

SIXTEENTH JUDICIAL DISTRICT COURT
ST. MARY PARISH
STATE OF LOUISIANA

DOCKET NO. 135219

DIVISION "F"

SECTION _____

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF WILDLIFE AND FISHERIES AND
THE DEPARTMENT OF NATURAL RESOURCES

v.

CLOVELLY OIL COMPANY, LLC

PETITION

Introduction

1.

The matter addresses, and seeks compensation for, violations of coastal use permits, destruction of the West Cote Blanche Bay Public Oyster Seed Ground, and the outstanding debt owed to the State of Louisiana under Clovelly Oil Company, LLC's coastal use permits numbered P20031354, P20040515, P20070443, P20070759, P20070832, and P20071316 ("the Clovelly CUPs").

Parties

The Plaintiffs

2.

The plaintiffs are the State of Louisiana, through the Department of Natural Resources ("LDNR"), and the State of Louisiana, through the Louisiana Department of Wildlife and Fisheries ("LDWF").

3.

The LDNR is delegated the authority, under La. R.S. 49:214.36(D), to "bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the coastal zone...which are not in accordance with the terms and conditions of a coastal use permit."

4.

The LDWF is delegated the duty to regulate and protect the oyster resources of the State of Louisiana. La. R.S. 56:434-434.1.

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5.

These resources include, but are not limited to, public oyster seed grounds and the Public Oyster Seed Ground Development Account. La. R.S. 56:434-434.1.

6.

The Plaintiffs are the proper parties to bring this suit under La. R.S. 49:214.36 and La. R.S. 56:434-434.1.

The Defendant

7.

The defendant is Clovelly Oil Company, LLC (“Clovelly”).

8.

Clovelly is a limited liability company organized and existing under the laws of the State of Delaware authorized to and doing business in Louisiana. Clovelly’s principal business office in Louisiana is in Jefferson Parish, and its registered office in Louisiana is in Orleans Parish.

9.

Clovelly may be served with process upon its registered agent, M. Taylor Darden, Esq., Carver Darden, LLC. 1100 Poydras St., Ste. 3100, New Orleans, Louisiana 70163.

Jurisdiction

10.

This Court has jurisdiction over this lawsuit under La. R.S. 49:214.36 and La. R.S. 56:45.

Venue

11.

Venue is proper in St. Mary Parish under La. R.S. 49:214.36 and La. R.S. 56:47.

Legal Background

Public Oyster Seed Grounds

12.

The LDWF regulates and protects public oyster seed grounds on State-owned water bottoms. La. R.S. 56:434.

13.

The LDWF regulates and protects oyster, fish, plant, wildlife, and related ecosystem resources on State-owned water bottoms.

14.

The LDWF administers the Public Oyster Seed Ground Development Account, into which any funds paid to compensate the State of Louisiana for damage to public oyster seed grounds are to be deposited. La. R.S. 56:434.1.

Coastal Use Permits

15.

The Coastal Resources Management Act of 1978, as amended, states that it is the public policy of the state “[t]o protect, develop, and where feasible, restore or enhance the resources of the state’s coastal zone.” La. R.S. 49:214.22(1).

16.

Louisiana’s “Coastal Zone” is defined in La R.S. 49:214.24, and includes “the coastal waters and adjacent shore lands within the boundaries of the coastal zones”

17.

The term “coastal waters” includes “bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).” La. R.S. 49:214.23(4).

18.

Under the Coastal Resources Management Act, the State of Louisiana, through LDNR, regulates certain “uses” within the Coastal Zone.

19.

La. R.S. 49:214.30(A)(1) states that “[n]o person shall commence a use of state or local concern without first applying for and receiving a coastal use permit.”

20.

The term “use” is defined at La. R.S. 49:214.23(13) as “any use or activity within the coastal zone which has a direct and significant impact on coastal waters.”

21.

“Uses of state concern” are defined, in pertinent part, as:

Those uses which directly and significantly affect coastal waters and which are in need of coastal management and which have impacts of greater than local significance or which significantly affect interests of regional, state, or national concern. Use of state concern shall include, but not be limited to:

(a) Any dredge or fill activity which intersects with more than one water body.

(b) Projects involving use of state owned lands or water bottoms

* * *

(f) All mineral activities, including exploration for, and production of oil, gas, and other minerals, all dredge and fill uses associated therewith, and all other associated uses.

(g) All pipelines for the gathering, transportation or transmission of oil, gas and other minerals.

La. R.S. 49:214.25(A)(1).

LDWF's Civil Enforcement Authority

22.

Civil and criminal enforcement of laws and regulations for the unlawful damaging of oysters, public oyster beds, and public oyster seed grounds is within the authority of the LDWF.

La. R.S. 36:602; La. R.S. 56:40.1-40.4, La. R.S. 56:45-69, and La. R.S. 56:31-39.

23.

The LDWF may sue persons who damage public oyster seed grounds. *State, Dep't of Wildlife & Fisheries v. Gulfport Energy Corp.*, 2012-356, p. 1 (La.App. 3 Cir. 11/7/12); 125 So.3d 468, 469.

24.

Further, “[n]o license for any purpose whatsoever shall be issued to [a defendant cast in judgment] by the commission or by any commission or office required to enforce the laws protecting natural resources, until such judgment is satisfied.” La. R.S. 56:67.

LDNR's Civil Enforcement Authority

25.

Enforcement of the Coastal Resources Management Act is within the authority of the Attorney General and the LDNR. La. R.S. 49:214.36(D).

26.

The LDNR is empowered to bring declaratory, civil damages, or other actions as are necessary to ensure that no uses of state concern “are made of the coastal zone for which a coastal use permit has not been issued when required or which are not in accordance with the terms and conditions of a coastal use permit.” La. R.S. 49:214.36(D).

27.

In such an action, this Court may impose civil liability, assess damages, order restoration costs or actual restoration of areas disturbed, grant other reasonable and proper sanctions or relief, and award costs and reasonable attorney’s fees to the prevailing party. La. R.S. 49:214.36(E).

Material Facts

28.

Clovelly has been in the past and, upon information and belief, currently is, engaged in oil and gas exploration and production activities in West Cote Blanche Bay, St. Mary Parish, Louisiana.

29.

Clovelly applied for and obtained the following coastal use permits from LDNR: P20031354, P20040515, P20070443, P20070759, P20070832, and P20071316.

30.

Each of the Clovelly CUPs included the following or similar language: “Applicant shall be liable for, and shall compensate the state for, any damages to the oyster seed grounds caused by Applicant or Applicant’s contractors during any work done under this permit.”

31.

The “Operational Areas” defined in each permit at issue are located in West Cote Blanche Bay in St. Mary Parish, Louisiana.

32.

The Operational Areas are within the Coastal Zone.

33.

The Clovelly CUPs included notice regarding the mitigation requirements for oyster impacts in the Operational Areas.

34.

Mitigation and restoration requirements are based upon a pre-project assessment of the Operational Areas.

35.

This assessment determines what type of water bottom is located in the Operational Areas.

36.

The types of the water bottoms described in the pre-project assessment are then used by the LDNR, LDWF, and permittee (here, Clovelly) to determine the amount of oyster production in the Operational Areas that may be affected by the project.

37.

Prior to commencement of work under the Clovelly CUPs, Clovelly's agents submitted a pre-project assessment regarding the water bottom for the Operational Area of each permit.

38.

Each assessment showed productive oyster seed grounds in the Operational Areas' water bottoms.

39.

Clovelly has not challenged or materially amended its assessments for the Clovelly CUPs.

40.

Clovelly commenced activities associated with its oil and gas exploration and production operations in West Cote Blanche Bay under each permit.

41.

Clovelly submitted as-built drawings to the LDNR after completing work under each permit at issue.

42.

LDWF used Clovelly's pre-project assessments and Clovelly's as-built drawings to calculate the amount of damage to the West Cote Blanche Bay Public Oyster Seed Ground.

43.

Clovelly's activities in West Cote Blanche Bay, resulted in damage to, adverse effects to, and/or degradation of the public oyster seed grounds.

44.

Under both Louisiana delict law and Clovelly's CUPs, Clovelly is liable to the State of Louisiana for the damage to oyster seed grounds resulting from its activities, or the activities of those working for Clovelly.

45.

The Clovelly CUPs allow Clovelly to repair the damaged oyster seed grounds by planting cultch or to take other actions according to a set procedure described in the permits and their accompanying materials.

46.

In lieu of planting cultch material, Clovelly may make payment directly to the Public Oyster Seed Ground Development Account in an amount determined by the LDWF according to a standard formula.

47.

Clovelly has not communicated to LDWF any inclination to repair the damage it caused to the public oyster seed grounds under the Clovelly CUPs.

47.

Clovelly has otherwise refused to accept responsibility for the damage it has caused to the public oyster seed grounds under the Clovelly CUPs.

48.

LDWF sent invoices for oyster seed grounds damages caused by Clovelly.

49.

Despite repeated demand, Clovelly has not made any payment to the LDNR or LDWF under any of the invoices sent by LDWF.

Claims

Enforcement of the Terms of Clovelly's Coastal Use Permits

50.

Clovelly must repair the damage caused to the West Cote Blanche Bay Public Oyster Seed Grounds under the terms of Clovelly's Coastal Use Permits: P20031354, P20040515, P20070443, P20070759, P20070832, and P20071316 owes compensation to the State of Louisiana for the

repair and/or damage to the West Cote Blanche Bay Public Oyster Seed Grounds, under the terms of the Clovelly CUPs.

52.

Clovelly owes interest for the willful late payment of this compensation to the State of Louisiana, to the extent allowed under the law.

Damage to Public Oyster Seed Grounds and Other Natural Resources

53.

Clovelly undertook the activities described in its applications and as-built documents, which Clovelly submitted to LDNR in connection with the Clovelly CUPs.

54.

Clovelly's activities damaged the State-owned water bottoms, public oyster seed grounds, and other State natural resources, as evidenced by Clovelly's pre-project assessments and Clovelly's as-built documents associated with those permits.

55.

Clovelly owes compensation to the State of Louisiana for intentionally or negligently damaging the State's public oyster seed grounds, benthic habitat, aquatic ecosystems, State-owned water bottoms, live oysters, or other natural resources. La. R.S. 36:602; La. R.S. 56:40.1-40.4, and La. R.S. 56:45-69.

Prayer for Relief

56.

Wherefore, the State of Louisiana, through the LDWF and the LDNR, prays for Judgement in favor of LDNR and LDWF and against the Defendant, Clovelly Oil Co., LLC., and seeks:

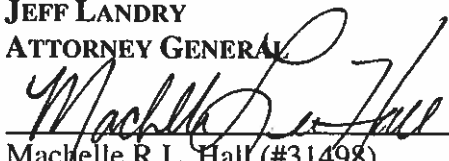
- A. A monetary judgment to compensate the State of Louisiana for damages to its public oyster seed grounds or other natural resources, or, in the alternative, an injunction ordering Clovelly to restore the State of Louisiana's public oyster seed grounds in a manner satisfactory to the LDWF;
- B. A monetary judgment to compensate the State of Louisiana for diminution of the value of natural resources, loss of use of natural resources, remediation expenses, restoration costs, loss of production, the costs of surveys and related expenses, as well as pre-

- judgement interest from the date of the earliest activity conducted by Clovelly under the coastal use permits issued to it, and all general and equitable relief that may be deemed just and proper under the circumstances;
- C. A monetary judgment to compensate LDWF for all expenses associated with investigative efforts, surveys and/or calculations to determine the cause, nature, and extent of the damages caused by Clovelly;
 - D. Penalties and fines as authorized under law;
 - E. Interest from the time of damage or time of demand until the time of payment as authorized under law;
 - F. Reasonable attorneys' fees and costs authorized under law;
 - G. A declaratory order that Clovelly is violating its Coastal Use Permits by failing to compensate the State for the damage it caused to public oyster seed grounds in St. Mary Parish;
 - H. An order, pursuant to La. R.S. 56:67, that "No license or permit for any purpose whatsoever shall be issued to Clovelly by any office required to enforce the laws protecting natural resources, until [any judgment signed] in this matter is satisfied."
 - I. Any other declaratory, injunctive, or monetary relief authorized under law;
 - J. Any other equitable relief this Court may deem fit in order to effect justice.

Respectfully Submitted,

JEFF LANDRY
ATTORNEY GENERAL

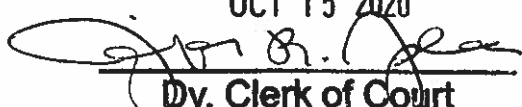
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*Counsel for State of Louisiana, through the
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Please Serve:

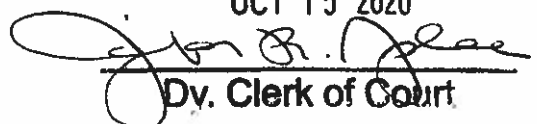
Clovelly Oil Co., LLC,
through its registered agent:

M. Taylor Darden
Carver Darden, LLC
1100 Poydras St. STE. 3100,
New Orleans, La 70163

NOTE: Mr. Darden must be served personally. Thank you.

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