

STATE OF LOUISIANA
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE SECRETARY

In re: Writ of Mandamus issued by 19th JDC in the matter entitled *Devon Energy Production Company, L.P. vs. Louisiana Department of Natural Resources, et al.*, No. 699,354, Div. 25 (19th Judicial District Court, Parish of East Baton Rouge), regarding Requests by Devon Energy Production Company, L.P. for Declaratory Relief or, in the Alternative, Requests for Compliance Schedules

Docket No. DNR OoS 22-01

DECLARATORY ORDER

This declaratory order is issued in response to the judgment granting the writ of mandamus in *Devon Energy Production Company, L.P. c. Louisiana Department of Natural Resources, et al.*, No. 699,354, Sec. 25 (19th Judicial District Court, Parish of East Baton Rouge).¹

Through its predecessors, Pennzoil Exploration and Production Company, Pennzoil Producing Company, Pennzenergy Exploration and Production, Watson Oil Corporation, MCOR Oil Development, Inc., Flores & Rucks, Inc., and Ocean Energy, Inc. as well as in its own name, Devon Energy Production Company, LP, (“Devon”), drilled and operated oil and gas wells in the Mallard Bay, Crab Lake, and Deep Lake fields in Cameron Parish. These operations were ongoing when the regulations pursuant to the State and Local Coastal Resources Management Act (“SLCRMA”) became effective in 1980, and all of these fields are within the coastal zone covered by SLCRMA. At least some of these activities were determined by DNR not to require coastal use permits due to either qualifying as lawfully commenced prior to the effective date of SLCRMA regulations or due to there being no direct and significant impact on coastal waters.

In February of 2016, Cameron Parish filed eleven lawsuits in the 38th Judicial District Court against current and former oil and gas exploration and production operators in specific fields in Cameron Parish that had suffered extensive land loss. Each suit encompassed all the operators in a specific geographical area, and all of their operations in that geographical area. *Parish of Cameron v. Alpine Exploration Companies, Inc., et al.*, No. 10-19580 (38th Judicial District Court, Parish of Cameron), encompassed the Mallard Bay field.² *Parish of Cameron v. Anadarko E & P*

¹ This order was scheduled to be released on December 14, 2022, but it was delayed by the closure of state offices due to inclement weather.

² There were thirty-eight defendants in this case: Alpine Exploration Companies, Inc.; Apache Oil Corporation; Atlantic Richfield Company; BEPCO, L.P.; BOPCO, L.P.; BP America Production Company; Cedyco Corporation; Chevron U.S.A. Holdings Inc.; Chevron U.S.A. Inc.; ConocoPhillips Company; Crimson Exploration Operating, Inc.; Cypress E&P Corporation; Davis Oil Company; Davis Petroleum Corporation; Denbury Onshore, LLC; Devon Energy Production Company, L.P.; Energen Resources Corporation; Exxon Mobil Corporation; Hess Corporation;

Onshore, LLC, et al., No. 10-19578 (38th Judicial District Court, Parish of Cameron), concerned the Crab Lake field.³ *Parish of Cameron v. Burlington Resources Oil & Gas Co. LP, et al.*, No. 10-19575 (38th Judicial District Court, Parish of Cameron), covered the Deep Lake Field.⁴ In each of the lawsuits, Cameron Parish alleged violations of SLCRMA by the operators in the respective fields. Cameron Parish brought suit pursuant to SLCRMA's enforcement provision, La. R.S. 49:214.36, as it was allowed to do as a Parish with an approved coastal resources management program.

Both the Attorney General and I, as secretary of the DNR, intervened in these cases on the side of Cameron Parish. I chose to do so because it was more efficient than instituting potentially thousands of administrative actions for enforcement in these cases.

The defendants, including Devon, removed the cases to the Western District of Louisiana. The parish, the Attorney General, and I filed motions for remand. After extensive delays, the motions to remand were granted in 2018, and all eleven cases, including the three that are pertinent here, were remanded to state court in Cameron Parish.

In a matter of weeks, the defendants removed the cases for a second time, again with Devon's consent. In the second removal, the defendants contended that, because some of the operations in some of the cases occurred during World War II, they were acting as "federal officers" entitling them to federal jurisdiction pursuant to 28 U.S.C. § 1442(a)(1). This basis for removal was asserted in all the cases that were pending anywhere in the state, even with respect to activities that did not commence until after World War II. One case was chosen in each federal district for determination of the propriety of the removals; all the other cases, including the three at issue here, were stayed at the defendants' requests during the pendency of the appeals of the remand decisions. The Eastern and Western District cases were consolidated by the U.S. Fifth Circuit, and after several hearings, the Fifth Circuit partially affirmed the remand orders of both

Hunt Oil Company; Linder Oil Company, a Partnership; LOPCO, Inc.; Mar-Low Corporation; McCormick Operating Company; Mobil Oil Exploration & Producing Southeast Inc.; Sable Minerals, Inc.; Shoreline Southeast LLC; The Texas Company; Toce Energy, L.L.C.; Total Petrochemicals & Refining USA, Inc.; Wagner Oil Company; and Williams Exploration Company.

³There were fifteen defendants in this case: Anadarko E&P Onshore, LLC; Anderson Exploration Company, Incorporated; Centurion Exploration Company, LLC; Chevron U.S.A. Inc.; ConocoPhillips Company; Davis Oil Company; Devon Energy Production Company, L.P.; Dominion Oklahoma Texas Exploration & Production, Inc.; Exxon Mobil Corporation; Freeport-McMoran Oil & Gas LLC; Hilliard Petroleum Inc.; Linder Oil Company, a Partnership; Mosaic Global Holdings, Inc.; The Louisiana Land and Exploration Company, LLC; and Vintage Petroleum LLC.

⁴There were fourteen defendants in this case: Burlington Resources Oil & Gas Company LP; Chevron U.S.A. Inc.; Devon Energy Production Company, L.P.; Exxon Mobil Corporation; Henry Production Company, Inc.; Hess Corporation; Hilcorp Energy Company; Merit Energy Company, LLC; Mobil Oil Exploration & Producing Southeast Inc.; Palace Operating Company; Petroquest Energy, L.L.C.; The Meridian Resource & Exploration LLC; Walter Oil & Gas Corporation; and Zenergy, Inc.

lower courts and remanded the cases to the district courts for further reconsideration. *Parish of Plaquemines v. Chevron USA, Inc.*, 7 F.4th 362 (5th Cir. 2021). This reconsideration resulted in yet another order of remand to state court. The defendants appealed again, and the Fifth Circuit recently affirmed the remand decision. *Plaquemines Parish v. Chevron USA, Inc.*, No. 22-30055, 2022 WL 9914869 (Fifth Circuit Oct. 17, 2022). The court of appeals has recently denied applications for rehearing and rehearing en banc.

During the pendency of the lawsuits, Devon sent a series of three letters, one on each of the fields, to me. The first, dated July 30, 2019, concerned the operations in the Mallard Bay field, and it asked me to certify that its operations were either exempt from permitting requirements, that it complied with applicable permits, or that I state with specificity the SLCRMA violations Devon was responsible for and a compliance schedule setting forth what Devon needed to do to become compliant. The second, dated November 13, 2019, made essentially the same requests with respect to the Crab Lake field. The third, dated January 14, 2020, made the same requests as to the Deep Lake field. Because of the litigation then pending in federal court concerning these identical issues, I did not respond to these letters.

Devon then brought the above-referenced suit against the DNR and me, seeking to compel a response to its requests. I responded by filing an exception of *lis pendens*, citing the pending lawsuits. The district court granted the exception, and Devon sought writs. The First Circuit Court of Appeal granted the writ and reversed the district court's judgment, holding, "The Louisiana Department of Natural Resources did not meet its burden of proving its entitlement to the relief sought in that the two actions do not arise from the same transaction or occurrence." *Devon Energy Production Company, L.P. v. Louisiana Dep't of Natural Resources, et al.*, 2020-CW-0992 (La. App. 1 Cir. 12/30/20).

Thereafter, the district court denied my exception of no cause of action. The court also denied Devon's motion for summary judgment, but Devon again sought writs, and the First Circuit again granted the writ and reversed the denial of summary judgment, ordering the district court to hold a show cause hearing. That hearing was held, and the district court granted Devon's request for mandamus. This order is issued in response to that judgment.

Following the judgment, DNR held a public hearing in Cameron Parish on November 14, 2022, and further announced that it would accept additional public comment through November 18. Devon appeared at the hearing and introduced voluminous records of its and its predecessors' operations in each of the three fields. After the hearing, Devon submitted supplemental information, including three reports from a professional petroleum engineer and records from DNR concerning its and others' CUP applications in various areas, including other parishes. In addition, Cameron Parish submitted comments and records. Cameron Parish reiterated its allegations, and it produced aerial photographs purporting to show the areas both before and after Devon's activities commenced, land loss that has occurred in the area, and the location of Devon's wells in the area. Cameron asserted that the requests in Devon's letters encompassed issues that are within the scope of the lawsuits it has filed, that Devon is responsible for the loss, and that Devon is solidarily liable with the other defendants in the lawsuits.

In light of the First Circuit’s ruling that DNR had not shown that the activities at issue in the mandamus request were the same as those at issue in the pending lawsuits, I had the hearing officer, James Devitt, ask Devon’s counsel: “Do you or your client have any information that indicates that the transactions and occurrences for which you are seeking declaratory orders are different than those at issue in the three lawsuits against Devon in which the Secretary has intervened?” Devon’s counsel declined to answer this question. Instead, he responded, “Devon believes the question asked is not relevant to the matter before the Secretary.”

With all due respect to Devon and its counsel, I disagree with that conclusion. Whether the activities constitute the same transactions and occurrences as those at issue in the lawsuits are not only relevant to the now-moot *lis pendens* issue, but also to the *res judicata* effect of any determination I make in this order. I think it is clear that since both the letter requests and the allegations in the lawsuits encompass the entirety of Devon’s actions in the three geographical areas at issue, they necessarily encompass the same transactions or occurrences. And if that is the case, I would expect Devon to raise the defense of *res judicata* to the lawsuits should I issue an order in its favor here.

By professional training and experience, I am a toxicologist; I am not a coastal scientist, geologist, or engineer. Devon’s records submitted are quite extensive, and they address some, but not all, of the issues raised by the apparent land loss depicted in the aerial photographs, with the operational areas surrounded by healthy marsh. Further, there are little or no records of the activities of the other operators who worked in the respective fields, making it impossible to allocate any responsibility among the various potentially responsible parties. Finally, I have nothing upon which to base any remediation or restoration order, as I do not know the best or most effective method of fixing the damage that was apparently done. It is very significant to me that all of these issues are susceptible to resolution in the pending lawsuits.

In light of the above, my duty as secretary of DNR, and the judgment’s requirement that I issue declaratory rulings or, in the alternative, compliance schedules sought by Devon in its three requests, I hereby declare that I cannot exonerate Devon from responsibility or quantify its relative responsibility, if any, and I cannot determine effective compliance schedules, and that I am therefore declaring that I intend to seek resolution of these issues in the pending judicial enforcement proceedings.

Baton Rouge, Louisiana, this 15th day of December, 2022.



THOMAS F. HARRIS
SECRETARY, DEPARTMENT OF NATURAL RESOURCES