An Overview of Coastal Litigation in Louisiana

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SYNOPSIS

§ 1.01 The Levee Board Suit

[1] Claims

On July 24, 2013, the Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East ("Board of Commissioners"), individually and as the Board governing the Orleans Levee District, the Lake Borgne Basin Levee District, and the East Jefferson Levee District, filed suit in the Civil District Court for the Parish of Orleans against approximately 100 oil and gas production and pipeline companies alleging that those companies were responsible for the loss of thousands of acres of coastal land in Louisiana.[2] This suit would be the first of many filed by political subdivisions and private persons[3] alike, alleging that the oil and gas industry is responsible for coastal erosion and land loss in Louisiana.

The Board of Commissioners alleged that the oil and gas industry's development of the coast, dating back to the early 1900s, was a contributing cause of land loss along the Louisiana coast. The Board further contended that in conjunction with that development, pipeline companies dredged a network of canals to access wells and also by which to transport petroleum products and byproducts. According to the Board, the network of canals and altered hydrology attendant therewith caused vegetation die off, sediment inhibition, erosion, and submergence of coastal lands.

Specifically, the Board purported that ongoing activities such as ring levees, drilling activities, fluid withdrawal, seismic surveys, spoil disposal, and maintenance dredging contributed to land loss. For example, fluid extraction is alleged to cause subsidence and contribute to the rate of relative sea level[4] rise in coastal Louisiana.

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[1] The views of the authors do not necessarily represent the views of their clients and none of the statements expressed here have been endorsed by any client.

[2] *Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East, et al. v. Tennessee Gas Pipeline Company, LLC, et al.*, No. 2013-6911, Civil District Court for the Parish of Orleans, State of Louisiana (filed July 24, 2013).

[3] In November of 2014 and January of 2015, four lawsuits were filed by landowners in Jefferson and Plaquemines Parish against many of the same oil and gas companies sued by the Board of Commissioners and the Parishes. Those lawsuits directly reference the allegations made in the Jefferson and Plaquemines Parish lawsuits as well as borrow the lists of well serial numbers and coastal use permit numbers attached to those pleadings. While the landowners have claims that differ from those of the State, Parishes, and Board of Commissioners, the underlying allegations remain largely the same.

[4] Relative sea level is the sea level relative to the level of the earth's crust.

The Board of Commissioners claimed that increased storm surge risk had required, and would continue to require, increased flood protection at an increasingly high cost, which the Board and the Levee Districts would bear. The Board noted that several remedial measures would be necessary to reduce storm surge risk including, but not limited to, abatement of oil and gas activities, restoration of the land, and mandatory levee certification costs.

The Petition expressly limited the claims to those arising under Louisiana law, but noted that Defendants' activities were subject to an extensive regulatory framework under the Rivers and Harbors Act of 1899 and the Coastal Zone Management Act of 1972 ("CZMA"). The specific causes of action included negligence, strict liability, natural servitude of drain, public nuisance, private nuisance, and breach of contract (as a third-party beneficiary of permits and rights-of-way issued under the aforementioned regulatory schemes).

Finally, the Board of Commissioners sought all damages just and reasonable under the circumstances, judicial interest from the date of judicial demand, "[i]njunctive relief in the form of abatement and restoration of the coastal land loss at issue, including but not limited to, the backfilling and revegetating of each and every canal Defendants dredged, used…as well as all manner of abatement and restoration activities deemed to be appropriate including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration," and costs, expenses and reasonable attorneys' fees.

[2] Removal

On August 13, 2013, Chevron U.S.A. Inc. filed a Notice of Removal in the United States District Court for the Eastern District of Louisiana.[5] The Notice set forth the grounds for removal as federal question jurisdiction, claims arising under general maritime law, claims arising under the Outer Continental Shelf Lands Act ("OCSLA"), the Class Action Fairness Act ("CAFA"), and federal enclave jurisdiction. The Board moved to remand the matter to the Civil District Court for the Parish of Orleans on September 10, 2013. After Opposition and other responsive memoranda were filed, Judge Nannette Jolivette Brown heard the matter on December 18, 2013, and the matter was taken under advisement.

Judge Brown denied the Board's Motion to Remand on June 27, 2014, finding that the Court had federal question jurisdiction over the claims under 28 U.S.C. § 1331. Specifically, Judge Brown applied the United States Supreme Court decision *Grable & Sons Metal Products v. Darue Engineering & Manufacturing*,[6] and found that the Board's claims against the defendants necessarily raised a federal issue, which was actually disputed and substantial, such that a federal forum could hear the matter without disturbing the congressionally approved balance of state and federal judicial responsibilities. The Court rejected defendants' contention that admiralty jurisdiction, federal enclave jurisdiction, OCSLA, and CAFA provided grounds for federal jurisdiction in the matter.

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[5] *Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East, et al. v. Tennessee Gas Pipeline Company, LLC, et al,* No. 13-4510, United States District Court for the Eastern District of Louisiana (filed August 13, 2013) (Rec. Doc. 1).

[6] 545 U.S. 308 (2005).

[3] Defendants' Motion to Dismiss

On September 5, 2014, Defendants filed a Joint Motion to Dismiss for Failure to State a Claim Under Rule 12(b)(6), arguing that the Board's causes of action were each legally flawed. Specifically, Defendants argued that the Board failed to plead that Defendants' activities were cause-in-fact of the alleged damages, did not state viable negligence or strict liability claims, did not state a claim under natural servitude of drain or nuisance because it did not own property adjacent to Defendants' property, and did not state a viable claim for breach of contract because it is neither a party nor a third party beneficiary to any contract with Defendants.

In its opposition, filed October 1, 2014, the Board argued that its claims did not rely on "enterprise liability," that Defendants owed a duty to the Board for the alleged harms, that the Board's claims satisfy the "neighbor" requirements to state a claim under natural servitude of drain and Article 667 nuisance, and also that the Board was a third-party beneficiary of contracts entered into by Defendants. The Court heard oral argument on November 12, 2014.

Judge Brown issued her opinion granting the Motion to Dismiss on February 13, 2015. The Court found that each of the Board's causes of action failed for the following reasons:

- It was not enough for the Board to assert that it was a beneficiary of the federal statutes at issue. Rather, the Board must demonstrate as a matter of law that Defendants owed a specific duty to protect the Board from the results of coastal erosion allegedly caused by Defendants' oil and gas activities in the Buffer Zone. The Board did not and could not make that showing under the Rivers and Harbors Act, the Clean Water Act, or the CZMA. Accordingly, the Court concluded that the Board did not state a viable claim for negligence.
- Because the Court found that Defendants' owed no legal duty to the Board, the Board's strict liability claims failed for that same reason.
- Plaintiff cited no case law, nor could the Court locate any, where the Louisiana Supreme Court has found a natural servitude of drain under similar facts. Any expansion of Louisiana law by finding that a natural servitude of drain may exist between non-adjacent estates with respect to coastal storm surge must come from the Legislature as the primary source of Louisiana law or from the Louisiana Supreme Court as a secondary source of law, not from a federal district court. Having found no guidance from the Civil Code or the case law in support of the Board's position, the Court concluded that the Board did not and could state a viable claim for natural servitude of drain.
- Although the Board alleged that the parties derive ownership rights from the owners of the properties at issue, the Board did not alleged physical proximity of the servient and dominant estates. The Board instead stated that neither adjacency nor ownership of property is necessary to establish a cause of action for public or private nuisance pursuant to Article 667. However, considering that both Louisiana courts and the United States Court of Appeals for the Fifth Circuit appear to agree that the plaintiff must have some interest in an immovable "near" the defendant proprietor's immovable to recover under Article 667, the Board's public and private nuisance claims must be dismissed.
- The Board characterized at least some of the dredging permits at issue as "contracts" between Defendants and the United States Army Corps of Engineers, but failed to present any authority suggesting that a dredging permit issued by the federal government is a

contract. And even if the permits were construed as contracts, the Board did not and could not establish that it was an intended third-party beneficiary under the terms of the permits. Accordingly, the Board's third-party beneficiary claims failed as a matter of law.

The Board appealed this Judgment as well as the Court's Order denying its Motion to Remand on February 20, 2015. Following briefing, the case was set for oral argument before Chief Judge Carl E. Stewart, Judge Priscilla R. Owen, and Judge Greg J. Costa on February 29, 2016. The panel has not yet issued its opinion.

§ 1.02 The Parish Suits

[1] Plaquemines and Jefferson Parish Suits

Following the suit by the Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East, on November 8, 2013, the Parish of Plaquemines, individually and on behalf of the State of Louisiana, filed twenty-one (21) lawsuits against various oil and gas companies in the 25th Judicial District Court for the Parish of Plaquemines, alleging generally that Defendants' oil and gas operations in fields in the Parish were conducted in violation of the Louisiana State and Local Coastal Resources Management Act of 1978.

Three days later, on November 11, 2013, the Parish of Jefferson, individually and on behalf of the State of Louisiana, filed seven (7) lawsuits against various oil and gas companies in the 24th Judicial District Court for the Parish of Jefferson, making nearly identical allegations that Defendants' oil and gas operations in fields in the Parish were conducted in violation of the Louisiana State and Local Coastal Resources Management Act of 1978.

[a] Removal

Defendants removed each of the Plaquemines and Jefferson Parish lawsuits on December 18, 2013. The grounds for removal tracked closely with those raised by the oil companies in the *Board of Commissioners* lawsuit and included diversity jurisdiction, OCSLA as grounds for federal jurisdiction, jurisdiction under general maritime law, and jurisdiction as a "mass action" under CAFA.

The Parishes filed Motions to Remand in each of the cases on January 14-15, 2014, arguing that there was no diversity jurisdiction because the State of Louisiana was a plaintiff and there was no improper joinder, that Defendants' OCSLA argument that infrastructure sharing between the complained-of activities and activities happening on the Outer Continental Shelf was an inappropriate expansion of OCSLA jurisdiction, that there was no general maritime law jurisdiction over the claims and if there was, the Court should consider abstention under *Burford v. Sun Oil*, and there was no jurisdiction under CAFA because there were only two plaintiffs in the action.

The parties next filed Joint Motions to Suspend Briefing Deadlines in Connection with the Parishes' Motions to Remand, pending a ruling on the Parish of Plaquemines' Motion to Remand in *Plaquemines Parish v. Total Petrochemicals & Refining USA, Inc.*, Civil Action No. 13-6693

(Zainey, J.), which was the first case removed to the United States District Court for the Eastern District of Louisiana.

Judge Zainey heard oral argument in the *Plaquemines v. Total Petrochemicals, et al.* matter on July 2, 2014, and issued his Order and Reasons on December 1, 2014. The Court granted the Motion to Remand in a lengthy opinion noting: (1) Defendants did not establish that the doctrine of egregious misjoinder rendered diversity jurisdiction appropriate; (2) any ambiguity in § 49:214.36 regarding whether a local government can file suit on behalf of the State should be construed in the Parish's favor; (3) Defendants did not establish that the complained-of activities constituted an operation "conducted on the outer continental shelf" such that there was no OCSLA jurisdiction; (4) there was no general maritime jurisdiction over the Parish's claims; and (5) that there was no federal enclave jurisdiction over the Delta National Wildlife Refuge.

Following remand in the *Plaquemines v. Total Petrochemicals, et al.*, the other pending Plaquemines and Jefferson Parish matters were re-opened with briefing schedules set on their individual Motions to Remand. Ultimately, each court found Judge Zainey's ruling persuasive, and remanded the matters to state court.

[b] Exceptions and State Interventions

In September of 2015, Defendants filed Exceptions in each of the cases. In the Plaquemines Parish cases, Defendants raised Dilatory Exceptions of Vagueness and/or Ambiguity and Failure to Comply with Article 891 of the Louisiana Code of Civil Procedure, Improper Cumulation and Improper Joinder of Parties, and Prematurity for Failure to Exhaust Administrative Remedies, and also raised the Peremptory Exception of No Right of Action. In the Jefferson Parish cases, Defendants raised those same Exceptions and one additional Dilatory Exception of Non-Compliance with Louisiana Revised Statute § 42:263.

[i] Plaquemines Parish Exceptions

On November 12, 2015, the Plaquemines Parish Council passed Resolution 15-389 instructing its counsel to "cease and desist from performing any work associated with the legal action currently pending under the Coastal Zone Management Act . . . other than to dismiss all actions and lawsuits." The resolution instructed counsel to dismiss the suits; however, counsel for the Parish did not filed motions to dismiss the cases. Given this development, Defendants moved to continue the hearing on their Exceptions which was set for December 21, 2015.

Because the Parish attorneys did not file motions to dismiss the cases as instructed by Resolution 15-389, Defendants filed Motions to Dismiss without Prejudice in each of the Plaquemines Parish cases. The Court set status conferences in each matter on April 7, 2016.

In the interim, in March of 2016, the State of Louisiana, through the office of the Attorney General ("AG"), filed Petitions for Intervention in all of the Plaquemines Parish suits. The Petition stated that "…in light of the Plaquemines Parish council's November 2015 resolution to dismiss this suit, the Attorney General intervenes to protect any State rights that may be lost through a

dismissal of this suit by the Parish." The AG further clarified that it did not authorize the initial suits.

At the April 7, 2016 Status Conference, it came to light that the Secretary of the Louisiana Department of Natural Resources ("DNR") intervened in the lawsuit, and the Court advised that it would hear the Motions to Dismiss on June 27, 2016. While the AG's Intervention sought to supersede the Parishes' representation, the DNR's Intervention argues that the DNR and the Parishes have the **concurrent** right to enforce SLCRMA. The DNR's Intervention further argued that in the event the Parishes are awarded relief, restoration must be achieved consistent with state law.

Following the Interventions by the AG and DNR, the Plaquemines Parish Council met again on April 14, 2016, and suspended its rule requiring that resolutions be read at two meetings prior to a vote. The Council then read a resolution rescinding Resolution No. 15-389 in its entirety. Accordingly, Defendants filed Motions to Withdraw the Motions to Dismiss in late April of 2016, which were granted the following month.

A Status Conference was held on November 4, 2016, at which the parties agreed Defendants would file Exceptions in all cases by December 22, 2016. The parties further agreed to select two cases for which Exceptions would be heard on March 1, 2017: *Parish of Plaquemines v. Equitable Petroleum Corporation, et al.*, No. 60-986 and *Parish of Plaquemines v. Rozel Operating Company, et al.*, No. 60-996.

In accordance with the agreed-upon briefing schedule, Defendants filed Exceptions to the Interventions of the State through the AG and DNR. The Exceptions largely adopted the Exceptions filed previously in response to the Parish's claims. Defendants filed a Memorandum in Support of the Exception of Failure to Exhaust Administrative Remedies which supplemented the earlier filed Memorandum on the same topic filed in response to the Parish's claims. The Exceptions in the agreed-upon cases will be heard on March 1, 2017. The others will be held in abeyance.

[ii] Jefferson Parish Exceptions

The *Jefferson Parish v. Atlantic Richfield, et al.* case was selected as the first of the Jefferson Parish cases to be set for hearing because it was the first suit filed in Jefferson Parish and bore the lowest case number. The hearings on the Exceptions in the remaining Jefferson Parish cases were continued without date, pending a decision in that first case. Judge Stephen Enright heard argument on February 17, 2016 on all Exceptions in the *Jefferson Parish v. Atlantic Richfield* case, and all five Exceptions were taken under advisement.

In March of 2016, the State of Louisiana, through the AG's office, filed Petitions for Intervention in all of the Jefferson Parish suits. The Petitions stated that "…in light of the Plaquemines Parish council's November 2015 resolution to dismiss this suit, the Attorney General intervenes to protect any State rights that may be lost through a dismissal of this suit by the Parish." The AG further clarified that it did not authorize the initial suits. Separately, the Secretary of the Louisiana Department of Natural Resources also filed Petitions to intervene in the lawsuits. As

with the Plaquemines Parish Interventions, the AGs Intervention sought to supersede the Parishes' representation, while DNR's Intervention argues that DNR and the Parishes have the **concurrent** right to enforce SLCRMA. DNR's Intervention further argued that in the event the Parishes are awarded relief, restoration must be achieved consistent with state law.

Defendants filed an amended Exception against the Parish arguing that Louisiana's Coastal Zone Management law does not allow co-enforcement by both the Parish and State, and also filed Exceptions against the State. The revised and new Exceptions were set for hearing July 20, 2016.

Judge Enright issued a Judgment and Reasons for Judgment on August 1, 2016, granting the Dilatory Exceptions of Prematurity for Failure to Exhaust Administrative Remedies filed by Defendants. The Court further ruled that the remaining Exceptions were moot, given the ruling on the Exception of Prematurity.

In his decision, Judge Enright relied heavily on a Louisiana Supreme Court case, *Steeg v. Lawyers Title Insurance Corporation*, 329 So.2d 719 (La. 1976), which holds that a statute does not have to expressly state that a suit can be brought only after administrative remedies are exhausted for the administrative remedies to be found to be a prerequisite for filing a civil action. Enright rejected the Parish and State entities' argument to the contrary which focused on the lack of language in SLCRMA specifically mandating that all enforcement actions be submitted to the Secretary of the Department of Natural Resources before suit is allowed.

Judge Enright instructed that it is well settled in Louisiana that the failure to pursue and exhaust administrative remedies precludes judicial relief. When pleading the Exception of Prematurity, Defendants bear the initial burden of proving that an administrative remedy is available. Finding that Defendants met this burden, Judge Enright cited SCLRMA's requirement that DNR and each local government initiate a field surveillance program to ensure the proper enforcement of the coastal management program. Further, the permitting body has the authority to issue cease and desist orders and has the authority to suspend, revoke or modify coastal use permits if the user is found to have violated any of the conditions of the permit. Judge Enright then quoted the administrative process for modifying, suspending or revoking permits which is laid out in the Louisiana Administrative Code. On the question of permits not issued when required, Judge Enright cited the Administrative Code again which dictates that only the Secretary of the Department of Natural Resources may determine that a coastal use permit is not required. After outlining the process, Judge Enright concluded that Defendants met their initial burden of showing the existence of an administrative remedy by reason of which the case is premature.

Because the Parish and State entities made no showing that they "made any attempt to comply with the enforcement regime," Judge Enright instructed that the burden then shifted to the Parish and State entities to show that this case is one of the exceptional situations in which they are entitled to judicial relief because any administrative remedy is irreparably inadequate. Judge Enright rejected the Parish's contention (adopted by the State entities) that no meaningful administrative remedy exists because the process does not provide for an award of civil damages. According to Enright, without going through the administrative process, it has yet to be determined whether civil damages exist. If it is found in the administrative process that violations

occurred that could give rise to damages, Plaintiffs could file suit after the process is completed. The Court concluded by citing *Steeg's* pronouncement that disputes as to matters within administrative regulation and expertise should ordinarily first be addressed by administrative tribunals legislatively intended to decide them, rather than to the courts.

On August 17, 2016, the Parish of Jefferson and DNR[7] filed separate Motions for New Trial. DNR adopted the prior briefing by the Parish on the Exceptions, and argued that several of the grounds warranting new trial "are particular to the DNR within the statutory-enforcement scheme at issue and were not included in the original round of briefing" to the Court before DNR intervened. DNR argued that "with the benefit of full briefing of those agency-specific issues", the Court should agree that the Exceptions should be denied.

The Parish put forth the same arguments as DNR, but added that the determination of damages is within the exclusive jurisdiction of district courts such that the Court's judgment constitutes an unconstitutional application of SLCRMA because it divests the Court of its original jurisdiction. The Parish also expounds on the position that because SLCRMA does not require a hearing or adjudication, the provisions of the Louisiana Administrative Procedures Act do not apply. The Parish further argued that DNR has no jurisdiction to adjudicate these claims, as "obviously the LDNR cannot adjudicate its own claims."

Judge Enright granted the Motions for New Trial on November 8, 2011, based on an affidavit from the Secretary of the Department of Natural Resources, which stated that "the DNR clearly lacks the ability to handle the necessary administrative actions in this case. According to the Affidavit, the LDNR does not have the staff, funding or capability to conduct the thousands of administrative enforcement actions that would be necessary to address the violations alleged in the parish lawsuits." Additionally, DNR lacked the ability to handle the enforcement actions while continuing to perform its everyday monitoring and enforcement obligations. From this, the Court concluded that the available administrative procedure was "irreparably inadequate."

On December 9, 2016, Defendants applied for Supervisory Writ to the Louisiana Fifth Circuit Court of Appeal, arguing that the district court's August 1, 2016, Judgment was correct, and also that the district court erred in granting a new trial on the basis of Secretary Harris' affidavit. The matter has been briefed by all parties, and as of now, no oral argument has been granted.

[2] Cameron Parish Suits

In February of 2016, Cameron Parish filed eleven (11) lawsuits against oil and gas defendants tracking the claims made in the previously filed Plaquemines and Jefferson Parish suits. The AG filed Petitions for Intervention in the suits on March 21, 2016. On April 7, 2016, DNR filed its Interventions.

On April 21, 2016, Defendants removed the cases, arguing that: (1) the Parish's claims were subject to maritime jurisdiction because the alleged injuries occurred on navigable waters which implicates traditional maritime activities; and (2) the Parish's claims are subject to federal

[7] The AG did not join in this filing.

OCSLA jurisdiction because its claims "arise out of" and "in connection with" operations conducted on the outer continental shelf.

Motions to Remand were filed separately by the Parish and the State entities on May 11, 2016, and May 23, 2016, respectively. The Parish argued that remand was proper because: (1) there is no jurisdiction under OCSLA; (2) the removal arguments based on maritime law have been rejected in each of the U.S. District Courts in Louisiana; (3) attempts to remove state court cases "into admiralty" are improper; (4) amendments to 28 U.S.C. 1441 do not support removal based on admiralty jurisdiction; and (5) oil and gas activities are not traditional maritime activities. The State argued that there is no maritime or OCSLA jurisdiction over the claims and added the argument that its sovereign immunity under the 11th Amendment precludes it from being hailed in federal court absent its consent.

Oppositions and Replies were filed, and the Motions were set for hearing on September 1, 2016. On August 25, 2016, Magistrate Judge Kathleen Kay issued an electronic order in each of the cases "terminating" the September 1st hearing to await a decision from the Fifth Circuit in the *Board of Commissioners of the Southeast Louisiana Flood Protection Authority-East, et al. v. Tennessee Gas Pipeline Company, LLC, et al.,* case. The Court's electronic order notes that "once the court of appeals has ruled we will allow the parties the opportunity to supplement or amend their memoranda, should they find supplementation or amendment warranted, and will proceed accordingly at that time."

[3] Vermilion Parish Suit

In July of 2016, Keith Stutes, the District Attorney for the 15th Judicial District of the State of Louisiana, filed suit against oil and gas companies for the enforcement of the State and Local Coastal Resources Management Act and its regulations, rules, orders and ordinances promulgated or adopted thereunder by the State and Vermilion Parish. Again, these claims track those made in the previously filed suits; however, Vermilion Parish filed one Petition covering many different oil and gas fields rather than filing multiple suits as was done in Plaquemines, Jefferson, and Cameron Parishes.

The AG filed his Petition for Intervention on August 2, 2016. The Intervention argued that the Parish's District Attorney is not empowered to file suit under SCLRMA. Further, according to the AG, because Vermilion Parish does not have an approved local coastal protection plan as defined by SLCRMA, Vermilion Parish has no rights under SCLRMA and, instead, all rights belong to the State. The State then asserts the claims and recognizes that 40 claims have been filed which require uniform treatment.

The DNR followed suit on August 10, 2016, and filed a Petition for Intervention arguing that it has an overlapping right with the district attorney to enforce the coastal zone laws and to receive monies for actual restoration. The crux of the argument is that the DNR, as the "designated executive branch agency and office responsible for the enforcement of the coastal zone management program and coastal protection and restoration, has a real interest in ensuring the continued coordination of coastal protection activities." Unlike the Attorney General, the DNR did not contest the District Attorney's rights to bring enforcement actions under SLCRMA.

On September 2, 2016, Defendants removed the Vermilion Parish case to the United States District Court for the Western District of Louisiana. The arguments in the Notice of Removal mirror those raised in the previously filed suits by Defendants. Certain defendants filed supplemental notices of removal in which they argue that the case is also independently removable because the Natural Gas Act applies to the Plaintiffs' claims against them. In other words, those defendants argue that interstate natural gas pipelines, such as those operated by those defendants, are subject to a "comprehensive scheme of federal regulation" under the jurisdiction of the Federal Energy Regulatory Commission. Accordingly, Plaintiff's claims are subject to exclusive federal jurisdiction under Section 24 of the Natural Gas Act.

The Parish filed its Motion to Remand on September 20, 2016 and asserted that there is no federal question jurisdiction over the claims, no OCSLA jurisdiction over the claims, no maritime removal jurisdiction over the claims, no jurisdiction under the Natural Gas Act, and no jurisdiction under any of the other grounds for removal alleged in the notices of removal filed by Defendants.

Eight days later, on September 28, 2016, the AG filed his Motion to Remand re-urging the grounds for remand raised by District Attorney Stutes on behalf of the Parish and adding the argument that the State's sovereign immunity under the Eleventh Amendment precludes it from being hailed in federal court absent its consent.

DNR filed its Motion to Remand the same day. DNR supported the Parish's Motion to Remand as well as the Motion to Remand filed by the AG and adopted those parties' arguments in favor of remand. DNR states that Defendants' arguments in favor of removal have been asserted and rejected previously in other cases (such as the *Total Petrochemicals* case from Plaquemines Parish). DNR then asserts Eleventh Amendment sovereign immunity as an additional basis for remand, which is unique to the State.

These Motions to Remand were set for hearing before Magistrate Judge Carol B. Whitehurst on November 16, 2016; however, on October 4, 2016, Judge Whitehurst signed an Order continuing both the hearing on Plaintiffs' Motion to Remand and the hearing on the Intervenors' Motions to Remand pending an entry of decision in the *Board of Commissioners* suit. The Order noted that once a decision has been made in the *Board of Commissioners* suit, the Court will give the parties an opportunity to amend their briefing prior to resetting the hearing.

[4] St. Bernard Parish Suit

On September 29, 2016, St. Bernard Parish filed suit against oil and gas companies for the enforcement of the State and Local Coastal Resources Management Act and its regulations, rules, orders and ordinances promulgated or adopted thereunder. Again, these claims track those made in the previously filed suits; however, like Vermilion Parish, St. Bernard Parish also filed one Petition covering many different oil and gas fields rather than filing multiple suits as was done in Plaquemines, Jefferson, and Cameron Parishes.

The AG filed his Petition for Intervention on October 10, 2016. The Intervention argued that the Parish is not empowered to file suit on behalf of the State under SCLRMA. Further, the

Intervention asserts that the AG has an overriding obligation to protect the interests of the State as a whole. In addition to asserting rights under SLCRMA, the AG also asserts a *parens patriae* claim under the Public Trust Doctrine to preserve and protect the State's natural resources and the environment.

The LDNR likewise intervened on October 10, 2016. The DNR's intervention argues that it has an overlapping right to enforce the coastal zone laws and to receive monies for actual restoration. The crux of the argument is that the DNR, as the "designated executive branch agency and office responsible for the enforcement of the coastal zone management program and coastal protection and restoration, has a real interest in ensuring the continued coordination of coastal protection activities."

On November 10, 2016, Defendants removed the St. Bernard Parish case to the United States District Court for the Eastern District of Louisiana. Again, the arguments in the Notice of Removal mirror those raised in the previously filed suits by Defendants. The Parish filed its Motion to Remand on December 2, 2016 and asserted that there is no federal question jurisdiction over the claims, no OCSLA jurisdiction over the claims, no maritime removal jurisdiction over the claims, and no jurisdiction under any of the other grounds for removal alleged in the notices of removal filed by Defendants.

On December 9, 2016, the AG and DNR filed a Joint Motion to Remand re-urging the grounds for remand raised by the Parish. Intervenors again argued that Defendants' arguments in favor of removal have been asserted and rejected previously in other cases (such as the *Total Petrochemicals* case in Plaquemines Parish). DNR then asserts Eleventh Amendment sovereign immunity as an additional basis for remand, which is unique to the State.

The briefing is ongoing for these Motions to Remand, and they are currently set for hearing before Judge Carl J. Barbier on February 1, 2017; however, it is anticipated that, like the pending Motions to Remand in Cameron and Vermilion Parishes, the Court will continue the hearing on the Motions until there is an entry of decision in the *Board of Commissioners* suit.