

34TH JUDICIAL DISTRICT COURT
PARISH OF ST. BERNARD
STATE OF LOUISIANA

HEALTHY GULF AND SIERRA CLUB

NUMBER _____

VERSUS

DIV. “___”

SECRETARY, LOUISIANA
DEPARTMENT OF NATURAL
RESOURCES

PETITION FOR JUDICIAL REVIEW

1. The Louisiana Department of Natural Resources’ Office of Coastal Management (“DNR”) erred as a matter of law when it failed to consider or apply requisite Coastal Use Guidelines¹ and failed to discharge its constitutional duty as a public trustee to protect St. Bernard Parish or its people when it granted Tennessee Gas Pipeline Company, LLC (the “Company”) a Coastal Use Permit to construct a methane pipeline and compressor station system from Yscloskey to Toca in St. Bernard Parish, that would feed a colossal liquefaction and export facility in Plaquemines Parish.

2. Louisiana’s Coastal Resources Management Act and its regulations, the “Coastal Use Guidelines,” mandate DNR to consider and avoid to the maximum extent practicable a proposed project’s adverse “cumulative impacts,”² to avoid project sites that pose “flood and storm hazards” or otherwise “endanger” public safety,³ and to require “effective” plans for protecting people and the environmental in the case of accident or emergency,⁴ among other things. DNR, however, failed to comply with these mandates when it: *I*) did not consider the

¹ The “Coastal Use Guidelines” are regulations that implement Louisiana’s State and Local Coastal Resources Management Act (La. R.S. § 49:214.21, *et seq.*) and constitute Subchapter B of Louisiana Administrative Code Title 43, Part 1, Chapter 7 on Natural Resources, Coastal Management. 43 La. Admin. Code Pt. I, §§ 701 – 719.

² *See* 43 La. Admin. Code Pt. I, § 701.F.15 (permitting authority “shall ...in evaluating whether the proposed use is in compliance with the guidelines,” use information including “likelihood of, and extent of impacts of, resulting secondary impacts and cumulative impacts”); *id.* at § 701.G.10 (all uses should avoid “adverse effects of cumulative impacts”).

³ 43 La. Admin. Code Pt. I, § 711.A.2 (instructing that industrial and other uses should take place only where “lands ... have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety would not be unreasonably endangered”).

⁴ *See* 43 La. Admin. Code Pt. I, § 719.K (“Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.”).

cumulative impacts that the project will have on St. Bernard Parish and the Louisiana Coastal Zone—not from the project’s destruction of more than 300 acres of wetlands that would protect St. Bernard Parish from storm surges and flooding and not from the project’s cumulative emissions and related increases in storm severity and sea level rise; 2) did not meet its obligation to require “effective environmental protection and emergency or contingency plans” for St. Bernard Parish and other affected areas in the event of explosions or other methane pipeline accidents and, instead, punted that obligation to some potential future state or federal agency action(s); and 3) improperly deemed the gas pipeline and compressor station project “neither industrial or commercial,” and withheld the warranted protections for St. Bernard Parish’s people against siting a project in areas vulnerable to flooding, storm, and other public safety hazards.

3. These legal errors under Louisiana’s Coastal Resources Management Act and its regulations also constitute failures to meet DNR’s separate public trustee obligations under Louisiana Constitution Article XI section 1 to give full and careful consideration to environmental costs, among other things, and to protect against the harm the activity would bring to the health, safety, and welfare of the people of St. Bernard Parish and Louisiana. DNR’s failure to meet the legal requirements for permitting any project—let alone one whose impacts so threaten St. Bernard Parish and the Louisiana Coastal Zone—was arbitrary and capricious, in violation of the constitutional and statutory provisions, and made on improper procedure, and its decision must be vacated.

PARTIES

4. Petitioner Healthy Gulf is a non-profit organization based in New Orleans, Louisiana whose mission is to collaborate with and serve communities who love the Gulf of Mexico by providing the research, communications, and coalition-building tools needed to reverse the long pattern of over exploitation of the Gulf’s natural resources. Healthy Gulf fights for people of Gulf communities to live and work in Louisiana free from the sights, sounds, and dangers of industry. Healthy Gulf also fights for the ability for everyone to benefit from the use and enjoyment of the wetlands, waters, and coastal areas in the Gulf. Healthy Gulf’s members include citizens who live, work, or recreate in St. Bernard Parish, Plaquemines Parish, and throughout Louisiana’s Gulf Coast, *i.e.* areas affected by DNR’s decision on the Project coastal use permit application (P20200134) to construct and operate a methane gas pipeline system.

5. Petitioner Sierra Club is a non-profit organization whose mission is to explore, enjoy and protect the wild and beautiful places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist people to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club has thousands of members in Louisiana, including citizens who live, work, or recreate in St. Bernard Parish, Plaquemines Parish, and throughout Louisiana's Gulf Coast. Members of Sierra Club live, work, or recreate in the area affected by DNR's decision on the Company's coastal use permit application (P20200134) to construct and operate a methane gas pipeline system.

6. The Louisiana Department of Natural Resources is an agency of the state of Louisiana. DNR, through its Secretary, took the final action approving Coastal Use Permit application P20200134 and authorizing the Company's Evangeline Pass Project methane pipeline and compressor station activities, and can be sued pursuant to the provisions of La. R.S. § 36:351(A).

7. Healthy Gulf and Sierra Club (the "Petitioners") are adversely affected parties with a real and actual interest in DNR's Coastal Use Permit decision authorizing the Company to construct and operate a methane pipeline system in St. Bernard and Plaquemines Parishes and the Louisiana Coastal Zone.

8. Healthy Gulf and Sierra Club are aggrieved persons who may appeal DNR's decision pursuant to La. R.S. § 49:214.30(D).

JURISDICTION AND VENUE

9. Jurisdiction is proper in this Court, and Petitioners have a right to bring this judicial review action pursuant to La. R.S. § 49:214.35(D) and (E).

10. Venue is proper in this Court pursuant to La. R.S. § 49:214.35(E), which provides: "Proceedings for review may be instituted by filing a petition in the district court of the parish in which the proposed use is to be situated" DNR authorized construction and operation of Evangeline Pass Expansion Project methane gas pipeline system in St. Bernard Parish and Plaquemines Parish. The majority of the Project is in St. Bernard Parish.

11. This petition is timely filed pursuant to La. R.S. § 49:214.35(E), which requires filing a petition “within thirty days after mailing of notice of the final decision by the secretary or, if a reconsideration is requested, within thirty days after the decision thereon.”

APPLICABLE LAWS

Review Standard

12. “[J]udicial review of actions of the secretary under [the Louisiana Coastal Zone Management Program], including coastal use permit ... approval ... and determinations of direct and significant impact” ... shall be “pursuant to the Louisiana Administrative Procedure Act, provided that all such cases shall be tried with preference and priority. Trial de novo shall be held on request of any party.” La. R.S. § 49:214.35(A) & (F).

13. The Louisiana Administrative Procedure Act provides: “The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) In excess of the statutory authority of the agency; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court.” La. R.S. § 49:978.1(G).

Environmental Laws and Regulations

14. “The coastal use permit decision must be consistent with the state program and approved local programs for affected parishes and must represent an appropriate balancing of social, environmental and economic factors.” La. R.S. § 49:214.30(C)(3).

15. Coastal use permit decisions are subject to the Coastal Use Guidelines and other provisions contained in Louisiana Administrative Code Title 43, Part I, Chapter 7.

16. “The guidelines must be read in their entirety. Any proposed use may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied with.” 43 La. Admin. Code Pt. I, § 701(A).

Public Trustee Duty

17. Under the Louisiana Constitution, Article IX, Section 1: “The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the

environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” La. Const. Art. 9, §1.

18. Before “granting approval of proposed action affecting the environment,” DNR must meet its mandate as “public trustee” under Article IX, Section 1 of the Louisiana Constitution, including to determine “that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare.” *See Save Ourselves v. La. Env’tl. Control Comm’n*, 452 So.2d 1152, 1157 (La. 1984).

19. As public trustee, DNR must, at a minimum, demonstrate on the record that: “1) the potential and real adverse environmental effects of the proposed project [have] been avoided to the maximum extent possible; 2) a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and 3) there are [no] alternative projects [n]or alternative sites [n]or mitigating measures which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.” *In re Rubicon, Inc.*, 95-0108, p. 12 (La. App. 1 Cir. 2/14/96), 670 So.2d 475, 483.

20. To be “in conformity” with the public trustee duty, a decision must “at least contain[]: 1) a general recitation of the facts as presented by all sides; 2) a basic finding of facts as supported by the record; 3) a response to all reasonable public comments; 4) a conclusion or conclusions on all issues raised which rationally support the order issued; and 5) any and all other matters which rationally support the DEQ’s decision. This is not an exclusive listing, but merely illustrative.” *Id.* at 483.

21. The reviewing court must reverse the agency’s decision, “if the decision was reached ‘without individualized consideration and balancing of environmental factors conducted fairly and in good faith.’” *Id.* at 481 (*quoting Save Ourselves*, 452 So.2d at 1159).

22. A public trustee “‘is required to make basic findings supported by evidence and ultimate findings which flow rationally from the basic findings; and it must also articulate a rational connection between the facts found and the order issued.’... Only by detailing its reasoning does the [the agency] uphold its position as public trustee and justify the discretion with which it is entrusted by constitutional and statutory authority in a contested environmental matter.” *In re Am. Waste & Pollution Control Co.*, 93-3163 (La. 9/15/94), 642 So.2d 1258, 1266 (*quoting Save Ourselves*, 452 So.2d at 1159-60).

CLAIMS

23. On February 7, 2020, the Company applied to DNR for a Coastal Use Permit for the “Evangeline Pass Expansion Project” (also referred to here as the “Evangeline Pass Project” or the “Project”) to construct and operate two “(2) 36-inch natural gas looping pipelines (the Yscloskey Toca Lateral Loop & Grand Bayou Loop) totaling approx. 13.0 miles in length, a new compressor station [in St. Bernard Parish near Yscloskey] and modification to an existing compressor station [in Plaquemines Parish],” impacting more than 300 acres of wetlands (application no. P20200134 or the “application”). The application described the applicant type as an “Industry/Oil and Gas.”

24. The stated purpose of the Project is to provide up to 1,100,000 dekatherms per day of methane capacity “for delivery to Venture Global at a proposed interconnection with Gator Express Pipeline (“Gator Express”) in Plaquemines Parish, Louisiana to supply feed gas for Venture Global’s natural gas liquefaction and liquefied natural gas export facility in Plaquemines Parish, Louisiana (‘Plaquemines LNG Terminal’).” Decision at 4.

25. The stated need for the Project “is to support the binding precedent agreement executed between [the Company] and Venture Global for up to 2,000,000 Dth/d of firm transportation capacity under which [the Company] has agreed to construct, acquire, and operate the necessary facilities and capacity.” Decision at 4.

26. The Project is one of at least three pipeline systems supplying feed gas to the Plaquemines LNG Terminal.

27. Healthy Gulf submitted public comments on August 24, 2020; Sierra Club submitted comments at a public hearing on October 5, 2022; and Healthy Gulf and Sierra Club submitted public comments on October 13, 2022 (“Petitioners’ Comments”).

28. On April 25, 2023, DNR first authorized the Project (the “Decision”).

29. On May 5, 2023, the Petitioners timely submitted a Petition for Reconsideration to the DNR, challenging the Decision.

30. On May 22, 2023, the Secretary of DNR denied the petition for reconsideration and, on May 31, 2023, emailed a copy to Petitioners.

31. Coastal Use Guideline 701.F provides that DNR “shall ... in evaluating whether the proposed use is in compliance with the guidelines,” use information regarding the “likelihood

of, and extent of impacts of, resulting secondary impacts and cumulative impacts.” 43 La. Admin. Code Pt. I, § 701.F.15.

32. Coastal Use Guideline 701.G provides “all uses and activities shall be planned, sited, designed, constructed, operated, and maintained to avoid to the maximum extent practicable significant: ... adverse effects of cumulative impacts; [and] increases in the potential for flood, hurricane and other storm damage, or increases in the likelihood that damage will occur from such hazards.” 43 La. Admin. Code Pt. I, § 701.G.10 & G.20.

33. DNR’s regulations define “Cumulative Impacts” as “impacts increasing in significance due to the collective effects of a number of activities.” 43 La. Admin. Code Pt. I, § 700.

34. DNR’s regulations define a “Secondary Impact” as “an impact which would: 1. result from the proposed activity; 2. cause significant modifications or alterations to the physical characteristics of acreage beyond the limit of the area depicted as being altered in the accepted permit application drawings; and 3. be identified and quantified by the secretary based on an evaluation of similar and previously implemented activities.” 43 La. Admin. Code Pt. I, § 700.

35. Petitioners’ Comments raised concerns about the Project’s contribution to methane and other greenhouse gas emissions, including from Project pipeline leaks, the Project’s compressor stations’ turbines, and from downstream use of the methane, among other things. The public comments also raised concerns about the destruction of wetlands that serve to protect communities from storm surges and flooding. The public comments also explained (using scientific and government reports) that greenhouse gas emissions are exacerbating the severity of hurricanes, storms, and storm surges, as well as rising sea levels, noting that St. Bernard Parish and the Louisiana coastal zone are particularly vulnerable to those cumulative impacts.

36. For its Decision, DNR summarized public comments to include:

- Cumulative environmental impacts, especially when taking into account climate change and the combined impacts of nearby and connected projects (Venture Global project - Plaquemines LNG and Gator Express Pipeline) have not been adequately addressed;
...
- Land subsidence combined with increasing sea level rise driven by climate change will result in increased land loss and intensity of storms leading to damage to the pipeline infrastructure located in coastal wetlands – at a minimum, to reduce public risk, the project should be constructed in an area where flood and storm hazards are minimal;
...
- Allowing losses to coastal wetlands, which serve as an important barrier to protect Louisiana from increased hurricane intensity and storm surge, should be avoided since it also creates a public safety threat from increased coastal flooding.

Decision p. 2.

37. For its Decision, DNR did not consider the Project's cumulative environmental impacts on St. Bernard Parish or anywhere else in the Louisiana Coastal Zone reasoning that some of those impacts would also affect other areas:

Regarding the concerns for the impact of greenhouse gases upon global climate change, this topic is beyond the scope of the project review under the coastal use guidelines. While the guidelines do address cumulative and secondary impacts, these are limited to the localized effects in coastal Louisiana.

Decision at 18.

38. The Project will have adverse cumulative impacts on St. Bernard Parish, Plaquemines Parish, and the Louisiana Coastal Zone, including from methane and other greenhouse gas emissions from and related to the Project.

39. For its Decision, DNR did not consider the impacts of the Project's wetlands destruction on local or Parish-wide flooding.

40. For its Decision, DNR did not consider the impacts of flooding, sea-level rise, and land subsidence on the Project or the potential for damage to the pipeline infrastructure in coastal wetlands, accidents, or detriment to the public safety.

41. For its Decision, DNR found "[f]or the proposed project, there are no foreseen secondary or cumulative impacts." Decision at 18.

42. DNR's finding on foreseen secondary and cumulative impacts is arbitrary and capricious and not supported and sustainable by a preponderance of evidence.

43. DNR violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it did not consider the adverse cumulative impacts of the Project, including the adverse cumulative impacts of methane and other greenhouse gas emissions from and related to the Project.

44. Coastal Use Guideline 711.A provides: "Industrial, commercial, urban, residential, and recreational uses ... shall be consistent with the other guidelines and shall, to the maximum extent practicable, take place only ... on lands which have foundation conditions sufficiently stable to support the use, and where flood and storm hazards are minimal or where protection from these hazards can be reasonably well achieved, and where the public safety

would not be unreasonably endangered,” among other things. 43 La. Admin. Code Pt. I, § 711.A.2.

45. Neither the State and Local Coastal Resources Management Act nor its regulations define either “industrial” or “commercial.” La. R.S. § 49:214.2, *et seq.*; 43 La. Admin. Code Pt. I, § 700.

46. For its Decision, DNR did not apply Coastal Use Guideline 711.A, stating that the Project is “neither industrial nor commercial - the project itself is not the production of goods and services, nor is it engaged in commerce.” Decision at 25.

47. Natural gas is a good that is sold in commerce.

48. Liquefied natural gas (*i.e.* liquefied methane) is a good that is sold in commerce.

49. The Plaquemines LNG Terminal is (or will be when construction is complete) a facility for the production of liquefied natural gas.

50. The stated purpose or need for the Project is to fulfill a contractual obligation to provide a good or service to Plaquemines LNG Terminal.

51. The stated purpose or need for the Project is to act as part of or in connection with the Plaquemines LNG Terminal production system.

52. The Project is, among other things, an industrial use.

53. The Project is engaged in commerce.

54. The Project is, among other things, a commercial use.

55. DNR’s finding that the Project is “neither industrial nor commercial” is arbitrary and capricious and not supported and sustainable by a preponderance of evidence.

56. DNR violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it did not apply Coastal Use Guidelines 711.A to the Project or require the Project to conform with Coastal Use Guideline 711.A.

57. Coastal Use Guideline 719.K provides: “Effective environmental protection and emergency or contingency plans shall be developed and complied with for all mineral operations.” 43 La. Admin. Code Pt. I, § 719.K.

58. For its Decision, DNR stated Coastal Use Guideline 719.K “is met as the Pipeline Hazardous Materials Safety Administration will regulate compliance and safety of interstate pipelines and the State Office of Conservation within the Department of Natural Resources will ensure safety and compliance with the regulations regarding intrastate pipelines.” Decision at 27-28.

59. No “effective environmental protection and emergency or contingency plans” have been “developed and complied” with for the Project.

60. DNR did not review or confirm development of or compliance with any environmental protection and emergency or contingency plans for its Decision.

61. DNR did not condition its authorization of the Project on development of or compliance with “effective environmental protection and emergency or contingency plans” for its Decision.

62. DNR violated the Coastal Resources Management Act, the Coastal Use Guidelines, and the Louisiana Constitution when it authorized the Project without requiring or conditioning the coastal use permit on development of and compliance with effective environmental protection and emergency or contingency plans.

63. DNR’s authorization is arbitrary and capricious and based on error of law and unlawful procedure because it did not consider the full impacts of the Project on coastal waters or the Coastal Zone.

64. DNR’s Decision violated Article IX, Section 1 of the Louisiana Constitution.

65. For its Decision, DNR did not meet its constitutionally mandated public trust duty.

66. DNR’s Decision violated the La. R.S. § 49:214.30 mandate to represent an appropriate balancing of social, environmental, and economic factors.

67. DNR's Decision violated the regulatory requirement that "permit decisions will be made only after a full and fair consideration of all information before the permitting body, and shall represent an appropriate balancing of social, environmental, and economic factors." 43 La. Admin. Code Pt. I, § 723.C.8.a.

68. DNR's Decision did not follow and failed to meet the Coastal Use Guidelines.

69. DNR arbitrarily and capriciously determined that the Project is consistent with the State and Local Coastal Resources Management Act and the Louisiana Coastal Resources Program.

ASSIGNMENT OF ERRORS

70. DNR's decision to authorize the Evangeline Pass Project has prejudiced substantial rights of the Petitioners because DNR's decision is "in violation of constitutional or statutory provisions." La. R.S. § 49:978.1(G)(1).

71. DNR's decision to authorize the Evangeline Pass Project has prejudiced substantial rights of the Petitioners because DNR's decision is "in excess of the statutory authority of the agency." La. R.S. § 49:978.1(G)(2).

72. DNR's decision to authorize the Evangeline Pass Project has prejudiced substantial rights of the Petitioners because DNR's decision is "made upon unlawful procedure" or "affected by other error of law." La. R.S. § 49:978.1(G)(3) & (4).

73. DNR's decision to authorize the Evangeline Pass Project has prejudiced substantial rights of the Petitioners because DNR's decision is "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." La. R.S. § 49:978.1(G)(5).

74. DNR's decision to authorize the Evangeline Pass Project has prejudiced substantial rights of the Petitioners because DNR's decision is not supported or sustainable by a preponderance of the evidence. La. R.S. § 49:978.1(G)(6).

DESIGNATION OF RECORD FOR APPEAL

75. Petitioners designate as the Administrative Record all information produced by, considered by, and submitted to DNR in connection with the Company's application for a Coastal Use Permit (P2020134).

PRAYER FOR RELIEF

Upon consideration of the law and facts of this case, Petitioners respectfully request that this Court grant relief as follows:

1. Reverse the DNR decision and vacate the authorization for the Evangeline Pass Project and Coastal Use Permit application no. P2020134; and
2. Award all other relief as this Court finds equitable.

Respectfully submitted on June 21, 2023,



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