

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

RISE ST. JAMES, LOUISIANA BUCKET
BRIGADE, SIERRA CLUB, CENTER FOR
BIOLOGICAL DIVERSITY, HEALTHY GULF,
EARTH WORKS, AND NO WASTE LOUISIANA

NO. 2021 CW 0032
CONSOLIDATED WITH
NO. 2021 CW 0037

VERSUS

LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY

MARCH 15, 2021

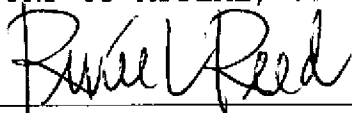
In Re: Intervenor FG LA, LLC and Louisiana Department of
Environmental Quality, applying for supervisory writs,
19th Judicial District Court, Parish of East Baton
Rouge, No. 694029.

BEFORE: McDONALD, HOLDRIDGE, AND PENZATO, JJ.

WRIT GRANTED. The district court remanded this matter to the Louisiana Department of Environmental Quality ("DEQ") prior to its receipt of any merits briefing from DEQ or FG LA, LLC. Without benefit of merits briefing from all parties, the import of any updated EJSCREEN data is unclear. Moreover, in her "Motion for Judicial Notice of Adjudicative Facts and to Admit Proof of Procedural Irregularities," Intervenor Beverly Alexander only requested the district court consider the updated EJSCREEN data in connection with its consideration of the merits of the judicial review action. Intervenor Alexander did not request that the district court remand the matter to DEQ to consider the additional evidence, nor did she assert that the original public notice and public comment period was insufficient. As such, we conclude that the district court abused its discretion in remanding this matter to DEQ. Notwithstanding the foregoing, La. R.S. 30:2050.21(E) allows the district court to remand the matter to DEQ to consider additional evidence when certain conditions are met. On remand, DEQ "may modify its findings and decision by reason of the additional information and shall file that information and any modification, new findings, or decisions with the reviewing court." In remanding here, we further note that the district court exceeded the statutory authority set forth by the legislature because, in addition to instructing DEQ to consider the additional evidence, the district court also ordered DEQ to provide "a more thorough environmental justice analysis," "publicly notice and receive public comment on pollution and health risks from the people of Louisiana in its reconsideration of the environmental justice analysis," and "evaluate the facts and data received in the public comments from the people of Louisiana in its reconsideration of the environmental justice analysis." Accordingly, we grant the writ application and reverse the district court's December 14, 2020 judgment remanding this matter to DEQ. We remand this matter to the district court for further proceedings.

JMM
GH
AHP

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DEPUTY CLERK OF COURT
FOR THE COURT