



OFFICE OF LAND AND WATER

**RESPONSES TO PUBLIC COMMENT AND INQUIRIES FROM THE
NATURAL RESOURCES STEERING COMMISSION**

July 19, 2024

Questions from Commission Members

1. Have courts established a definitive answer to water bottom ownership, especially mineral rights, when land erodes and becomes submerged?

Land and mineral ownership along shifting boundaries is a troublesome area of the law, as there are multiple factual and legal issues at play. Unfortunately, there is no “definitive answer.” But the following summary will give an overview of the relevant considerations.

The Civil Code provides that the State owns the beds and bottoms of all *navigable* waters of the state – including lakes, rivers, streams, bays, and in the Gulf of Mexico. As a default rule, water bodies that were navigable when the state of Louisiana was admitted into the Union (1812) and continue to be navigable are state-owned. But the state must prove current navigability when attempting to establish ownership of lands that became submerged after 1812 due to natural phenomena such as erosion, accretion, dereliction or land subsidence. As such, legal boundary and ownership disputes caused by these natural phenomena often times turn on the question of *navigability*. This is a difficult burden of proof and requires technical and historical evidence of experts such as surveyors and hydrologists. Outcomes depend on the facts and circumstances of each case.

If the state is able to prove navigability, its ownership of the submerged lands includes all underlying mineral rights. However, this default rule is limited by Louisiana’s “Freeze Statute” (see below), which provides that the state does not acquire ownership of minerals through erosion, accretion, dereliction or subsidence when said minerals were subject to a mineral lease that pre-dated the change in ownership of the submerged lands. In other words, the State acquires title to lands submerged beneath navigable waters, but it does not acquire ownership of the subsurface minerals if said minerals are already encumbered by a lease.

In all cases where a change occurs in the ownership of land or water bottoms as a result of the action of a navigable stream, bay, lake, sea, or arm of the sea, in the change of its course, bed, or bottom, or as a result of accretion, dereliction, erosion, subsidence, or other condition resulting from the action of a navigable stream, bay, lake, sea, or arm of the sea, the new owner of such lands or water bottoms, including the state of Louisiana, shall take the same subject to and encumbered with any oil, gas, or mineral lease covering and affecting such lands or water bottoms, and subject to the mineral and royalty rights of the lessors in such lease, their heirs, successors, and assigns; the right of the lessee or owners of such lease and the right of the mineral and royalty owners thereunder shall be in no manner abrogated or affected by such change in ownership. La. R.S. § 9:1151.

These areas of the law are frequently litigated and popular among legal scholars, as they have large impacts on land and mineral ownership—especially along the Gulf coast and the Red River near the Haynesville shale region. The Land and Water working group is happy to offer additional reference material upon the Commission’s request.

2. Can the water resources commission be used for planning purposes as to state water management? Would it be sensible to use that body as a governing body for a state water plan or to maintain those functions in a traditional agency office?

At the present time, the Water Resources Commission doesn't have the necessary statutory authority to serve as planning entity for state water management. Additional legislation and resources would be required for the Water Resources Commission to begin water resources planning endeavors. The Office of Land and Water working group recommends that state water resource management be performed at a traditional state agency office. However, the Water Resources Commission could play a valuable role in the planning process. The state agency planning efforts could involve some form of master plan/annual plan process that could involve review and approval from the Water Resources Commission. Such a process could mimic the Coastal Protection and Restoration Authority Master Plan/Annual Plan process.

Questions from Public

1. How can Land & Water pursue inter-agency coordination with other water regulators, such as DEQ, to ensure effective but efficient regulation?

Currently, the DENR has multiple Memoranda of Understanding (MOU) with DEQ regarding surface water withdrawal review, review of coastal use permit applications, and oil spill coordination. It would be appropriate for the DENR Office of Land and Water to enter into an MOU with DEQ to further coordinate effective and efficient regulation of both surface and ground water uses.

2. Would it be beneficial for Land & Water to require water use assessments for any new energy project?

The working group believes that it would be beneficial for the Office of Land and Water to require water use assessments for some new energy projects. However, there may not be legislative will to require these assessments for all future energy projects. It may be more appropriate for "thresholds" for a certain volume of water, for both surface and groundwater, that would require water use assessments. Once appropriate thresholds for withdrawal have been established, the Office of Land and Water could perform the assessment, establish reporting and monitoring requirements, etc.

3. Is it within the jurisdiction of DENR and Land & Water to regulate water quality as it pertains to nutrient pollution and its impacts on water quality?

Currently, the regulation of water quality primarily resides in DEQ. DEQ is also the primary nutrient pollution (point source and non-point source pollution) review and regulatory agency. There is a Water Office within the DEQ. Some of the water quality programs that DEQ oversees include but are not limited to: Drinking Water Protection Program, Total Maximum Daily Load (TMDL) Program, Nonpoint Source Pollution, Sewage Sludge & Biosolids, etc.

4. Can a strategic plan be created for the State's groundwater resources?

The Office of Land and Water working group supports the creation of a strategic plan for the state's groundwater resources. The working group notes that a significant amount of work has already occurred to support the further development and ultimately, the finalization of a strategic plan for groundwater management. Specifically, the 2002 "Assistance in Developing the Statewide Water Management Plan" that was drafted for the Louisiana Ground Water Management Commission, the 2012 Ground Water Resources Commission's "Managing Louisiana's Groundwater Resources" interim report to the Louisiana Legislature and the 2018 DOTD, and USGS "Water Use in Louisiana,

2015” water resources report are recent strategic reports regarding groundwater (and other water resources.) The 2012 report was intended to be the blueprint to support a future “strategic mater plan” for groundwater resources. From a regulatory planning perspective, the Commission should also consider a review of the Regulated Riparian Water Model Code created by the American Society of Civil Engineers, which provides a comprehensive and well-integrated statutory scheme for creating or refining a regulated riparian system of water law capable of dealing with the water management problems of the twenty-first century.

The working group recommends that the Office of Land and Water continue the efforts that have already been undertaken to work towards finalization of a state strategic plan for groundwater resources. A state master plan for groundwater resource management is long overdue.

Other Outstanding Questions

1. Would it be advisable to rename Land and Water to "Office of Energy Resource Management" to better cover all aspects of the office?

I would advise re-naming the office from “Land and Water” to an alternative that better reflects the function envisioned for the office. In one sense, “Land and Water” is too narrow, as the purview of the envisioned office extends not only to land and water, but also to minerals and power. In another sense, it is too broad, as the envisioned office will have a limited administrative and managerial role as it pertains to State land and water, and only for certain purposes. Other State offices will retain authority over regulation/conservation of State mineral assets (OC), non-energy-related land permits and leases (OSL), and management of water as to quality (DEQ).

As suggested in our initial report, “Energy Resource Management Office” or “Energy Resource Administration Office” are clearer and better reflect the scope of operations envisioned for the office, as both encompass minerals, energy-related land/waterbottoms, and power. The inclusion of “management” or “administration” is critical, as these words clarify that the office’s role is ministerial, not regulatory. However, one could argue that these two options fail to encompass the water quantity management function.

Other options include the following:

- Resource Management Office
- Resource Administration Office
- Natural Resource Management Office
- Natural Resource Administration Office
- Public Resource Management Office
- Public Resource Administration Office
- State Resource Management Office
- State Resource Administration Office

2. How can the Power division work to represent the State's interests at the PSC? Can the Power division collaborate with PSC to begin to close regulatory gaps?

Historically, DENR has had very little involvement with regulatory items coming before the PSC. At a minimum, a DENR Power representative should regularly attend meetings of the PSC. The Power division could enter into a MOU with the PSC to coordinate regulatory issues that intersect the PSC and DENR. There may also be a significant benefit to DENR coordination and information sharing with the PSC with regard to solar and wind energy projects. Both solar and wind projects will likely require PPA's with utilities, transmission lines that will also need to be permitted by DENR (CUP), etc. The renewable project would benefit from having the coordination between DENR and the PSC while these projects traverse an extensive regulatory review process. There are a number of large power-consuming projects that are in early stages of development (potential carbon sequestration projects). These projects will require extensive grid analysis and grid upgrading in order for the project to move forward. PPA's, rate level analysis, etc. will need to be coordinated between the project developer, energy provider and the PSC. Since DENR will, in many instances, be the permitting authority for these types of projects, it is important that its permitting be coordinated with the PSC. The state is anticipating more industrial and energy development projects in the near future, and these developments will require a significant increase in power availability. DENR should be more involved with power related initiative and have more consistent representation and communication with the PSC.

3. What personnel would be required to administer the following functions currently housed at State Lands: titles, leasing, servitudes/ROW, and sales/use/consumption of state water and timber?

I. Energy-related servitudes-ROWs and waterbottom permitting/leasing: (3-5 T.O.)

OSL leadership has advised that its ROW and waterbottom permitting/leasing functions are designed to be managed by a three-person team—with two Analysts and one supervisory Manager. These positions were created within OSL as a product of its recent job study with State Civil Service. However, OSL elected not to fill the positions in anticipation of the DENR reorganization, so each is currently vacant. OSL leadership advised that the waterbottom permitting/leasing and ROW functions are currently managed by one individual, Mr. Joel Brannan, who ordinarily works as a Public Lands Specialist within OSL. OSL plans for Mr. Brannan to remain with OSL and resume his prior job duties after the contemplated functions are transferred to DENR. As a short-term compromise, the Commission should consider alternatives for temporarily retaining Mr. Brannan (on loan from OSL) during the transition phase, which would allow time to onboard and train new analysts hired to fill the permanent roles within DENR.

The skillset and functions of the three above-referenced OSL positions will somewhat overlap with certain individuals in OMR's Resource Management ("RM") and GIS/Mapping subdivisions. OMR's RM personnel perform geologic and financial analyses on State lease bids to determine the best deal for the State. Once bids are awarded, RM staff incorporates the State lease location, LUW code, and royalty information into Sonris and builds a royalty deck to monitor and track royalty payments. The GIS/Mapping group incorporates the State lease information onto the Sonris interactive map so it is viewable by the public. These same functions could service, record, and track energy-related waterbottom permitting/leasing and ROWs granted by DENR. But the Commission should consider creating one additional T.O. position within each group to account for the additional workload. Additional personnel in each subdivision would also allow better career progression opportunities, especially with respect to the GIS/Mapping group. For additional detail, see

II. Titles: (0 T.O.)

Title work and recordkeeping for State-owned property is currently managed by OSL, whose statutory duties include “identify[ing] all public lands and water bottoms within the state and develop[ing] and maintain[ing] a current master list of those lands and water bottoms,” (R.S. 41:1701.1) and “maintain[ing] a current inventory of state lands and a depository in which shall be recorded and preserved all records, surveys, plats, applications, permits, leases, licenses, and other evidence pertaining to the trust lands, their description, disposition, and encroachments thereon.” (R.S. 41:1703). Under this mandate, OSL actively manages the SLABI database, a centralized inventory of immovable property owned/leased by the State, and it also manages an active map of the State’s waterbottom layer.

Industry and other State subdivisions turn to OSL for title work and opinions on the scope of State ownership, which are especially common in boundary disputes caused by shifting water bodies. OMR also relies on OSL’s waterbottom layer to determine the extent of state ownership in the mineral lease nomination and leasing process. It is noteworthy that OSL title opinions are often less accurate than work performed by private title workers / attorneys, who dedicate more time and resources to the title work than the State.

The Land and Water working group did not fully analyze a complete merger of OSL’s title and recordkeeping functions with DENR, as such was not contemplated by JML 24-13. A full merger could complicate the reorganization effort with subject matter issues, as DENR would assume non-energy-related title and recordkeeping work. While DENR has a particular interest in the State’s title, especially for waterbottoms, a merger of only energy-related title work and recordkeeping from OSL could be problematic, as it would divide State title and recordkeeping work between the two offices, potentially causing confusion and/or duplication of efforts. As an alternative, title and recordkeeping functions could remain within OSL, and DENR could increase emphasis on effective collaboration through a cooperative endeavor agreement of some type.

III. Sale, Use, and Consumption of Water:

Sale, use, and consumption of State water is not within OSL’s purview. DENR would need to create new water management positions and recruit both intra-agency and external individuals with adequate subject matter expertise to fill them. For additional detail on the water management structure posed by this working group, see OFFICE OF LAND AND WATER – REPORT TO THE NATURAL RESOURCES STEERING COMMISSION PURSUANT TO EXECUTIVE ORDER JML 24-13, page 36 (June 18, 2024).

IV. Timber: (0-1 T.O.)

OSL’s timber management and sales functions have been relatively dormant in recent decades, as staffing, timber prices, and timber processing capacity have limited development of the program. OSL’s timber program currently operates out of its Land and Waterbottom Management Division, the same division that manages ROWs and waterbottom permits/leases. Though not “energy-related,” timber is certainly a natural resource, and OSL’s timber management operations would merge well along with the energy-related ROW and waterbottom permitting/leasing functions. Under a

conservative approach, the timber management functions could be managed by the same staff who will manage the energy-related ROW and waterbottom permitting/leasing functions. Alternatively, DENR could create one additional analyst position to manage timber. Under this approach, one manager would supervise three analysts – one who handles ROWs, one who handles waterbottom permits/leases, and one who manages timber.

4. How can the office begin to build out a regulatory structure for state management of surface water and ground water?

The Office of Land and Water working group recommends that, at a minimum, statutory authority be granted to the appointing authority of the Office of Land and Water to begin rulemaking under the state's Administrative Procedures process. The rulemaking process regarding planning, water master plan/annual plan initiatives, authority regarding the oversight of both surface and groundwater withdrawal, monitoring and reporting associated with water withdrawal and utilization requirements, should all be considered. We note that such rulemaking would be a large undertaking, requiring significant time, resources, public input, and personnel with both the bandwidth and subject-matter expertise to manage the task.

The working group also recommends addition layer(s) of oversight of the Office of Land and Water. Consideration should be given to what authorities the Secretary of DENR, the Commissioner of Conservation and the respective water resources commissions should maintain, be added to and/or removed during future legislative cycles with regard to their individual authorities. The working group recommends consideration of a regulatory framework that allows for master/annual plan development and approval, regulatory (permits) dispute resolution, Secretarial reconsideration of regulated activities/permits, establishing water withdrawal thresholds, water utilization fee structures, potential fee waivers, etc.



Jeff Landry
Governor

State of Louisiana

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To: Mr. Jason Lanclos and Dr. Gregory Upton, Ph.D

Energy Office Working Group

From: J. Clay Parker

Date: July 12, 2024

Re: Outstanding Questions from NRSC

Dear Mr. Lanclos and Dr. Upton:

Thank you very much for your service and assistance in leading the Office of Energy working group through the first Natural Resources Steering Commission(NRSC) meeting. Your presentation was very informative and will be of great assistance to the Commissioners as they deliberate over reorganization under Executive Order JML 24-13. After the presentation and close of public comment, some questions have arisen from the Commissioners and the public regarding your presentation. Given that you are the subject matter expert on the proposed Office of Energy, I would like to request some information from you. I have attached the questions from the NRSC, from the public, and other outstanding questions in the following paragraphs. Please review and respond to these questions by July 19, 2024.

Questions from Commission Members

1. How can the Office of Energy develop guidance and policies for pursuit of economic development and technology assessment? Could this take the shape of a strategic plan for energy?
2. How can the Office of Energy work to develop strategic partnerships with entities like CES, Water Institute, and the Watershed Initiative? Would these partnerships enhance agency capability?
3. Can the Office of Energy work to develop guidelines for accepting or rejecting Federal grants?

Questions from Public

1. Can the Office of Energy build out its own capability to administer Federal grants? What sort of resources would be required?
2. Can the Office of Energy build out its own capability for contracting? What resources would be required?
3. What resources would the Office of Energy request from CPRA to administer Federal Grants?



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4. How can the Office of Energy work to maintain and maximize the Federal funds currently coming to the office?

Other Outstanding Questions

1. Would it make sense to expand the Energy Office to also include resiliency and move the Public Works functions currently at DOTD to the new office?
2. Could the option in Question 1 improve access to funding for those public works programs through Federal dollars?
3. What sort of relationship could the Office of Energy have with the PSC? How could the two entities work together?

Again, thank you for your assistance and service in this process so far. Please review and respond to these questions by July 19, 2024. I will forward your answers to the Commissioners and let you know if they have any further questions. In the meantime, if you have any questions, comments, or concerns, please do not hesitate to let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Clay Parker".

J. Clay Parker

JEFF LANDRY
GOVERNOR



TYLER PATRICK GRAY
SECRETARY

State of Louisiana

DEPARTMENT OF ENERGY AND NATURAL RESOURCES
OFFICE OF THE SECRETARY

To: J. Clay Parker

From: Jason Lanclos and Dr. Greg Upton, Ph.D.
Energy Working Group

Date: Thursday, July 18, 2024

Re: Response to Outstanding Questions from NRSC

Dear Mr. Parker:

Thank you for your kind words and for giving the Energy Working Group the opportunity to present at the first Natural Resources Steering Commission (NRSC) meeting. I am glad the presentation was informative and useful for the Commissioners as they consider the reorganization under Executive Order JML 24-13.

I appreciate the feedback and understand the need for further clarification on specific points raised during the presentation. Below, you will find responses to the questions posed by the NRSC Commissioners, from public comment and any other outstanding questions:

Questions from Commission Members

- 1. How can the Office of Energy develop guidance and policies for the pursuit of economic development and technology assessment? Could this take the shape of a strategic plan for energy?***

The Office of Energy can provide information that can be used to inform potential policies aimed at economic development and technology assessment. Such analysis should be data-driven and include stakeholder feedback. The Office of Energy is currently developing a strategic energy plan that will lay the groundwork for the Energy Office's structure, funding, grant management, and short and long-term strategy. The Office of Energy can also work with the legislators to provide high-quality data and analysis on policy-related questions.

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- 2. *How can the Office of Energy work to develop strategic partnerships with entities like CES, the Water Institute, and the Watershed Initiative? Would these partnerships enhance agency capability?***

The Office of Energy is working to solidify our partnership with CES and the Water Institute. These partnerships can significantly enhance the Office's capabilities by leveraging shared data, resources, and expertise. As the Office of Energy continues to be developed, it is imperative that strategic partnerships are developed. Collaborating with CES brings a specific data-driven approach to energy data, GIS, tax information, and reporting. This public-facing data-driven approach will lead to things like updated website resources, changes to SONRIS, and other refreshes of public data outlets. The Water Institute will coordinate with faculty at Louisiana's universities and other technical resources to support LDENR. The largest areas of need are data analysis and building of infrastructure with the State's multifaceted watershed and levee systems. Although the Office of Energy is not directly working on water-related issues, it is imperative that coordination occurs within LDENR and throughout state government.

- 3. *Can the Office of Energy work to develop guidelines for accepting or rejecting Federal grants?***

Yes, the Office of Energy can work on developing guidelines for accepting or rejecting Federal grants. These guidelines could include assessing for strategic alignment, impact and benefit analysis, risk assessment, financial considerations, and compliance requirements. As we build out a system for evaluating grant potential, we will continue coordinating with the Governor's Office, other state agencies, and other states for lessons learned. The federal grant system is very complicated, and there are many opportunities that Louisiana is missing without contract support from a grants management team or internal team to help identify and manage grants.

Questions from Public

- 1. *Can the Office of Energy build out its own capability to administer Federal grants? What sort of resources would be helpful?***

Yes, the Office of Energy can develop its capability to administer Federal grants. To achieve this effectively, the Office would need to recruit personnel with grant and project management expertise. Additionally, resources such as comprehensive training and development programs and detailed standard operating procedures are essential. Implementing these measures would necessitate an increased budget allocation. In addition, it is not always feasible to build internal teams due to the ebbs and flows of federal grant funding. LDENR needs to continue to look for solutions on the contracting side to be able to pull from a list of contractors as tasks develop.

- 2. *Can the Office of Energy build out its own capability for contracting? What sort of resources would be required?***

The Office of Energy could enhance its contracting capabilities. Currently, staff members are drafting contracts internally and collaborating with the Fiscal division to finalize the process through the Office of State Procurement, as mandated by statute. The proposed in-house team would streamline these processes before submission to the Office of State Procurement. Given

the anticipated increase in federal grant funding, our current capacity is insufficient to manage the larger volume of contracts. Therefore, additional personnel in the Fiscal division would be necessary to administer these contracts effectively. Within the Office of Energy, project managers overseeing the grants, in coordination with the Fiscal team, would assume responsibility for contract writing. In addition, LDENR is working directly with CPRA to assess if utilizing their Indefinite Delivery / Indefinite Quantity (IDIQs) is feasible. CPRA has access to professional, consulting, and legal service firms. As the Office moves projects forward, it can quickly identify tasks and utilize a multitude of firms to address needs.

3. *What resources would the Office of Energy request from CPRA to administer Federal Grants?*

It is important for CPRA and LDNER to continue to communicate and collaborate on contracting solutions. CPRA has a multitude of contracting mechanisms for professional, consulting, and legal services. As the Office continues to take on major federal grant opportunities, we must continue to look for ways to work together with CPRA on any and all solutions for contracting. If LDENR moves forward with its contracting build-out, it could take at least a year under ideal conditions. In addition, it will take multiple experienced accounting and financial staff to stand up this group without utilizing resources from another agency.

As we work through solutions, we need to be innovative and open to discussions about potential solutions. The consulting community can provide immediate resources to address many tasks that will enable the implementation of many phases of the Office's work. We will continue to meet, look for solutions, and communicate between the agencies and the Office of State Procurement. Our work and tasks will continue to diversify in complexity and scope, and we need viable alternatives to respond to federal solicitations and grant opportunities. It is also important to note that CPRA advertises these IDIQs at certain times of the year. We need to capitalize on these advertisements when they are being developed if this is identified as a potential solution.

4. *How can the Office of Energy work to maintain and maximize the Federal funds currently coming to the office?*

One way the Office of Energy can work to maintain and maximize our current federal funding is by working with our strategic partners through CES and the Water Institute. Another way would be to work with other state agencies and our contractors to ensure the timely execution of grants. Lastly, expanding staff resources to manage grants effectively would assist as well. In addition, having the ability to have a consultant aid in grants management can continue to help identify key areas and opportunities for the State.

Other Outstanding Questions

1. *Would it make sense to expand the Energy Office to also include resiliency and move the Public Works functions currently at DOTD to the new office?*

The quick answer is yes, with some qualifiers. We need to assess implementation and feasibility and thoroughly review legal statutes, budgets, personnel considerations, and scope and function.

This could definitely be added as a first order of business for the Office of Energy's strategic plan. Both resilience and public works have direct ties to energy and would broaden the Office's scope and breadth. We would also lean heavily on the aforementioned partnerships to help implement this process.

2. *Could the option in Question 1 improve access to funding for these public works programs through Federal dollars?*

Based on the response above, we are still uncertain. However, adding any program to the Office of Energy could increase access to funding. That said, we would have to determine if this funding met the department's strategic plan.

3. *What sort of relationship could the Office of Energy have with the PSC? How could the two entities work together?*

Our Office has been working in collaboration with the PSC to ensure our programs align similarly with theirs. We have collaborated on many of the federal grants we have applied for and won on the development side, incorporating their input into the applications. However, given the structure of the PSC, it is very complicated. We have a good relationship with the PSC, but that could always be improved. The Energy Office, as it currently exists, cannot work on electricity regulatory issues because that is strictly under the purview of the PSC. In an ideal world, we would have closer ties that align similar goals for the State and more collaboration between the two groups. This would include a working partnership to ensure that the State's energy goals can be met and that we can work together on similar projects.

Should there be any immediate concerns or additional information needed, please do not hesitate to reach out.

Sincerely,



Jason Lanclos
Director, State Energy Office



Jeff Landry
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To: Mr. Steven Giambrone, Office of Enforcement Working Group

From: J. Clay Parker

Date: July 12, 2024

Re: Outstanding Questions from NRSC

Dear Mr. Giambrone:

Thank you very much for your service and assistance in leading the Office of Enforcement working group through the first Natural Resources Steering Commission(NRSC) meeting. Your presentation was very informative and will be of great assistance to the Commissioners as they deliberate over reorganization under Executive Order JML 24-13. After the presentation and close of public comment, some questions have arisen from the Commissioners and the public regarding your presentation. Given that you are the subject matter expert on the proposed Office of Enforcement, I would like to request some information from you. I have attached the questions from the NRSC, from the public, and other outstanding questions in the following paragraphs. Please review and respond to these questions by July 19, 2024.

Questions from Commission Members

1. Does LOSCO fit more into the emergency response portion of Enforcement or into an adjudication division for damage assessment?
2. How can Enforcement look for more Federal funds that may be available? Would a collaboration with the Grants division of an Energy Office work?

Questions from Public

1. Is there any overlap in jurisdiction between DENR and other agencies' enforcement?
2. Would Enforcement be capable of handling 404 permitting enforcement with existing staff, or would more staff be needed?

Other Outstanding Questions

1. Would it make sense to maintain Enforcement as its own "sub-office" under the Conservation umbrella?
2. Would efficiency improve if Enforcement oversaw all district offices?
3. Would efficiency improve by dividing Enforcement into State programs(oil & gas, auditing), Federal programs(coastal, pipeline, 404 permits), District Offices, and Financial Recovery?



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Again, thank you for your assistance and service in this process so far. Please review and respond to these questions by July 19, 2024. I will forward your answers to the Commissioners and let you know if they have any further questions. In the meantime, if you have any questions, comments, or concerns, please do not hesitate to let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Clay Parker".

J. Clay Parker

JEFF LANDRY
GOVERNOR



TYLER PATRICK GRAY
SECRETARY

BENJAMIN C. BIENVENU
COMMISSIONER OF CONSERVATION

State of Louisiana

DEPARTMENT OF ENERGY AND NATURAL RESOURCES
OFFICE OF CONSERVATION

To: Mr. Clay Parker, Office of the Governor

From: Steven Giambrone, Office of Enforcement Working Group

Date: July 19, 2024

Re: Outstanding Questions from NRSC

Dear Mr. Parker,

I appreciate the comments in your July 12, 2024 letter and offer the responses below to the questions posed by the Natural Resources Steering Committee and the public.

Questions from Committee Members

- 1) Does LOSCO fit more into the emergency response portion of Enforcement or into an adjudication division for damage assessment?

Pursuant to state and federal authorities, LOSCO is the state on-scene coordinator for oil spills in Louisiana, serving as the state lead point of contact for oil spills across the state and working with the responsible party, federal government, and other state agencies (as appropriate) to ensure the discharged oil is cleaned up. LOSCO does not permit or regulate facilities, nor does it issue enforcement actions or penalties.

In addition to its response functions, LOSCO serves as the state's lead administrative natural resource trustee for oil spill natural resource damage assessments (NRDA) in Louisiana. In this function, LOSCO, in consultation with the other state trustee agencies, determines whether data collected during response and/or pre-assessment indicates that a NRDA is warranted.

Where the decision is made to proceed, LOSCO works with other state and federal trustees to assess and quantify injuries resulting from oil spills, to evaluate and select restoration appropriate to compensate the public for those injuries, to present and negotiate settlements (based on the trustees' preferred restoration) with the responsible parties, and to implement or oversee the implementation of the selected restoration, all consistent with the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 et seq.), its implementing regulations (15 C.F.R. Part 990), the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA) (La. R.S. 30:2451, *et seq.*), and its implementing regulations (LAC 43:XXIX). Damages

Pipeline Division

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under these authorities are not penalties or fines that are easily computed and levied against a responsible party. NRDA's can, and typically do, take years of scientific evaluation and work by state and federal trustees to develop a claim for presentment to the responsible party. A court is typically not involved until an agreement is reached between the trustees and responsible party.

LOSCO also leads oil spill contingency planning for the State in conjunction with federal, local, and industry partners, and manages and submits cost reimbursements to responsible parties and/or federal government for response and assessment costs incurred by state agencies. Therefore, LOSCO functions are not your typical "enforcement" or "adjudication" functions. Based on LOSCO's programmatic responsibilities as they relate to interagency affairs, it is recommended that LOSCO be evaluated for placement within the Office of the Secretary.

- 2) How can Enforcement look for more Federal funds that may be available? Would a collaboration with the Grants division of an Energy Office Work?

Certainly those with expertise within the agency could be leaned on to search for more federal funding for the Enforcement Office or any other Office within the Department. The federal government advertises grants through their Grant.Gov website which is accessible by anyone, but those within the agency with knowledge of how to navigate those waters are better suited to provide assistance. In recent years, we have seen the federal government more willing to provide money for tasks more traditionally falling under "state programs" such as the federal dollars allocated to plugging orphan wells. While some grant opportunities are well publicized, others are not, and the Energy Office's experience with navigating that process would certainly be helpful.

Questions from the Public

- 1) Is there any overlap in jurisdiction between DENR and other agencies' enforcement?

The lines of enforcement are fairly clear, however, where there may be perceived overlap or potential for confusion, agencies have developed MOU's to address these issues. The most common potential overlap, is that between DENR and DEQ when it comes to releases of product from a production facility. The Departments have a long standing agreement on where jurisdictions begin and end to avoid duplication of efforts. However, that does not mean that multiple agencies may not respond to a single incident and even take enforcement actions. For instance, an incident such as a salt water release which leaves a production facility lease would be addressed by both DENR and DEQ. DENR would enforce compliance "onsite" to the standards of Statewide Order 29-B and DEQ would enforce compliance "offsite" to their RECAP Standards. However, all releases of hazardous materials at a production facility are addressed by DEQ as DENR only addresses releases of Non-Hazardous Oilfield Waste.

-
- 2) Would Enforcement be capable of handling 404 permitting enforcement with existing staff, or would more staff be needed?

Violations of 404 permits are addressed by the US Army Corps of Engineers (USACE) as they are responsible for reviewing and issuing all 404 permits in the State. DENR has previously explored applying for primacy from USACE to handle such permitting through its Office of Coastal Management. However, this matter was not pursued. During the Department's evaluation, it was determined that the staffing needed to handle the 404 program would more than double OCM's current staffing for permitting and enforcement. Therefore, it is anticipated that staff would need to be added to address enforcement of 404 permitting requirements.

Other Outstanding Questions

- 1) Would it make sense to maintain Enforcement as its own "sub-office" under the Conservation umbrella?

Certain efficiencies may still be able to be realized if enforcement programs remained under the umbrella of the Office of Conservation, but one of the benefits of separating the two programs would be to reduce any conflicts of interest that arise from housing the permitting programs (i.e. those programs facilitating economic development) and the enforcement programs (verification of compliance with regulations) under the same Office. These types of programs are generally separated from one other either through implementation by different Offices within an agency or by being implemented by completely different agencies. The Office of Conservation will maintain personnel with certain expertise that could still be drawn on when issues arise that may require collaboration. Collaboration across the Offices of the Department will improve the efficiency of the Department and each Office's ability to serve the public good.

- 2) Would efficiency improve if Enforcement oversaw all district offices?

It is recommended in our report that the District Offices be placed under the Office of Enforcement. The Districts currently play dual roles handling permitting and inspections, but the inspection piece is the bulk of the work performed by the Districts. The Districts perform the preliminary review of drilling permits and are the sole reviewer of "work permits". It is contemplated that the Districts would relinquish the role of "first reviewer" on drilling permits with that process being completed solely by the Office of Conservation, while "work permits" would still be handled by the District. Work permits cover activities that generally require more local knowledge to review while drilling permits have more to do with spacing requirements and Commissioner's Orders.

-
- 3) Would efficiency improve by dividing Enforcement into State programs (oil & gas, auditing), Federal programs (coastal, pipeline, 404 permits), District Offices, and Financial Recover?

In developing the recommendations for the steering committee, a comprehensive review was undertaken of the enforcement programs as they currently exist. Where overlap was found, it was a goal to merge efforts for the sake of efficiency. There are programs which are “state programs” and there are programs which are considered “federal programs”. The federal programs have little commonality with each other aside from the fact that each program receives federal funding and each is implemented at the state level through an agreement with a federal agency.

These programs where implemented at the federal level, are done so by different agencies as the expertise required and industries regulated are quite different. For instance, there is no commonality between regulation of surface mining activities and regulation of the pipeline network in Louisiana, but each is a “federal program” implemented by the State through a primacy agreement. The grant process is setup by each federal agency and can be quite different. Additionally, there is much administrative work that goes into preparing and maintaining the documentation required to satisfy federal auditors for these programs and each federal agency administers its oversight responsibilities in its own manner. Due to the lack of commonality and the different federal partners for each program, there does not seem to be a benefit to combining these programs in any way and in our report, they are proposed to be maintained separately.

On the other hand, state programs are currently cooperating in different ways on enforcement activities and these programs have been evaluated for potential merger of duties. Financial recovery, District Offices, Auditing and the Oil & Gas program are all intertwined and certain efficiencies can be realized through better cooperation or merging of programs.

I appreciate the feedback received and the thoughtfulness put into the questions and I submit these responses in hopes that they better explain the thought process behind our initial report. I am available to further explain/answer any questions the Committee may have.

Yours very truly,



Steven Giambrone

Cc: File
Karolien Debusschere, LOSCO

Appendix D: Public Comments to September 20, 2024 NRSC Meeting

Public Comments – Draft Report of the Natural Resources Steering Commission Pursuant to Executive Order JML 24-77
Via e-mail

Dear Members of the Natural Resources Steering Commission,

Thank you for the opportunity to comment on the Draft Report of the Natural Resources Steering Commission Pursuant to Executive Order JML 24-77. We read this report with interest and appreciate the opportunity to provide our comments and thoughts on its summaries and recommendations.

For context, The Nature Conservancy (Conservancy) is a US-based, global environmental non-governmental organization with the mission to conserve the lands and waters on which all life depends. With the support of more than one million members globally, the Conservancy has protected more than 120 million acres of land, 5,000 river miles and currently manages more than 150 marine conservation projects around the world. Across 79 countries and all 50 states in the U.S, the Conservancy has been working to conserve, protect, and restore coastal and marine habitats and species for over four decades. We use a science-based and consensus-oriented approach to find solutions that are good for people and nature. In Louisiana, we have worked with public and private partners to conserve over 300,000 acres of important habitats.

The report recommends creating a steering commission (Commission). We recommend that the new Commission should also include the heads of the Coastal Protection and Restoration Authority (CPRA) and the newly proposed Upland Resource Management Authority (URMA). Further, it is unclear what decisions the Commission would be tasked with making and how this structure would differ from the current CPRA Board. The report does not articulate exactly how the CPRA Board or the Governor's Advisory Commission on Coastal Protection, Restoration and Conservation would interface or overlap with this new Commission. The report states that the new Commission will need legal representation and administrative expertise. It is unclear whether this will come from newly hired staff or if current agency staff will be expected to fill that role. Both DENR and CPRA have extensive legal and administrative needs and we caution having the same staff be required to perform multiple roles with the creation of this Commission will likely stretch resources and overburden staff.

We are most concerned with the report's proposal to centralize implementation into "Planning and Policy" (PP) which seems to be proposed to be headquartered in the Governor's Office of Coastal Activities (GOCA). CPRA has a very robust and highly awarded planning team and planning process, culminating in the creation of a Coastal Master Plan every six years. This report seems to suggest that a new PP would direct planning, strategic oversight and project development in the future and it is unclear whether the Coastal Master Plan process would proceed as it has. We strongly object to any substantive changes to the planning process for CPRA projects. As it currently stands, CPRA has a robust, science-based process for planning projects. Any changes to this process must retain its science-based, non-partisan approach to picking and planning projects. It is also unclear from the report what staff would compose PP, whether they would be new or existing staff, and if they are existing staff, if this work would

compromise new job responsibilities. We recommend that these questions be addressed and the proposed structure be additionally articulated and presented for public comment before moving forward with this plan. Additionally, organizational charts detailing where staff will be placed and who reports to whom will be helpful in understanding and providing public comment on aspects of these recommendations.

The report proposes establishing the Upland Resource Management Authority (URMA). The report does not articulate how this would differ or interface with the Louisiana Watershed Initiative which already has a structure in place for handling water management throughout the state. Additionally, the report does not specify where this new authority would be housed within state government and whether new or existing staff would be needed to implement it. It also does not specify how this new authority would be funded. The report states that the newly established Trust could provide a valuable funding mechanism but does not specify how the Trust will be funded. We ask for further details on how this Trust will be funded and how decisions will be made on how funds will be spent (as well as details on how it will differ from current Trusts already established in state government, such as the Coastal Protection and Restoration Fund).

We appreciate the acknowledgment in the report for the concern voiced regarding eliminating half of the members of the CPRA Board. We continue to believe that the CPRA Board is working well and that further eliminations would not help CPRA's performance.

We are available and happy to provide feedback if requested. We look forward to working the Governor and his administration to continue to build support for, and protect, our state's great natural resources.

Sincerely,

Karen Gautreaux

Louisiana State Director



Board of Directors

September 19, 2024

Kimberly Reyher
Executive Director

Re: Draft Report of the Natural Resources Steering Commission Pursuant to Executive Order JML 24-77

Parker Kilgore
Chairman

Dear Chairman Dove and members of the Natural Resources Steering Commission (NRSC):

Ashley Liuzza
Vice Chair

I am writing on behalf of the Coalition to Restore Coastal Louisiana (CRCL). We have reviewed the "Draft Report of the Natural Resources Steering Commission Pursuant to Executive Order JML 24-77" regarding the findings and recommendations set forth by the NRSC and working groups. We appreciate the opportunity to contribute feedback.

Nene Gianfala
Treasurer

Will Norman
Secretary

CRCL is proud to have been the first statewide nonprofit organization dedicated to confronting coastal land loss in Louisiana. We represent a unique mix of businesses, local governments, industries, scientific communities, national and local conservation groups, hunters, anglers and a broad spectrum of concerned residents. Our mission is to unite people in action to achieve a thriving, sustainable Louisiana coast for all.

Mindy Nunez Airhart
Donald Brinkman
Steve Chustz
Rob Gardiner
Sarah Giles
Brendan Hughes
Devyani Kar
Heather Layrisson
Terrence Lockett
Sam Miles
Brock Piglia
John Ross
Randy Smith
Kristian Sonnier
Beau Tate

In reviewing the report, we agree with and support the commission's endeavor to study existing agencies, systems and structures for opportunities to improve efficiency within state government. In addition, as longstanding advocates for Louisiana's coastal program, we are encouraged to see that the report seeks to maintain the Coastal Restoration and Protection Authority (CPRA) as "the primary entity responsible for the implementation of coastal projects."

The report highlights our coast's role as the cradle of our energy sector and a first line of defense from storms. But our coastal wetlands provide more than that. From the foundations of our culture to our world-class sportsman's paradise, bountiful seafood and bustling tourism industry, Louisiana's coast drives our identity as a state. For this reason, we agree that a commissioner focused on coastal activities should be included in the steering committee. Furthermore, it is vital that this individual should understand and represent these diverse sectors.

While we are encouraged by the commission's acknowledgement of CPRA's success and plans to replicate it to create the "Upper Resource Management Authority (URMA)," CRCL would like to stress its strong opposition to removing or overextending existing resources that make the coastal program so successful. We emphatically support the CPRA Master Plan process as it exists today.

The report mentions the creation of an office for “Planning and Policy” that would be set within the Governor’s Office of Coastal Activities (GOCA). We are intrigued by this recommendation and look forward to understanding more regarding its role in combination with the existing master planning process.

Coordination between Louisiana’s coastal and non-coastal parishes is vital to understanding flood mitigation and water management for our state. While details are currently limited in this report, the proposal to create the “Upper Resource Management Authority (URMA)” in conjunction with CPRA seems to be a positive step toward a comprehensive approach to water management. CRCL could support this measure contingent on the continued planning and execution of projects based on sound science and community input.

We agree that the looming “coastal fiscal cliff” is of major concern for the future of the coastal program. CRCL remains committed to exploring and advocating for long-term funding opportunities both at the state and federal levels. We urge the commission to ensure the proposed changes do not negatively impact the current level of resources the coastal program receives. Additionally, CRCL continues to support policies that protect the coastal trust fund and use of state surplus dollars.

Finally, the report mentions a “zero-based review structure” for all boards and commissions relating to natural resources. We agree this is overall a good practice; however, further clarification is needed regarding the “CPRA Advisory Board” mentioned on Page 13. Currently, there is no board with this specific title. We are unsure if this refers to the CPRA Board or the Governor’s Advisory Commission on Coastal Protection, Restoration and Conservation. In either case, CRCL believes it is paramount that the review considers the diverse communities, populations and stakeholders vital to the success of our coastal program.

In conclusion, we believe that our state and coast has benefited from a history of nonpartisan and science-based decision making. It is our hope that the changes the commission is considering remain based on sound science and community input, not politics.

We thank you for the opportunity to provide input and look forward to working for the betterment of Louisiana as the reorganization advances.

Sincerely,



Kimberly Davis Reyher
Executive Director
The Coalition to Restore Coastal Louisiana



LOUISIANA WILDLIFE FEDERATION

The voice of Louisiana's wildlife and natural resources since 1940.

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September 19, 2024

J. Clay Parker
Special Counsel
Governor's Office of Coastal Activities

Email: clay.parker@la.gov and driveinitiative@la.gov

Re: Draft Report of The Natural Resources Steering Commission Pursuant to Executive Order JML 24-77

Louisiana Wildlife Federation (LWF) appreciates the opportunity to comment on the "Draft Report of the Natural Resources Steering Commission," a direct result of the Governor's executive order, Departmental Review for Innovation and Visionary Enhancement (DRIVE), and reorganization of the Department of Energy and Natural Resources (DENR).

During its eight decades as an organization, LWF has facilitated citizen action and engagement in natural resources management on behalf of our membership comprised of hunters, anglers, paddlers, campers, boaters, and birders who appreciate Louisiana's abundance of wildlife and the heritage of outdoor recreation. Our membership of more than 11,000 prioritize coastal sustainability, comprehensive water management, and wildlife conservation as crucial for Louisiana's economic and environmental stability.

LWF commends the immense work of the Governor, the Steering Commission, and DENR that has gone into the recommendations of the draft report with a purpose of modernizing and streamlining natural resource management around the state.

While there are a number of admirable recommendations included in the draft document, including the need for DENR internal restructuring around permitting and enforcement, there are a number of recommendations that are either unclear or confusing at this time. While some of these recommendations may be explained further during a public meeting to be held one day after written comments are due, these written comments must rely solely on the draft document provided.

In general, the biggest concern is the apparent lack of public input and stakeholder engagement included in some of the more outward facing aspects of the recommendations. For example, there is little indication that levee boards, water commissions such as the Sparta Ground Water Commission, the Louisiana Watershed Initiative, or many other groups currently working on water management and flood control were included in discussions about forming an Upland Resource Management Authority.

In addition, with the release of the document late in the evening of Friday, Sept. 13, just days after Hurricane Francine made landfall in the state, and comments due by midnight Thursday, Sept. 19, there was little time to read and digest the draft recommendations. The decision to have public comments due nine hours before the public meeting neither allows for inclusion of public comment in the discussion nor allows for the benefit of hearing the presentations at the public meeting which may have answered many of the following questions.

Relying on the draft document, LWF outlines our thoughts, and sometimes concerns, about the recommendations presented in the following comments.

NRSC-1-2024: Implementation

The recommendations include the formation of a five-member Steering Commission that would include “(1) a commissioner representing coastal activities, (2) a commissioner representing statewide interests on natural resources and energy resiliency and infrastructure, (3) a commissioner representing finance, economic development, and planning, (4) a commissioner representing the head of the Department of Energy & Natural Resources, and (5) a commissioner representing energy resources management.”

Currently, the Steering Committee makeup doesn’t specifically include representation from Louisiana Coastal Protection and Restoration Authority (CPRA) or the envisioned Upland Resources Management Authority (URMA). As the leaders of these two organizations will have essential knowledge and expertise on their respective duties, it seems imperative that they also have a formal place on the Steering Committee.

The recommendations also call for the Governor’s Office of Coastal Activities (GOCA) to take on a statewide planning and policy role in order to provide strategic direction for CPRA (for coastal areas) or URMA (for non-coastal areas). This Planning and Policy (PP) would take on the roles of developing strategic direction, evaluation of cost estimates, and project specifications leaving CPRA and URMA with the sole duty of implementation. As stated in the recommendations, this stripping of duties from CPRA flies in the face of previous praise of CPRA’s effectiveness as an organization toward a well-defined goal of coastal restoration and protection.

For example, Louisiana’s Coastal Master Plan receives international praise not because it is a list of projects, but because it is a deeply researched, science-based plan that evaluates cumulative impacts, benefits, and costs for the larger good. In short, the Coastal Master Plan is a coastal strategy that is underpinned by lessons learned, up-to-date science and research, and extensive stakeholder input which is updated every six years specifically in order to incorporate new discoveries and science. As a result of this extensive input, the Louisiana Coastal Master Plan receives unanimous approval from the legislature.

As part of this, there is an implementation plan in the form of CPRA’s Annual Plan which outlines the short-term spending expected on projects, already vetted through the Coastal Master Plan process.

Taking away this planning and budgetary work from CPRA would essentially turn the authority into a construction firm that has no control over the sequence of construction or the benefit of long-term construction goals as found in the Coastal Master Plan and Annual Plan.

In short, the current recommendation adds layers of bureaucracy to fixing a problem that doesn’t exist at CPRA, i.e. lack of planning, policy, and cost analysis. These recommendations seek to reform a process so valued that the Natural Resources Steering Commission holds it up as the example other state agencies should emulate. From the report, “In contrast, CPRA and GOCA have shown how a well-integrated planning process at the intersection of the Executive and Legislative branches can provide strategic oversight and growth opportunities.”

Even if the PP were to form a team to perform this work from current employees at CPRA, Department of Transportation and Development, and Department of Energy and Natural Resources, the learning curve of building a new team to deliver these guidance documents for the coast, such as the Coastal Master Plan, would defeat the Commission’s statement that the work would be done “with consideration not to dilute a coastal focus.”

CPRA was formed in 2006 for the express reason of bringing together coastal duties previously scattered among different state agencies into a single entity with no divided loyalties. The recommendations

presented in this report represent a step backwards for the state's coastal efforts at the exact time we should be looking forward to address our coastal crisis.

The formation of URMA would be modeled on CPRA and would be focused on non-coastal flood protection. Flooding is not just a coastal concern as the 2016 floods clearly demonstrated and this is a great step in continuing to recognize statewide vulnerability. However, it is unclear how the ongoing Louisiana Watershed Initiative will be incorporated into these efforts, how URMA will be staffed, and where funding for the program will be generated. Although the report states that the Natural Resources Trust Authority will be "valuable funding mechanism" for both URMA and CPRA, it is unclear how that funding structure will be set up and how it will be distributed. More details on the funding mechanisms and distribution are needed.

NRSC-2B-2024: Boards & Commissions

In this section there is a recommendation to reduce the size of the "CPRA Advisory Board" by half. It is unclear whether this refers to the CPRA Board or the Governor's Advisory Commission on Coastal Protection, Restoration, and Conservation.

If this refers to the CPRA Board, concerns arise from reducing the board to the point that it ceases to serve the function of representing the broad range of interests across Louisiana's coast. The issues facing southwest Louisiana are very different than those that face south central or southeast Louisiana and those voices can be lost if the board is made up of only members who live and work in Baton Rouge or southeast Louisiana.

If this refers to the Governor's Advisory Commission on Coastal Protection, Restoration, and Conservation, a group that performs a very different function than the CPRA Board, this is also a concern. The Governor's Advisory Commission on Coastal Protection, Restoration, and Conservation provides a valuable service in bringing more voices to the critical issues of coastal restoration and protection in the state and over the years has been a forum to vet different coastal concepts, funding mechanisms, and projects. Reducing this group by an arbitrary number (half) would effectively reduce the voice of important coastal voices in the ongoing discussion about the future of Louisiana's coast. We would recommend a conversation with the commission to reexamine membership makeup before decisions are made about what sectors of the coastal community should be removed.

NRSC-3A-2024: Natural Resources Trust Authority

The Steering Committee recommends collaboration between DENR and CPRA to enhance collaboration and creation of a workflow that allows the two agencies to collaborate on grant support through the Indefinite Delivery Indefinite Quantity Process. While using CPRA's work as a model is laudable, we have concerns that collaboration may take away from CPRA's specialized work

In addition, it is unclear how the Coastal Trust Fund will, or won't, be incorporated into the Natural Resources Trust Authority. If it is incorporated, it appears that the State Mineral and Energy Board would have authority over these funding streams without the mandate of coastal restoration and protection currently housed at CPRA and GOCA.

A clearer outline/flowchart is needed for how this Natural Resources Trust Authority will work, what funding streams will be included, how it will fund the additional URMA creation, and how funding will be allocated.

The Natural Resources Steering Commission recommendation report states that, "By enhancing transparency and financial oversight, the Trust will gain legislative support, as lawmakers will be reassured that public funds are being managed responsibly and in alignment with the state's strategic

goals.” However, CPRA already enjoys legislative support and produces transparency in planning, policy, and spending through the Coastal Master Plan and the Annual Plan process.

General comments

The reorganization and renaming of a number of departments would be greatly clarified through an organizational chart from the Natural Resources Steering Commission that clearly shows how responsibilities and authorities would flow within the proposed changes. There are also a number of areas that are labeled as needing continued exploration which ultimately could influence the feasibility of recommended changes. We would recommend taking the time to work out more details on the general concepts presented here before moving these recommendations toward adoption.

We would disagree with the report’s conclusion that states, “The structure proposed herein also addresses public comments in *ensuring CPRA remains independent* and improves the function of all offices within the state’s natural resources management structure.”

While it is true that CPRA is left to be independent, large portions of what makes the agency successful such as science-based strategic planning, implementation annual planning, and broad stakeholder engagement, would be removed through this plan. CPRA would essentially be an implementation organization, taking away the greatest strengths of the program which has been the planning, prioritization, and funding analysis to develop and implement a rigorous, science-based approach to comprehensive coastal restoration.

In addition, it isn’t clear from the document what entity will be responsible for response and coordination before, during, and after tropical storms and hurricanes. Currently, CPRA provides a central clearing house for requests for many coastal parishes in facilitating preparation and recovery work. Will this aspect now be housed in PP or individually in CPRA and URMA?

Also, the current recommendations don’t provide any analysis of what this reorganization as proposed will cost (moving programs, staffing requirements, permit consolidation savings, etc.) or how much it will save the state. While only one measure of efficiency, the cost/benefit of making these changes seems critical in determining whether the recommendations will be beneficial in the short or long-term management of these critical natural resources.

We understand the Natural Resources Steering Commission was given an extremely difficult task of both streamlining for efficiency while also creating new organizations with added responsibilities and duties. Our criticisms and concerns listed here are offered in the spirit of helping you succeed for the benefit of the state.

Again, thank you for the opportunity to comment on this ambitious undertaking for the state of Louisiana.

Please reach out if we can provide any assistance.

Sincerely,



Rebecca Triche
Executive Director



[OFFICERS]

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Vice Chair

Amy Cohen
Secretary

Michael Kelly
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Kristi Trail
Executive Director

September 19, 2024

Mr. Clay Parker
Special Counsel
Governor's Office of Coastal Activities
Capitol Annex Building, Suite 138
Baton Rouge, Louisiana 70802

Re: Executive Order JML-13: Consolidation of Natural Resources and Energy Executive Branch Functions, Powers, Duties, and Responsibilities

Dear Mr. Parker:

At Pontchartrain Conservancy (PC), our mission is to drive environmental sustainability and stewardship through scientific research, education, and advocacy. As long-standing coastal stakeholders with an interest in the Department of Energy & Natural Resources (DENR) re-organization process, we appreciate being included in the review of the Draft Report of the Natural Resources Steering Committee (NRSC) and the DRIVE initiative. We are writing to you today to share our comments on DENR's re-organization plans, including changes in the works for Coastal Protection & Restoration Authority (CPRA) and its potential new counterpart, URMA.

Overall, the report reflects both previous content found in the original executive order, subsequent information shared, and presentations given at the first meeting of the NRSC. While we have no issues with most of the report and are very pleased to see that the CPRA will be allowed to continue as an independent entity, we do have some questions and concerns about the new governance structures planned for DENR and how those may impact the coastal program and its projects.

First, the creation of a permanent five-member panel—the Natural Resources Steering Commission—to oversee the governance of all natural resource areas is a big job for only a handful of individuals, however capable they may be. The inclusion of the Executive Assistant for Coastal Activities as one of the five members is important. However, without representation by the CPRA implementation office, specifically through its Executive Director, many elements of project work, funding-related issues, land rights and a myriad of other bits of knowledge will not be directly available to this commission as they begin the daunting task of managing a very large

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program at DENR. We strongly suggest the addition of the Executive Director of CPRA be included in the commission. Consideration should also be given to the new Executive Director (or equivalent position) at URMA once it is formally created.

Secondly, we firmly believe in the state's science-based Coastal Master Plan and would like to see it continue to be updated and implemented for the lifespan of the CPRA program. The report indicates that a new management structure will be created—within the existing Governor's Office of Coastal Activities (GOCA) —to direct planning and policy for the “entire state's water and natural resource-related construction projects.” While policy has always been a function of GOCA, planning has been a cornerstone of CPRA's implementation office since its inception: it is a critical role for CPRA and is coordinated in-house with other sections such as science, adaptive management, and engineering. The Coastal Master Plan team, that includes CPRA and its consultants, is comprised of top-notch Louisiana scientists and planners and the outcomes of the team's modeling efforts that comprise the projects in the master plan are what guides the agency in project implementation. We believe that planning should be left to the scientists and engineers at CPRA and the significant and time-consuming task of directing and implementing policy at the state and federal levels be handled by GOCA moving forward.

Next, directing CPRA to implement a plan to assist DENR by providing support for federal grant programs would take away time from the roughly 180 CPRA employees whose mission has been solely focused on coastal protection and restoration work, including management of many ongoing large federal grants and programs. The CPRA is an efficient, competent agency, and we encourage the state to reconsider taking them away from that mission unless it takes the form of temporary training while DENR hires its own staff to implement grants.

Lastly, we would like to signal our support for Office of Enforcement consolidation. We applaud the proposal to consolidate all these related efforts together under one roof and we look forward to learning more of the details, as well as seeing an organizational chart in the next iteration of this report.

Building support and understanding regarding the state's coastal program is part of our advocacy work at PC. We have worked in this arena for 35 years and will continue to support coastal protection and restoration efforts for as long as the land loss crisis remains an issue to our state. To this end, we respectfully request that the science-based Coastal Master Plan continue to function in the effective way it has been operating since the first conceptual report was finalized in 2007. We strongly support the Coastal Master Plan and its companion document, the Coastal Annual Plan. Thus, whatever changes come from the state's DRIVE initiative, we sincerely hope no changes are contemplated for these key coastal planning documents as it would serve only to undermine both the program's credibility and stakeholder support.

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Although the report focuses mostly on DENR's reorganization, including the Office of Conservation, Office of Energy, Office of Land and Water, Office of the Secretary and tasks relevant to those departments, we currently have no substantive comments on those items.

Again, we truly appreciate your notification to us of this report and we look forward to continuing this dialogue as the work of DENR proceeds throughout the remainder of the year.

Sincerely,



Kristi Trail, P.E.
Executive Director

cc: Secretary Tyler Gray, Louisiana Department of Energy & Natural Resources

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RESTORE

THE MISSISSIPPI RIVER DELTA



MississippiRiverDelta.org

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@RestoreDelta

September 19, 2024

RE: Executive Order JML-13: Consolidation of Natural Resources and Energy Executive Branch Functions, Powers, Duties, and Responsibilities

Dear Secretary Gray, Chairman Dove, and Mr. Parker,

Restore the Mississippi River Delta Coalition, comprised of the Environmental Defense Fund, the National Audubon Society, the National Wildlife Federation, and Pontchartrain Conservancy, has been a long-standing advocate for a strong, science-based coastal program for Louisiana. We appreciate that our environment is changing, so our governance models and ability to strategically develop and implement plans may also need to evolve. We also appreciate that as the DRIVE Initiative strives to replicate the best aspects of the coastal program's structure within the Department of Energy and Natural Resources (DENR) and at proposed entities like the Upland Resource Management Agency (URMA) and Planning and Policy (PP), it does so with a recognition that the current configuration of the state's coastal program has brought benefits and successes to the people, economy, and environment of Louisiana. However, we are concerned that many of the complex proposals provided in the latest draft report cannot guarantee improvement in the state's natural resources governance but, in contrast, could slow down the state's ability to proactively meet the challenges posed by the coastal crisis and the opportunities presented by the energy transition where time is also a precious resource.

Our organizations appreciate the difficulty of your task. This spring, you were instructed by executive order to accomplish two monumental and opposing tasks: to find efficiencies within your agencies and expand your mission. The challenge of reconciling these two charges is present throughout this draft report, as well as the changes proposed to the state's natural resources management.

At their most general, our concerns focus on the proposed changes to "planning" presented across the document. When done right, a strong vision and sound strategy are necessary for good planning—it articulates a clearly defined problem that needs solving or points out the potential for seizing unmet opportunities.

Louisiana's natural resources arena has both challenges and opportunities. There are enormous challenges like land loss, rising sea levels, frequent and damaging hurricanes, and an inadequate energy grid. Massive changes are underway with the potential to positively shape the state's future, like the growth of renewable energy, industrial decarbonization, hydrogen production, and the demand for appropriately deployed carbon capture. Yet, aside from a passing mention of the "need for a focus on resiliency," these enormous and pressing issues are missing from this exercise—precisely the problems that have prevented DENR from remaining proactive over the past several years.

The lack of clarity or stated purpose behind the many changes proposed across state government in this draft report makes it difficult to judge the value of the reforms proposed. In some places, the needed changes increase government, such as the creation of URMA and PP or the creation of the "Advocate General for Natural Resources." In others, whole programs, like statewide flood control at DOTD, are cut from one agency and pasted into another without any specific explanation for the "how?" or the "why?". In other cases, governmental functions added in the report appear similar or



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the same as current ongoing efforts; specific examples include the Watershed Council and the CPRA Board. However, the report does not indicate whether the elimination of or changes to those groups are being contemplated. Because of the lack of clarity on the vision or purpose, the outcomes proposed in this draft report do not represent a “streamlined” DENR but, in fact, a seemingly larger organization with new government structures and bureaucracy that takes functionality from other agencies without explanation to long-term impacts to budgets and organizational structures within and across divisions at DENR. This becomes more significant given the findings of the most recent LLA Report (2023) for DENR, where “Continuity of Operations Planning” for each of its offices was noted as lacking.

References to planning processes and entities throughout this draft report are the most concerning as they reflect both a lack of understanding of the existing system and a lack of appreciation for why and how planning occurs at present.

Most of our concerns stem from the duties of the newly proposed Planning and Policy (PP) entity (discussed below in more detail), which is described as the “state’s central body for water and natural resources management” and “the key driver of strategic oversight and project development.” PP is purportedly modeled on, or understood to be an expansion of, the Governor’s Office of Coastal Activities (GOCA)—except that GOCA does not have a role in planning, nor can it legally work on issues outside of the coastal area. As outlined in Louisiana statute(s), GOCA is the policy branch of the coastal program, traditionally comprised of those with a legal or policy background acting as either legislative liaisons or engaged in federal policy. The statutes are clear that this office directly and only acts to support integrated coastal protection. Any expansion of this mission would require changes in state statute. GOCA’s role is to ensure the coastal crisis remains a top priority for the Governor through the Executive Assistant to the Governor for Coastal Activities and his staff, to staff the CPRA Board, to ensure that efforts to address the coastal crisis are carried out and aligned across agencies, to develop policy to facilitate or speed the implementation of the Coastal Master Plan and to help manage the politics of coastal protection and restoration so that the scientists, engineers, and planners at CPRA can be shielded from these political interactions.

Coastal planning takes place at the Coastal Protection and Restoration Authority inside the Division of Planning and Research in developing the Comprehensive Master Plan for a Sustainable Coast. The refrains, “science-based Coastal Master Plan,” and “a process built on science”—widely acknowledged to be at the heart of CPRA’s political and practical success—is the agency’s defining characteristic and is a direct reference to their planning function. The outcome of this planning process is identifying the most effective projects to ensure taxpayer dollars are spent wisely. This type of planning also includes years of community support and public buy-in through annual public meetings, monthly board meetings, and direct engagement through community conversations. These efforts have been successful, with a 2023 poll of Louisiana residents that showed 92% of the responders agreeing that it was important for the state to have a plan to deal with coastal land loss that keeps up with the latest science.

The idea that the policy office would provide oversight and project development is exceptionally concerning. This could be interpreted as a foundational shift in the coastal program. Enabling the PP entity to “serve as the primary body for assessing statewide water management needs and developing comprehensive strategies,” and then, following assessments of “the feasibility and financial implications of proposed projects, including detailed cost breakdowns,” for the PP to “present a detailed plan to CPRA and URMA for implementation,” would seem to negate the purpose and need of the renowned Coastal Master Plan. This needs to be clarified and detailed so the true intent of this proposed shift is clearly conveyed.



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The draft report's consistent references to "financial implications," "cost breakdowns," "transparent budgeting," and "cost estimates" within the implementation and planning sections are also concerning as it seems to neglect that there is more to planning than budgeting and accounting. The projects selected to move forward must first be proven to provide strategic solutions to the problem and move the state toward its larger goals and vision, and not simply be the right price for the given moment. It is unclear why the coastal authority has been targeted for this type of analysis singularly or if the intent is for this type of analysis to happen across the cabinet.

We hope you will allow project development to be retained within the CPRA under the guidance of its scientists, engineers, and subject matter experts, leaving policy as the primary purpose of the GOCA office. Whether or not coastal projects are feasible is a question asked and answered by the six-year Coastal Master Plan, the heart of CPRA's mission. The state already has a process that chooses projects based on requests to fulfill any and all purposes, where budget and politics alone determine their viability: it is the Capital Outlay process, which applies to all state departments, and it is not a scientific way to approach an existential problem such as coastal land loss with limited resources.

We recommend serious additional evaluation and consideration before adopting the strategy of taking over statewide flood control and upland levees from DOTD. It is a heavy lift that may not be completely necessary and the last thing we would want to see is mission creep by DENR that would overwhelm its staff time and resources.

Please include organizational charts for DENR, CPRA, and GOCA to show where each major department falls within the overarching DENR framework and provide more details on each department's structure. Is the proposed URMA entity a new agency? Is there still a CPRA Board, or is it to be replaced by PP? Will the new positions created, such as Advocate General and Chief Administrative Officer, be classified or unclassified (unclassified positions or civil servants)?

Recommendations for Reorganization:

Steering Commission

This critical voting commission should also include subject matter experts in the field of coastal protection and restoration implementation at the Coastal Protection and Restoration Authority (CPRA) and the newly envisioned Upland Resources Management Authority (URMA), which is detailed as responsible for statewide flood control and upland levee systems. The CPRA and URMA Executive Directors should be added to the Commission to ensure their views are represented formally at this level of government.

Recommendations of Working Groups

Implementation, CPRA: Again, in this section, the text of the report describes the CPRA role in planning and policy formulation to be "centralized under PP," with the CPRA role condensed to the technical execution of projects as its "sole focus." This is both concerning and confusing without more explanation of what expertise the PP group will bring to the table.

This section of the draft report discusses the need to investigate long-term financial stability for CPRA. This issue is a classic charge of the policy arm of CPRA at GOCA—working with the state leadership, legislature, and the federal delegation to push forward on critical initiatives such as the RISEE Act and new initiatives such as supporting the Wind Amendment on



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the Fall 2024 ballot. These are areas where GOCA previously did and should now excel in promoting the success of the coastal program into the future.

Implementation, URMA: In considering the concept of URMA as a companion entity to the CPRA implementation office, DENR must decide that assuming the responsibility (currently held by DOTD) of statewide flood control and levees outside the coastal area fits its mission, is in its best interest and will be manageable with current capacity and governance. Our questions are focused on the “how” of URMA: will CPRA staff be divided away from the coastal mission to create this new entity, or will staff be taken from DOTD public works? The text in the report indicates that “an evaluation of existing governmental entities” will be undertaken to facilitate the creation of URMA, but with scant detail on the potential pathways through which it will be formally set up. With the stated goal of ideally using “an existing funding source,” the report leaves essential questions outstanding that should be addressed either in the upcoming meeting of the NRSC or in another draft/final report. We hope you will hire new staff for this group or take on staff from DOTD and not rely on CPRA’s existing staff of 186 to fulfill this new mission.

Office of the Secretary

Legal Consolidation: CPRA and possibly the new URMA should retain legal counsel to directly and only work on coastal and upland issues. CPRA faces many day-to-day legal challenges—from land rights to water bottoms to fisheries—that require the attention of the CPRA coastal legal experts on staff. Any diminishment of this expertise will cause problems at CPRA and could slow down project implementation.

Boards and Commissions

There is a recommendation in the report to reduce the CPRA “advisory board” (which we believe references the Governor’s Advisory Commission on Coastal Protection, Restoration and Conservation created by LA Rev Stat § 49:214.4.1 (2016)) by half. Founded in 2003, the Governor’s Advisory Commission provides a very different perspective on the future of the coast than the CPRA Board. It has been invaluable to governors dating back to Governor Mike Foster on practical, emerging issues across the coastal area of Louisiana. It also was very deliberative in its membership, representing a diverse group of stakeholders from business, industry, ports, fisheries, academia, and levee districts through ALBL and conservation. The opportunity for community representatives exists through the at-large appointments as well.

Many stakeholders have questions about who will be removed or retained: Is “half” a target because the panel is considered too large, or is the reduction more specific to either category of representation or the number of individuals represented in a particular category? Additionally, as noted at the beginning of the DRIVE Initiative, many boards and commissions appear redundant, so why this group was targeted is unclear.

We respectfully suggest Governor’s Advisory Chairman Tony Alford be allowed to work with the commission for at least another year and then be consulted by NRSC on the commission’s work, membership, and staffing needs. After that time, we recommend the NRSC and CPRA leadership convene with the commission chairman to decide in-house what the commission’s most beneficial outcomes will be.

Office of Management and Finance



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This section focuses on “collaboration” between CPRA and DENR staff in administering federal grants and the IDIQ process. As mentioned in previous comments, we recommend this arrangement be temporary to not take away from CPRA’s staff duties permanently, but instead to only receive the assistance of the CPRA staff for a limited period until DENR can hire and train experts to handle the job. In the months since the DRIVE Initiative was proposed, the beginnings of an IDIQ process specific to natural resource management could have been created with the input of CPRA.

It is also important to note that most of CPRA’s experience with federal agencies is specific to NOAA, the US Fish and Wildlife Service, the US Army Corps of Engineers, and EPA. They do not work regularly with the Department of Energy or other DENR-specific federal agencies and, therefore, do not know these agencies through relationships, practice, or methods that are all likely very different from their counterparts.

Natural Resources Trust Authority

We have many questions about the role and functionality of the NRTA and its relationship to the current CPRA Trust Fund and CPRA Financing Corporation. This section suggests the “funds will be segregated for different projects”. Still, it does not indicate whether the Coastal Trust Fund will exist as it does today or is envisioned as a sub-fund to the new Trust Authority.

The example of segregating coastal dollars from energy dollars seems to suggest all the various funds would be consolidated into the Natural Resources Trust Authority, then technically supervised by the Mineral Board. The question is begged: what changes will be made to the structure and operation of the CPRA Trust Fund and why? It exists in the state treasury, it is managed in-house, and the constitution and statute govern it. Without a clear vision for its purpose and governance, we do not see the value in moving the fund, particularly if it is to be so far removed from CPRA and overseen by the Mineral Board.

Also, as a reminder, CPRA Trust Fund is different from the Coastal Financing Corporation, which has its own board and its own authorities. Should bonding be pursued for coastal projects, it is not clear why the Mineral Board is a better oversight body than CPRA Financing Corporation Board, or why those dollars would need to go into the NRTA. Revenues from the OCS, carbon credits, and state mineral revenues are what would constitute the coastal program, which is fundamentally different from oil and gas exploration that is putting down bonds for future remediation and decommissioning.

Lastly, the Trust Oversight Committee adds another layer of approval to the Coastal Trust Fund that does not currently exist. We question the need for this extensive oversight for CPRA, a program that has been running smoothly for many years. Additionally, we are concerned that these many layers of oversight may slow down the release of project funds, thus causing problems for project implementation.

We have no issues with the Trust Authority’s investment strategies, relationship with the Legislative Auditor’s Office, or creation of a dashboard—these things all seem to be in the best interest of public transparency, and we applaud the effort.

Office of Conservation

Housed in one office, all permitting activities, like enforcement, could bring about efficiencies, and we applaud the effort.



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A reference is made in this section to have the state assume the responsibility of Section 404 permitting from the USACE. We do not know of any state that has assumed responsibility for Corps' permitting for wetlands. If the Corps approves such a request, it becomes, again, a capacity and possible mission creep issue for DENR that should be soundly vetted before proceeding.

Office of Land and Water

We have no comment on the text in this section or the name change envisioned.

Office of Energy

Resilience is sometimes a synonym for levee projects and a broader category of infrastructure. Yet resilience is not one of the stated goals of the DRIVE initiative or any of its individual reforms. Furthermore, the report states that "there is a need for a focus on resiliency, as the influx of federal grants focused on resiliency has shown." This line leaves the impression that the resilience focus is in response to federal priorities, not state priorities.

The job of the state's Chief Resilience Officer is comprised of more than energy and should continue to be housed within the Office of the Governor so that every state agency may be called on to think about it as it pertains to their programs, projects, policies, and infrastructure. Ideally, it should not reside within one single department. The state energy officer at DENR would be an excellent candidate to act as the department's resilience officer/coordinator. Still, the CRO position should remain in the Governor's Office, where he/she can coordinate across all hazards and all agencies.

The state energy office should focus on standing up grant programs like HERO, Solar for All, and a weatherization program, to name a few. It should be given the tools and staff to focus on these jobs.

Finally, the Office of Energy should develop a statewide strategic energy plan. That plan should contemplate a big-picture overview of energy needs that includes state strategies on renewable energy, carbon capture, and hydrogen (of any color). It may also include a picture of the continued decline of onshore oil and gas production and the exporting of LNG, among other topics, if they are not covered in public reporting elsewhere in the department.

Office of Enforcement

Housed in one office, all enforcement activities, like permitting, could increase efficiency. We applaud the effort.

Conclusion

The success of these offices and agencies is something that every Louisianian relies on in their daily lives. As such, there is a strong history of public engagement in the processes of agencies like CPRA. This engagement has been and will continue to be critical to the long-standing success of Louisiana's coastal program. To maintain this engagement and support, the state must continue to prioritize transparency, communication, and meaningful dialogue with coastal stakeholders every step of the way. We feel this DRIVE process, and the timing of this draft report release does not uphold those essential values. The public deserves more time and clarity to appropriately respond and engage with this process. Additionally, the



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state must properly acknowledge and respond to stakeholder input.

We appreciate your consideration of this critical topic and thank you for your thoughtful response.

Sincerely,

Simone Maloz
Campaign Director
Restore the Mississippi River Delta

Kristi Trail
Executive Director
Pontchartrain Conservancy

Lauren Bourg
Director, Mississippi River Delta Program
National Audubon Society

Amanda Moore
Senior Director, Gulf Program
National Wildlife Federation

Will McDow
Senior Director, Climate Resilient Coasts & Watersheds
Environmental Defense Fund





TULANE INSTITUTE
ON WATER RESOURCES LAW & POLICY

September 19, 2024

Mr. Tyler Gray, Secretary

Mr. Clay Parker, Special Counsel

Louisiana Department of Energy and Natural Resources

driveinitiative@la.gov

Re: EO-JML 24-13, DRIVE, and NRSC

Dear Secretary Gray and Special Counsel Parker,

We appreciate being invited to provide comments on the governmental reorganization ideas set forth in the Draft Report of the Natural Resources Steering Commission responding to EO JML 24-77 and Governor Landry's March 11 letter to you and in your letter to Gordon Dove of March 14. These comments are in addition to the comments we filed submitted on February 21 and on March 25 which we would like to incorporate here by reference. We would like to preface our more specific comments below with the general observation that the shortness of the comment period on the NRSC recommendations (7 days) in advance of the public meeting on September 20 at which the adoption of those recommendations is scheduled reflects a lack of the transparency and opportunity for public input promised by the document itself. There is simply no way the input from filed comments and those offered at the hearing can be given meaningful consideration by the NRSC. The challenge is compounded by the fact that the recommendations themselves reflect the unreconciled and in many ways unclear work of 9 Working Groups. For an effort intended to modernize LDENR by reducing confusion under unclear statutes and regulations in ways that inspire trust and confidence through transparency and accountability, it seems that more consideration and public discussion is needed before any recommendations are adopted. Indeed, we can't help but note that the recommendations do not identify any specific statutes and regulations that warrant attention.

We do appreciate the need for updating the mission and structure of LDENR and other state bodies but strongly believe in the adage that "doing something quickly is never a good excuse for doing something poorly."

1. Recommendations for Reorganization

With regard to managing the state's natural resources and regulatory structure, the proposal suggests "as one option" (page 4) a new Steering Commission (SC) with five members. The recommendation does not offer any other options, nor does it explain what the SC's powers and authority would be, where it would be housed, who it would report to, how it would be staffed. Perhaps it would be a body located in the Governor's office that could coordinate and harmonize the programs of executive branch agencies? Perhaps, but it does not say so.

Nor does it say how the SC would square with the statutory and constitutional jurisdictions and responsibilities of those state agencies and their secretaries/directors? For example, the recommendation calls for Commissioners focused Finance and Economic Development Policy (page 6) and on Coastal Activities (page 7). This seems potentially redundant or contradictory to the duties of the Department of Economic Development, the Governor's Office of Coastal Activities and the Coastal Protection and Restoration Authority. To be sure, the recommendation does say that coastally focused commission should represent the state's coastal activities thus continuing their focus on long term planning for CPRA. It is not at all clear what this means nor why it is necessary. This confusion seems contrary to the explicit aim of this endeavor which is to reduce confusion and lack of clarity.

The recommendation also speaks of the SC's need for "legal representation and counsel" and unspecified "administrative expertise" under the umbrella of the "advocate general for natural resources" (no description or scope of authority) and a CAO and says those will be discussed in later paragraphs but they are not.

Finally the recommendation suggests creation of an Upland Resource Management Authority of unspecified membership and expertise. It does not suggest the elimination of any current positions.

2. CPRA/UMRA/Policy and Planning concerns

The Implementation Working Groups (IWG) section of the report contains the most robust set of recommendations for the NRSC. Most notably, the IWG calls for the creation of an Upland Resource Management Authority (URMA) to deal with flood protection and prevention projects outside of the coastal area (pages 3 and 8).

Later, the document closely ties planning, financing and execution for CPRA and URMA together. That is inconsistent. URMA seems to be an afterthought, perhaps to placate interests in the northern part of the state. It should be remembered, however, that without vigorous and well-funded CPRA activities, the folks in URMA could instead be facing the issues of CPRA. Since the URMA does not currently exist and it would almost certainly require a realignment responsibilities and resources from the Department of Transportation (page 9) it is unclear why upland flood protection and prevention could not simply be improved by refocusing and better resourcing DOTD? Indeed, the recommendation does not indicate where URMA would be housed, who it would report to or what its administrative structure would be. No explanation is offered as to why this would better serve the people of the state. Again, this seems to be contrary to the aims of this undertaking.

The recommendation, apparently impressed by model set by the CPRA (pages 3 and 8) also calls for the creation of something called "Planning and Policy" (PP) to set strategic direction for URMA and CPRA. The recommendation offers no insight as to how PP would work or how it would preserve the successful CPRA model. It does say that "in theory" the Governor's Office of Coastal Activities would continue its policy and planning role but be expanded to embrace the statewide needs such as those that might be assumed by URMA (which, again does not exist). That approach is posited as a "theory" not a recommendation and it would untimely for the NRSC to treat it as until it has been more fully fleshed out, especially since the IWG expressly notes that whatever is ultimately done should not dilute GOCA and CPRA's coastal focus.

3. The other Working Group reports also contain important suggestions that deserve more careful attention. Indeed, they use terms that may be understood by some but certain won't be by all. For example, what is meant

by a “zero basis review” of the CPRA advisory board (page 13). What would trigger this drafting (issuance) of advisory opinions by DENR’s legal team and will those be publicly available (page 11) ? What are "transparent financial boundaries" as referred in the report?

Conclusion.

The NRSC has undertaken the most significant review and, potentially, revamp of State government in decades. It is about much more than just refocusing and streamlining LDENR. Whatever the outcome, this state and her people will live with the consequences far into the future. It is worth doing right. That should begin with not rushing to adopt recommendations that are not fully fleshed out or fully vetted with the public. We wish you well in this and offer these comments in that spirit.

Respectfully Submitted,

Mark S. Davis
Director, Tulane Center for Environmental Law

Christopher J. Dalbom
Director, Tulane Institute on Water Resources Law & Policy



September 18, 2024

Executive Committee

Devin Foil
Bryant Dixon
Brandi Nelson
Emily Bullock

Board Members

Anthony Burrell Jr.
Bob Mora
Blaise Pezold
Kellyn LaCour-Conant
Kristin Tracz
Megan Terrell
Rachelle Sanderson
Randi Ezell
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RE: Public Comment on the Natural Resources Steering Commission Draft Report (EO JML 24-13)

Dear Members of the Natural Resources Steering Commission,

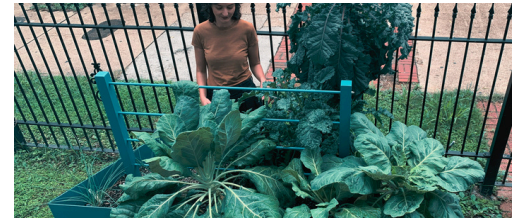
On behalf of The Water Collaborative of Greater New Orleans, we would like to express our appreciation for the thoughtful work that went into the Natural Resources Steering Commission (NRSC) Draft Report and the effort to improve the state's natural resource management. The objectives of greater efficiency, coordination, and sustainability are crucial for the future of Louisiana's natural resources, and we support initiatives that aim to achieve these goals.

While we recognize the value of the recommendations, we respectfully offer a few counterpoints and suggestions, particularly regarding creating the Office of Land and Water (renamed the Office of Resource Management), which we believe might lead to redundant structures. We fully support the establishment of a permanent office specifically dedicated to funding water resource management, but we recommend that it be designed to complement existing systems and agencies. Additionally, we advocate for greater investment in green infrastructure and nature-based solutions over an overreliance on traditional grey infrastructure projects. We have also attached an example of a potential Office of Water for Louisiana, that better reflects the challenges and opportunities we're currently facing without tearing down departments from within. We advise that the team review our example as another method for approaching these challenges.

Office of Land and Water: Redundancy Concerns

The proposal to create the Office of Land and Water, with responsibilities for managing state lands, minerals, energy leasing, and water resources, seems to duplicate existing functions handled by other agencies. The Coastal Protection and Restoration Authority (CPRA) has long-established goals and expertise in coastal and environmental resource management, and creating a new office that overlaps with these functions could result in inefficiency.

We believe it would be more effective to expand CPRA's scope to manage non-coastal resource issues, leveraging its demonstrated success in addressing Louisiana's environmental challenges. Rather than introducing new structures, we encourage investing in the modernization of existing agencies through better technology and infrastructure, ensuring they are equipped to manage their expanded responsibilities.



Water Management: Green Infrastructure and Nature-Based Solutions

We fully support a permanent office dedicated to water resource funding but want to emphasize the importance of investing in green infrastructure and nature-based solutions over a surplus of grey infrastructure projects. Louisiana's unique environmental landscape requires solutions that work with nature, rather than against it. Projects such as wetlands restoration, urban green spaces, and floodplain restoration offer long-term, sustainable benefits that complement traditional infrastructure.

Grey infrastructure, while important, often leads to expensive maintenance and can exacerbate environmental challenges if not balanced with nature-based solutions. By prioritizing investments in green infrastructure—such as permeable surfaces, bioswales, rain gardens, and natural water retention areas—Louisiana can mitigate flood risks, improve water quality, and build resilience to climate change in a way that aligns with the state's environmental goals. We encourage the Office of Resource Management to focus on integrating these nature-based solutions into its water resource planning.

Modernizing Infrastructure and Technology: The Path Forward

Rather than creating new offices such as the Natural Resources Trust Authority and the Office of Permitting, we recommend a modernization-first approach. Investing in better infrastructure and technology within the existing framework could significantly improve efficiency and reduce bureaucratic bottlenecks.

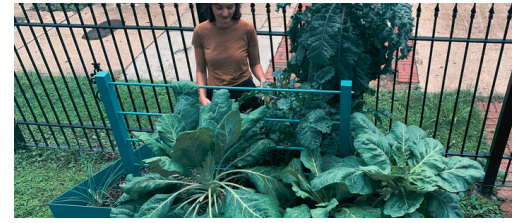
For example, enhancing digital systems for project management, permitting, and real-time water resource monitoring could streamline processes across agencies like CPRA, DEQ, and the Office of Conservation (OC) without the need for new bureaucratic layers. By leveraging data-driven decision-making tools and advanced water management technologies, the state could achieve more efficient natural resource governance while ensuring better coordination between existing bodies.

Importantly, modernization efforts should also focus on green infrastructure, which can be integrated with technology-driven water management systems to provide more comprehensive solutions for flood mitigation and water conservation.

CPRA's Role: Enhancing an Already Proven Model

The Coastal Protection and Restoration Authority (CPRA) has demonstrated its ability to successfully manage large-scale coastal projects. The report's recommendation to transfer CPRA's strategic planning and policy functions to the Governor's Office of Coastal Activities (GOCA) raises concerns about fragmenting the authority's capabilities. CPRA's centralized leadership has contributed to effective coastal restoration, and splitting its roles could hinder its efficiency.

Instead of dividing responsibilities, we propose enhancing CPRA's model by integrating green infrastructure and nature-based approaches into its long-term strategic planning. CPRA has already proven it can manage complex environmental challenges, and with additional resources and modernization, it could extend its expertise to broader areas, including non-coastal regions. This would prevent the need for creating separate entities like the Upland Resource Management Authority (URMA), which risks duplicating responsibilities.



Voting Membership Structure: Limited Representation for Regional Stakeholders

One of the more pressing concerns is the proposed voting membership of the Natural Resources Steering Commission, which is comprised of five commissioners representing different sectors. While this structure may simplify decision-making, we are concerned that it does not adequately reflect the needs and interests of the diverse regional stakeholders and community members who will be most affected by the decisions made by this body.

Louisiana’s environmental challenges are regionally specific, and a small group of five commissioners may not fully account for the unique needs of various communities, particularly those in vulnerable coastal and non-coastal areas. We recommend expanding the representation on this commission to include voices from local governments, community organizations, environmental groups, and indigenous communities. This would ensure that the decisions made are more reflective of the state’s diverse environmental and socio-economic landscapes, leading to more equitable and effective outcomes.

Funding and Financial Oversight: A Permanent Office for Water Resource Funding

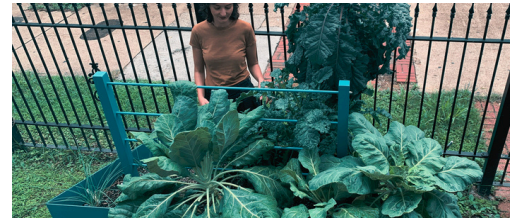
We strongly support the establishment of a permanent office dedicated to securing sustainable funding for water resource management. Louisiana’s water systems face increasing pressure from environmental changes, and having a reliable source of funding is essential for maintaining and enhancing these resources. However, this office should work in coordination with existing entities like CPRA to avoid duplicating efforts. It should also prioritize funding for green infrastructure projects that provide both environmental and economic benefits. This office could help ensure that Louisiana invests in long-term solutions that align with both sustainability and fiscal responsibility.

Avoiding Conflicts of Interest

As the NRSC continues to refine its recommendations, we suggest that the Commission review whether any potential conflicts of interest exist within the working groups. Given that some members may have affiliations with industries affected by the proposed reorganization, it is important to ensure transparency and neutrality in decision-making. Ensuring that these recommendations are driven by the public interest will enhance the credibility of the Commission’s work.

Collaboration Over Consolidation

Finally, we recommend prioritizing collaboration over consolidation. Rather than creating new offices, the state could focus on improving interagency communication and coordination. Strengthening partnerships between agencies like CPRA, DEQ, and the Office of Conservation, supported by investments in green infrastructure and technology, would streamline processes without adding new bureaucratic layers. By enhancing shared resources and data systems, Louisiana could address the challenges identified in the report without the risk of redundancy or inefficiency.



Conclusion:

In closing, while we support the creation of a permanent office for water resource funding, we encourage the Commission to consider modernizing and expanding the capabilities of existing agencies like CPRA rather than creating new entities. We also advocate for a focus on green infrastructure and nature-based solutions over an overreliance on grey infrastructure projects, as this approach will provide sustainable, resilient benefits for Louisiana's unique environmental challenges.

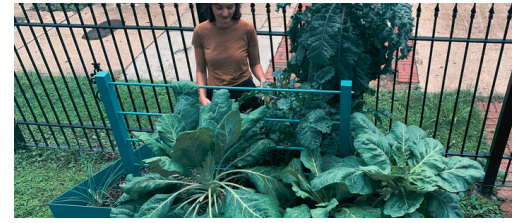
Additionally, we urge the Commission to revisit the structure of the voting membership, ensuring that regional stakeholders and community members are adequately represented. This would ensure that decisions are made with a full understanding of the diverse needs across the state, leading to more inclusive and effective natural resource management.

The Water Collaborative of Greater New Orleans offers our expertise in helping refine these recommendations, particularly in the areas of water resource management, sustainability, and the integration of green infrastructure. Our work with local, state, and regional partners allows us to contribute valuable insights into optimizing Louisiana's natural resource management framework.

We are grateful for the opportunity to provide this feedback and look forward to the Commission's final decisions. We hope our comments help contribute to a stronger, more resilient natural resource management system for the state of Louisiana.

Sincerely,

The Water Collaborative of Greater New Orleans
Jessica Dandridge-Smith
Executive Director



Example of a Study Commission for the Office of Water/Water Agency Consolidation

LOUISIANA WATER AGENCY CONSOLIDATION STUDY

A RESOLUTION

To establish a commission on the study of water agency consolidation in the State of Louisiana for the purpose of improved water resource management and funding.

WHEREAS, the Louisiana Legislature is concerned about water resource management, regulation, oversight, and transparency in the State of Louisiana; and

WHEREAS, bringing those duties into one place could help improve the effectiveness and efficiency of the State of Louisiana's water resource management, regulation, and oversight responsibilities; and

WHEREAS, the State of Louisiana is highly dependent on its water resources for economic, recreational, and environmental protection purposes; and

WHEREAS, the water resources in the State of Louisiana are pivotal to the state's economic well-being and quality of life for its residents; and

WHEREAS, the State of Louisiana continues to lose approximately twenty-five square miles of wetlands per year; and

WHEREAS, the coastal areas in the State of Louisiana subside at approximately nine millimeters per year; and

WHEREAS, the State of Louisiana is increasingly at risk from hurricanes, tropical storms, and flash flood events; and

WHEREAS, approximately forty-seven percent of properties in the State of Louisiana are at risk of flooding and flood insurance rates continue to increase; and

WHEREAS, approximately forty percent of the continental United States drains into Louisiana; and

WHEREAS, drinking water and wastewater treatment costs have become unaffordable for many residents and utilities in the State of Louisiana; and

WHEREAS, the American Society of Civil Engineers rates the State of Louisiana's drinking water infrastructure grade a D-, its wastewater grade a C-, its inland waterways grade a D-, its coastal areas grade a D+, its levees grade a C+, its dams grade a C, and its ports grade a C-; and

WHEREAS, federal funding for water infrastructure has been cut by eight-two percent, per capita, since 1977; and

WHEREAS, there are currently billions of federal dollars available to the State of Louisiana to manage water resources; and



WHEREAS, water resource management, regulation, and oversight in the State of Louisiana is currently shared between several agencies, commissions, and authorities.

THEREFORE, BE IT RESOLVED by the House of Representatives of the State of Louisiana and the Senate of the State of Louisiana concurring therein, that:

1. A commission on the study of water agency consolidation is established. The commission shall be composed of:
 - a. one member of the Louisiana Department of Environmental Quality,
 - b. one member of the Louisiana Department of Health,
 - c. one member of the Louisiana Department of Natural Resources,
 - d. one member of the Louisiana Department of Wildlife and Fisheries,
 - e. one member of the Louisiana Water Resources Commission,
 - f. one member of the Louisiana Public Service Commission or their designee,
 - g. one member of the Louisiana Department of Transportation and Development's Public Works and Water Resources Division,
 - h. one member of the Louisiana Office of Community Development,
 - i. one member of the Coastal Protection and Restoration Authority,
 - j. one member of the Louisiana Watershed Initiative,
 - k. one member of the Louisiana State Senate,
 - l. two members of the Louisiana House of Representatives,
 - m. one member of The Water Collaborative of Greater New Orleans,
 - n. one member of Healthy Gulf,
 - o. two Louisiana university academic researchers focused on water studies and management,
 - p. two members shall be experts in the field of water studies and management, and
 - q. two tribal lands jurisdiction members.
2. The members shall be appointed by:
 - a. the Speaker of the Louisiana House of Representatives,
 - b. the President of the Louisiana State Senate,
 - c. the Secretary of each respective department.
3. The Chairperson of the commission shall be selected by a majority vote of commission members.
4. The commission shall report to the Legislature recommendations on:
 - a. the appointment of a water czar to oversee, evaluate, and audit all state water-related departments, federal and state water-related funding initiatives, water-related project and program implementation,
 - b. to determine where in state government the water czar's office and staff should be housed,
 - c. the consolidation of water management agencies in the State of Louisiana,
 - d. the consolidation of water management resources in the State of Louisiana, including the management of federal and state funding,
 - e. the improvement and implementation of water quality research and testing in the State of Louisiana,
 - f. the transparency and oversight of water management agencies and resources in the State of Louisiana, and
 - g. any other information pertinent to consolidating water resources management, regulation, and oversight.
5. The commission may seek expertise, data, and analysis from water management institutions and experts outside of the commission.
6. The commission shall meet at least once per month and submit final recommendations to the Louisiana Legislature and the Governor not later than Friday, January 26, 2024.



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September 19, 2024

J. Clay Parker
Special Counsel
Governor's Office of Coastal Activities
P.O. Box 94004
Baton Rouge, LA 70804-9004

Via Email: Clay.Parker@la.gov &
driveinitiative@la.gov

Re: **Draft Report of the Natural Resources Steering Commission**

Dear Mr. Parker:

Thank you for your hard work on this very important project. The draft report is very thorough and offers a great outline of the manner in which the State of Louisiana can move forward in streamlining its management of natural resources.

I write on behalf of the Baton Rouge Water Works Company and Parish Water Company (collectively "BRWW") with particular interest in the management of groundwater resources. As the largest producer of groundwater for public supply in the State of Louisiana, it is our strong opinion that the State of Louisiana needs a comprehensive groundwater management plan and this can only be accomplished at the State level, not through local political subdivisions.

Fortunately, the statutory foundation for statewide management of groundwater resources is already in place. I have attached detailed outline of comments for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to be 'BPF', written over a light blue horizontal line.

Brett P. Furr

BPF:mb
Enclosures

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DENR STEERING COMMITTEE COMMENTS

- 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. IX, § 1.
- Conserving the natural resources of the State of Louisiana is uniquely in the public interest of the State. La. R.S. 38:3097.1.
- Recognizing the need for the establishment of a comprehensive and uniform groundwater program, Act 49 (2003) vested exclusive jurisdiction over water resources with the State, through the Commissioner of Conservation. La. R.S. 38:3097.1 et seq.
- More recently, Act 727 (2024) established the Office of Land and Water which was given responsibility for “The administration of groundwater, surface water and other water resources for quantity purposes, unless otherwise designated by the secretary following adequate review set forth by rule.” La. R.S. 36:358(G).
- Further, Act 727 directed the Office of Conservation exercise the functions of the state “... with respect to ...permitting ... and use of natural resources...” La. R.S. 36:358(C).
- There are four major groundwater aquifer systems in Louisiana – the Southern Hills Aquifer, the Sparta Aquifer, the Chicot Aquifer and the Mississippi Alluvial Aquifer. Each provides drinking water to hundreds of thousands of Louisiana residents and supports agricultural and industrial interests. The aquifers cover thousands of square miles and have a geographic reach well beyond the State of Louisiana into neighboring States. (See p. 5-7).
- Only the State is in a position to negotiate with neighboring states on matters related to groundwater and enter into interagency agreements and interstate compacts. La. 38:3097.3(10).
- There are two different regional groundwater districts with jurisdiction over the Southern Hills Aquifers and Sparta Aquifers, respectively that were created under the prior groundwater regime. The Capital Area Groundwater Conservation Commission (38:3076, et seq.) and the Sparta Groundwater Commission (38:3087.131, et seq.).
- There is no separate ground water district for the Chicot Aquifer or the Mississippi Alluvial Aquifer.
- The two groundwater commissions were created as independent political subdivisions outside of the Executive Branch of Government and are not subject to any meaningful oversight by the Governor. La. R.S. 38:3072 and 38:3087.132.
- The contrast in the operations, regulatory activities and level of expenditures of the two commissions illustrates the need for the uniformity in the management of groundwater resources and highlights the inconsistencies created by regional management of the State’s

water resources by separate commissions and the problems that arise from these inconsistencies and the lack of oversight by the State.

- Neither commission possesses the level of technical and regulatory expertise needed to manage the State's groundwater resources nor jurisdiction over the complete aquifer system it is charged with protecting.
- By bringing management of groundwater under Office of Land and Water, qualified personnel could be hired to manage this precious resource. In fact, DNR and the Office of Conservation already have the skilled professional employees needed to manage the State's water resources; the two commissions simply do not.

THE PRESENT STATE – INCONSISTENT REGULATORY AUTHORITY

- The State's jurisdiction over water resources, exercised through the Commissioner of Conservation, is "exclusive." La. R.S. 38:3097.1.
- Prior to Act 727, the Commissioner of Conservation, was empowered and responsible for the administration of all matters related to the management of the State's groundwater resources by providing for the most advantageous use of the resource consistent with the protection, conservation, and replenishment thereof. La. R.S. 38:3097.3(A).
- The regulatory powers of the Commissioner of Conservation are both robust and subject to review and oversight. La. R.S. 38:3097.3 and 3097.6.
- The regulatory authority of the Office of Land and Water has not yet been developed with any degree of specificity.
- Regulation by the Commissioner of Conservation is subject to an objective standard and formal process to be employed by the Commissioner prior to issuing permits or setting limits on rates of production, La. R.S. 38:3097.6(B)(3) and 38:3097.3(C)(4)(b).
- The Commissioner of Conservation has the authority to determine areas of groundwater concern and designate areas of critical groundwater concern. La. R.S. 38:3097.3(C)(5).
- The process for making such declaration, requires the Commissioner of Conservation to hold a public hearing, notify both the Senate and House Committees on Natural Resources, seek advice and consultation of local governmental entities on any actions or decisions which may have an impact upon those entities or residents within the entities' respective jurisdictions. La. R.S. 38:3097.3(A) and 38:3097.6(A).
- Limits on production on large volume wells (those in excess of 50,000 gpd) may only be ordered following a declaration of an Area of Groundwater Concern or an Area of Critical Groundwater Concern. La. R.S. 38:3097.3(C)(4)(b)(i).
- Any such declaration is subject to review and oversight by the Water Resources Commission, as are all other rules promulgated by the Commissioner. La. R.S. 38:3097.4(D).

- It is suggested that until the authority of the Office of Land and Water is more fully developed, and it has the opportunity engage in the rule making process for the use of groundwater resources, the Commissioner of Conservation should continue to exercise his jurisdiction over these resources.

CAPITAL AREA GROUNDWATER COMMISSION

- Regardless of whether the exclusive jurisdiction of the state is exercised through the Commissioner of Conservation or the Office of Land and Water, the role of the Capital Area Groundwater Commission must be brought in line with the exclusive jurisdiction of the state. As set forth in La. R.S. 38:3076, its role is limited to working with the Commissioner of Conservation in an advisory capacity.
- Among the issues that presently exist are:
 - Although its role is to work with the Commissioner of Conservation, there has historically been little if any oversight by the state.
 - Capital Area Groundwater Commission has jurisdiction over a portion, but not all, of the Southern Hills aquifer in Louisiana. (**See p. 6**). It has no jurisdiction over the use of water in Mississippi.
 - Furthermore, the Commission has no jurisdiction over agricultural, “small” users or shallow wells. La. R.S. 38:3076(D).
 - The responsibilities and authority of the Capital Area Groundwater Commission under 38:3076 are largely duplicative those of the Commissioner of Conservation under 38:3097.1 The Capital Area Commission’s responsibilities are at best redundant with that of the Commissioner of Conservation resulting in inefficiencies and inconsistencies in the management of the state’s groundwater resources.
 - Water is natural resource. La. Const. Art. IX, § 1. Severance taxes are defined as a tax assessed on the volume of natural resources at the time and place of severance. Const. Art. VII, § 4(B). Political subdivisions are prohibited from levying severance taxes. Const. Art. VII § 4(C). The Capital Area Groundwater Commission is a political subdivision (La. R.S. 38:3072) that is prohibited from levying a severance tax.
 - The Commission has recently been found to have levied an unconstitutional severance tax by the Board of Tax Appeals. In addition, the BTA found that Commission violated the prohibition against incurring debt without approval of the State Bond Commission. Both the Treasurer and Legislative Auditor for the State of Louisiana testified before the Board of Tax Appeals that they believe the Commission violated the prohibition against incurring debt without approval of the State Bond Commission. (**See Exhibit “A”**)
 - The severance tax has been increased from \$5 to \$65 per million gallons in the last 5 years. Each increase was a unilateral act by the Capital Area Groundwater

Commission without conducting a vote of the persons who are obligated to pay the tax.

- Until recently, the total budget of the Capital Area Groundwater Commission is now nearly \$4MM. There is no State oversight of its budget or the expenditures. **(See budget p. 8-9)**. Its current budget is not in balance.
- The Capital Area Commission does not have a well-developed set of rules by which users can operate. Due to the lack of state oversight, it generally operates by fiat.
- The Capital Area Commission can purportedly set groundwater use priorities (La. R.S. 38:3076(12)), but priorities are established by statute under La. R.S. 38:3096(B)(3) creating potential inconsistency and conflict between the state's management of groundwater resources and the regional groundwater district.
- In conflict with the detailed processes required of the Commissioner of Conservation, the Capital Area Commission can purportedly limit rates of production "within affected areas." La. R.S. 38:3976(19). While there is a requirement that such action be based on research, "affected areas" is not defined and there is no objective standard; rather, the standard is simply "danger" to quality or quantity of water. There is also no similar process for review to which the Commissioner of Conservation is subject.
- Adding to the inconsistencies in management of the Southern Hills Aquifer is authorization for the Greater Baton Rouge Water Conservation District under La. R.S. 38:3051, et seq.

SPARTA GROUNDWATER COMMISSION

- The Sparta Groundwater Commission exists under the provisions of La. R.S. 38:3087.131. The Sparta Aquifer is larger than the Southern Hills Aquifer, extending as far north as southwest Kentucky and as far east as western Alabama. **(See p. 7)**.
- The Sparta Groundwater Commission recognizes that its jurisdiction was largely transferred to the Commissioner of Conservation with the passage of 38:3097.1. <https://www.spartaaquifer.com/aquifer-info>.
- In contrast to the Capital Area Commission, the Sparta Commission is funded entirely through grants and donations.
- The Sparta Commission's total budget is less than \$160,000 per year – which is approximately 4% of the Capital Area Groundwater Commission's budget. **(See p. 10 (2021 is the last budget available))**.
- Sparta's total budget is less than the base salary paid to the Executive Director of the Capital Area Commission. Sparta's Executive Director is a part-time position.

- The Sparta Commission, in contrast to the Capital Area Groundwater Commission, more appropriately largely exists to educate the public on the importance of conserving groundwater. <https://www.spartaaquifer.com/about>.

NEED FOR CONSOLIDATION AND UNIFORM REGULATION

- The regulatory authority, funding and operation of the Sparta Commission and the Capital Area Commission are inconsistent with each other and inconsistent with and duplicative of the authority of the Commissioner of Conservation and now the office of Land and Water. Neither the Chicot nor Mississippi Alluvial aquifers have regional groundwater districts.
- Confirming that the management of the State's water resources is exclusively vested in the State through the Commissioner of Conservation will:
 - Allow for oversight by the Executive Department of State government.
 - Eliminate inconsistencies in regulation and promote a uniform system of groundwater priorities and management.
 - Reduce administrative overhead by eliminating redundancies and overlap of functions and responsibilities.
 - Optimize data gathering and management operations.
 - Allow trained professionals within the Office of Conservation or the Office of Land and Water to effectively manage the State's groundwater resources.
 - Streamline the decision-making process and promote a uniform, State-wide vision and strategy for managing groundwater resources.
 - Foster interdisciplinary perspectives and expertise, enriching the depth and breadth of discussions and decision making.
 - Allow the State's political leaders to speak with one voice.
 - Allow local groundwater commissions to focus on Education and water conservation.
 - Facilitate coordination amongst State and academic water experts, State and local political leaders and producers of water leading to better communication and collaboration.
- Uniform management of water resources will allow for a careful balancing of public consumption, conservation, environmental, agricultural and economic development interests of the State.
- The Executive Department, through the Governor will be responsible for and be able to exercise oversight through his Administration of a State-wide policy on groundwater resources.

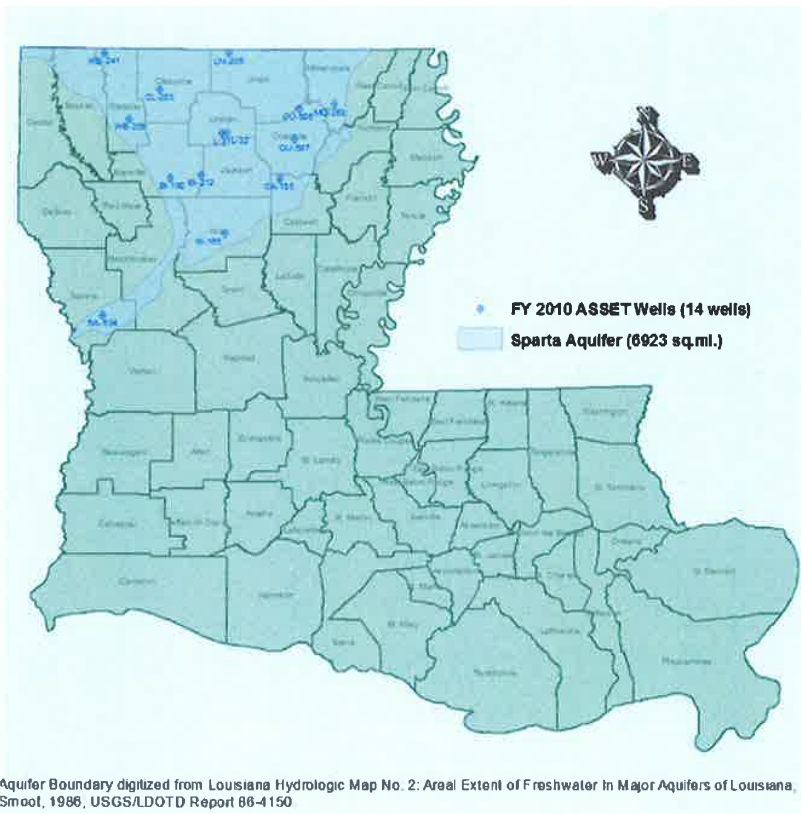
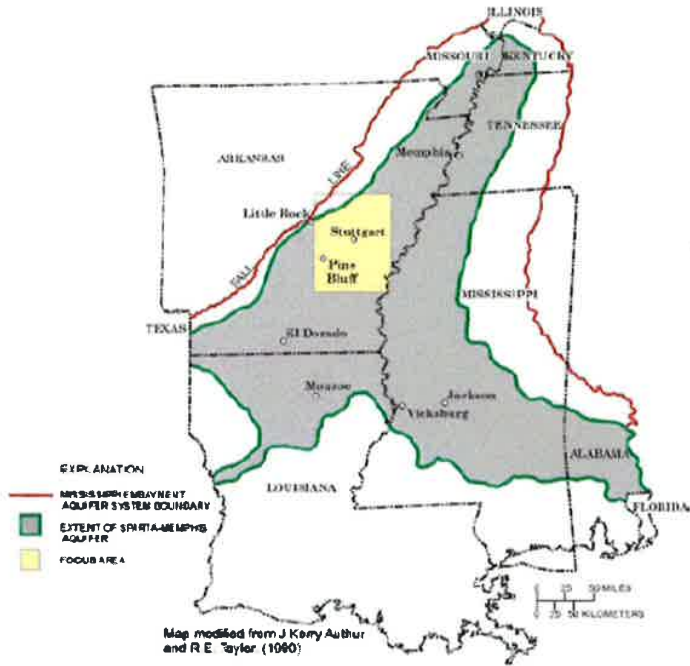
The Capital Area Groundwater Conservation District is comprised of six parishes.



Southern Hills Aquifer



Sparta Aquifer



Proposed Budget for FY 2024-2025

(July 1, 2024 - June 30, 2025)

Option F

REVENUE	2,316,000	2,316,000
Pumpage	51,000,000	51,000,000
Permit Fee	0,000	0,000
Sub-Total	3,323,000	3,323,000
Transfer from Reserve	358,840	358,840
Less Impd Invoices by BR Water Parish Water	-1,223,608	-1,223,608
TOTAL	1,958,110	1,958,110

CATEGORY A: PERSONNEL EXPENSES

Salary & Related Expenses	186,000	186,000
Personnel (Director)	140,000	140,000
Personnel (Deputy Director)	0	0
Field and Construction Mgr/ Engineer	0	0
Office Manager	54,000	54,000
Benefit, Retirement Contributions & Performance Evaluations	186,997	186,997
Subtotal of Personnel Expenses	868,997	868,997

CATEGORY B: OPERATING EXPENSES

Postage	2,000	2,000
Printing	20,000	20,000
Office Supplies	3,100	3,100
Information Technology	24,000	24,000
Subscription	2,000	2,000
Meeting Expenses (incl. transcripts, court reporter, security, etc)	18,000	18,000
Bank Fees	3,000	3,000
Advertisements & Legal Notices	3,100	3,100
Insurance	3,000	3,000
Field Equipment	3,100	3,100
Field Expenses	0	0
Office Equipment & Furniture	10,000	10,000
Travel	16,000	16,000
Office Equipment & Maintenance	16,000	16,000
Office Rent & Utilities	80,000	80,000
Miscellaneous	10,000	10,000
Subtotal of Operating Expenses	201,100	201,100

CATEGORY C: CONTRACTS

UGS	132,503	132,503
CPA's (John Roberts & Partners)	53,000	53,000
Auditor	81,000	81,000
Match (25%) for Capital Outlay	287,000	287,000
Legal Services	418,000	418,000
Computer Technology Specialist (Alexander Center)	0	0
Office Services (Lesa Hensley)	59,000	59,000
Office Services (Invoicing - Clark & Gaunt)	12,000	12,000
Mooring Program (Burstability Partners)	1,498,000	1,498,000
CPMA (The Water Institute)	438,000	438,000
Well Sampling - Independent	9,000	9,000
Geotech Consultants (Geotech Resolutions, LLC)	35,000	35,000
Website & IT Cons (Trust/Tyler/Donna Greider)	59,000	59,000
Computer Consultants	9,000	9,000
The W Group (public education)	30,000	30,000
Paul Reinwater (federal grant assistance)	28,000	28,000
Miscellaneous	2,000	2,000
Field Outreach (Miscellaneous)	20,000	20,000
General Miscellaneous	0	0
Subtotal of Contracts	3,074,503	3,074,503

TOTAL	33,890,000	33,890,000
	1,958,110	1,958,110

SPARTA

Ground Water Commission

2021 Sparta Groundwater Commission BUDGET		<i>2021 Budget</i>
Income		
	Donations	\$ 45,000.00
	Other*	\$ 145,833.33
	Interest	\$ 60.00
	Total Income	\$ 190,893.33
Expenses		
	Contract Services	\$ 151,000.00
	Dues & Memberships	\$ 550.00
	Mileage Reimbursement/Meeting	\$ 5,000.00
	Miscellaneous/Operations	
	Office Supplies	\$ 833.33
	Telephone Expense	\$ 600.00
	Reconciliation/Discrepancies	
	Travel & Meetings	\$ -
	Web Site Expense	\$ 300.00
	Total Expense	\$158,283.33

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

BATON ROUGE WATER WORKS COMPANY
AND PARISH WATER COMPANY, INC.,

PETITIONERS

VERSUS

DOCKET NO. L01630

CAPITAL AREA GROUNDWATER CONSERVATION COMMISSION
AND CAPITAL AREA GROUNDWATER CONSERVATION DISTRICT,

DEFENDANTS

INTERIM ORDER AND REASONS

This matter was heard on June 14, 2024, with Local Tax Judge Cade R. Cole presiding. Brett Furr, John Milazzo, Jr., Justin Mannino, Will Patrick, and Brandon DeCuir appeared on behalf of Baton Rouge Water Works Company and Parish Water Company, Inc. (collectively, "BRWC"). Murphy Foster and Jacob Roussel appeared as attorneys for the Capital Area Groundwater Conservation Commission and the Capital Area Groundwater Conservation District (collectively, the "CAGWC"). At the conclusion of the hearing, the Board took the matter under advisement and now rules as follows:

Background

BRWC operates approximately 100 water wells that produce groundwater from the Southern Hills Aquifer ("SHA").¹ The SHA is a renewable groundwater resource that supplies water for domestic, agricultural, light business, and industrial purposes. The SHA covers approximately 14,000 square miles, underlying the vast majority of the Parishes of: Pointe Coupee; West Feliciana; East Feliciana; West

**EXHIBIT
A**

¹ As stated in the Water Institute of the Gulf ("WIG") State of the Science Report, aquifers are subterranean porous media where water is present in empty voids between materials such as sand, silt, and clay or in fractures within rocks.

Baton Rouge; East Baton Rouge; St. Helena; Livingston; Tangipahoa; Washington; and Saint Tammany. The SHA also extends into Mississippi as far north as Vicksburg. In the Baton Rouge area, the SHA ranges between 200 to 2,800 feet deep. The shape of the SHA tends downward and southward towards the Gulf of Mexico. The SHA and saltwater from the Gulf interact such that the SHA is susceptible to saltwater encroachment.

In 1974, concerns about saltwater intrusion and subsidence led the legislature to create the CAGWC. CAGWC exists to provide for the “efficient administration, conservation, orderly development and supplementation of groundwater resources” in “the parishes of Ascension, East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, and West Feliciana” (the “District”)². CAGWC, in conjunction with the Commissioner of Conservation, is charged with regulating groundwater production from wells that serve the public and industry. However, CAGWC does not have the authority to regulate: production for agricultural or horticultural purposes; wells of a total depth of less than four hundred feet; wells drawing on the Mississippi River alluvial aquifer; or domestic wells at a person’s home for use by the resident or residents of the property.³

The legislature authorized the CAGWC to fund its operations by assessing “pumpage charges” within the District “based upon the annual rate of use of each user.” La. R.S. 38:3076(A)(14)(a).⁴ The CAGWC assessed pumping charges at a rate of \$5 per million gallons pumped from its inception until 2016, when it raised the rate to \$10 per million gallons pumped. BRWC testified that it was not concerned about

² La. R.S. 38:3071(B). Ascension Parish was added to the District by 2019 Act 200 (SB 231).

³ La. R.S. 38:3076(D). However, a well for “domestic use of persons resident upon the same premises” must not be “capable of producing not more than fifty thousand gallons per day in the aggregate,” or it will be subject to the CAGWC’s regulatory power, including the power to assess a pumping charge. *Id.*

⁴ The term “User” is defined as “any person who produces groundwater in the district for any beneficial use, in excess of fifty thousand gallons for any day during any calendar year from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.”

the fee until it was raised beyond \$10. The fee was subsequently raised to \$20 and then to \$65 per million gallons of water pumped.

The Louisiana Legislative Auditor (“state Auditor”) conducted a performance audit of the CAGWC because, according to the United States Geological Survey (“USGS”), groundwater withdrawals from the SHA had resulted in saltwater intrusion. The state Auditor issued an audit report on May 9, 2019 (the “2019 LLA Report”). The state Auditor found that CAGWC “does not effectively regulate the withdrawal of water from the Southern Hills Aquifer so that saltwater encroachment can be reduced and the supply of fresh groundwater can be sustained.” In addition, the state Auditor found that CAGWC relied on self-reported production amounts when assessing fees on well owners but did not conduct inspections to verify the reported amounts.

The CAGWC began efforts to address the state Auditor’s findings and implement some of the recommendations. These efforts involved hiring a new Executive Director, Mr. Gary Beard, at a salary approximately 600% higher⁵ than its previous Agency Head.⁶ In addition, for Fiscal Year 2024, CAGWC hired a Deputy Director at a salary of \$140,000.⁷ By contrast, for Fiscal Years 2018, 2019, and 2020, actual total salary expenditures (all salaries) were only: \$103,952; \$105,508; and \$109,778, respectively. In 2019, the CAGWC doubled the pumping charge rate to \$20 per million gallons pumped.

Under Mr. Beard’s leadership the CAGWC dramatically intensified its regulatory efforts to preserve the SHA. Early in his tenure as Executive Director, Mr.

⁵ CAGC’s 2023 audit report indicates that Mr. Beard’s salary has increased to \$174,585. In addition, the CAGC’s proposed budget for Fiscal Year 2025 shows that Mr. Beard’s salary will increase to \$191,580.

⁶ For Fiscal Years 2018 through 2020, CAGC’s Agency Head was Anthony Duplechin earning \$32,001.

⁷ CAGC’s Proposed Budget for Fiscal Year 2025 proposes a salary of \$144,200 for the Deputy Director. CAGC also proposed to hire an Office Manager at a salary of \$56,238.

Beard canvassed Users as to the nature and reliability of their metering equipment. He testified that meters were broken, decrepit, and deactivated. In addition, his analysis of historically self-reported data led him to believe that many Users simply averaged their wells' maximum output over a three-month period without really measuring what they actually extracted.

The CAGWC contracted with the Water Institute of the Gulf ("WIG") to develop a comprehensive strategy for combatting saltwater intrusion. On November 30, 2021, WIG and CAGWC held a forum on environmental modeling and data. During the forum, Dr. Frank Tsai, with LSU's Department of Civil & Environmental Engineering, presented on a Groundwater Availability Model ("GAM") being developed by LSU. The GAM would provide a 3D model of the SHA. The proposed GAM would be used to inform both short and long-term decision making concerning the preserving of the SHA.

The CAGWC entered into a much-disputed Cooperative Endeavor Agreement (the "CEA" or the "SP Contract") with Sustainability Partners, L.L.P. ("SP") to purchase 377 Flexim Ultrasonic Flow Meters (the "Flexim Meters").⁸ CAGWC agreed to the CEA after a bidding process pursuant to a Request for Quotations ("RFQ") where SP was the only bidder.

BRWC produced evidence at trial showing that there were serious questions about that RFQ. The RFQ and the requirements on any proposing bidder were created almost verbatim from a template provided by SP. The CAGWC's published evaluation criteria for proposals included examining the bidder's experience as a provider of "Infrastructure as a Service," a term that also appears as a criterion in the RFQ's Statement of Qualifications. This key qualification term, "Infrastructure As A Service," is a trademark registered to and exclusively used by SP, as shown by

⁸ The CEA also provided for the purchase of equipment and materials for their power supply and installation onto Users' wells, design and equipment for a Supervisory Control and Data Acquisition ("SCADA") system, and an annual agreement for Operation & Maintenance ("O&M").

Plaintiffs' Exhibit 36, Trademark Registration No. 6,768,747. The RFQ appears to have been written in a manner that sent a signal to all potential bidders that CAGWC predestined the ultimate contract with Sustainability Partners.

Mr. Beard further admitted that his private company does business with Jay Simon, SP's principal engineering subcontractor on the CAGWC contract. There was email communication about developing business with Mr. Beard at the same time the SP contract was pending. Although there is no evidence to question Mr. Beard's good intentions, there is a serious appearance of undue conflicts of interest permeating the SP Contract. The record established that Mr. Beard personally profits from his private work with that subcontractor while at the same time the subcontractor is profiting from CAGWC's lucrative contract (\$50+ million) with SP.

The breakdown of upfront costs to the CAGWC under the CEA is as follows:

Item Description	Qty.	Hardware & Materials	Installation & Services	Total
Concrete Pad	377	\$1,179	\$1,179	\$888,966
Aluminum Shelter	377	\$3,296	\$850	\$1,563,042
Solar Panel	377	\$2,234	\$430	\$1,004,328
Flexim Meter	377	\$4,200	\$1,250	\$2,054,650
Control Panels	377	\$6,000	\$500	\$2,450,500
Salinity Probe	12	\$8,183	\$2,367	\$126,600
Conduit	377	\$43	\$157	\$75,400
SCADA System	1	\$0	\$1,545,700	\$1,545,700
IT Equipment	1	\$12,880	\$0	\$12,880
Engineering, Design & CM & PM	377	\$0	\$1,883	\$709,711
Total upfront costs				\$10,431,777

Subsequent annual costs were itemized as follows:

Description	Qty.	Services/yr	Total
Cellular Data Collection	377	\$92	\$34,684

Annual Factory Site Inspections / Calibrations (as required)	161	\$961	\$154,721
Monthly monitoring / troubleshooting / maintenance	377	\$600	\$226,200
Total annual O&M costs			\$415,605
Yearly Debt Service & Equipment Replacement Costs			\$1,179,693
Total combined annual costs			\$1,595,298

In sum, the CAGWC was obligated to pay \$10,431,777 up front, plus an annual fee of \$1,595,298 thereafter. The CEA does not specify a number of years for which the annual payments will continue. However, Mr. Beard testified that he expected the contract to be in effect for at least thirty years—which would assume payments of public money of over \$50 million to SP.

It is widely understood and black letter law in Louisiana that if you obligate a public body to payments beyond the current fiscal year then oversight by the State Bond Commission is triggered. During the merits hearing, State Treasurer John Fleming testified that the CEA obligates the CAGWC to pay interest or finance charges on its obligations to SP in a way that should have required Bond Commission approval. He testified that as Chairman of the State Bond Commission this contract was not submitted for approval and that his office found that the failure to seek that approval was in violation of Bond Commission rules.

The state Auditor also⁹ testified that the CEA is a debt obligation that did not receive the required approval of the State Bond Commission. The state Auditor further testified that the CEA has a formula for imposing a draconian termination penalty. In addition, the state Auditor testified that this is concerning because the

⁹ It should be noted that the current state Auditor is Mr. Michael Waguespack. He was not the state Auditor when the 2019 LLA Report was issued.

CEA does not contain a provision absolving the CAGWC of financial liability under a traditional 'non-appropriation' clause that is used to protect the public fisc in these types of contracts. The state Auditor had serious concerns about these problems with the SP Contract.

CAGWC argues that the metering program and corresponding rate increase were necessary and appropriate expenses of fulfilling its regulatory responsibilities. Mr. Beard testified that the Flexim Meters were intended to feed real time data into a SCADA System. The collated data from the SCADA system was supposed to enable Dr. Tsai to generate a reliable GAM.

The CAGWC planned to compel Users to permit the installation of the Flexim Meters on their wells. By Emergency Rule effective January 20, 2022, CAGWC more than tripled their pumping charges (which had been \$5 approximately five years earlier) from \$20 to \$65 per million gallons pumped. It also promulgated the requirement that Users permit installation of the Flexim Meters at all wells.

The Emergency Rule was formally approved by a closely divided vote during a highly contentious CAGWC board meeting on April 22, 2022. The minutes of this meeting reflect comments in opposition by BRWC's President and CEO, Mr. Patrick Kerr. The final rule¹⁰ was promulgated and went into effect on June 20, 2022. LAC 56:V.707, 1107. The CAGWC began negotiating with Users and executing Lease Agreements to permit contractors to install and maintain the Flexim Meters on their private property.

BRWC, however, refused to install the Flexim Meters, execute a Lease Agreement, or voluntarily continue to pay the pumping charges. Instead BRWC purchased 100 of its own meters and installed them on its wells.

¹⁰ 48 LR No. 1502 (June 20, 2022).

Act 494 of the 2024 Regular Session of the Legislature was recently enacted into law. Subsection F was added to R.S. 38:3076 to expressly prohibit CAGWC from requiring Users to install CAGWC's meters on their property assuming certain criteria were met. It is undisputed that the BRWC meters meet those specifications and that it is now expressly illegal for CAGWC to install SP's meters on BRWC's property.

Procedural History

On December 21, 2022, BRWC filed the instant Petition with the Board. CAGWC responded with Exceptions of Lack of Subject Matter Jurisdiction, *Lis Pendens*, No Cause of Action, and No Right of Action, which were heard on July 13, 2023. On November 30, 2023, the Board rendered Judgment overruling the Exceptions of Lack of Subject Matter Jurisdiction, No Right of Action, and *Lis Pendens*. The Exception of No Cause of Action was sustained in part, allowing BRWC to amend their Petition to make clear any use of the Board's declaratory judgment jurisdiction pursuant to the Louisiana Constitution and La. R.S. 47:1407. We further converted the Exception in part to an Exception of Prematurity and dismissed BRWC's claims for refunds of past payments, made without protest and for which BRWC did not request an administrative refund, without prejudice.

BRWC timely filed their First Supplemental, Amending and Restated Petition on December 13, 2023 (the "Amended Petition"). In their Amended Petition, BRWC acknowledged that there is no statute providing for the payment of the pumping charges under protest. Therefore, BRWC requested that they be allowed to deposit their payments in the Board's escrow account.

BRWC continued to pay under protest until their last payment to CAGWC on November 17, 2023. That payment brought the sum of their payments under protest to CAGWC to \$2,160,449.45. After that, and beginning with their following payment on February 29, 2024, BRWC began depositing their payments in their attorneys'

Trust Account at Taylor Porter Brooks & Phillips, LLP. As of the date of the merits hearing, BRWC had deposited \$849,132.69 in the Taylor Porter Trust Account.

Roughly one month before it began tendering payments to their attorneys, BRWC filed a Motion for Partial Summary Judgment with the Board. Therein, BRWC asserted that: (1) the pumpage charges are imposed on the same incidents of taxation that trigger the State's severance tax; (2) groundwater is a natural resource for purposes of the severance tax; (3) CAGWC is a political subdivision of the state; (4) as a political subdivision, CAGWC is prohibited from levying a severance tax by La. Const. Art. VII § 4(C); and (5) the pumpage charges are therefore unconstitutional severance taxes.

Before the Summary Judgment hearing, CAGWC filed an Expedited Motion for Contempt. Therein, CAGWC asserted that BRWC was in violation of the Board's Judgment on the Exceptions. We set the Motion for Contempt for hearing. However, CAGWC requested that that hearing be continued so that BRWC would have an opportunity to make a formal request for an extension of time to pay the pumping charges at a CAGWC meeting. Accordingly, we canceled the hearing. CAGWC never asked the Board to reset its motion for another date.

BRWC's Motion for Partial Summary Judgment was heard on April 12, 2024. At the conclusion of the hearing, we stated that we intended to grant summary judgment in part. Specifically, we found that if the pumping charges are taxes, then they are severance taxes unconstitutionally levied by a political subdivision. However, we denied summary judgment in part because BRWC had not established that the pumpage charges were, in fact, taxes. Accordingly, we held that the question of whether the pumpage charges were taxes was a material dispute to be resolved at trial. On April 19, 2024, we set forth these holdings in a Judgment with Reasons.

Prior to the merits hearing, on May 23, 2024, CAGWC filed a Motion in Limine to exclude evidence concerning the CEA or CAGWC's monitoring program set forth in La. Admin. Code 56:V.707. The motion was heard and denied on June 4, 2024. At

the conclusion of the hearing, we ruled that evidence concerning the CEA and the monitoring program was relevant to the purpose of increasing the pumpage charges, and relevant to whether the costs associated with the CEA and the monitoring program were necessary costs of regulation.

Discussion

While La. Const. Art. VII, § 4(B) authorizes the State to levy taxes on natural resources severed from the soil or water, it expressly provides that political subdivisions may **not** levy a severance tax. La. Const. Art. VII, § 4(C). The constitution prohibits political subdivisions from levying a severance tax on any natural resource. Groundwater is a natural resource. La. R.S. 31:4. The Commission is a political subdivision of the State. La. R.S. 38:3072. Thus, the Commission is not allowed to levy a severance tax. The legislature cannot authorize what is prohibited by the Constitution. *Baton Rouge Water Works Company and Parish Water Company, Inc., Petitioners v. Capital Area Groundwater Conservation Commission and Capital Area Groundwater Conservation District*, Docket No. L01630 (La. Bd. Tax App. 4/19/2024), 2024 WL 1827917, at p. 3.

If a tax operates in substantially the same way as a severance tax, then it is a severance tax regardless of how it is named in law. In *City of New Orleans v Scramuzza*, 507 So.2d 215 (La. 1987), the Louisiana Supreme Court stated that “[classification of a tax must be determined by its operational effect. . . . The realities of the tax must be examined; its substance, not its form.” *Id.* at 218. The pumpage charges are imposed on the severance of a natural resource. Thus, if the pumpage charges are taxes, they are unconstitutional severance taxes.

Under *Audubon Ins. Co. v. Bernard*, 434 So.2d 1072 (La. 1983), “not every imposition of a charge or fee by the government constitutes a demand for money under its power to tax.” *Id.* at 1074. If the imposition is “not principally intended to raise revenue but is merely incidental to the making of rules and regulations to promote public order, individual liberty and general welfare, it is an exercise of the

police power.” *Id.* Similarly, assessing a special fee to a limited class of persons who receive special benefits that are not shared by other members of society is an exercise of the police power and not a tax. *Id.* However, if the imposition is primarily intended to raise revenue, **or if it “clearly and materially exceeds the cost of regulation or conferring special benefits upon those assessed, the imposition is a tax.”** *Id.* Thus, the issue presented for resolution on the merits is whether BRWC can prove that the pumping charges are taxes because: (1) it receives no special benefit from the charge; and (2) the cost clearly and materially exceeds the necessary cost of regulation by the CAGWC.

We find that pumping charges are not a charge on a specific class of persons levied in exchange for a unique benefit **not** shared by the general public. In *Audubon Ins.*, the tax at issue was levied on casualty insurers to fund the firefighters’ retirement system. The retirement system’s attorneys argued that insurers benefitted from better fire protection through reduced incidents of fire loss. However, the Court held that better fire protection benefits everyone, not just insurers and policyholders. *Id.* at 1076.

The pumping charges are dedicated to funding the CAGWC’s operations. The CAGWC is responsible for protecting the SHA for the benefit of **all** people in the capital area. The public, small domestic well owners, and agricultural concerns all benefit from the preservation of a reservoir of comparatively pure drinking water. Industrial concerns also benefit from having access to a source of water that is significantly less expensive to treat for use in industrial processes. BRWC does not gain any unique benefit from the CAGWC’s operations.

2024 Act 494

Analysis of whether the fulfillment of the SP contract justifies the pumping charges was pretermitted in part on June 10, 2024, when the Governor signed 2024 Act 494 into law. Act 494 expressly prohibits the CAGWC from compelling a User to

install the CAGWC's meters if the User's own meters substantially comply with the following:

- (a) Demonstrates compliance with the user's obligation to meter.
- (b) Measures flow data at least hourly for each well, for each stratum from which the well draws, and reports the data to the board monthly.
- (c) Ensures proper operation of the metering device through installation, calibration, validation, and maintenance practices that are consistent with the accepted capability of that type of metering device. Calibration of each metering device shall be performed at least once a year by a qualified source, which is a person or entity that has received formal training or has practical field experience in the calibration of that type of metering device.
- (d) Adheres to accepted scientific practices to safeguard the accuracy and reliability of measurements of the volume of monitored withdrawals.
- (e) Measures flows with a maximum deviation of less than five percent from true withdrawal rates throughout the range of expected withdrawal volumes.¹¹

BRWC's meters undisputedly satisfy all of the above criteria. Consequently, the effect of Act 494 is to affirmatively prohibit the CAGWC from forcing BRWC to install the Flexim Meters. The legislature and governor, through duly enacted law, have therefore restricted CAGWC's exercising its authority. Therefore, Act 494 requires the Board to consider the increased pumping charges in light CAGWC's narrowed regulatory powers. We also consider the fact that the meters were never used on BRWC wells and were not part of the actual regulation of BRWC activities prior to the enactment of Act 494.

An exercise of the police power is a measure taken to provide for the health, welfare and safety of the public. *CITGO Petroleum Corp. v. State ex rel. Dep't of Revenue & Taxation*, 2002-0999, p. 7-8 (La. App. 1 Cir. 4/2/03), 845 So.2d 558, 562, writ denied sub nom. *Citgo Petroleum Corp. v. State Thorough Dep't of Revenue & Taxation*, 2003-1243 (La. 6/27/03); 847 So.2d 1274. An example of this power would

¹¹ La. R.S. 38:3076(F)(1).

be a city's assessments for garbage collection. *Id.* Assessments of that kind are more comparable to the price paid for a commodity or service than they are to taxes. *Id.*

In this case, the installation and maintenance of the Flexim Meters could be seen as analogous to the CAGWC providing a commodity or service in lieu of Users having to bear the expense of self-metering and self-reporting. However, as stated above, CAGWC cannot do this with respect to BRWC. Furthermore, because this matter concerns an imposition on the severance of a natural resource, there should be considerably less leeway if the pumping charges generate excess revenue. The law specifically *authorizes* municipalities to generate some revenue from providing utilities. La. Const., Art. XIV, § 14; La. R.S. 33:4161; *City of Lake Charles v. Wallace*, 170 So.2d 654, 660 (La. 1964) (“Because the city charges a fee, and it may be hence argued that some incidental revenue would come to the municipality does not convert the ordinance into a revenue measure.”). By contrast, political subdivisions are constitutionally *prohibited* from levying a severance tax. La. Const. Ann. art. VII, § 4(C); *cf.* The constitutional prohibition against levying a local severance tax is broad and prohibits any kind of local severance tax. Thus, any revenue generated by the pumping charges that clearly and materially exceeds the necessary and reasonable costs of regulation represents an unconstitutional severance tax.

That said, Act 494 does not prevent the CAGWC from installing and maintaining meters as to Users who do not meet the requirements for self-metering. Furthermore, the pumping charges are statutorily required to be used to fund the operations of the CAGWC. The CAGWC is expressly charged to exercise the police power to preserve the SHA. The pumping charges are not taxes to the extent that they fund the CAGWC's necessary operations as a regulator. For this reason, we hold

that only the portion of the pumping charges that purports to fund the now-prohibited metering program under the CEA are unconstitutional taxes.¹²

The record evidence establishes that \$31.91 of the pumping charges at their current rate is attributable to the metering program. This portion of the \$65 pumping charges is found to be in excess of what is necessary for the CAGWC to carry out its regulatory purpose and is therefore an unconstitutional severance tax as to BRWC. A Declaratory Judgment will be rendered reflecting that finding.

The motion to pay the disputed funds into the registry of the board was orally granted at trial. Accordingly, **IT IS ORDERED** that the full amount held in escrow in the Taylor Porter IOLTA account be paid into the registry of the board within ten days of this Order. Any further amounts in dispute may be paid into the registry of the board pending appeal until a final judgment is in effect concerning this matter.

We will order a division of the escrowed funds in accordance with this Interim Order. The amount attributable to \$31.91 of the \$65 shall be adjudged to be returned to BRWC, and the remainder shall be payable to the CAGWC. The amounts held in escrow will be released to the respective parties to whom they are due pursuant to the final judgment once any appeals have concluded.

The law provides no procedural device for refund of those earlier fees paid under protest. As explained in prior rulings, the applicable statutes do not textually apply to this situation. Therefore, the Board will only render a money judgment related to those amounts. This amount would be payable only pursuant to appropriation of the CAGWC. La. Const. art. XII, § 10(C).

Accordingly, **IT IS FURTHER ORDERED** that on or before July 29, 2024, the parties shall submit a joint proposed Judgment accordance with this Interim

¹² We make no ruling as to any User not before us, and would observe that for Users who will not self-meter and satisfy the requirements of La. R.S. 38:3076(F), there would be a supportable basis for charging the full fee amount in exchange for providing the metering service at that location.

Order and Reasons and the parties' calculation of the amounts due to BRWC and to CAGWC pursuant to the substance of this Interim Order related to the amounts held in escrow. The proposed Judgment will also reflect a calculation of a money judgment in favor of BRWC concerning the impact of this Interim Order on the amounts previously paid under protest.

IT IS FURTHER ORDERED that if the parties cannot agree on the form of a proposed Judgment on or before July 29, 2024, that either party may submit its own proposed Judgment and Memoranda by that date. Either party may file a response to the other party's proposed Judgment and Memoranda on or before August 9, 2024.

IT IS FURTHER ORDERED that the final judgment will rule that \$31.92 of the purported \$65 per million gallons pumping charges, as increased per the promulgation of La. Admin. Code 56:V.1107, is an unconstitutional severance tax. This is a declaration that this portion of the rule is unconstitutional, not the underlying statute, therefore the appeal of this Judgment will lie to the First Circuit Court of Appeals.

However, La. C.C.P. Art. 855.1, recently enacted by 2024 2nd Ex. Sess. Act 12, provides:

All civil actions alleging that a law is unconstitutional shall be in writing and be brought in an ordinary proceeding. The pleading shall be served upon the attorney general of the state in accordance with Article 1314. Upon proper service, the attorney general shall have thirty days to respond to the allegations or represent or supervise the interests of the state.

While the judgment will strike a portion of a regulation, not the statute itself, the BRWC's pleadings do allege the unconstitutionality of a law.¹³ Therefore, we find that the Attorney General should be served under this recently enacted provision.

¹³ In addition, to challenging LAC 56:V.707 and 1107, BRWC alleged that the entirety of the pumpage charges authorized by La. R.S. 38:3072(B)(14)(a) and (b) are unconstitutional.

Accordingly, **IT IS FURTHER ORDERED** that a copy of this Order, any prior Judgments, and all Pleadings in this matter shall be served on the Attorney General.

We will allow 30 days to pass from service to allow time for the Attorney General to intervene. If the Attorney General does not intervene in this time, then a Judgment will be rendered in accordance with this Interim Order. If the Attorney General does intervene, we will conduct a status conference to ascertain a reasonable basis for allowing the Attorney General to be heard to comply with any applicable procedural requirements.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

SO ORDERED THIS 24th DAY OF JUNE, 2024.

FOR THE BOARD:


LOCAL TAX JUDGE CADE R. COLE