



Louisiana Sea Grant Legal Program
Louisiana Coastal Law Email Update Service
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Attorney General Opinion

Louisiana Revised Statute 38:2337 grants complete and independent authority to the Sabine River Authority to the exclusion of other statutes and legislative acts in matters concerning the Sabine River. Revised Statute 38:2325 dictates the powers of the SRA, including the ability for the SRA to engage in contracts for sale, conservation, utilization, and consumption of the water of the Sabine. Therefore, any procurement procedures required of the SRA are governed solely by R.S. 38:2325. This includes the written concurrence of the Governor for contracts with parties outside the state. While the Department of Natural Resources does not have a stated role in this process, collaboration between the departments is encouraged.

Source: James "Buddy" Caldwell, Louisiana Attorney General, Opinion 10-0297.

Cases

New Orleans Residents Sue the Army Corps of Engineers to Halt Repair of 17th Street Canal

Homeowners with backyards along the 17th Street Canal filed a civil suit in state court on January 5, 2011, to stop repairs being made to the canal by the Army Corps of Engineers. The homeowners claim that they own the land where the work will take place and they have not been compensated for damage to their properties. Additionally, seven families claim work crews would be trespassing. The suit stems from a dispute over whether backyards along the canal are part of the state's right of way or private land. In 2008, homeowners sought compensation for the loss of trees, fences and outbuildings close to the 17th Street Canal levee that were removed by crews to make the canal's levee and floodwalls safer. A state district judge ruled in their favor, but their compensation claims were overturned in 2009 by the Louisiana 4th Circuit Court of Appeal.

Source: Alison Haynes, www.katc.com, *Suit seeks to halt New Orleans levee work* (January 11, 2011).

News

White House Lifts Drilling Moratorium

Under pressure from gulf coast lawmakers warning of job loss, the Obama administration lifted the moratorium on deepwater drilling for oil and gas in the Gulf of Mexico weeks ahead of schedule, pledging closer oversight in the wake of the worst spill in U.S. history. The Interior Department recently issued a slew of new operating and safety rules for deepwater drilling, and permits will only be issued to conforming operators.

Source: Juliet Eilperin and Steven Mufson, WashingtonPost.com, *White House lifts ban on deepwater drilling* (October 12, 2010).

Dives Near Site of Macondo Well Result In Varied Oil and Wildlife Samples

Scientists on a research vessel in the Gulf of Mexico are finding a substantial layer of oily sediment on the seafloor, stretching for dozens of miles in all directions. Their discovery suggests that a lot of oil from the Deepwater Horizon did not simply evaporate or dissipate into the water, but rather has settled to the seafloor. Samantha Joye, a professor in the Department of Marine Sciences at the University of Georgia, has taken samples of seafloor mud, some containing oily layers up to 2 inches thick. "It's very fluffy and porous. And there are little tar balls in there you can see that look like microscopic cauliflower heads."

Source: NPR.org, *Scientists Find Thick Layer of Oil On Seafloor* (September 10, 2010).

Wave of Workers' Compensation Claims Resulting from Deepwater Spill Seen on the Horizon

OSHA has reported on its website that more than 33,200 people have responded to help in the clean up, including more than 2,000 federal employees. Workers' compensation claims relating to the Gulf disaster cleanup have been estimated in the billions of dollars. Claims can be filed under a variety of statutes, including state workers' compensation laws, the Jones Act, and other specialized federal laws covering maritime workers and operations. The litigation will undoubtedly take years.

Source: M. Lee Smith Publishers & Printers, Louisiana Employment Law Letter, *Next wave of trouble rolling onto shoreline: workers' comp claims* (September, 2010).

Oil Spill Claims Process Under Attack

An Associated Press review that included interviews with legal experts, government officials and more than 300 Gulf residents found the claims process beset by red tape and delay, and at the center of it all a fund administrator whose ties to BP have raised questions about his independence. Lawmakers in Washington are demanding the White House step in, while the Louisiana governor and others want a federal judge to intervene.

Source: Associated Press, nola.com, *Gulf oil spill claims process under fire* (February, 15, 2011).

BP Claims Process to be Examined by Legislature

A special committee was formed by House and Senate leaders in response to complaints about the way Kenneth Feinberg is handling claims filed by Louisiana individuals and businesses. The committee, led by Rep. Walter Leger III, held its first in March 2011. The committee will be able to subpoena witnesses, but will not have power to change the way the claims process is being handled.

Source: Jan Moller, The Times-Picayune, *Gulf of Mexico oil spill process to be examined by legislative committee* (March 3, 2011).

Feinberg Finalizes Plan for Subsistence Claims

Kenneth Feinberg has finalized the claims procedure for subsistence claims: claims that are based on the inability of fishermen to feed themselves and their families using the seafood they would have caught. These claims will be available to commercial fishermen and American Indians, but not recreational fishermen who claim "loss of enjoyment." The process to calculate the amount of the payment due was developed by Feinberg's team, nonprofit lawyers, and community advocates. The Gulf Coast Claims Facility has said it will use scholarly studies to determine the amount normally consumed by different groups. It is not clear at this point if an IRS Form 1099 will need to be filed.

Source: David Hammer, The Times-Picayune, *Ken Feinberg reaches deal to pay subsistence claims for commercial fishermen who consume a portion of their catch* (April 12, 2011).

BP Compensation Fund Claims Deadline for Emergency Financial Claims

Tuesday, November 23, 2010, was the deadline to file a claim for an emergency financial payment. More than 400,000 claimants filed claims, including a variety of people that lost money or profits over the summer due to the oil spill, such as business owners and beach wedding planners. The deadline to document that actual loss was extended up to three years by the claim czar, Ken Feinberg.

Source: NPR.org, *Gulf Coast Residents Face Claim Deadline* (November 23, 2010).

Oil Spill Beach Clean Up Deadline Set

The Coast Guard set the end of February, which correspond to many colleges' Spring Break, as the deadline for clean up on bathing beaches. In total, 928 miles of beach were fouled with oil and fewer than 30 miles were left to clean at the time the deadline was set. At the spill's height, 47,000 people and more than 10,000 vessels were working in response to the disaster. Now, the army of spill responders is down to 6,000 and the fleet consists of about 380 vessels. In many places, tar balls and black sticky patties that once littered the shoreline are gone. The sand is no longer stained brown, and the surf is clear of crude. Beaches that once looked like excavation sites are returning to normal.

Source: Cain Burdeau, Washington Post, *Oil cleanup along Gulf Coast nears an end* (December 31, 2010).

St. Tammany Parish Looks into Possible Oil Spill Lawsuit

St. Tammany Parish has retained Walter Leger Jr. as special counsel in the event that it decides to sue for damages related to last year's oil spill in the Gulf of Mexico, which sent tar balls into Lake Pontchartrain and possibly inflicted other, still unknown harm along the north shore.

Source: Christine Harvey, Nola.com, *St. Tammany Parish hires attorney to look into possible oil spill lawsuit* (January 7, 2011).

Use of Dispersant in Cleaning BP Oil Spill Creates Further Concerns About Contamination

Last summer's use of dispersants in addressing the oil spill was the first-ever subsea application of dispersants and was unprecedented in volume. William Reilly, EPA Director from 1989-1992, voiced concerns about possible fish contamination. The National Oil Spill Commission found that although current EPA Director, Lisa Jackson, acted in a sound and professional manner in her decision regarding subsea application, research is needed to justify future decisions in times of crisis.

Source: Nola.com, *National Oil Spill Commission urges research on toxicity of dispersants* (January 15, 2011).

Alabama oyster bed restoration among first since Gulf oil spill

Volunteers deposited 23,000 bags of oyster shells in Mobile Bay as part of a restoration project by a coalition of funders including the Nature Conservancy, U.S. Fish and Wildlife Service, the National

Oceanic and Atmospheric Administration, and private donors. The goal of the project is to help replenish oyster reefs, promote new growth, protect delicate salt marshes and sea grasses, and provide habitat for numerous marine species. The project is expected to cost a total of \$100 million and take approximately 5 years to complete provided continued funding.

Source: Nola.com, *Alabama oyster bed restoration among first since Gulf oil spill* (January 24, 2011).

BP Accused of Racketeering

Oil spill victims' lawyers accused BP of breaking civil racketeering law by knowingly breaking U.S. environmental laws, skirting federal rules on offshore oil and gas extraction, and misrepresenting its ability to stop and clean up a deepwater spill. The lawyers claimed that BP engaged in a pattern of fraudulent conduct directed at regulators from the inception of the Macondo project up to the spill and beyond, repeatedly placing profits over safety. BP is the only defendant named in the suit and has declined to comment on the case.

Source: Laurel Brubaker Calkins, BusinessWeek.com, *BP accused by victims of racketeering law violation* (January 25, 2011).

Louisiana Elected Officials Back Using BP Fine Money for Coastal Restoration

A house oil spill response bill has a new amendment that would implement a key recommendation by the bipartisan oil spill commission. The recommendation is for Congress to dedicate 80 percent of Clean Water Act penalties to be assessed for the Deepwater Horizon oil spill to Gulf Coast restoration. All six Louisiana congressmen co-sponsored GOP congressman Scalise's Gulf Restoration Act (H.R. 56) that mandates at least 80 percent of the civil and criminal penalties charged to BP under the Clean Water Act be returned to the Gulf Coast for long-term economic and environmental recovery. The fines for violations of the Clean Water Act alone will range from \$1,100-\$4,300 for each of the 4.9 million barrels spilled, which results in a fine between \$5-\$21 billion.

Source: The Nature Conservancy, Nature.org, *House bill amendment to dedicate Gulf oil spill fines to Gulf restoration praised* (January 27, 2011).

Oil Spill Lawyers Urge Clients to Settle

A group of lawyers suing BP PLC over its Gulf oil spill is moving instead to redirect dozens of its clients to make claims to the \$20 billion fund set up by BP and the Obama administration. While hundreds of people are still suing BP in federal court, the lawyers' move could end up robbing that ongoing litigation of the critical mass of plaintiffs that might be needed to prove broad economic losses. For the fishermen, resort owners, hoteliers and others who say they were financially harmed by the Gulf disaster, settling means a quicker payout but a lost chance at earning damage payments.

Source: Dionne Searcey, WSJ.com, *Oil Spill Lawyers Urge Clients to Settle* (January 28, 2011).

Energy Security and Environmental Concerns At Odds Over New Pipeline to Gulf Coast

A Canadian company is pushing to build a 1,900-mile pipeline that would carry crude oil extracted from tar sands in Alberta, Canada, to refineries in Texas. The Canadian Prime Minister Stephen Harper is in favor of the pipeline, calling his country a secure, stable and friendly neighbor that poses no threat to Americans. The \$7 billion Keystone XL pipeline could substantially reduce U.S. dependency on oil from

the Middle East and other regions. The pipeline is slated to create 20,000 high-paying jobs for American families and inject \$20 billion into the U.S. economy. The environmental organization, Friends of the Earth, opposes the pipeline, stating that tar sands oil is highly polluting. Nebraska Senators are wary since the pipeline would also travel over parts of the massive Ogallala aquifer, which supports irrigation and supplies drinking water to about 2 million people in Nebraska and seven other states.

Source: Associated Press, npr.org, *Canada PM Urges US to Approve Oil Pipeline* (February 4, 2011).

Senator Landrieu Authors Language Change in FDA Regulation and Serves Up Louisiana Gumbo

On November 29, 2010, the Senate passed legislative language that Sen. Landrieu authored as part of the food safety bill, to protect approximately 3,500 Gulf Coast oyster industry jobs from new U.S. Food and Drug Administration (FDA) regulations. The Senate Food Safety Bill (S.510) would require the FDA to conduct public health and costs assessments prior to issuing new regulations that impact the processing and consumption of raw oysters. In celebration, the Senator served her Senate colleagues Gulf Coast seafood gumbo for lunch in participation with Dine America/Dine Louisiana 2010.

Source: Congressional Documents and Publications, Federal Information and News Dispatch, Inc., *Sen. Landrieu scores win protecting Louisiana jobs* (December 2, 2010).

Waterway Initiative

In a cooperative effort between the United States Coast Guard, United States Coast Guard Auxiliary, and the Louisiana Office of State Parks, the agencies will promote boating safety and recreational use of Louisiana's waterways through the distribution of free informational brochures. These brochures will be available at Louisiana State Parks located throughout the state and will include topics like safe boating tips, proper life jacket selection, and general boating responsibility. Each brochure is designed to encourage enjoyment of boats and personal watercraft in a safe and responsible manner.

Source: Times-Picayune, *Waterway safety initiative launched* (December 30, 2010).