



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE

CIVIL DIVISION

P.O. BOX 94005

BATON ROUGE

70804-9005

June 10, 2016

Honorable Jon A. Gegenheimer
Clerk of Court
Jefferson Parish, 24th JDC
P.O. Box 10
Gretna, LA 70054-0010

By FACSIMILE

Re: Parish of Jefferson v. Atlantic Richfield, Co., et al., 732-768, Div. N

Dear Sir:

Please see attached a faxed copy of the Attorney General's First Amended, Supplemental and Wholly Restated Petition for Intervention. The original will be filed within five days of this transmission. If you have any questions regarding this matter, please feel free to contact me at (225) 326-6085. Thank you in advance for your courtesies. Inasmuch as this request is being made on behalf of the State of Louisiana, no court costs are due.

Sincerely,

JEFF LANDRY
ATTORNEY GENERAL

By: 

Steven B. "Beaux" Jones
Assistant Attorney General

JL/SBJ/tp

Enclosures: cc: All known counsel of record

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

DOCKET NO. 732768

DIV. "N"

THE PARISH OF JEFFERSON

VERSUS

ATLANTIC RICHFIELD COMPANY, ET AL

FILED:

DEPUTY CLERK

FIRST AMENDED, SUPPLEMENTAL AND WHOLLY RESTATED PETITION FOR INTERVENTION

NOW INTO COURT, through undersigned counsel, comes THE STATE OF LOUISIANA, *EX REL.* JEFF LANDRY, ATTORNEY GENERAL, who respectfully intervenes in this action to protect and enforce the rights of the citizens of the State of Louisiana to a sustainable coastal zone:¹

1.

The Parish of Jefferson (hereinafter "the Parish") has alleged violations of the Louisiana Coastal Resources Management Act of 1978, as amended (La. R.S. 214.21, *et seq.*, hereinafter, "the LCR") in Jefferson Parish as a result of activities by the defendants. The Parish has filed this action to seek restoration of property and damages.

2.

Counsel for the Parish filed the original Petition "on its own behalf and in the name of the State of Louisiana" notwithstanding the fact that there is no contract between counsel and any State agency or State official authorized to represent the State of Louisiana. This purported co-representation was done under the Parish's interpretation of La. R.S. 49:214.36, which it believed authorized such a filing.

3.

On December 1, 2014, following removal of a nearly identical suit from Plaquemines Parish to federal court, Judge Jay C. Zainey agreed with Plaquemines Parish's interpretation that

¹ In the interest of clarity, the State hereby and herewith replaces its entire Original Petition with this "wholly restated" Petition. The only differences between this Petition and the Original Petition are edits to Paragraphs 12, the elimination of the former Paragraph 13 and the renumbering thereafter. The remainder of the Original Petition is completely reproduced herein.

² Judge Zainey's adoption of the Parish's reasoning on the purported representation of the State of Louisiana was dicta as the analysis followed his proclamation that "[t]he Court's ruling on the egregious misjoinder issue renders

the State of Louisiana was a real party in interest and that the Parish was authorized to sue in matters such as this under La. R.S. 49:214.36(D) *on behalf of* the State of Louisiana.²

4.

The Attorney General of the State of Louisiana files this Petition for Intervention as authorized by La. R.S. 49:214.36(D) and in accordance with his authority under Art. IV, Section. 8, of the Louisiana Constitution to intervene in any lawsuit and supersede the attorneys in representing the interests of the State of Louisiana, more specifically, “as necessary for the assertion or protection of any right or interest of the state, the attorney general **shall have the authority** (1) to institute, prosecute, or intervene in any civil action or proceeding.

5.

The Attorney General, as the Chief Legal Officer of the State, has an overriding obligation to protect the interests of the State as a whole. This matter raises issues that have policy and legal implications that are far reaching and necessitate representation by the State’s Chief Legal Officer.

6.

By filing this Petition, the State of Louisiana is not adopting the Parish’s reasoning, nor Judge Zainey’s dicta in the Plaquemines Parish suit regarding co-representation. However, to ensure that no State claims are encumbered absent the presence of the State’s Chief Legal Officer, the Attorney General hereby seeks intervention.

7.

In addition to protecting the litigious rights provided by La. R.S.49:214.36(D), the State intervenes to enforce the contents of the LCR and to ensure that any and all unpermitted and unmitigated damage to the coastal zone is remediated and restored in accordance with the Constitution of the State of Louisiana and applicable laws and regulations administered by the Louisiana Department of Natural Resources, the Coastal Protection and Restoration Authority, the Attorney General, and any other agencies and political subdivisions of the State.

8.

In the alternative, the State intervenes under the authority of the Public Trust Doctrine, Louisiana Constitution Article IX, Section 1, which provides, in pertinent part,

² Judge Zainey’s adoption of the Parish’s reasoning on the purported representation of the State of Louisiana was dicta as the analysis followed his proclamation that “[t]he Court’s ruling on the egregious misjoinder issue renders moot the question whether the claims on behalf of the State destroy diversity jurisdiction. For completeness, the Court nonetheless will address this potential impediment to diversity jurisdiction.” *Plaquemines v. Total Petrochemical & Refining USA, INC. et al.*, 64 F.Supp.3d. 872, 887 (E.D.La. 2014).

The natural resources of the state, including the air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

9.

Further, the Attorney General intervenes pursuant to Article 1091 of the Louisiana Code of Civil Procedure in that the Attorney General, as the State's chief legal officer, has the authority and responsibility to bring a *parens patriae* action to protect and preserve the State's natural resources and the environment.

10.

An intervention is defined by La. C.C.P. Art. 1031 as an incidental demand and, because no answer has been filed in this case, La. C.C.P. Art. 1033 provides that the State may intervene without leave of court.

11.

Pursuant to the aforementioned authority, the State of Louisiana, *ex rel.* Attorney General Jeff Landry, asserts its jurisdiction over all claims originally asserted by the Parish of Jefferson and hereby supersedes said claims as though made by the State through the Attorney General in the first instance.

12.

The State's claims track closely to those claims asserted by the Parish under La. R.S. 49:214.36 for activities contributing to the degradation of property in the coastal zone.

13.

In sum, the State of Louisiana, through the Attorney General, seeks to intervene in this suit to protect the State's independent litigious rights under La. R.S. 49:214.36, which may be interpreted as being encumbered by the Parish's current posture in this case and by previous rulings of the United States District Court for the Eastern District of Louisiana. For that reason, the State, through the Attorney General, herein and hereby asserts as its own the Parish's claims in this matter under La. R.S. 49:214.36.

14.

The State of Louisiana asserts the right to recover all civil penalties, damages, payments of restorations costs, actual restoration of the disturbed areas, and other reasonable and proper sanctions for uses conducted within the coastal zone without a coastal use permit whether a

coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit.

15.

The State of Louisiana further asserts the right to recover costs and attorney fees from any party found to be responsible.

16.

The State of Louisiana also reserves the right to seek injunctive relief, specific performance, and any other applicable remedies or equitable or relief permitted by law.

WHEREFORE, THE STATE OF LOUISIANA, *EX REL.* JEFF LANDRY, ATTORNEY GENERAL, prays:

- (1) that judgment be rendered in favor of Intervenor and against any party found to be responsible for damage from activities conducted within the coastal zone without a coastal use permit whether a coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit in accordance with La. R.S. 49:214.21, *et seq.*;
- (2) that, alternatively, judgment be rendered in favor of Intervenor on behalf of the State in its capacity as public trustee or as *parens patriae*, and against any party found to be responsible for damage from activities conducted within the coastal zone without a coastal use permit whether a coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit;
- (3) that judgment be rendered in favor of the Attorney General, the Chief Legal Office of the State, to supersede the Parish's attorneys.
- (4) that judgment be rendered in favor of Intervenor and against any party found to be responsible for damage from activities conducted within the coastal zone without a coastal use permit whether a coastal use permit is required or which are not in accordance with the terms and conditions of a coastal use permit, for damages, reasonable costs and attorney fees incurred by or on behalf of the State in responding to such activities and enforcing the State's rights;

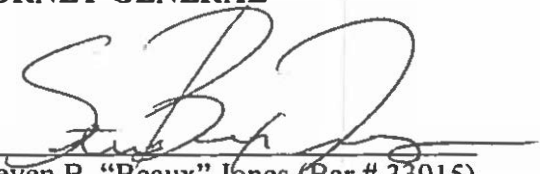
- (5) that Defendants be ordered to restore the Jefferson Parish Coastal Zone to its original condition or make payments for such restoration costs.;
- (6) such other and further relief available, subject to any limitations set forth in the petition.
- (7) The State of Louisiana requests trial by jury.

Intervenor further prays for all costs of these proceedings, for all necessary orders and decrees as may be required or proper in the premises and for full, general, and equitable relief.

Respectfully submitted:

**JEFF LANDRY
ATTORNEY GENERAL**

By: _____


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SHERIFF: PLEASE WITHHOLD SERVICE