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April 9, 2025

Via Electronic Mail

The Honorable Liz Murrill
Louisiana Attorney General
1885 North Third Street
Baton Rouge, LA 70802

Re: Louisiana Coastal Erosion Litigation

Dear Attorney General Murrill:

I am writing you on an important and urgent matter on behalf of the American Free Enterprise Chamber of Commerce, the American Energy Institute, the United States Energy Association, and First Principles.

As you know, the Trump administration is committed to unleashing America's domestic energy production. This week the President issued an Executive Order "Protecting American Energy from State Overreach," castigating States for threatening America's energy dominance by "subject[ing] energy producers to arbitrary or excessive fines through retroactive penalties" cast as damages for alleged past environmental harm.

We are concerned Louisiana is in the process of doing just this by its acquiescence to the wave of 43 lawsuits devised by prominent plaintiffs' lawyers against American oil and gas companies on behalf of Louisiana's coastal parishes. These cases all claim that the oil and gas production activities of these companies over the past 80 years are responsible for Louisiana's coastal land loss and erosion. The suits allege these production activities violated Louisiana's State and Local Coastal Resources Management Act of 1978 ("SLCRMA"), which took effect in 1980, and seek massive damages—tens of billions of dollars—to restore coastal land to its condition in the 1930s. The first of these cases reached a jury verdict last week in Plaquemines Parish where the jury awarded a judgment against Chevron of $745 million.

Though pursued in the name of State and local governments, the State seems to have largely ceded control of the litigation to the private plaintiffs' lawyers and deferred to their legal positions. While local judges have allowed these cases to continue, plaintiffs' claims are clearly contrary to SLCRMA's explicit terms and devoid of legal merit, as the federal U.S. Court of Appeals for the Fifth Circuit has already held. *See New Orleans City v. Aspect Energy, L.L.C.*, 126 F.4th 1047, 1052 (5th Cir. 2025). Under SLCRMA, a violation can occur only after 1980 when a company engages, without a permit, in operations for which a permit is required. In the cases at issue, defendant companies were not required to obtain permits because their continuing operations were lawfully commenced before 1980, and the statute expressly exempts those uses from a permit requirement. But, even if permits were required after 1980, SLCRMA only allows

damages for harm inflicted after 1980 by such unpermitted operations – not for harm inflicted before 1980 when there were no permit requirements – and here the vast bulk of damages being sought occurred before 1980.

Ignoring these clearcut limitations, these lawsuits seek to impose ruinous, retroactive liability for oil and gas producers based on decades of activities that were expressly permitted by all relevant federal, state and local authorities and that generated the energy, employment and revenue that once made Louisiana a leading contributor to American prosperity. We are concerned these suits, if they continue, will impact critical current LNG plants and operations in the coastal zone, curtail new energy investments in Louisiana, constrain funding available for new production in the Gulf of America, and undermine President Trump's efforts to re-establish American energy dominance.

The phenomenon of land loss and coastal erosion in Louisiana has long been studied and has been largely attributed to federal management of the Mississippi River and natural processes such as hurricanes. It is well understood that the U.S. Army Corps of Engineers has built extensive levees and diversions and conducted dredging that prevents Mississippi River sediment from reaching and settling in the coastal marshes. Although these measures have had adverse effects on Louisiana's coastline, they are designed to enable flood control and navigation in the Mississippi River Basin for the benefit of Louisiana and the 30 other States in the basin.

The State's role in this litigation is particularly troubling in light of its previous posture on the causes of Louisiana's coastal problems. When Governor Landry was Attorney General, he filed suit against the United States, stating that the Army Corp of Engineers "is responsible for a vast majority of our Louisiana coastal problems." Over the years Louisiana and coastal parishes have echoed this claim, obtaining many billions of dollars in federal funds by attributing coastal erosion to federal activity and natural causes. Given this history, plaintiffs' attempt to extract many billions more from America's oil and gas companies on the theory that they are responsible for the coastal erosion seems flatly incompatible with the position previously taken by the State in attributing that erosion to federal action while obtaining federal funds to address coastal damage.

The importance of these cases is such that we respectfully urge you to reconsider the role your office plays in this litigation. These cases don't involve merely local concerns. They involve matters of great consequence to the whole State, and indeed the whole country. As the State's highest legal officer, you are uniquely positioned to bring needed independent and impartial judgment to the course of this litigation. As an Attorney General, you pursue the best interests of the State, not as a mere private litigant seeking advantage, but as a constitutional officer with a higher duty to base your litigation decisions on a faithful interpretation of the law and an honest assessment of the facts and merits of the case.

Then-Attorney General Landry previously intervened in these cases, and thus the State is a party. But in doing so, Attorney General Landry entered into a "Common Interest, Joint Prosecution" agreement with the private trial lawyers representing the parishes. In that agreement, he agreed to reject "*any* defenses or exceptions raised by any defendant in any

claims." (Emphasis added.) We are deeply concerned that this agreement, on its face, purports to constrain the ability of the Attorney General to engage in an impartial assessment of the merits of any energy industry defenses or exceptions. Thus, this agreement inexplicably places the interests of the State of Louisiana in the hands of fee-seeking private trial lawyers representing coastal parishes, regardless of the potentially divergent interests of the State and other parishes, let alone the legal and factual merits of the issues.

Given the stakes in these cases—for Louisiana, the country, and the critical energy sector—we respectfully request that, notwithstanding the common interest, joint prosecution agreement, your office give independent and impartial consideration to several critical issues that relate to important matters of federal and state policy and are plainly meritorious. It seems to us, as a matter of public policy, that the common interest agreement cannot constrain that consideration or abrogate the obligation of Louisiana office holders to "impartially discharge and perform all the duties incumbent upon [them]." If necessary to achieve an independent review by your office, we ask that the agreement be terminated, or alternatively, that you exercise your right to supersede local parish lawyers and take full charge of these cases.

Specifically, we ask that, through intervention or supersession, you take an active role at this stage in all the cases and particularly in the post-trial motions and appeal in the Plaquemines Parish case. We request you give impartial consideration to three key issues.

First, there is the issue of pre-1980 activities. We ask that your office independently consider the energy companies' defense that, under the plain terms of SLCRMA, none of their production activities violated that statute, and further that SLCRMA, by its terms, does not allow for recovery of damages caused by activities conducted prior to 1980.

The terms of SLCRMA are straightforward. Before that statute went into effect in 1980 there was no state permitting system for engaging in activities within the coastal zone. SLCRMA required that starting in 1980 oil-and-gas operators obtain coastal-use permits when commencing any "use" within the coastal zone. However, the statute makes an exception, grandfathering in "uses" that were "lawfully commenced or established" prior to 1980. SLCRMA can only be violated when an operator engages in a use that requires a permit and does so either without the requisite permit, or outside the scope of the permit. By definition, then, SLCRMA can be violated only by activities occurring after 1980, because no permits were required before then.

Second, there is the issue of pre-1980 coastal erosion. The parishes argue that the oil-and-gas defendants are liable for coastal damage *before* 1980, dating back to the 1940s, on the theory that the companies' pre-1980 operations did not qualify for grandfathering and that defendants were thus required to get permits for their operations in 1980. Plaintiffs have never provided a coherent explanation why defendants' pre-1980 operations did not qualify as "legally commenced," but even if plaintiffs were right (and they are not) it would only mean that defendants were required to get permits in 1980. The only violations would be the unpermitted uses made after 1980, and defendants' only liability would be for any harm caused by that unpermitted use after 1980.

But the parishes further contend that once an unpermitted use is found after 1980, the operator is liable for all harm caused by that use before 1980, going back to the inception of the activity. This is directly contrary to the text of SLCRMA. Subsection E of section RS 49:214.36 of the Act authorizes courts to impose liability or assess damages "for uses conducted within the coastal zone without a coastal use permit *where a coastal use permit is required....*". (Emphasis added.) In other words, damages under SLCRMA must only be for harms that result from the violation of SLCRMA – that is, harms caused by post-1980 activities performed without a required permit.

In short, plaintiffs' legal theory in these cases is a house of cards. It is patently contrary to the statutory text. And even if it were accepted as a matter of statutory law, it would raise serious constitutional issues of retroactivity, due process and takings.

And third, we ask that you impartially consider whether the federal government is responsible for at least the vast majority of the land loss for which the private trial lawyers now seek to hold energy companies liable, and how federal responsibility should be presented in any trial or other proceeding seeking to attribute liability to other defendants.

We believe that addressing these pivotal legal issues at this stage is in the interests of Louisiana's economic future and important to the President's energy goals. A stable regulatory framework not only ensures fair legal standards but also bolsters investor confidence and supports ongoing job creation and increased production in the energy sector.

Thank you for your attention to these critical issues.

Sincerely,

William P. Barr

cc: The Honorable Chris Wright
Secretary of Energy

The Honorable Doug Burgum
Secretary of Interior

Acting Assistant Attorney General Adam R.F. Gustafson
Environment and Natural Resources Division
U.S. Department of Justice