TWENTY FOURTH JUDICIAL DISTRICT COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

DOCKET NO. 732-768 **DIVISION "N"**

THE PARISH OF JEFFERSON

VERSUS

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

FILED: _____ **_____**
DEPUTY CLERK

STATE OF LOUISIANA'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' EXCEPTIONS TO THE STATE OF LOUISIANA'S PETITIONS FOR INTERVENTION

NOW INTO COURT, through undersigned counsel, come the Intervenor-Plaintiffs, the State of Louisiana, *ex rel.* Jeff Landry, Attorney General ("Attorney General") and the State of Louisiana, through the Louisiana Department of Natural Resources, Office of Coastal Management and its Secretary Thomas F. Harris ("LDNR") (sometimes collectively the "State"), who oppose the duplicative and identical exceptions filed by Exxon Mobil Corporation, Atlantic Richfield Company, Chevron U.S.A. Inc., and Chevron U.S.A Holdings to the State of Louisiana's Petitions for Intervention ("Defendants' Exceptions"). The State requests this Court deny the previously filed dilatory exceptions as well as the newly asserted exceptions of lack of procedural capacity or, in the alternative, no right of action.

I. DILATORY EXCEPTIONS

The Defendants have adopted and incorporated the following previously asserted dilatory exceptions:

(1) Dilatory Exception of Vagueness and/or Ambiguity and Failure to Comply with Article 891 of the Louisiana Code of Civil Procedure, and Defendants' Memorandum in Support of Dilatory Exceptions of Vagueness and Ambiguity of the Petition and Non-Conformity with La. Code of Civil Proc. Article 891;

(2) Dilatory Exception of Improper Cumulation and Improper Joinder of Parties, and Memorandum in Support of Dilatory Exception of Improper Cumulation; and,

(3) Dilatory Exception of Prematurity for Failure to Exhaust Administrative Remedies, and Memorandum in Support of Dilatory Exception of Prematurity for Failure to Exhaust Administrative Remedies.

In the interest of judicial efficiency, the State hereby adopts and incorporates, generally, the Plaintiff's, Jefferson Parish (the "Parish"), Memorandum in Opposition to Exceptions of Vagueness/Non-Conformity with La. C.C.P. Article 891, Memorandum In Opposition to Exceptions of Improper Cumulation, and Memorandum in Opposition to Dilatory Exception of Prematurity for Failure to Exhaust Administrative Remedies.[1]

II. DILATORY EXCPETION OF LACK OF PROCEDURAL CAPACITY AND PEREMPTORY EXCEPTION OF NO RIGHT OF ACTION.

The Defendants have filed a dilatory exception of lack of procedural capacity and, in the alternative, a peremptory exception of no right of action to the State's Original and Amended Petitions of Intervention.[2] The State, through the Attorney General and LDNR seek the same remedy in this case: restoration of Louisiana's coastal area. There is nothing inconsistent about the States' Interventions. Indeed, the two Interventions are complimentary of each other. Both Interventions seek that any parties found to be liable for violations of the State and Local Coastal Resources Management Act of 1978, La. R.S. 49:214.21 – 214.42 ("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.[3] There is no statutory or jurisprudential prohibition against "dual enforcement", and indeed, the Defendants have pointed to little support for such a claim. The Defendants' entire argument rests on the interpretation of the word "or." In the context of SLCRMA, and specifically La. R.S. 49:214.36, the use of the word "or" indicates alternatives, but there is nothing to indicate these alternatives are mutually exclusive. When subsection (D) of that provision is read *in pari materia* with the rest of La. R.S. 214.36 and the Act itself, the only reasonable conclusion is that any of the entities listed are authorized to file a civil action, as long as the Plaintiffs, collectively, are not seeking double (or triple) recovery.

A. Standard of Review

La. C.C.P. art. 927(5) provides that one of the peremptory exceptions is: "No right of action, or no interest in the plaintiff to institute the suit." The essential function of this exception is to provide a threshold device for terminating a suit brought by one without the legal interest to assert it. *Watkins v. Louisiana High School Athletic Ass'n,* 301 So.2d 695 (La.App. 3rd

---

[1] While the State adopts by reference the Parish's argument on La. R.S. 49:214.31, generally, it does so reserving its right to clarify the permitting, regulatory, and enforcement scheme vis-à-vis the Office of Conservation and the Office of Coastal Management when, and if, necessary.

[2] The State of Louisiana, *ex rel.* Jeff Landry, Attorney General has filed a Petition for Intervention and a First Amended, Supplemental and Wholly Restated Petition for Intervention. The Louisiana Department of Natural Resources, Office of Coastal Management and its Secretary, Thomas F. Harris filed a Petition for Intervention. The Attorney General and LDNR join in opposition to the Defendants' exceptions.

[3] *See* Prayers for Relief in the State's Petitions for Intervention.

Cir.1974). Standing is a concept utilized to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court. The requirement of standing is satisfied if it can be said that the plaintiff has a legally protectable and tangible interest at stake in the litigation. *See Hainkel v. Henry,* 313 So.2d 577 (La.1975); *Abbott v. Parker,* 259 La. 279, 249 So.2d 908 (1971).

Lack of procedural capacity is a dilatory exception which merely delays the progress of the action rather than tends to defeat it. *See* La. C.C.P. articles 923, 925, 926, 928 and 930. This exception tests a party's legal capacity to bring an action or to have one brought against it. *Whitlock v. Fifth Louisiana Dist. Levee Bd.*, 49,667 (La.App. 2 Cir. 4/15/15), 164 So.3d 310, *citing Dejoie v. Medley,* 41,333 (La.App.2d Cir.12/20/06), 945 So.2d 968. In *Whitlock*, a landowner filed a petition against a levee board for trespass, seeking injunctive relief and damages to prevent the levee board's lessee from traveling across his property to meet a hunting lease owned by the board. The levee board argued the plaintiff lacked procedural capacity to sue in representative capacity for the other landowners. The appellate court disagreed, reasoning that that La. C.C.P. art. 682 states that a competent major and a competent emancipated minor have the procedural capacity to sue. *Id.* at 318-19. The court held, "[p]laintiff is a competent major, capable of suing on his own behalf to prevent the trespass of property he owns. He does not claim to have brought the suit on behalf of his co-owners and has every right to assert this action alone." *Id.*

Based on the plain language of La. R.S. 49:214.36(D), and as outlined in more detail herein, both the Attorney General and LDNR, through its Secretary, clearly have a legal interest to assert claims for violations of SLCRMA and to seek damages resulting therefrom and have the procedural capacity to sue on their own behalf and on behalf of the State of Louisiana to seek restoration of the State's coastal area. However, if the court grants the Defendants' exceptions, finding that only one of the State entities can move forward with these claims, then La. C.C.P. arts. 932 and 933 require the Court to allow the State to remove the grounds of the objections pled by amendment of the petition.

B. SLCRMA Authorizes the Attorney General and the Louisiana Department of Natural Resources to Jointly Enforce the Law.[4]

Louisiana Revised Statute 49:214.36(D) provides:

[4] The exceptions as against the State argue only the Attorney General or LDNR has the authority to proceed with the claims at issue. The Defendants have filed a separate exception, under a similar theory, as against the Parish. The State is not required to nor does it address that exception here, other than to state that any holding regarding the interpretation of "or" as inclusive versus exclusive would apply to all parties.

> The secretary, the attorney general, an appropriate district attorney, or a local government with an approved program may 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.

The Defendants rely solely on La. R.S. 1:9 to support their assertion that this provision is a disjunctive statute authorizing only one entity to enforce SLCRMA's provisions. However, not only do the Defendants ignore other rules on statutory interpretation to arrive at their preferred version of the law, they also completely write out and ignore a critical portion of La. R.S. 1:9. That provision states, in its entirety, "**[u]nless it is otherwise clearly indicated by the context,** whenever the term 'or' is used in the Revised Statutes, it is used in the disjunctive and does not mean 'and/or'." La. R.S. 1:9 (emphasis added). Curiously, the critically highlighted portion of this section is noticeably absent from the Defendants' memoranda. And here, both the context of SLCRMA as a whole and within La. R.S. 49:214.36, clearly indicate an interpretation of the word "or" that is inclusive, meaning A or B, or both, rather than exclusive, meaning A or B, but not both.[5]

Furthermore, the generally accepted rules of statutory interpretation declare that courts should avoid a construction which would lead to absurd results, and statutes must be interpreted in such a manner as to render their meaning rational, sensible and logical. *State Through Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Division v. Louisiana Riverboat Gaming Commission and Horseshoe Entertainment*, 94-1872 (La.5/22/95), 655 So.2d 292. The law requires a fair and genuine construction of a legislative act, a reasonable construction in light of the act's purpose. *Louisiana Health Service & Indemnity Company v. Tarver*, 93-2449 (La.4/11/94), 635 So.2d 1090. To ascertain the true meaning of a word, phrase or section, the act as a whole must be considered.

The jurisprudence regarding the use of "and" and "or" as disjunctive or conjunctive consistently follows this rule of statutory construction which looks to the context of the law in order to avoid unreasonable or absurd results. Louisiana courts have held that "although the word 'or' may express a disjunctive meaning rather than a conjunctive one, it may nevertheless be used in a conjunctive sense and hence may be construed to mean 'and'." *State ex rel. Board of Commissioners of the Lake Borgne Basin Levee District v. Bergeron*, 106 So.2d 295, 302 (La. 1958). In *Bergeron*, the Louisiana Supreme Court further explained:

---

[5] *See* Kenneth A. Adams, Alan S. Kaye, *Revisiting the Ambiguity of "And" and Or" in Legal Drafting*, 80 St. John's L. Rev. 1167, 1180 (2006).

> We are mindful of the fundamental rule that in the construction of statutes the grammatical sense of words is to be adhered to. If that is contrary to or inconsistent with any expressed intention or any declared purpose of the statute, or if it would involve an absurdity, repugnance or inconsistency in its different provision, the grammatical sense must then be modified, extended or abridged, so far as to avoid such.
>
> The popular use of 'or' and 'and' is so loose and so frequently inaccurate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one read in place of the other in deference to the meaning of the context. Sutherlands on Statutory Construction, Sec. 252.

Id.[6]

In this case, there are two independent reasons requiring this Court to find that, when considering the context of La. R.S. 49:214.36(D), the law clearly indicates that an interpretation of the phrase "[t]he secretary, the attorney general, an appropriate district attorney, *or* a local government with an approved program..." in any way other than as providing for cooperative enforcement is not warranted. First, any suggestion that the State, through both the Attorney General and LDNR, cannot cooperatively enforce SLCRMA would be an unreasonable interpretation of the statute. Second, SLCRMA is a remedial statute enacted for the protection of the environment; therefore, it should be afforded an interpretation that expands, rather than limits, its application.

1. The Defendants' interpretation of La. R.S. 49:214.36 leads to absurd results.

Courts should avoid statutory construction which would lead to absurd results; statutes must be interpreted in such manner as to render their meaning rational, sensible and logical. La. R.S. 1:3. An interpretation of an environmental protection statute that would prohibit a joint, cooperative enforcement action by the agency established to administer the program at issue and the chief legal officer of the State who is authorized to protect any right or interest of the State by instituting, prosecuting, or intervening in a civil action, would be illogical. Furthermore, this is not a situation where the State is seeking double recovery or the Defendants are subjected to separate, distinctive, and potentially overlapping enforcement such as to impact any applicable due process.[7]

---

[6] *See also Jefferson Parish v. Stansbury*, 228 So.2d 743 (1969) (interpreting the word "and" in the disjunctive sense in order to avoid giving a statute absurd and ridiculous result); *Doctors Hosp. of Augusta v. DHH*, 2013-1762 (La.App. 1 Cir, 9/17/14), not reported in So.3d (holding the word "and" should be interpreted as "or" in order to avoid an impossible requirement, citing *Smith v. Our Lady of the Lake Hosp., Inc.*, 624 So.2d 1239, 1249 (La.App. 1st Cir. 1993, *aff'd in part, rev'd in part on other grounds*, 93-2512 (La. 7/5/94), 639 So.2d 730 (noting it was cognizant of the jurisprudence suggesting that, in a civil context, "and" may mean "or" and vice versa)).

[7] For example, the practice of "overfiling" is barred in some instances. Overfiling happens when the EPA initiates an enforcement action after a state begins or settles an action on the same matter. *See, e.g., Harmon Industries, Inc v. Browner*, 191 F.3d 894 (8th Cir. 1999) (holding that EPA could not overfile under hazardous waste laws after the authorized state had already enforced its hazardous waste laws against the violate. *But c.f. U.S. v. City of*

Rather, here, both the Attorney General and LDNR are jointly seeking to enforce SLCRMA and recover damages, restoration costs, and restoration, as applicable, for violations of that Act. While it is true the Attorney General and LDNR filed separate Petitions for Intervention, it is not logical to conclude that the result of such filings must mean that both entities are seeking to recover separate and duplicative damages. The more common-sense, and indeed correct, conclusion is that both the Attorney General and LDNR seek to protect the rights and interests of the State by intervening in these lawsuits and requesting that any party found to be liable for violations of SLCRMA be assessed (only once for the same violation) damages, the payment of restoration costs, actual restoration of the coastal area, and costs and attorneys' fees.

An extension of the Defendants' strict interpretation of the word "or" as disjunctive and mutually exclusive through the entirety of La. R.S. 49214.36(D), regardless of context, means the entity authorized to file this action is limited to choosing between the filing of injunctive relief, declaratory relief, *or* any other action necessary to ensure no unauthorized use of the coastal zone. For example, under this scenario, the district attorney, but only the district attorney, can file injunctive relief, but not declaratory relief. This is not a reasonable interpretation of the enforcement provision of the State's coastal management program.

Finally, if only one entity can file a civil action, then how is it determined which entity has the authority to file, and who will make this determination? One conceivable, but severely flawed, outcome could be that subsection (D) was intended to create a race to the courthouse. Such an interpretation would lead to the absurd result of incentivizing litigation and promoting the filing of potentially premature claims. In other words, if a first to file interpretation is adopted,[8] then in an effort to "win the race," parties may file lawsuits before completing their research and investigation of the potential causes of action. Certainly, this is not a scenario intended by the legislature when they enacted SLCRMA.

Because it is fundamental that statutory interpretation should not lead to absurd results,[9] this Court should deny the Defendants exceptions and find that SLCRMA authorizes, and indeed encourages, cooperative regulation, including enforcement.[10]

Youngstown, 109 F.Supp.2d 739 (N.D. Ohio 2000) (authorizing overfiling under the Clean Water Act even where the State was already enforcing the same water discharge violations the EPA wanted to pursue).

[9] *Johnson v. Occidental Life Insurance Company of California*, 368 So.2d 1032 (La.1979); *Hayes v. Orleans Parish School Board*, 256 La. 677, 237 So.2d 681 (1979); *City of New Orleans v. New Orleans Public Service, Inc.*, 471 So.2d 233 (La.App. 4th Cir.1985), writ den. 472 So.2d 22 (La.1985).

[10] *See, e.g.*, La. R.S. 49:214.31(A) and (D) (recognizing that the Act does not abridge the constitutional authority of any department of state government or any agency or of any local governments, levee board, or other political subdivisions).

2. SLCRMA is a statute enacted for the protection of the public health, safety, and welfare and is to be given an extremely liberal construction.

Many courts have recognized that "'statutes which are enacted for the protection and preservation of public health' are to be given 'an extremely liberal construction for the accomplishment and maximization of their beneficent objectives.'" *United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 192 (D.C.Mo. 1985) (*quoting* 3 Sutherland, Statutes and Statutory Construction, §71.02 at 313).[11] Louisiana courts have adopted this remedial purpose canon of statutory interpretation, holding that remedial statutes are to be accorded a liberal construction in favor of those entitled to their benefits. *Davis v. United Fruit*, 120 So.2d 273, 276 (La.App. Orleans 4/11/1960). The court in *Davis* reasoned:

> Remedial statutes are to be accorded a liberal construction in favor of those entitled to their benefit. This is true of a curative statute having a remedial purpose or a statute seeking correction of recognized abuses or implying an intention to reform or extend rights. The right of the legislature to enact statutes of this character may not be disputed; if they are remedial and effect the enforcement only and not the substance of the contract, they constitute a valid exercise of legislative authority and/or a declaration of the public policy of the state.

Id. See also Cryer v. City of Alexandria through Alexandria Police Pension and Relief Bd., 425 So.2d 900, 905 (La.App. 3 Cir. 1/10/1983) ("[i]t is axiomatic that **remedial statutes** are to be liberally construed.").

Further, it is generally recognized that remedial statutes are those enacted to protect life, property, and the public welfare and "are designed to correct an existing law, redress an existing grievance, or introduce regulations conducive to the public good." 82 C.J.S. Statutes § 523. A remedial statute is one that affords a remedy or improves or facilitates existing remedies. *Id.*[12] Statutes enacted for the protection of the environment have been considered remedial statutes. *See supra* n. 5; *see also* 3 Sutherland Stat. Construction § 60:2, n. 50.

There can be little doubt that SLCRMA is a remedial statute, enacted to protect the natural resources and environment of the State, promote public welfare, and "introduce regulations conducive to the public good." Louisiana Constitution Article IX, Section 1 provides, in pertinent part;

> 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,

---

[11] *See also Westfarm Assocs. v. Washington Suburban Sanitary Comm'n*, 66 F.3d 669, 677 (4th Cir. 1995) ("CERCLA is a comprehensive remedial statutory scheme, and as such, the courts must construe its provisions liberally to avoid frustrating the legislature's purpose."); *First United Methodist Church v. United States Gypsum Co.*, 882 F.2d 862, 867 (4th Cir. 1989) (". . . CERCLA, as all remedial statutes, must be given a broad interpretation to effect its ameliorative goals.").

[12] (*citing Kalima v. State*, 111 Haw. 84 (2006); *Esposito v. O'Hair*, 886 A.2d 1197 (R.I. 2005); *Lukes v. Employees Retirement system of Texas*, 59 S.W.3d 838 (Tex.App. Austin 2001).

> 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.

The Louisiana Legislature, in 1978, enacted SLCRMA (Act 361 of 1978, codified at La. R.S. 49:214.21 *et seq.*) (*i.e.* the Louisiana Coastal Zone Management Program) in order to balance conservation and development within Louisiana's coastal zone. SLCRMA is one of the public trust laws enacted by the legislature pursuant to La. Const. art. IX, § 1. In enacting SLCRMA, the legislature declared that it was the public policy of the State "[t]o protect, develop, and, where feasible, restore or enhance the resources of the state's coastal zone." La. R.S. 49:214.21.

One needs to look no further to determine the remedial purpose of SLCRMA than the statutory provision at the heart of these exceptions – La. R.S. 49:214.36. The subsection, entitled, "Enforcement; injunctive; penalties and fines," was created to set forth the remedial measures to be used to ensure the policies of SLCRMA are being met. The remedial actions available to achieve the enforcement goals of the Act are not only numerous, but they are very clearly not mutually exclusive. La. R.S. 49:214.36 consists of 15 subparts, many authorizing different and distinctive enforcement options available under the Act. For example, the following actions are authorized under this section:

(A)	Field surveillance program to ensure proper enforcement;
(B)	Cease and desist orders;
(C)	Suspension, revocation, or modification of coastal use permits;
(D)	Injunctive, declaratory, or other actions
(E)	Imposition of civil liability and damages; Order of payment of restoration costs, actual restoration, imposition of reasonable and proper sanctions, and payment of costs and attorneys' fees.
(F)	Criminal fines
(H) & (I)	Administrative costs and penalties

Notably absent from this subsection is any language intending to limit the enforcement options available to the State entities and authorized local governmental entities. In fact, the opposite conclusion is expressed throughout the provision. The list of enforcement tools itself is inclusive as there is no limiting language between subsections suggesting these are alternative enforcement options (*i.e.* A or B, but not both). Further, several of these authorizing provisions expressly state the remedy is in addition to other actions. *See* La. R.S. 49:214.36 (F) ("...[t]his penalty shall be in addition to any other costs or penalties assessed pursuant to this Section."); (H) ("[i]n

addition to the other enforcement actions authorized by this Section..."); (I) ("[i]n addition to the other enforcement actions authorized by the provisions of this Section..."); (N) ("[i]n addition to the other enforcement actions authorized by the provisions of this Section...").

The clear language of La. R.S. 49:214.36, in the context of SLCRMA as a whole, supports a liberal interpretation of the law "construed to give the terms used the most extensive meaning to which they are reasonably susceptible." 3 Sutherland Stat. Construction § 60:2. Here, it is completely reasonable to interpret the "or" in La. R.S. 49:214.36(D) as inclusive and not exclusive. This is particularly true given the introductory phrase used in La. R.S. 1:9, "unless it is otherwise clearly indicated by the context." This preamble requires the Court to review the challenged provision by the context within which it is to be interpreted. As outlined herein, nothing in SLCRMA indicates the Act was intended to be strictly construed or that the legislature intended to limit cooperative enforcement by two State entities otherwise statutorily authorized to pursue these claims. Instead, the statute clearly indicates otherwise. La. R.S. 49:214.36 authorizes the attorney general, as the chief legal officer of the State, and the Secretary of the Louisiana Department of Natural Resources, the State entity authorized to implement the coastal management program, to jointly and cooperatively pursue enforcement of SLCRMA in order to protect, conserve, and restore coastal Louisiana.

The Defendants offer only two justifications to support an interpretation of SLCRMA that would prohibit the joint, cooperative enforcement of SLCRMA. Their argument is that "dual enforcement is fundamentally unfair" because (1) it allows duplication or inconsistency in litigation by the State, and (2) the unfairness is compounded in view of the statute's quasi-criminal nature.

First, there is absolutely no evidence the State has taken, or intends to take, inconsistent litigation strategies in this matter. The Attorney General's and LDNR's Petitions for Intervention are virtually identical and seek the same relief from damages resulting from the same alleged activities. Further, multiple parties pursue similar causes of action in courtrooms every day, and in situations that may become inherently more complex in terms of litigation strategy than this case.[13] Any inconsistencies in the litigation that threaten to "unfairly" impact the Defendants can be addressed by the Court, pursuant to its inherent power to control and manage its courtroom to achieve the orderly and prompt disposition of cases. *Peterson v. Gibraltar Savings and Loan,*

[13] *See, e.g., In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, April 20, 2010*, MDL 2179 (E.D.La.); *Florida Gas Transmission Company, LLC v. Texas Brine Co., LLC, et al.*, Docket No. 34316, Twenty-Third Judicial District Court, Parish of Assumption (and related Texas Brine Cases).

Inc., 751 So.2d 820 (La. 1999). Such powers, through, *inter alia*, the issuance of pretrial orders and by scheduling conferences, *see* La. C.C.P. art. 1551, can be utilized to "protect" the Defendants from the multiple (two) State entities seeking to hold them responsible for any damages their activities in the coastal zone may have caused.

Second, 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) governs the assessment of criminal or quasi-criminal fines. The States' Petitions make no mention of this subsection. All of the remedies sought by the Plaintiffs in this case are civil. The State filed its Interventions pursuant to La. R.S. 49:214.36(D) and (E), which authorize injunctive and declaratory relief and civil liability, damages, restoration costs, and actual restoration.

C. In-Lieu Permit

The Defendants have also argued that the State does not have the right to pursue certain of the claims it has pled. More specifically, the Defendants allege that all of the allegations in the States' Interventions pertain exclusively to oil and gas activities, and that traditional oil and gas activities are permitted and enforced by the Office of Conservation in lieu of coastal use permits. In an effort to avoid duplication of arguments already made, the State hereby adopts and incorporates, generally, those portions of the Plaintiff-Parish's Memorandum in Opposition to Exceptions of No Right of Action, filed on December 18, 2015.[14]

Additionally, to further emphasize the Defendants' misconception of the coastal use permitting scheme as it relates to La. R.S. 49:214.31(B), that provision provides:

> Permits issued pursuant to existing statutory authority of the office of conservation in the Department of Natural Resources for the location, drilling, exploration and production of oil, gas, sulphur or other minerals shall be issued in lieu of coastal use permits, provided that the office of conservation shall coordinate such permitting actions pursuant to R.S. 49:214.32(B) and (D) and shall ensure that all activities so permitted are consistent with the guidelines, the state program and any affected local program.

La. R.S. 49:214.31(B). Nothing in this section exempts activities associated with oil and gas exploration and production that otherwise impact coastal waters and the coastal area from the application of SLCRMA or the need of a coastal use permit. The Office of Conservation ("Conservation") and the Office of Coastal Management ("OCM") regulate different types of activities and uses such that even though the cumulative activity may consist of a traditional oil

[14] *See generally* Section VI of Memorandum in Opposition to Exceptions of No Right of Action. While the State adopts by reference the Parish's argument on La. R.S. 49:214.31, generally, it does so reserving its right to clarify the permitting, regulatory, and enforcement scheme vis-à-vis the Office of Conservation and the Office of Coastal Management when, and if, necessary.

and gas exploration and production activity (*e.g.* placement and operation of a new well), the subcomponents necessary to make that well operational will require permits from both Conservation (to drill the well) and OCM (*e.g.* to dredge an access canal to reach the drilling location). And while Conservation may regulate the location of the well in the example above, if pilings are required to be placed in the coastal zone, the placement of those pilings will be subject to OCM's regulatory jurisdiction. Finally, subsection (B) should be read conjunction with the immediately preceding provision, which provides:

> Nothing in this Subpart shall abridge the constitutional authority of any department of state government or any agency or office situated within a department of state government. Nor shall any provision, except as clearly expressed herein, repeal the statutory authority of any department of state government or any agency or office situated in a department of state government.

Nothing in subsection B indicates a clear expression to repeal the statutory authority of OCM. Instead, the more rational interpretation is that while this section may authorize the issuance of a joint coastal use permit and an Conservation permit (an "in-lieu" permit that incorporates all of the necessary requirements, terms, conditions, and guidelines required by SLCRMA), it does not repeal the statutory authority of OCM to issue a separate coastal use permit for activities falling under its jurisdiction.

Finally, as outlined in great detail in the Parish's Memorandum on this issue, the reality is that "in-lieu permits" have never been issued by Conservation. The Office of Conservation and the Office of Coastal Management have historically maintained their separate regulatory authority and permitting programs. Each of these offices employs professionals with expertise in their respective fields, and rather than duplicate the efforts of OCM, Conservation fulfills its statutory duty to "ensure that all activities so permitted are consistent with the [coastal use] guidelines" by deferring to the OCM. As such, the State has the right to pursue the instant claims through SLCRMA given that the "separate *in lieu* permitting regime" described by the Defendants simply doesn't exist.

D. Notwithstanding La. R.S. 49:214.36, the Attorney General and LDNR have Independent Bases for Intervention.

As detailed above, the Attorney General and LDNR both posses rights of action under La. R.S. 49:214.36 and have properly exercised those rights. However, independent of those SCLRMA, both entities have independent bases for participating in this case. First, the Attorney General has a constitutional right to intervene under Article IV, §8 of the Louisiana Constitution;

and second, both the Attorney General and LDNR can intervene as interested parties through La. C.C.P. art. 1091.

Regardless of the particular statute upon which the Parish's Original Petition is based, La. Const. art. IV,§ 8 provides "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." There has been no allegation by the Defendants there is no state right or interest at issue in the current case. In fact, the Defendants have challenged the Parish's claims on the basis the coastal use permits at issue implicate wholly state interests. Such arguments by the Defendants establish that the Attorney General is acting within his rights under the clear language of the Louisiana Constitution.

Additionally, both the Attorney General and LDNR explicitly cited to La. C.C.P. art. 1091 in their Petitions for Intervention, which provides that "a third person having an interest therein may intervene in a pending action to enforce a right related to or connected with the object of the pending actions...."

A two-fold inquiry has developed in Louisiana's jurisprudence regarding the requirements for intervention: the intervenor must have a justiciable interest in, and a connexity to, the principle action. *Palace Props., L.L.C. v. City of Hammond*, (La.App. 1 Cir. 6/27/2003), 859 So.2d 15, 20, *citing Niemann v. American Gulf Shipping, Inc.*, 96-687, p. 6 (La.App. 5 Cir. 1/15/97), 688 So.2d 42, 45, *writ denied* 97-0404, (La. 3/27/97). 692 So.2d 397. The First Circuit, in *Amoco Production Company v. Columbia Gas Transmission Corporation*, 455 So.2d 1260, 1264 (La.App. 1 Cir. 8/31/1984), defined "justiciable right" in the context of an intervention as "the right of a party to seek redress or a remedy against either plaintiff or defendant in the original action or both...." The court further held that the justiciable right must be "so related or connected to the facts or object of the principal action that a judgment on the principal action will have a direct impact on the intervenor's rights." *Id.* As set forth in the previously-filed Petitions, Louisiana law establishes LDNR as the agency tasked with authority to enforce the provisions of law at issue in the current matter, thereby satisfying the justiciable interest prong. Moreover, and notwithstanding the question of whether LDNR or the Attorney General have an independent right of action, the State is seeking the restoration of Louisiana's coast, which is directly connected to the principal action. Thus, the State, through the Attorney

General and LDNR, has both an interest in ensuring that any judgment awarded herein is used for integrated coastal protection and a right to participate in this lawsuit.

Consequently, even if this Court finds that the text of La. R.S. 49:214.36(D) does not support the filing of three separate petitions seeking to cooperatively enforce SLCRMA , LDNR and the Attorney General have the right to intervene in this proceeding in order to protect the States' interests

III. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court deny the Defendants' Exceptions, allowing the case to proceed in its present posture.

Respectfully submitted,

Steven B. "Beaux" Jones (#33915)
Ryan M. Seidemann (#28991)
Elizabeth B. Murrill (#20685)
Wilbur L. Stiles, III (#27654)
Assistant Attorneys General
Louisiana Department of Justice
1185 North 3rd Street
Baton Rouge, Louisiana 70802
Telephone No.: (225) 326-6085
Facsimile No: (225) 326-6099

Attorneys for Intervenor-Plaintiff, the State of Louisiana, Ex Rel. Jeff Landry, Attorney General

Megan K. Terrell (#29443)
Legal Advisor
Governor's Office of Coastal Activities
900 North 3rd Street, Fourth Floor
Baton Rouge, Louisiana 70802
Telephone No.: (225) 342-6952

J. Blake Canfield (#30426)
Executive Counsel
La. Dept. of Natural Resources
P.O. Box 94396
Baton Rouge, Louisiana 70804
Telephone No.: (225) 342-2707

Attorneys for Intervenor-Plaintiff, the State of Louisiana, through the Department of Natural Resources, Office of Coastal Management and its Secretary, Thomas F. Harris

CERTIFICATE OF SERIVCE

I hereby certify that a copy of the above has been served upon all known counsel of record by placing a copy of the same in the U.S. Mail, and/or by hand delivery, and/or by e-mail transmission.

New Orleans, Louisiana, this 12 day of July, 2016.

Steven B. "Beaux" Jones