity with the coastal management program. Changes which would significantly increase the impacts of a permitted activity shall be processed as new applications for permits pursuant to Subsection C, not as a modification.

b. A permit may be modified upon request of the permittee:

i. if mutual agreement can be reached on a modification, written notice of the modification will be given to the permittee;

ii. if mutual agreement cannot be reached, a permittee's request for a modification shall be considered denied.

2. Suspensions

a. The permitting body may suspend a permit upon a finding that:

i. the permittee has failed or refuses to comply with the terms and conditions of the permit or any modifications thereof; or

ii. the permittee has submitted false or incomplete information in his application or otherwise; or

iii. the permittee has failed or refused to comply with any lawful order or request of the permitting body or the secretary.

b. The permitting body shall notify the permittee in writing that the permit has been suspended and the reasons therefor and order the permittee to cease immediately all previously authorized activities. The notice shall also advise the permittee that he will be given, upon request made within 10 days of receipt of the notice, an opportunity to respond to the reasons given for the suspension.

c. After consideration of the permittee's response, or, if none, within 30 days after issuance of the notice, the permitting body shall take action to reinstate, modify or revoke the permit and shall notify the permittee of the action taken.

3. Revocation. If, after compliance with the suspension procedures in Subsection B, above, the permitting body determines that revocation or modification of the permit is warranted, written notice of the revocation or modification shall be given to the permittee.

4. Enforcement. If the permittee fails to comply with a cease and desist order or the suspension or revocation of a permit, the permitting body shall seek appropriate civil and criminal relief as provided by §214.36 of the SLCRMA.

(See also Jefferson Parish, Louisiana Coastal Zone Management Program, September 1982, sec. VII(F)(3)).

La. Admin. Code tit. 43, pt. I sec. 723(G)(3) also provides that “[o]nly the secretary [of the Louisiana Department of Natural resources] may determine that a coastal use permit is not required.” A local permitting body may request a finding from the Secretary of the Louisiana Department of Natural Resources on whether a coastal use permit is required. La. Admin. Code tit. 43, pt. I sec. 723(G)(1).

Defendants have met their initial burden of showing the existence of an administrative remedy, by reason of which this judicial action is premature. Plaintiff and Intervenors did not make any showing that they exhausted administrative remedies before filing this lawsuit. There is no showing that Plaintiff and Intervenors made any attempt to comply with the enforcement regime.

Plaintiff and Intervenors contend that there is no language in SLCRMA mandating that all enforcement actions be submitted to the Secretary or Department of Natural Resources before filing suit. However, under Louisiana jurisprudence failure to exhaust administrative remedies may preclude judicial relief when the applicable statute does not explicitly mandate that suit be filed after exhausting administrative remedies. *Steeg, id.*; See also *Shreveport Laundries v. S. Cities Distrib. Co.*, 176 La. 994, 147 So. 56 (1933); *Floyd v. E. Bank Consol. Fire Prot. Dist. for Par. of Jefferson*, 09-780 (La. App. 5 Cir. 4/13/10), 40 So. 3d 160, writ denied sub nom. *Floyd v. E. Bank Consol. Fire Prot. Dist. For the Par. of Jefferson*, 2010-1094 (La. 9/3/10), 44 So. 3d 689; *Taylor v. S. Cent. Bell*, 422 So. 2d 528, 528 (La. App. 5 Cir. 1982).

Accordingly, the burden shifts to the Plaintiff and Intervenors to show that the present case is one of the exceptional situations where the plaintiff is entitled to judicial relief because any administrative remedy is irreparably inadequate. By this Court’s interpretation, the statutory provisions afford an administrative remedy to Plaintiffs and Intervenors. Plaintiff and Intervenors contend that no meaningful administrative remedy exists because the administrative process does not provide for an award of civil damages. However, in the absence of an exhaustion of administrative remedies, it is yet to be determined whether civil damages exist. If it is

determined during the administrative process that violations occurred which could give rise to damages, the Plaintiff and/or Intervenors can pursue their actions in district court.

The Louisiana Supreme Court has stated that “[a]s we held in *O’Meara v. Union Oil Co.*, 212 La. 745, 33 So.2d 506 (1947), disputes as to matters within the administrative regulation and expertise should ordinarily first be addressed for determination to the administrative tribunals legislatively intended to decide them, rather than to the courts.” *Steeg v. Lawyers Title Insurance Corporation*, *id.* at 722. (citing Davis, *Administrative Law Treatise*, Section 20.01 (1958), including 1970 supplement).

In conclusion, the existing administrative remedies must be pursued before a lawsuit for civil damages is pursued. The Parish and Intervenors failed to pursue their administrative remedies and failed to show that the administrative remedy is irreparably inadequate. Accordingly, this lawsuit is premature for failure to exhaust administrative remedies and is dismissed without prejudice.

Signed this 1 day of August, 2016 in Gretna, Louisiana.



JUDGE STEPHEN D. ENRIGHT, JR.