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EXECUTIVE

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SHREVEPORT _____

DATE: 9/16/20

NINETEENTH JUDICIAL DISTRICT COURT
EAST BATON ROUGE PARISH
STATE OF LOUISIANA

DOCKET No. _____ DIVISION “___” SECTION _____

STATE OF LOUISIANA, THROUGH THE DEPARTMENT OF WILDLIFE AND FISHERIES

v.

ZACHARY MATERIALS, LLC

PETITION

Introduction

1.

This matter addresses sand, gravel, or other earthen material mining along the Comite River in East Baton Rouge Parish without a Scenic Rivers Permit in violation of the Louisiana Scenic Rivers Act.

Parties

Plaintiff

2.

The plaintiff is the State of Louisiana, through the Louisiana Department of Wildlife and Fisheries (“LDWF”).

3.

The LDWF is delegated the duty to regulate and protect the scenic rivers of the State of Louisiana.

4.

Under La. R.S. 56:1840-56, known as the Louisiana Scenic Rivers Act (the “Scenic Rivers Act”), LDWF administers the Scenic Rivers Program and is responsible for enforcing the provisions of the Scenic Rivers Act, including issuing permits for certain activities along the shoreline of designated Scenic Rivers and enforcing violations of the Scenic Rivers Act and the Scenic Rivers Program regulations.

5.

Plaintiff is the proper party to bring this suit under La. R.S. 56:1851 and 76 LAC Pt IX, §§ 117-19.

Defendant

6.

The defendant is Zachary Materials, LLC (“Zachary Materials”).

7.

Defendant Zachary Materials is a limited liability company organized and existing under the laws of the State of Louisiana, authorized to and doing business in Louisiana. Zachary Materials’ principal business office and domicile address is in East Baton Rouge Parish.

8.

Zachary Materials may be served with process upon its registered agent, Robert L. Case, 1774 N. Flannery, Baton Rouge, LA 70815.

Jurisdiction

9.

This Court has jurisdiction over this matter under La. R.S. 56:45 & 1851.

Venue

10.

Venue is proper in this Court under La. Code Civ. P. arts. 42 & 43, and 76 LAC Pt IX, § 119.

Legal Background

Scenic Rivers Permits

11.

Under La. R.S. 56:1841, the purpose of the Scenic Rivers Act is to preserve, among other things, the ecological and aesthetic features and resources along designated scenic rivers:

B.(1) This system shall be administered for the purposes of preserving, protecting, developing, reclaiming, and enhancing the wilderness qualities, scenic beauties, and ecological regime of certain free-flowing streams or segments thereof.

(2) This system shall further be administered for the purpose of preserving aesthetic, scenic, recreational, fish, wildlife, ecological, archaeological, geological,

botanical, and other natural and physical features and resources found along these streams or segments thereof.

12.

The Louisiana Legislature may designate any river or segment of a river in the State of Louisiana as a natural and scenic river (a "Designated River"). La. R.S. 56:1845.

13.

Under La. R.S. 56:1847(8), the segment of the Comite River at issue in this petition is a Designated River.

14.

No person shall commence or engage in certain activities governed by the Scenic Rivers Act without first obtaining a permit from LDWF. La. R.S. 56:1849.

15.

The Scenic Rivers Act and its regulations apply to all uses on the stream or on adjacent lands within 100 feet of a "designated system stream" by any "person" (unless such uses are exempted from regulation under R.S. 56:1852(B)). 76 LAC Pt IX, § 105.

16.

These regulations further apply to all activities more than 100 feet from "designated system streams" that have potential to significantly impact the ecological integrity of a system stream. 76 LAC Pt IX, § 105.

17.

The Scenic Rivers Act prohibits cutting or harvesting of timber within 100 feet of "the ordinary low water mark" of a Designated River, except for the limited allowances of selectively harvesting trees for commercial purposes, cutting trees to control disease or insects, or harvesting trees for the personal use of the property owner or lessee. La. R.S. 56:1854.

18.

76 LAC Pt IX, § 115 absolutely prohibits the following uses of a Designated River:

- commercial cutting or harvesting of trees or timber in violation of La. R.S. 56:1854;
- use of a motor vehicle or other wheeled or tracked vehicle on a "designated system stream," except for permitted uses, and direct crossings by immediately adjacent

- landowners or lessees for noncommercial activities in a manner that does not directly and significantly degrade the ecological integrity of the stream; and
- any use requiring a permit where a permit has not been obtained.

19.

Under 76 LAC Pt IX, § 117, prior notification of any commercial harvesting of trees pursuant to La. R.S. 56:1854 within one hundred feet of the ordinary low water mark of a Designated River shall be given to the Louisiana Office of Forestry before such harvesting begins.

20.

Under La. R.S. 56:1850 and 76 LAC Pt IX, § 117, activities that require scenic river permits include, but are not limited to: (1) prospecting, drilling and mining for nonrenewable natural resources, and (2) commercial uses, activities and access, and (3) point source discharge of any pollutant unless the person has given written notice to the LDWF before applying for a Clean Water Act permit.

LDWF's Civil Enforcement Authority

21.

The LDWF administers the scenic rivers system in accordance with the policies, purposes, and requirements of the Scenic Rivers Act, and has the authority to regulate activities that may directly and significantly degrade the ecological integrity of a Designated River. La. R.S. 56:1843, 1850.

22.

Each day on which a violation of the Scenic Rivers Act occurs shall be a separate offense. La. R.S. 56:1851.

23.

The Secretary of LDWF may institute civil proceedings to enforce his rulings in the district court for the parish in which the violation occurs. La. R.S. 56:1851.

24.

The Secretary of LDWF may issue cease and desist orders, compliance orders, and obtain injunctions or other appropriate relief upon determining that a violation has occurred, is occurring, or is about to occur. La. R.S. 56:1851.

25.

For any violation of the provisions of 76 LAC Pt IX, § 117.A and B, the LDWF may institute civil proceedings to enforce department rulings in the district court for the parish in which the violation occurs. 76 LAC Pt IX, § 119.

26.

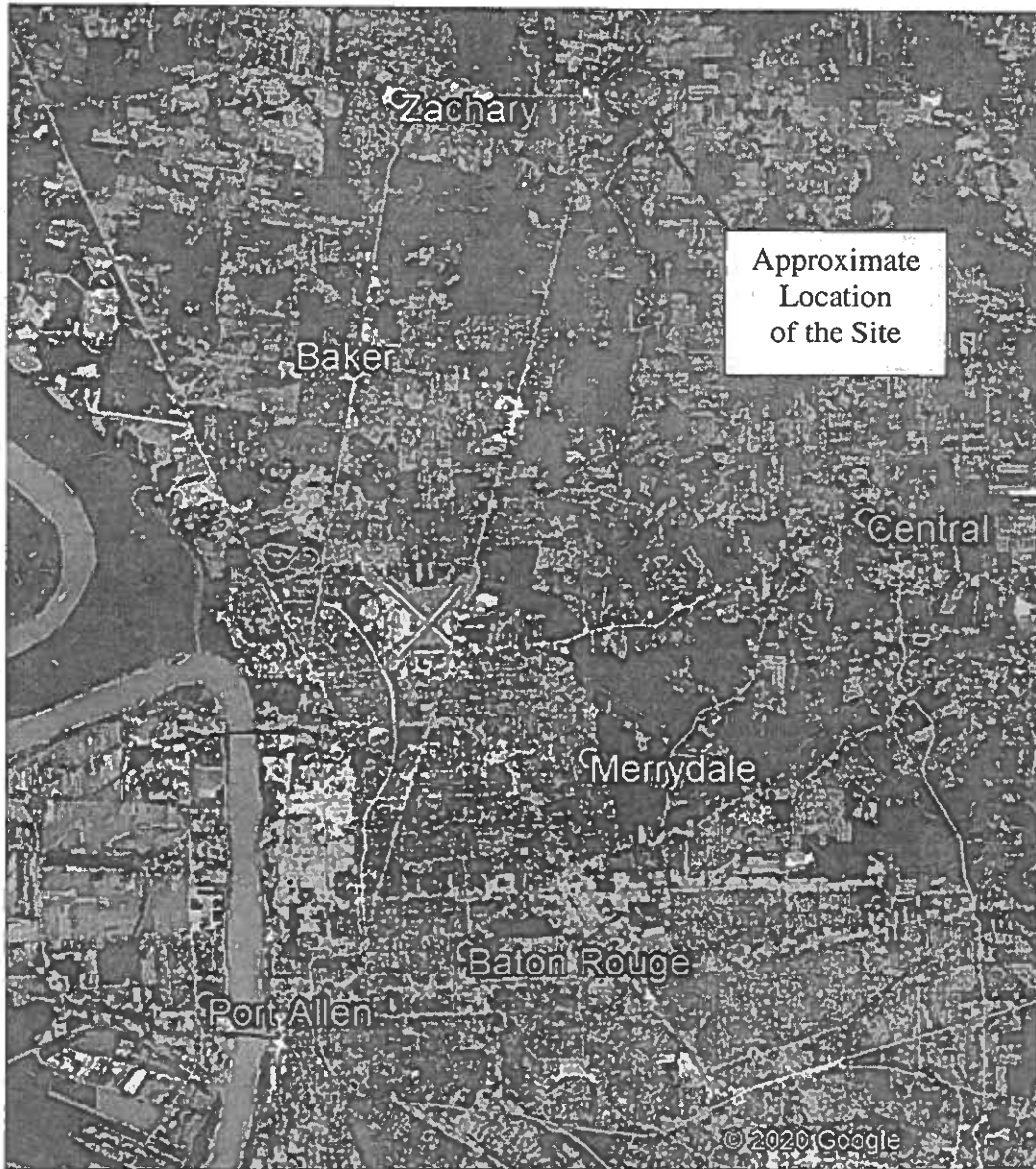
Each day in which a violation occurs prior to voluntary cessation of the activity as a result of the receipt of any lawful order from the LDWF, or prior to cessation as the result of an injunction, shall be a separate offense. 76 LAC Pt IX, § 119.

Material Facts

Defendant's Activities

27.

Zachary Materials has engaged in activities on the right descending bank of the Comite River in East Baton Rouge Parish in Section 56 of Township 4 South, Range 1 East (at a location approximately identified at Latitude 30 degrees, 38 minutes, 56 seconds and Longitude 91 degrees, 5 minutes, 43 seconds), as depicted in the following images (the "Site"):



28.

Zachary Materials has engaged in mining activities along the bank of the Comite River, in an area the LDWF estimates to be up to 500 feet in length.

29.

Zachary Materials has mined, and upon information and belief intend to continue mining, natural resources, sand, and dirt, along the bed and bank of the Comite River.

30.

Zachary Materials has already removed and sold earthen materials such as sand or dirt that it mined at the site.

31.

Zachary Materials' mining activities at the site have occurred within the floodplain.

32.

Zachary Materials' mining activities within the floodplain have included pits that have captured suspended sand, gravel, dirt and other earthen materials from the stream, which Zachary Materials then mined and sold.

33.

Upon information and belief, Zachary Materials plans to continue engaging in mining activities along the bank of the Comite River.

34.

Zachary Materials' pit mining activities within the floodplain have removed valuable sand, silt, dirt, and other earthen materials, causing significant ecological damage at the mining site and downstream from the mining site.

35.

Zachary Materials' activities have resulted in removal of vegetation, including trees, shrubs, and bushes, along the bank of the Comite River, including within the area extending from the ordinary low water mark in an upland direction 100 feet.

36.

These activities have exposed sand and dirt, which upon information and belief Zachary Materials has mined, stockpiled, and removed for sale.

37.

Zachary Materials has sporadically reestablished ephemeral mining pits on the sandbar in the Comite River for the purpose of capturing and removing course sediment from the river for sale.

38.

This mining activity directly and significantly has degraded and continues to degrade the ecological integrity of the Comite River.

39.

This mining activity causes bed and bank erosion of the Comite River.

40.

Zachary Materials has cut and harvested trees within one hundred feet of the ordinary low water mark of the Comite River for purposes other than those provided for in the exceptions under La. R.S. 56:1854.

41.

Upon information and belief, Zachary Materials periodically geographically expands these activities, thereby increasing the length and scope of injury to the shoreline and the Comite River.

42.

Zachary Materials' activities have pushed or displaced fill, dirt, or sand into the Comite River and caused runoff of dirt, fill, and other material into the Comite River, thereby polluting the Comite River.

43.

This polluting activity has directly and significantly degraded and continues to degrade the ecological and aesthetic integrity of the Comite River.

44.

The currently available aerial view of the Site on Google Earth, taken in January 2019, appears in this image:



45.

Zachary Materials has neither applied for nor been granted a Scenic Rivers Act Permit for any of its activities.

LDWF's Enforcement Actions and Zachary Materials' Response

46.

On October 31, 2017, LDWF issued a Cease and Desist Order to Zachary Materials, ordering Zachary Materials to immediately:

- (a) cease and desist all mining activities at the Site that are visible from the Comite River and/or subject to flooding or inundation during times of high water; and
- (b) move all equipment associated with mining operations to a location not visible from the Comite River.

47.

The Cease and Desist Order additionally ordered Zachary Materials to:

1. Within five (5) calendar days of the date of the Order, contact the LDWF Scenic Rivers Coordinator by telephone;
2. Within ninety (90) days of the date of the Order, submit to the LDWF Scenic Rivers Coordinator a restoration plan to:
 - (a) Restore to pre-mining contours all excavated areas within one-hundred (100) feet of the ordinary low water mark of the Comite River. These areas are to be closed and graded utilizing appropriate materials (i.e., sand and gravel) from the Site.
 - (b) Stabilize bare soils using typical best management practices for non-point sources, such as establishing long-term stands of grass on exposed soil surfaces and installing erosion and sediment control blankets, silt fences, and/or straw bale barriers;
 - (c) Reestablish a healthy riparian plant community (“vegetated buffer”) along the Comite River extending landward from the ordinary low water mark no less than one-hundred (100) feet. The vegetated buffer will be planted with native, riparian tree and shrub species seedlings;
3. Provide quarterly progress reports, including photographs, to the Scenic Rivers Coordinator until LDWF is satisfied that the restoration is successful and that appropriate relief has been provided.

48.

Zachary Materials received the Cease and Desist Order on November 9, 2017.

49.

Zachary Materials has not complied with the provisions of the Cease and Desist Order.

50.

On November 15, 2017, LDWF issued a Compliance Order to Zachary Materials, ordering Zachary Materials to restore the mined areas using onsite, stockpiled materials.

51.

The Compliance Order further ordered Zachary Materials to contact LDWF within five days of completion of the restoration activities to ensure that the affected areas were restored to pre-project conditions.

52.

Zachary Materials received the Compliance Order on November 30, 2017.

53.

Zachary Materials has not complied with the provisions of the Compliance Order.

54.

On April 11, 2018, LDWF issued Zachary Materials a Notice of Noncompliance, informing it that, unless a written response including documentation of the actions taken to achieve compliance was received by LDWF within 30 days of the issuance of the letter, LDWF would proceed with levying a penalty of \$200.00 per day for each day of noncompliance beyond May 11, 2018.

55.

Zachary Materials received the Notice of Noncompliance on April 12, 2018.

56.

Zachary Materials continued to engage in the prohibited activities and operations after receiving the Notice, and have failed to undertake the required restoration activities.

57.

The environmental damage caused by Zachary Materials' removal of the trees and vegetation and sand and dirt has seriously impacted the ecological and aesthetic integrity of the Comite River in a manner that cannot be reasonably measured by a pecuniary standard or compensated in money damages.

Concurrent Administrative Proceeding

58.

In December 2018, the LDWF instituted an administrative proceeding to seek penalties and to enforce the compliance order.

59.

In March 2019, the LDWF suspended the hearing until further notice.

60.

The LDWF intends to seek penalties in that concurrent administrative proceeding, but is seeking to enforce its administrative injunctive orders in this proceeding before this Court, as allowed under La. R.S. 56:1851.

Claims

Claims for Timber Harvesting

61.

Zachary Materials violated La. R.S. 56:1854 by cutting or harvesting timber within 100 feet of “the ordinary low water mark” of the right descending bank of the Comite River.

Claims for Unpermitted Uses within 100 Feet of a “Designated System Stream”

Polluting

62.

Zachary Materials violated La. R.S. 56:1850 and 76 LAC Pt IX, § 117 by discharging dirt, fill, or other pollutants into the Comite River without a Scenic River Permit, and/or without notifying the LDWF before applying for a Clean Water Act permit.

Mining

63.

Zachary Materials violated La. R.S. 56:1850 and 76 LAC Pt IX, § 117 by prospecting and mining for dirt, sand, or other earthen materials along the Comite River without a Scenic River permit.

Commercial Uses

64.

Zachary Materials violated La. R.S. 56:1850 and 76 LAC Pt IX, § 117 by engaging in commercial uses, activities and access without a Scenic River Permit.

Prayer for Relief

65.

Wherefore, the State of Louisiana, through the LDWF, prays for Judgement in favor of LDWF and against Zachary Materials, and seeks:

- A. A Declaration that Zachary Materials has violated the Louisiana Scenic Rivers Act;
- B. A Judgment restraining Zachary Materials and its officers, employees, and agents, from:
 - a. Engaging in any mining activities on the sand bar or within the banks of the Comite River;
 - b. Engaging in any mining activities in areas along the Comite River that are subject to flooding or inundation during times of high water;
 - c. Engaging in any mining activities within one-hundred (100) feet of the “designated system stream” of the Comite River;
 - d. Removing any trees located within one-hundred (100) feet of the ordinary low water mark of the Comite River;
 - e. Removing any native sand or dirt from the Site, whether naturally deposited or stockpiled by previous mining operations;
 - f. Depositing sand, dirt, trees, or pollutants in the Comite River; and
 - g. Engaging in any other activities that may require a Louisiana Scenic Rivers Act Permit without first applying for and receiving such a permit from LDWF.
- C. A Judgment Ordering Zachary Materials to:
 - a. Restore the mined areas using onsite, stockpiled materials;
 - b. Restore to pre-mining contours all excavated areas within one-hundred (100) feet of the “designated system stream” of the Comite River. These areas are to be closed and graded using appropriate materials (i.e., sand and gravel) from the site;
 - c. Stabilize bare soils using typical best management practices for non-point sources, such as establishing long-term stands of grass on exposed soil surfaces

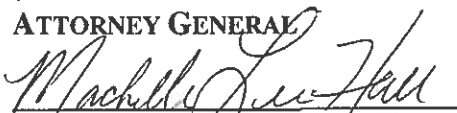
and installing erosion and sediment control blankets, silt fences, and/or straw bale barriers;

- d. Reestablish a healthy riparian plant community (“vegetated buffer”) along the Comite River at the site that is sufficient to restore the aesthetic and ecological integrity of the site’s location along the Comite River. This vegetated buffer shall be planted with native, riparian tree and shrub species seedlings, and shall include areas within the zone extending landward from the ordinary low water mark no less than one-hundred (100) feet, as is reasonable based on the specific location within the site;¹
 - e. Contact LDWF within five (5) days of completion of the restoration activities so that LDWF may assure that the affected areas were restored to pre-project conditions; and
 - f. Provide annual progress reports, including photographs, to the Scenic Rivers Coordinator for the shorter of ten years or until LDWF is satisfied that the restoration is successful and that appropriate relief has been provided.
- D. A judgment awarding LDWF all other declaratory, injunctive, or monetary relief authorized under law;
- E. A judgment awarding LDWF all reasonable attorneys’ fees or costs authorized under law; and
- F. Any other and further relief this Court deems appropriate under the circumstances.

Respectfully Submitted,

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ATTORNEY GENERAL

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¹ For example, it would not be reasonable to expect the Defendant to plant a vegetated buffer on the sandbar or in the sandy area immediately next to the stream.

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