STATE OF LOUISIANA

DIVISION OF ADMINISTRATIVE LAW

DOCKET NO. 2020-9442-DNR

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IN THE MATTER OF: HERO LANDS COMPANY, L.L.C. V. CHEVRON U.S.A. INC., ET. AL.

DEPARTMENT OF NATURAL RESOURCES
CONSERVATION DOCKET NO.: ENV-2020-L01
****

ON REFERRAL FROM THE 25TH JUDICIAL DISTRICT COURT FOR THE PARISH OF PLAQUEMINES

STATE OF LOUISIANA

DOCKET NO. 64-320 **DIVISION "A"**

HERO LANDS COMPANY, L.L.C.

VERSUS

CHEVRON U.S.A. INC., ET AL.

OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* TO EXCLUDE IN PART CHEVRON U.S.A. INC.'S FEASIBLE PLAN

Chevron U.S.A. Inc. ("Chevron") submits this Opposition to Plaintiff's Motion *in Limine* to Exclude, in part, Chevron U.S.A. Inc.'s Feasible Plan. Plaintiff seeks to exclude evidence of any proposed feasible plan containing an exception to Statewide Order 29-B relying solely on inadmissible affidavit testimony[1] that Plaintiff does not consent to a feasible plan containing an exception to Statewide Order 29-B.

Plaintiff's Motion should be denied. ***First***, LDNR has expressly stated that landowner consent is ***not*** required for LDNR to structure and approve a feasible plan containing an exception to Statewide Order 29-B. ***Second***, Plaintiff cannot identify a single constitutional article, statute, or regulation requiring landowner consent for a feasible plan to contain an exception to Statewide Order 29-B. In fact, the opposite is true. Act 312, its applicable regulations, and relevant guidance documents expressly provide that LDNR can structure a feasible plan containing an exception to 29-B without landowner consent. ***Third***, Plaintiff's argument is contradicted by its own testimony and its submittals from its own expert. Not only has Plaintiff testified it intends to use this property as industrial property in the future, Plaintiff's own expert used Louisiana's Risk

[1] Chevron has filed a Motion to Strike the Affidavit of George Alfred Hero, IV attached in support of Plaintiff's Motion.

Evaluation/Corrective Action Framework ("RECAP") – an exception to 29-B – to develop its proposed remediation plan in this matter (a plan it neglected to submit to this agency).

Plaintiff's refusal to grant consent is a litigation tactic - nothing more - and should not distract from LDNR's directive here: to develop "the most **reasonable** plan which addresses environmental damage in conformity with the requirements of Article IX, Section 1 of the Constitution of Louisiana **to protect the environment, public health, safety and welfare**..."[2]. Plaintiff's Motion, therefore, should be denied.

BACKGROUND

On March 8, 2018, Plaintiff filed the above captioned lawsuit seeking damages to restore property impacted by oil and gas exploration and production operations. In its Petition, Plaintiff recognized that Act 312 of 2014 applied to its claims. On July 29, 2020, before environmental sampling on the at-issue Property was complete, Chevron filed its limited admission within the time limits allowed by Act 312. On July 31, 2020, the Trial Court signed an Order referring Chevron's limited admission to LDNR for development of the "most feasible plan to evaluate, and, if necessary, remediate environmental damage" found on the Property. On October 30, 2020, Plaintiff elected to not submit a proposed feasible plan of its own, instead offering a variety of comments to the plan proposed by Chevron. Plaintiff supplemented this response on December 4, 2020. Plaintiff's supplemental response and Motion largely attack Chevron's experts' reliance on the Louisiana Department of Environmental Quality ("LDEQ")'s RECAP regulations to opine that remediation of two unusable and non-potable groundwater aquifers underlying Plaintiff's Property is not required.

ARGUMENT

I. Plaintiff's Argument Has Expressly Been Rejected by LDNR

Plaintiff's Motion should be denied for one simple reason – LDNR has considered and rejected this exact argument in other cases litigated under the Act 312 feasible plan procedure. On December 12, 2018, Mr. John Adams, Attorney for LDNR, prepared a memorandum for Richard P. Ieyoub, Commissioner of Conservation, examining this issue. His conclusion:

> "There is **no basis for requiring landowner consent** for [most feasible plans] issued to a reviewing court in context of an Act 312 public hearing."[3]

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[2] La. Stat. Ann. § 30:29(H)(4) (2014)(emphasis added).

[3] ***Exh. A***, December 12, 2018, Memorandum re: Landowner Consent prepared by Mr. John Adams, Attorney LDNR, to Commissioner of Conservation, Richard P. Ieyoub (emphasis added).

In reaching this conclusion, LDNR reasoned that "[l]andowner consent has not been required by [LDNR] when a case goes through an Act 312 public hearing...The reason is that the court is an active participant in the situation." Moreover, in "Act 312 public hearing cases with an issued Most Feasible Plan with 29-B exceptions...the landowner has the right and opportunity to put on evidence to protect and/or advance the landowner interest."[4]

In this same analysis, LDNR also rejected Plaintiff's argument that a feasible plan with exceptions violates the Louisiana Constitution and Act 312. In fact, LDNR found the opposite to be true:

> [t]he overriding interest in Act 312 is the public interest...**[r]equiring landowner consent for a plan in all events, even if the evidence at the public hearing does not support a finding that such a plan** (i.e. a plan requiring landowner consent) **is the most feasible plan, would, or could, result in the structuring of a plan by LDNR that is not the most feasible plan for the standpoint of the public interest** (i.e., from the standpoint of protection of the environment, public health, safety, and welfare.)[5]

All the purported "evidence" cited by Plaintiff involve situations where property is being remediated outside the scope of the Act 312 feasible plan procedure. LDNR expressly recognized this fact in its 2018 Memorandum.[6] It also recognized that landowner consent has never been required when a case has gone through the Act 312 feasible procedure, stating: it is "important to recognize the [LDNR's] **consistent application** of the law and regulations with accepting or developing MFP's with 29-B exceptions." LDNR then identified seven cases where LDNR has issued a feasible plan, containing exceptions to Statewide Order 29-B without landowner consent. All of these plans were ultimately accepted by the Trial Court.[7]

II. The Louisiana Constitution, Act 312, and Applicable Regulations Allow a Feasible Plan to Contain Exceptions to Statewide Order 29-B.

LDNR's recognition that a feasible plan can be structured and approved, with exceptions to Statewide 29-B, is clearly consistent with the plain language of the Louisiana Constitution, relevant statutes, and regulations. Indeed, LDNR has the authority, regardless of landowner consent, to develop a feasible plan containing exceptions to Statewide Order 29-B pursuant to both the Constitution and Act 312 if: (1) such a plan is deemed protective of the health, welfare

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[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

and safety of the citizens of Louisiana and (2) it is the most feasible approach for managing the relevant property.[8]

First, Act 312 expressly allows LDNR to develop and approve a feasible plan using regulatory standards of another agency, including LDEQ.[9] If such a plan is approved, LDNR is simply required to coordinate with that agency to allow it time to review and comment.[10] Landowner consent is **never** mentioned as a requirement to structure a feasible plan containing an exception to Statewide Order 29-B.[11]

Second, Louisiana's Constitution in no way prohibits approval of a feasible plan containing exceptions. In fact, the opposite is true. The Constitution of this State provides that "the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people."[12] Act 312 of 2014 expressly provides that "Article IX, Section 1 of the Constitution of Louisiana mandates that the natural resources and the environment of the state, including ground water, are to be protected, conserved, and replenished insofar as possible consistent with the health, safety, and welfare of the people…[t]o this end, [Act 312] provides the procedure for judicial resolution of claims for environmental damage to property arising from activities subject to the Department of Natural Resources, office of conservation."[13] Consequently, the Commissioner of Conservation is given the statutory grant of authority "over **all persons and property necessary to enforce effectively [Act 312]**" so that the "**health, safety, and welfare**" of the people is protected, including the Plaintiff here.[14] This authority is broad and without limitation insofar as LDNR can exercise it over this Plaintiff and this Property to enforce Act 312, including application of any exception to Statewide Order 29-B.

Third, LDNR's own regulations expressly contemplate the development of a feasible plan with exceptions to Statewide Order 29-B. Statewide Order 29-B provides that it was promulgated pursuant to the jurisdictional grant of authority to the Office of Conservation as set out in Revised Statute 30:4, which includes authority over "all persons and property" to effectively enforce Act 312. In conjunction with this authority, LDNR has promulgated administrative guidelines for any

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[8] La. Rev. Stat. § 30 29(A) (2014).

[9] La. Rev. Stat. § 30:29(c)(3)(b)(i)

[10] *Id.*

[11] *See id.*

[12] La. Const. Ann. art. IX, § 1

[13] La. Rev. Stat. § 30:29(A) (2014).

[14] La. Rev. Stat. § 30:4 (emphasis added).

plan submitted by a party.[15] Therefore, while, generally any submitted plan "shall comply with the standards set forth with Statewide Order 29-B,"[16] Statewide Order 29-B provides that "[t]he commissioner may grant **an exception** to any provision of [Statewide Order 29-B] upon proof of **good cause**."[17] These same administrative guidelines contemplate the ability to utilize an exception if: (1) there is "sufficient proof that the exception sought...does not endanger USDW's;"[18] (2) "a specific citation of the Louisiana rules, regulations or statutes sought to be applied in lieu of Statewide Order 29-B;"[19] and (3) upon a showing of "good cause."[20]

Plaintiff can identity no rule, statutory or otherwise, which requires landowner consent to an exception of Statewide Order 29-B. Instead, the jurisdiction vested with LDNR is over "all persons and property" – including this Plaintiff – and is not limited in any way by a consent requirement.[21] Consequently, as recognized by LDNR in 2018, LDNR is well within its jurisdiction to utilize an exception to Statewide Order 29-B if it deems it to be the "most feasible" in protecting the "health, safety and welfare" of the citizens of Louisiana, regardless of whether a plaintiff give consent. Moreover, LDNR's Office of Conservation has never **legally adopted** a consent requirement through administrative rulemaking. While the Office of Conservation has authority to "make...any reasonable, rules, regulations, and orders that are necessary," these can only be made after "notice" and a "hearing"— which has never occurred with respect to the purported "landowner consent" issue highlighted by Plaintiff.[22]

a. LDNR Routinely Utilizes RECAP as an Exception to Statewide Order 29-B Because Statewide Order 29-B Does Not Contain Groundwater Standards.

Plaintiff's chief complaint suggests that Chevron's proposed use of RECAP is somehow less protective of human health and the environment. But this position utterly fails to consider the purpose and function of LDEQ's RECAP framework. RECAP was promulgated specifically to "address risks to human health and the environment posed by the release of chemical constituents to the environment." Indeed, "[t]his is LDEQ's primary statutory mandate for remediation

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[15] *See* 43 LAC Pt XIX, § 601, *et al.*

[16] 43 LAC Pt XIX, § 611(F).

[17] 43 La. Admin. Code Pt XIX, 319(A).

[18] 43 LAC Pt XIX, § 611(F)(2)(b).

[19] 43 LAC Pt XIX, § 611(F)(2)(c).

[20] 43 LAC Pt XIX, § 319(A).

[21] La. Rev. Stat. § 30:4.

[22] La. Rev. Stat. § 30:4(B)(2016).

activities." Consistent with this mandate, "RECAP uses risk evaluation to: (1) determine if corrective action is necessary for the protection of human health and the environment, and (2) identify constituent levels in impacted media that do not pose unacceptable risks to human health or the environment."[23]

In fact, LDNR routinely relies on LDEQ's RECAP regulations and LDEQ expertise to evaluate environmental damage found in groundwater, and, if necessary, develop a feasible plan to remediate these impacts. The inter-agency coordination has been memorialized, twice, most recently, in a 2011 document entitled "First Amended Memorandum of Understanding Between Louisiana Department of Natural Resources Office of Conservation and Louisiana Department of Environmental Quality Regarding Approval of RECAP Groundwater Evaluation and Remediation Plans at Oilfield Sites." (the "2011 MOU"). The 2011 MOU recognizes that LDEQ has primary authority to regulate groundwater in Louisiana:[24]

> WHEREAS, the **Louisiana Department of Environmental Quality** (DEQ) was created as the **primary agency** in the state concerned with **environmental protection and regulation** (R.S. 30:2011), and
>
> WHEREAS, **statutory law provided DEQ the authority to establish statewide environmental and health risk-based soil and groundwater evaluation remediation** standards and protocol. **Such standards and protocol have been promulgated and effective** since December 1998 and under LAC 33:I.Chapter 13, **Risk Evaluation/Corrective Action Program ("RECAP").**[25]

Plaintiff would have LDNR exclude LDEQ from participation in development of the feasible plan; yet this is the agency which Louisiana's Legislature has vested with primary statutory authority over environmental protection and regulation. The 2011 MOU not only expressly provides that a feasible plan may be structured and approved by LDNR utilizing RECAP, it also sets forth the procedures the two agencies should follow if a feasible plan is structured utilizing RECAP guidelines.[26] This same inter-agency coordination is recognized in Act 312.[27] Consequently, use of RECAP is a recognized and commonly used exception to Statewide Order

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[23] https://www.deq.louisiana.gov/assets/docs/Land/RECAP/RECAPfinal.pdf

[24] ***Exh. B***, February 2011, First Amended Memorandum of Understanding between the Louisiana Department of Natural Resources and the Louisiana Department of Environmental Quality.

[25] *Id.* at p. 1.

[26] *Id.* at p. 2, ¶ 1.

[27] La. Rev. Stat. § 30:29(C)(3)(b)(i)("if the department preliminarily approves or structures a preliminary plan **that requires the application of regulatory standards of an agency other than the department or that provides an exception** from the department's standards, within fifteen days of such preliminary structuring or approval, the department shall submit the plan to the Department of Agriculture and Forestry, the Department of Environmental Quality, and the Department of Natural Resources for review and comment.") (emphasis added).

29-B, and Chevron will present evidence at the hearing that it is appropriate here in structuring the feasible plan.

III. The Evidence Presented at the Hearing Will Show Use of RECAP is Warranted in LDNR's Development of the Feasible Plan.

As discussed, Plaintiff simply cannot trump the police power of the State and its authorized agencies by withholding consent,[28] especially when its demand for "consent" is contradicted by its own testimony, the current and future highest and best use of the Property, and its own expert's remediation plan.[29]

Plaintiff's inadmissible affidavit is expressly contradicted by Plaintiff's sworn deposition testimony. At its deposition, Plaintiff's representative, George Hero, IV (also, the affiant), testified that the Plaintiff's plan for the property was to market it and use it as industrial property:

> Q. Is there any planned use for the property in the future that Hero Lands has had to forego because of the alleged environmental contamination on the property?
>
> A. Planned use. I would hope long term that once these well dry up that it would become a commercial property, it has road access, it has railroad access, it had riverfront access. I would hope that in the future we would be able to develop it for an industrial site that needs all of those assets.[30]
>
> ***
>
> Q. From your experience with Hero Lands, the drainage canals that were built, the Hero Canal that were built in the Belle Chasse area, would you agree that the property which is the subject of this lawsuit has now been converted into industrial property?
>
> A. Yes, it's industrial property, in my opinion.[31]

Plaintiff's inadmissible affidavit is also contradicted by its own expert's proposed remediation plan in this matter. Although Plaintiff failed to present a proposed feasible plan in connection with this regulatory proceeding, it did submit a remediation plan in connection with the trial proceeding. Ironically, Plaintiff's proposed plan uses RECAP as an exception to Statewide Order 29-B:

> Q. You agree with me that you only need to clean up what truly exceeds, in your opinion, 29-B or certain components of RECAP; correct?

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[28] *See e.g. Sohio Petroleum Co. v. V.S. & P.R.R.*, 62 So. 2d 615, 619-620 ("...all contracts of lease with respect to the development and production of minerals in this state must, of necessity, be subject to the police power exercised in protecting these natural resources...).

[29] In fact it is a well settled principle of constitutional law recognized by both state and federal courts that a state cannot surrender, abdicate, or abridge its police power. *City of New Orleans v. Bd. of Comm'rs of Orleans Levee Dist.*, 93-0690 (La. 7/5/94), 640 So. 2d 237, 249 (internal citations omitted).

[30] ***Exh. C.***, Excerpt, 1442 Deposition of Hero Lands Company LLC, at p. 293:12-22.

[31] ***Exh. C,*** Excerpt, 1442 Deposition of Hero Lands Company LLC, at p. 349:18-350:4.

A. Our plan for this site is to address any soil that exceeds a 29-B standard **or certain components of RECAP**.

Q. Right.

A. So that's what our plan is to address this site, right here.[32]

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Q. It's my understanding that with respect to remediating the soil, the constituents you're focusing on are arsenic, true total barium, oil and grease, chlorides and sodium under 29-B standards?

A. Yes.

Q. With respect to soil, again, **you're remediating TPH-D, TPH-O and barium to RECAP standards**?

A. **That's correct. RECAP MO-1 standards.**[33]

Chevron will present evidence at the hearing that the feasible plan should use RECAP as an exception to Statewide Order 29-B. Consistent with LDNR regulatory requirements, Chevron submitted a "Hypothetical 29-B" plan which attempts to comply with all requirements of Statewide Order 29-B.[34] But, Chevron in no way endorses the hypothetical plan as "the most feasible plan." In fact, the opposite is true. Evidence will show there is no risk to any underground source of drinking water underlying the Property, and RECAP is an appropriate exception to 29-B in this matter. Evidence will show that LDEQ has recognized that the groundwater underlying the Property is not a viable drinking water source and never will be due to a variety of factors including its poor natural quality, the shallowness of the aquifer, and the Property's proximity to the Mississippi River. And evidence will show that this exception in no way will prohibit the Plaintiff from using the Property in the future for industrial ***or*** residential purposes.

CONCLUSION

LDNR has never required landowner consent in structuring a feasible plan under Act 312. Plaintiff's argument not only lacks merit, but it ignores the plain language of the Louisiana Constitution, Act 312, and relevant regulations. It is also expressly contradicted by Plaintiff's and its experts' sworn testimony in this case. Therefore, Chevron requests LDNR deny Plaintiff's Motion and hear evidence as to why a feasible plan, utilizing RECAP, is the most "reasonable plan" to protect "human health and the environment" in this case.

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[32] ***Exh. D***, Sills Dep., 89:9-17.

[33] ***Exh. D***, Sills Dep., 84:12-85:2.

[34] *See* La. Admin. Code Pt XIX, 611(F).

Respectfully submitted,

Michael R. Phillips (#21020)
Claire E. Juneau (#33209)
Jeffrey J. Gelpi (#37130)
Claudia Carrizales (#37628)
KEAN MILLER LLP
First Bank and Trust Tower
909 Poydras St., Suite 3600
New Orleans, LA 70112
Telephone: (504) 585-3050
Facsimile: (504) 585-3051
mike.phillips@keanmiller.com
claire.juneau@keanmiller.com
jeff.gelpi@keanmiller.com
claudia.carrizales@keanmiller.com

L. Victor Gregoire (#22400)
Richard D. McConnell, Jr. (#29973)
John C. Funderburk (#35597)
KEAN MILLER LLP
400 Convention Street, Suite 700
P. O. Box 3513 (70821-3513)
Baton Rouge, LA 70802
Telephone: (225) 387-0999
Facsimile: (225) 388-9133
victor.gregoire@keanmiller.com
richard.mcconnell@keanmillller.com
john.funderburk@keanmiller.com

Robert E. Meadows (*pro hac vice*)
Tracie J. Renfroe (*pro hac vice*)
Elizabeth R. Taber (*pro hac vice)*
Mitchell B. Bryant (*pro hac vice*)
KING & SPALDING LLP
1100 Louisiana, Suite 4000
Houston, TX 77002
Telephone: (713) 751-3200
Facsimile: (713) 751-3290
rmeadows@kslaw.com
trenfroe@kslaw.com
etaber@kslaw.com
mbbryant@kslaw.com

Attorneys for Chevron U.S.A. Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all known counsel of record, the Louisiana Department of Natural Resources Commissioner of Conservation, Mr. John Adams, and panel members, and the Louisiana Division of Administrative LAW by electronic mail and via certified mail, postage prepaid and properly addressed.

New Orleans, Louisiana, this 10th day of December, 2020.

Claire Juneau

JOHN BEL EDWARDS
GOVERNOR

State of Louisiana
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF CONSERVATION

THOMAS F. HARRIS
SECRETARY

RICHARD P. IEYOUB
COMMISSIONER OF CONSERVATION

MEMORANDUM

TO: Richard P. Ieyoub, Commissioner of Conservation

FROM: John W. Adams, Attorney, LDNR/Office of Conservation

DATE: December 12, 2018

RE: Landowner Consent

ISSUE

Should landowner consent be required for a Most Feasible Plan (MFP) including exceptions to LAC 43:XIX.Subpart 1 (Statewide Order 29-B) which is approved or developed by the Agency as a result of evidence at an Act 312 public hearing?

THERE IS NO BASIS FOR REQUIRING LANDOWNER CONSENT FOR MFP ISSUED TO A REVIEWING COURT IN CONTEXT OF AN ACT 312 PUBLIC HEARING

Landowner consent has not been required by Louisiana Department of Natural Resources, Office of Conservation (hereinafter "LDNR/OC" or "Agency") when a case goes through an Act 312 public hearing and a Most Feasible Plan including exceptions to LAC 43:XIX.Subpart 1 (29-B) is approved or developed as a result of evidence at an Act 312 public hearing. The reason is that the court is an active participant in that situation, as explained more fully below.

Act 312 took effect in 2006 when the Governor signed Senate Bill 655 of the 2006 Regular Session into law. La. Acts 2006, No. 312, eff. June 8, 2006, which is codified at La. R.S. 30:29. Act 312 set forth requirements for pursuing claims for environmental damages caused by oilfield operations. It was immediately challenged as unconstitutional by landowner, M.J. Farms, Ltd., which owned property in Catahoula Parish on which it claimed certain defendants had caused environmental damage from oil and gas operations. The constitutional basis for the landowner's challenge was that Act 312 violated La. Const. art. V, § 16 (divestiture of the district courts of original jurisdiction), the Fifth Amendment of the United States Constitution (the deprivation of a landowner of his property without due process), and La. Const. art. I, § 4 (divestiture of the landowner's right to acquire, own, control, use, enjoy, protect and dispose of private property). The first basis was a denial of "access to courts" argument. The Seventh Judicial District Court in Catahoula Parish entered a judgment declaring Act 312 unconstitutional. On appeal, the Louisiana Supreme Court concluded the district court erred in finding Act 312

Exhibit A

of 2006 unconstitutional. *M.J. Farms, Ltd. v. Exxon Mobil Corp.*, 2007-2371 (La. 7/1/08), 998 So.2d 16. On the "access to courts" argument, the Court said the following:

> Although Act 312 changes the remedy available to M.J. Farms in its efforts to obtain surface restoration of its immovable property, we do not find this denies it access to the courts. To the contrary, under the provisions of Act 312 the district court remains an active participant in the entire restoration process. It is the filing of pleadings in the district court making demand for environmental damages that triggers implementation of Act 312. See La.Rev.Stat. § 30:29(B)(1). Furthermore, it is in the district court that it is determined whether environmental damages exists, who caused the damage, and it is the district court that orders the development of a restoration plan. La.Rev.Stat. § 30:29(C)(1). Finally, it is the district court who considers the various restoration plans, including any that the surface owner may choose to submit, determines which one is most feasible, and oversees the implementation of the restoration plan. La.Rev.Stat. § 30:29(C)(5). Accordingly, we find no merit to M.J. Farms' contrary assertion.

Id., at 37-38. *See also State v. Louisiana Land & Exploration Co.*, 2012-0884 (La. 1/30/13, 110 So.3d 1038, 1057.

LDNR/OC has required landowner consent for cleanup plans which include exceptions to 29-B in regulatory actions, including those pursuant to Act 312, for site evaluation and/or remediation of oilfield sites in cases where no Act 312 contradictory public hearing is involved. Landowner consent is required even though this is not explicitly set forth as a requirement for a cleanup plan anywhere in the regulations. LDNR/OC has looked to the definition of "contamination" in Statewide Order No. 29-B, specifically in LAC 43:XIX.301, which is "the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes." It is in reliance on this definition that LDNR/OC has required landowner consent as a matter of practice in cases where there is no contradictory hearing because, as it has said, "only a landowner or court of law can truly make a decision as to what a given property's "intended purpose" is." *See e.g.*, Letter of James H. Welsh, Commissioner of Conservation, to Louis E. Buatt, Esq., attorney for BP, dated 10/27/15.

But the Act 312 public hearing cases with an issued Most Feasible Plan with 29-B exceptions have been treated differently because the court is an active participant. There have been seven cases where a MFP with 29-B exceptions was issued to a reviewing court as a result of evidence at an Act 312 public hearing, which as described below, is a contradictory hearing. Landowner consent has not been required by the reviewing court in any of those cases. (*See* **Appendix A** at the end of this Memorandum). It is important to recognize that the Agency's consistent application of the law and regulations in accepting or developing MFP's with 29-B exceptions issued to reviewing courts specific to the issue of landowner consent has been, to date, accepted by the reviewing courts and participating parties.

There is a valid basis for making a distinction between the public hearing cases and the non-public hearing cases on the issue of whether landowner consent is required. Unlike the non-public hearing cases, in the public hearing cases the landowner has the opportunity to put forth a competing plan and/or comments to the responsible party's plan. Also, during the public hearing, the landowner has the right and opportunity to put on evidence to protect and/or advance the landowner interest. The hearing is contradictory in nature and permits cross-examination of the responsible party's witnesses by the landowner, and also permits cross-examination of the landowner's witnesses by the responsible party. The LDNR/OC panelists also get to ask their own questions of witnesses about the competing plans. Since the landowner is present to defend and advance the landowner interest, LDNR/OC panelists can focus on the public interest as intended by Act 312. In addition to this contradictory hearing, the Act 312 process includes substantial opportunity for active court involvement after the MFP is structured by LDNR/OC (see steps 6 and 7 below). The process from start to finish includes:

1. Step 1 The plaintiff/landowner files suit, and the court holds a trial to determine that environmental damage exists and the party or parties who caused the damage." La. R.S. 30:29(B) & (C)(1).

2. Step 2 The court orders the responsible party to develop and submit a remediation plan(s) to LDNR/OC for review and consideration. La. R.S. 30:29(C)(1).

3. Step 3 The plaintiff/landowner is given the opportunity to provide a landowner plan or provide comment or response to the other plan(s). La. R.S. 30:29(C)(1).

4. Step 4 LDNR/OC conducts a public hearing—a contradictory hearing—on the plan(s). La. R.S. 30:29(C)(2)(a).

5. Step 5 LDNR/OC accepts a plan submitted, or structures a plan, based on the evidence, which LDNR/OC determines to be the Most Feasible Plan to evaluate or remediate the environmental damage and protect the health, safety and welfare of the people. La. R.S. 30:29(C)(2)(a).

6. Step 6 The court adopts the LDNR/OC plan unless a party proves to the court by a preponderance of the evidence that another plan is a more feasible plan to adequately protect the environment and the public health, safety and welfare. La. R.S. 30:29(C)(5).

7. Step 7 The court issues such orders as necessary to ensure that funds are expended in a manner consistent with the adopted plan, retains oversight to ensure compliance with the plan, and retains continuing jurisdiction until such time as the evaluation or remediation is completed. La. R.S. 30:29(D) & (F).

Since 1) landowner consent is not explicit in the regulations, 2) the public hearing process is a contradictory process giving the landowner the opportunity to offer a competing plan and/or comments to the responsible party's plan, of cross-examination the responsible party's witnesses, and to put on evidence, and 3) the court has continuing oversight of the entire process after the structuring of the MFP in the public hearing, including conducting a preponderance hearing if necessary, ensuring funding of the plan, and ensuring compliance of the plan right up to the time remediation is completed, there is no basis for landowner consent as a requirement in Act 312 public hearing cases.

The overriding interest in Act 312 is the public interest. *See* La. R.S. 30: 29(A). Requiring landowner consent for a plan in all events, even if the evidence at the public hearing does not support a finding that such a plan (i.e., the plan requiring landowner consent) is the most feasible plan, would, or could, result in the structuring of a plan by LDNR/OC that is not the most feasible from the standpoint of the public interest (i.e., from the standpoint of protection of the environment, public health, safety and welfare).

Finally, should a party feel aggrieved by the Agency's acceptance or development of an MFP and issuance to a reviewing court following court referral pursuant to the agency mandated Act 312 public hearing process, the aggrieved party's legal recourse is and remains with the reviewing court.

APPENDIX A

The seven LDNR/OC Act 312 public hearing cases with issued MFP to date are as follows:

1. **In Re: Tensas Poppadoc, et al v. Chevron (USA), Inc., et al, LDNR/OC Docket No. ENV 2008-L-01**: (Responsible Party—Chevron) (Act 312 public hearing February 9-13 and 16, 2009):

This was the first Act 312 public hearing case. It came shortly after Act 312 was held constitutional in 2008. Numerous defendants, including Chevron, were sued by Tensas Poppadoc in 2006 pursuant to La. R.S. 30:29 alleging soil and groundwater contamination on the Tensas Poppadoc property. The case was tried to a jury in Concordia Parish in 2008. Following the jury trial, the trial court signed an order which sent the matter to LDNR/OC for consideration of a remediation plan submitted by Chevron. The court's order stated that the trial court retained jurisdiction pending approval and completion of an approved remediation. An LDNR/OC three-person panel conducted an Act 312 hearing on February 9-13 and 16, 2009. The Most Feasible Plan adopted by LDNR/OC required further collection of site data before a final remedy could be approved. Plaintiff objected to the Most Feasible Plan and appealed to the trial court in Concordia Parish. The case settled in 2014. Following settlement, Chevron moved forward with implementation of the Most Feasible Plan. The Final Report on the last round of data is due to be submitted to LDNR/OC in January 2019.

2. **In Re: Clyde Reese, et al v. Carl Oil & Gas Co., et al, LDNR/OC Docket No. ENV-2012-L-001**: (Responsible Party—UNOCAL) (Act 312 public hearing March 21, 2012):

The landowners sued Union Oil Company of California (UNOCAL) and other operators in 2006 for alleged damage to approximately 692 acres in Sections 4 and 5, Township 12 South, Range 2 West, Vermilion Parish, West Gueydan Field, arising from oil and gas operations. UNOCAL and/or its predecessor, The Pure Oil Company, operated four wells on approximately 50 acres of the property at issue ("UNOCAL Operational Tract" or "UOT"). UNOCAL filed a limited admission of liability under Act 312, admitting that "environmental damage" existed on the UOT (that portion of the acreage at issue referred to by landowners as the "Benoit Tract"), and praying for an order accepting that admission, ordering UNOCAL to develop an evaluation/remediation plan, and otherwise ordering the post-admission actions required under Act 312. The court signed an order on September 12, 2011 accepting UNOCAL's admission and ordering submission of a plan to LDNR/OC. The UNOCAL plan was submitted to LDNR/OC on November 28, 2011. A public hearing was held before LDNR/OC on March 21, 2012. On May 17, 2012, LDNR/OC submitted the Most Feasible Plan to the trial court. On July 16, 2012, the court issued an order adopting the MFP. Work is ongoing on the Benoit Tract pursuant to the MFP. The underlying litigation is still pending.

3. **In Re: Hazel Richard Savoie, et al v. Alice T. Richard, et al, LDNR/OC Docket No. 2012-L-002** (Responsible Party—Shell) (Act 312 public hearing August 7-10 and 13, 2012):

Shell Oil Company was sued along with subsequent operators in a lawsuit by the landowners, Hazel R. Savoie and family, in state district court in Cameron Parish relating to historical operations in the Kings Bayou Field. After a 2011 jury trial and verdict finding the existence of environmental damage and Shell as a responsible party, a public hearing was held at LDNR/OC from August 7-10 and 13, 2012 to determine the most feasible plan for the site. During the hearing, the landowner presented the LDNR/OC panel with an affidavit attesting to their intended use of the property and refusal to consent to any exceptions to Statewide Order No. 29-B. Following the hearing, in consideration of the landowner's testimony presented during the public hearing, LDNR/OC made modifications to the Shell plan, which LDNR/OC then recommended to the court as the most feasible plan. The landowners filed a motion for a preponderance hearing in the trial court to challenge the plan but withdrew the

motion on the second day of the hearing. The court then adopted the LDNR/OC-recommended plan as the most feasible plan. Shell is currently implementing the plan and continues to work with LDNR/OC on the remediation. In 2015, Shell and the landowners settled ancillary issues, and LDNR/OC issued a letter of no objection.

4. **In Re: Agri-South, LLC, et al v. Exxon Mobil, et al, LDNR/OC Docket No. ENV-2013-L-02** (Responsible Party—Tensas Delta) (Act 312 public hearing August 5-9 and 13-16, 2013):

Tensas Delta Exploration Company and ExxonMobil Corporation were sued along with others in a legacy lawsuit by the landowners, Agri-South Group, LLC; Plug Road, LLC; and King Brothers Land Company, LLC., in state district court in Catahoula Parish. In connection with this litigation, Tensas Delta made a limited admission of responsibility and submitted its remediation plan pursuant to La. CCP art. 1563 and La. R.S. 30:29 on January 25, 2013. Plaintiffs/landowners submitted an alternative remediation plan for LDNR/OC's consideration. LDNR/OC held a public hearing August 5-9 and 13-16, 2013 for the purpose of approving or structuring a final plan. On October 3, 2013, LDNR/OC submitted its most feasible plan to the court as required by La. R.S. 30:29(C)(3)(b)(ii). Following submission of the most feasible plan, the litigation progressed until the parties reached a settlement agreement. A redacted form of the settlement between the parties was submitted to LDNR/OC. LDNR issued a letter of no objection to the proposed settlement dated December 16, 2014.

5. **In Re: Martha Zoe Moore, et al v. Denbury Onshore, LLC, LDNR/OC Docket No. ENV-2015-L-01**: (Responsible Party—Denbury) (Act 312 public hearing August 25-26, 2015):

The Moore family landowners filed suit against Denbury Onshore, LLC over a spill incident in March 2013. Denbury made a limited admission of responsibly pursuant to La. C.C.P. art. 1563 and La. R.S. 30:29 on January 25, 2013. On March 23, 2015, Magistrate Judge Karen Hayes of the federal Western District of Louisiana, Monroe Division, signed the requested order and referred the matter to the LDNR/OC for a public hearing. Remediation plans were submitted by both Denbury and the Moore family. A public hearing was held on August 25-26, 2015 and LDNR/OC issued its Most Feasible Plan which was filed with the federal court in Monroe, Louisiana on October 22, 2015. The *Moore* case settled on the eve of trial in 2016. Part of the settlement involved an agreed to scaling back of the scope of the Most Feasible Plan adopted by the LDNR/OC, and LDNR/OC agreed to the revised plan. The settlement was approved by the court. Denbury is still executing part of the revised plan that involves groundwater monitoring in one well, and a vegetative recovery assessment that will be conducted in mid-2019.

6. **In Re: State of Louisiana and the Vermilion Parish School Board v. The Louisiana Land and Exploration Co., Union Oil Company of California, Union Exploration Partners, Ltd., Carrollton Resources, L.L.C. and Phoenix Oil & Gas Corporation, LDNR/OC Docket No. ENV-L-2016-01** (Responsible Party—UNOCAL) (Act 312 public hearing March 2-4, 7-10, 2016):

This case was filed by the Vermilion Parish School Board against numerous defendants in 2004. In 2010, UNOCAL filed an admission of environmental damage under R.S.30:29. The case was tried to a jury in Vermilion Parish in 2015, with UNOCAL and Chevron as the only remaining defendants. Based upon UNOCAL's admission, the jury found environmental damage and found UNOCAL responsible. After a jury verdict with a remediation plan of $3 million, the court referred the matter to LDNR/OC, where a public hearing was held on March 2-4 and 7-10, 2016 before a LDNR/OC panel. LDNR issued its Most Feasible Plan in July 2016. Plaintiff landowner objected to this plan in so far as it ordered UNOCAL, and not plaintiff, to implement the plan. The Most Feasible Plan was affirmed by the trial court and the court of appeal. UNOCAL is currently in the process of implementing the Most Feasible Plan. A final judgment has been entered in the trial court and various matters

are awaiting appeal, except plaintiff's motion for attorney's fees which is set for hearing beginning December 4, 2018.

7. **In Re: The Sweet Lake Land & Oil Company, LLC v. Oleum Operating Company, LLC, LDNR/OC Legacy Project No. 014-006-001** (Responsible Party—BP) (Act 312 public hearing April 25-28, 2016):

Sweet Lake Land & Oil Company, LLC, filed a petition on March 5, 2010, seeking damages caused by oil and gas operations from BP Products North America, Inc. and other defendants, to property Sweet Lake owned in Section 34, Township 10 South, Range 6 West, in Calcasieu Parish, in the East Bell City Oil and Gas Field. BP predecessors operated 10 wells, including two saltwater disposal wells on the property. By the time of trial, May 11, 2015 through May 27, 2015, the only remaining defendants were BP and Oleum/AKSM. The jury found that BP was responsible for "environmental damage" under Act 312 and estimated the remediation costs to be $1,500,000.00. The trial court referred the matter to LDNR/OC for Act 312 public hearing proceedings. BP and Sweet Lake submitted proposed plans to LDNR/OC. A public hearing was held from April 25-28, 2016. On October 3, 2016 LDNR/OC issued its Most Feasible Plan, essentially agreeing with the soil remediation plan of BP's experts, including soil restoration where proposed, with additional requirements for sampling and delineation. The MFP rejected both parties' experts' groundwater plan and ordered BP to submit a comprehensive groundwater investigation and aquifer characterization work plan. The MFP adopted by LDNR/OC require soil remediation for 29-B salt exceedances to root zone depth and used RECAP to address constituents with no standards in Statewide Order No. 29-B. A hearing in the trial court was held February 15, 2017 on BP's motion to adopt the MFP. The court denied the motion and ordered LDNR/OC to "submit a final plan to the court that includes a remediation plan for all environmental damage to be remediated." The court ordered LDNR/OC to state remediation options based on different outcomes in the further evaluation of shallow groundwater. The court also ordered LDNR/OC to "specify the flowlines on the property and include a remediation plan for flowlines that must be removed." BP sought writs from this ruling, which were denied. On October 26, 2017, LDNR/OC issued a compliance order in response to the court's ruling, which stated that in order to obtain the necessary information pursuant to satisfying the court's directive for additional information pertaining to final remediation of the Sweet Lake property, specific aspects of LDNR/OC's Plan must be completed and reported to the Agency for consideration, all incumbent upon the responsible party, BP, of which the court and all parties were informed with no subsequent response provided to the Agency from any party in opposition or to the contrary. The Agency's application of the law and regulation on the matter of landowner consent and its MFP decision was not an apparent issue before the court. On October 5, 2018 LDNR/OC approved HET's (BP's expert's) January 19, 2018 evaluation plan and work under the plan commenced on November 2, 2018.

FIRST AMENDED
MEMORANDUM OF UNDERSTANDING
BETWEEN
LOUISIANA DEPARTMENT OF NATURAL RESOURCES
OFFICE OF CONSERVATION
AND
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
REGARDING
APPROVAL OF RECAP GROUNDWATER EVALUATION AND REMEDIATION PLANS AT OILFIELD SITES

WHEREAS, the Louisiana Department of Natural Resources (DNR), through its offices and officers, is responsible for the conservation, management, and development of natural resources such as crude oil and natural gas (LSA-R.S. 36:351), and,

WHEREAS, the Louisiana Department of Natural Resources, Office of Conservation (DNR/OC) is authorized by State law and regulations to control the on-site and off-site management and disposal of Exploration and Production Waste (E&P Waste) as defined in LAC 43:XIX.501, and,

WHEREAS, disposal of E&P Waste into the subsurface by means of a disposal well, and all surface and storage waste facilities incidental to oil and gas exploration and production, shall be within the jurisdiction of DNR/OC (LSA-R.S. 30:1 et seq), and,

WHEREAS, "Oilfield site" or "exploration and production (E&P) site," as defined in LSA-R.S. 30:29, means any location or any portion thereof on which oil or gas exploration, development, or production activities have occurred, including wells, equipment, tanks, flow lines or impoundments used for the purposes of the drilling, workover, production, primary separation, disposal, transportation or storage of E&P wastes, crude oil and natural gas processing, transportation or storage of a common production stream of crude oil, natural gas, coal seam natural gas, or geothermal energy prior to a custody transfer or a sales point. In general, this definition would apply to all exploration and production operations located on the same lease, unit or field.

WHEREAS, the Louisiana Department of Environmental Quality (DEQ) was created as the primary agency in the state concerned with environmental protection and regulation (R.S. 30:2011), and,

WHEREAS, statutory law provided DEQ the authority to establish statewide environmental and health risk-based soil and groundwater evaluation and remediation standards and protocol. Such standards and protocol have been promulgated and effective since December 1998 under LAC 33:I.Chapter 13, Risk Evaluation \Corrective Action Program (RECAP), as amended, and,

WHEREAS, in December 2009, DEQ staff met with the Commissioner of Conservation and DNR\OC staff to inform of their agency's plan to reduce the number of staff available to review and approve RECAP plans by reallocating those staff to other assignments within the Department. During the Spring of 2010, DEQ staff confirmed that staff reallocation was complete. DEQ staff further informed

Exhibit B

remaining staff available for RECAP plan review and comment have experienced a significant increase in their respective workloads therefore resulting in an increase in the amount of time needed to complete review and provide comment on RECAP plans submitted to their agency, and,

WHEREAS, DNR/OC has both RECAP plan experience and trained personnel, with the exception of degreed or practicing toxicologists, and the organizational means necessary to adequately review and approve most RECAP plans for site evaluation or remediation situations that fall under its jurisdiction, and,

WHEREAS, it is in the public interest for both agencies to coordinate their resources in order to provide required levels of protection of public health and the environment and to establish definitive duties of each agency to avoid unnecessary inefficiencies and expenses to DNR/OC, DEQ, the regulated community and the citizens of this State.

THEREFORE, the following MEMORANDUM OF UNDERSTANDING (MOU) is hereby adopted to maximize efficient and prudent use of available resources for all matters involving RECAP plans for all site evaluation or remediation activities for any groundwater sources known or suspected to be contaminated with constituents of E&P Waste originating from crude oil and natural gas exploration, development and production operations, including all on-site and off-site treatment, storage, disposal and/or transfer operations, permitted and/or regulated under the jurisdiction of the Louisiana Department of Natural Resources, Office of Conservation, hereafter referred to as Oil and Gas E&P Operations.

1. This amended MOU shall replace and supersede the original MOU dated and made effective September 16, 2010.

2. The Secretary of DEQ and the Commissioner of Conservation hereby declare that this MOU shall apply to use of RECAP procedures for the evaluation or remediation of groundwater conditions to address present and past uncontrolled constituent releases to the environment at exploration and production sites pursuant to compliance with DNR/OC's regulatory requirements of Chapters 3, 4, 5 or 6 of LAC 43:XIX.Subpart 1 (Statewide Order No. 29-B) as an exception to Statewide Order No. 29-B groundwater background concentration requirements as set forth in LAC 43:XIX.303.C for parameters listed under LAC 43:XIX.311.C; or as required by and set forth in LAC 43:XIX.541 or 539.E.2 for parameters listed under LAC 43:XIX.549.E.2; or as required and set forth in LAC 43:XIX.421.A for parameters listed under LAC 43:XIX.311.C. DNR/OC approval of any evaluation or remediation plan and subsequent issuance of a NFA letter (i.e., no further action is deemed necessary at this time) shall satisfy the condition set forth in LAC 43:XIX.319.A, 431.A or 569.A for an exception to the applicable requirements.

3. This MOU shall apply to the evaluation and remediation of groundwater conditions and source soils where: a) the groundwater impact originates from an exploration and production waste (E&P Waste) source, and b) the E&P Waste source impacting groundwater is located onsite or within the permitted boundaries of a commercial facility or transfer station. If either of these conditions does not exist, the matter shall be referred to DEQ. "E&P Waste", "commercial facility" and "transfer station" are defined

under LAC 43:XIX.501 and "onsite" is defined under LAC 43:XIX.301.

4. All site evaluation or remediation plans or final results a) submitted pursuant to RECAP Management Option 3 (MO-3) assessments, or b) addressing air, surface water, water bottoms (sediments) or non-Statewide Order No. 29-B parameters* shall be forwarded to DEQ for review and comment. Only said plans or final results reviewed and reported in writing by DEQ as acceptable shall be approved by the Office of Conservation. All other site evaluation or remediation plans or final results meeting the requirements of RECAP may be approved by the Commissioner or his designee without the written consent of DEQ, unless otherwise determined by the Commissioner that written consent of DEQ is warranted. *Note: Statewide Order 29-B Oil and Grease and TPH parameters shall include all applicable RECAP organic compounds.

5. Upon acceptance of site evaluation or remediation documentation adequately demonstrating compliance with LAC 43:XIX.319.A, 431.A, or 569.A and that no further action will be necessary in accordance with RECAP, DNR/OC shall issue a letter stating "no further action is deemed necessary at this time (NFA)" and shall provide a copy of the NFA letter to DEQ. DEQ shall inform DNR/OC when it desires additional information on a particular site for which DNR/OC has issued an NFA letter. Upon such notification, DNR/OC will provide DEQ with the desired information without any undue delay.

6. This MOU shall not preclude DEQ or DNR/OC from emergency response or interim measures necessary to protect human health and the environment or to prevent significant migration of any parameters listed under the requirements of LAC 43:XIX.Subpart 1, as applicable.

This MEMORANDUM OF UNDERSTANDING is subject to revision upon agreement by both agencies, or cancellation by either agency preceded by 30 day written notification to the other agency by certified mail.

James H. Welsh, Commissioner
Office of Conservation

Date 2/25/11

Peggy Hatch, Secretary
Department of Environmental Quality

Date 2/24/11

25TH JUDICIAL DISTRICT COURT
PARISH OF PLAQUEMINES
STATE OF LOUISIANA

****

HERO LANDS COMPANY, L.L.C.

NO. 64-320

VS.

DIVISION "A"

CHEVRON U.S.A. INC. ET AL

****

VIDEOTAPED 1442 DEPOSITION OF HERO LANDS COMPANY, LLC THROUGH ITS REPRESENTATIVE GEORGE ALFRED HERO, IV

Taken on Thursday, May 28, 2020
At the Law Offices of
FISHMAN HAYGOOD
201 Saint Charles Avenue, Floor 46
New Orleans, Louisiana 70170

REPORTED BY: LORI COBB, CCR, RPR, RSA

****

JUST LEGAL LITIGATION
(225) 291-6595 setdepo@just-legal.net

Q But, sir, to go back to my question. My question was: For the property that's at issue in this litigation, are there any current plans to use the groundwater in the future?

A There are no current plans.

Q Is there any specific plan for use of the property that Hero Lands has had to forego because of the current condition of the property?

A It's currently leased, but at some point the wells will dry up. Say your question again.

Q Sure.

Is there any planned use for the property in the future that Hero Lands has had to forego because of the alleged environmental contamination on the property?

A Planned use. I would hope long term that once these wells dry up that it would become a commercial property, it has road access, it has railroad access, it has riverfront access. I would hope that in the future we would be able to develop it for an industrial site that needs all of those assets.

Q Does -- and this shows you how much I know about real estate. Does industrial real estate give you higher return on investment,

Q The air base next to the property, you mentioned earlier that there is some pending litigation -- or some ongoing or dormant litigation. Does that impact the use of the property that y'all can have relative to its nearness to the air base?

A Not now, but it could in the future.

Q In the way that, basically, you could be limited in using the property even for industrial. Would that be correct?

A Certainly residential. Industrial, part of it is -- and agricultural part of the -- you're talking about the AICUZ issue. I'm not sure that industrial is included in those regulations.

And the regulations aren't final. And, like I said, they're dormant. It was something that was being circulated. And those regulations are not published and not enforced, and -- it's just something that's been discussed.

Q Okay. On the subject site, which was the property defined in the lawsuit, that you've already gone through pretty extensive, is it correct that it is presently being used strictly for oil and gas and industrial operations at this time?

A Oil and gas, very little industrial. The batture is being used for river front activity. I'm not aware of any industrial operations on that -- on that site.

Q Is there any residential on that site?

A I don't think so.

Q How does -- those facilities that are on that site, how do they get their water, the water that they use? Do you know where it comes from?

A I don't know where it comes from.

Q Is there some type of municipal or available water system for that area?

A The Parish has a waterline that goes down Highway 23. It's possible that they're getting water from that.

Q But you're not aware of those facilities, or the people who occupy -- or industries that occupy that property using any of the groundwater on that property?

A I'm not aware if they're using groundwater or if they're using river water, or Parish water.

Q Okay. Now, I think I got this clear. Alfred Rufty is a member of the board of directors of Hero Lands, but he's not a member of Hero Lands?

REPORTER'S CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, Lori Cobb, Certified Court Reporter in and for the State of Louisiana, (CCR #87248), Registered Professional Reporter (RPR #815782), do hereby certify that on Thursday, May 28, 2020, the VIDEOTAPED 1442 DEPOSITION OF HERO LANDS COMPANY, LLC THROUGH ITS REPRESENTATIVE GEORGE ALFRED HERO, IV was reported by me in stenographic shorthand, prepared and transcribed under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that after having been duly sworn by me upon authority of R.S. 37:2554, the named witness did testify as hereinbefore set forth in the foregoing 452 pages; and that the transcript has been prepared in compliance with transcript format guidelines required by statute or by Rules of the Board;

That I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition

services and I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in Rules and Advisory Opinions of the Board; and that I have no actual knowledge of any prohibited employment or contractual relationship, direct or indirect, between a court reporting firm and any party litigant in this matter, nor is there any such relationship between myself and a party litigant in this matter;

That I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

SIGNED THIS THE 8TH DAY OF JUNE, 2020.

LORI COBB, CCR, RPR, RSA

25TH JUDICIAL DISTRICT COURT
PARISH OF PLAQUEMINES
STATE OF LOUISIANA

****

HERO LANDS COMPANY, L.L.C.

NO. 64-320

VS.

DIVISION "A"

CHEVRON U.S.A. INC. ET AL

****

VIDEOTAPE/ZOOM DEPOSITION OF JASON SILLS, EIT

Taken on Thursday, October 15, 2020
At the Law Offices of
KEAN MILLER
400 Convention Street, Suite 700
Baton Rouge, Louisiana 70802

REPORTED BY: LORI COBB, CCR, RPR, RSA

****

JUST LEGAL LITIGATION
(225) 291-6595
setdepo@just-legal.net

Exhibit D

who created those map figures; correct?

A Yes.

Q And if it's a groundwater figure, that's Greg?

A That's Greg.

Q Okay.

A And then all the historical aerials, and things like that, probably would have been inputted by me, but the location of the wells, pits, and everything like that, would have been an effort between the both of us.

Q All right. So with respect to the soil. Let's start with the soil, soil delineation. It's my understanding that with respect to remediating the soil, the constituents you're focusing on are arsenic, true total barium, oil and grease, chlorides and sodium under 29-B Standards?

A Yes.

Q With respect to soil, again, you're remediating TPH-D, TPH-O and barium to RECAP Standards?

A That's correct. RECAP MO-1 standards.

Q RECAP MO-1.

A Yes.

Q So we're not remediating soil to

A Around BC8, yes.
Q Around BC8.
As you sit here today, Mr. Sills, do you know what that number is?
A Ballpark, I think it was around $200,000, somewhere in that area, of losing that 50 feet. 150 to 200,000.
Q Okay.
Just to make sure I'm clear, with respect to the remedial goals, we're not remediating to original condition either; correct, the original condition of the soil on the property?
A No. Our goal here was just to meet 29-B.
Q It's a regulatory standard --
A Right.
Q -- it's strictly a regulatory cleanup?
A That's correct.
Q So with respect to your use of RECAP on the soil, that's for barium, TPH-D and TPH-O; correct?
A That's correct.
Q And I believe you said that you did an MO-1 for those standards; correct, under RECAP?
A That's correct.
Q With respect to the MO-1 standard under

REPORTER'S PAGE

I, LORI COBB, Certified Court Reporter in and for the State of Louisiana, (CCR #87248), Registered Professional Reporter (RPR #815782), as defined in Rule 28 of the Federal Rules of Civil Procedure and/or Article 1434(B) of the Louisiana Code of Civil Procedure, do hereby state on the Record:

That due to the interaction in the spontaneous discourse of this proceeding, dashes (--) have been used to indicate pauses, changes in thought, and/or talkovers; that same is the proper method for a transcription of proceedings, and that the dashes (--) do not indicate that words or phrases have been left out of this transcript;

That any spelling of words and/or names which could not be verified through reference material have been denoted with the parenthetical "(phonetic)";

That the parenthetical "(sic)" is used to denote when a witness/attorney stated a word or phrase that appears odd or erroneous to show that it was quoted exactly as it stands.

LORI COBB, CCR, RPR, RSA

prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in Rules and Advisory Opinions of the Board; and that I have no actual knowledge of any prohibited employment or contractual relationship, direct or indirect, between a court reporting firm and any party litigant in this matter, nor is there any such relationship between myself and a party litigant in this matter;

That I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

SIGNED THIS THE 30TH DAY OF OCTOBER, 2020.

LORI COBB, CCR, RPR, RSA