

**THIRD CIRCUIT COURT OF APPEAL  
STATE OF LOUISIANA**

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**2019 CA 00565**

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**BAYOU BRIDGE PIPELINE, LLC**

**PLAINTIFF / DEFENDANT-IN-RECONVENTION  
APPELLEE**

**VS.**

**38.00 ACRES, MORE OR LESS, LOCATED  
IN ST. MARTIN PARISH, ET AL.**

**DEFENDANTS / PLAINTIFFS-IN-RECONVENTION  
APPELLANTS**

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**APPEAL FROM THE 16<sup>TH</sup> JUDICIAL DISTRICT COURT  
PARISH OF ST. MARTIN, CIVIL CASE NO. 87011**

**HON. KEITH COMEAUX, DIV. E**

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**CIVIL PROCEEDING**

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
JURISDICTIONAL STATEMENT.....	1
CONCISE STATEMENT OF THE CASE.....	1
ASSIGNMENTS OF ERROR.....	3
ISSUES PRESENTED FOR REVIEW.....	4
STATEMENT OF FACTS.....	4
SUMMARY OF THE ARGUMENT.....	11
LAW AND ARGUMENT.....	14
I. Louisiana’s Delegation of the Power of Eminent Domain to Private Oil Pipeline Companies Violates the Fifth Amendment of the U.S. Constitution and Art. I, Sections 2 and 4 of the Louisiana Constitution.....	14
A. Louisiana’s Delegation of the Power of Eminent Domain to Private Oil Pipeline Companies Lacks any Form of Pre-Taking Certification or Approval by Any State or Federal Agency.....	16
B. Other Common Carriers are Subject to Certification and Approval Processes.....	18
II. The Trial Court Erred in Failing To Render Judgment On Appellants’ Reconventional Demands for Violations of the Takings Clause and Due Process Clauses of the U.S. and Louisiana Constitutions.....	22
III. The Trial Court Erred in Denying Appellants’ Dilatory Exceptions of Prematurity Despite Having Found That BBP Failed to Comply with the Statutory Prerequisites to Litigation.....	25
IV. The Trial Court Erred in Allowing Inadmissible Evidence of Economic Development and Incidental Benefits, and Not Allowing Evidence of Environmental and Economic Harm and the Users and Purpose of the Pipeline.....	28
CONCLUSION.....	31
Appendix A: Order Denying Defendants’ Exceptions and Constitutional Challenges, November 27, 2018.....	34
Appendix B: Reasons for Judgment, December 6, 2018.....	37
Appendix C: Final Judgment, December 18, 2018.....	49
CERTIFICATE OF SERVICE.....	70

## TABLE OF AUTHORITIES

### CASES

<i>Anderson v. Bossier Par. Police Jury</i> , 45,639 (La. App. 2 Cir. 12/15/10); 56 So.3d 275 .....	23
<i>Archbold-Garrett v. New Orleans City</i> , 893 F.3d 318 (5th Cir. 2018).....	23, 27
<i>Ass’n of Am. Railroads v. U.S. Dep’t of Transp.</i> , 821 F.3d 19 (D.C. Cir. 2016).....	11, 14, 21
<i>Belgarde v. City of Natchitoches</i> , 156 So.2d 132 (La. App. 3 Cir. 1963).....	24
<i>Boerschig v. Trans-Pecos Pipeline, L.L.C.</i> , 872 F.3d 701 (5th Cir. 2017).....	12, 15, 21
<i>Bossier v. Garber</i> , 2017-349 (La. App. 3 Cir. 1/10/18); 235 So.3d 1200 .....	26
<i>Bowie v. Louisiana Public Serv. Comm’n</i> , 627 So.2d 164 (La. 1993).....	17
<i>Bridgers v. Sw. Louisiana Hosp. Ass’n</i> , 99-520 (La. App. 3 Cir. 11/3/99); 746 So.2d 731 .....	28
<i>Carey v. Phipus</i> , 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978).....	27
<i>Carter v. Carter Coal Co.</i> , 298 U.S. 238, 56 S.Ct. 855, 80 L.Ed 1160 (1936).....	21
<i>Cleco Evangeline, LLC, v. Louisiana Tax Comm’n</i> , 2001-2162 (La. 4/3/02); 813 So.2d 351 .....	14, 26
<i>Eldridge v. Carrier</i> , 2004-203 (La. App. 3 Cir. 11/17/04); 888 So.2d 365 .....	30
<i>Fields v. State Through Dept. of Public Safety and Corrections</i> , 98-0611 (La. 7/8/98); 714 So.2d 1244 .....	23
<i>Gen. Elec. Co. v. New York State Dep’t of Labor</i> , 936 F.2d 1448 (2d Cir. 1991).....	21
<i>Global Tel*Link, Inc. v. Louisiana Public Serv. Comm’n</i> , 97-0645 (La. 1/21/98); 707 So.2d 28.....	17
<i>Gray v. State Through Dept. of Highways</i> , 191 So.2d 802 (La. App. 3 Cir. 1966).....	12, 15
<i>Hewitt v. Lafayette City-Par. Consol. Gov’t</i> , 2017-45 (La. App. 3 Cir. 4/4/18); 243 So.3d 79.....	15

<i>Johnson v. Motiva Enterprises LLC</i> , 13-305 (La. App. 5 Cir. 10/30/13); 128 So.3d 483 .....	15
<i>Kelo v. City of New London</i> , 545 U.S. 469 (2005) .....	29-30
<i>Kimble v. Bd. of Comm'rs for Grand Prairie Levee Dist.</i> , 94-1134 (La. App. 4 Cir. 1/19/95); 649 So.2d 1112 .....	14
<i>Louisiana Intrastate Gas Corp. v. Gulf Outlet Lands, Inc.</i> , 542 So.2d 705 (La. App. 4 Cir. 1989) .....	12, 25
<i>Louisiana Power &amp; Light Co. v. Lasseigne</i> , 220 So.2d 462 (La. App. 4 Cir. 1969) .....	15
<i>Mongrue v. Monsanto</i> , 249 F.3d 422 (5th Cir. 2001) .....	12, 23
<i>Prejean v. Commonwealth for Cmty. Change, Inc.</i> , 503 So.2d 662 (La. App. 3 Cir. 1987) .....	12, 22
<i>Rebel Distributors Corp., Inc. v. LUBA Workers' Comp.</i> , 2013-0749 (La. 10/15/13); 144 So.3d 825 .....	26
<i>Sierra Club v. FERC</i> , 867 F.3d 1357 (D.C. Cir. 2017) .....	18
<i>Sierra Club v. U.S. Army Corps Eng'rs</i> , 803 F.3d 31 (D.D.C. 2015) .....	18
<i>So. Natural Gas Co. v. Poland</i> , 406 So.2d 657 (La. App. 2 Cir. 1981) .....	13, 25
<i>Sultana Corp. v. Jewelers Mut. Ins. Co.</i> , 2003-0360 (La. 12/03/03); 860 So. 2d 1112 .....	28
<i>Texas Rice Land v. Denbury Green Pipeline</i> , 363 S.W. 3d 192 (Tex. 2012) .....	20
<i>Texas Gas Transmission Corp. v. Soileau</i> , 251 So.2d 104 (La. App. 3 Cir. 1971) .....	13, 25
<i>TransCanada Keystone Pipeline, LP v. Dunavan</i> , 303 Neb. 872 (Neb. 2019) .....	20
<i>Williams v. City of Baton Rouge</i> , 98-1981 (La. 4/13/99); 731 So. 2d 240 .....	24

**STATUTES AND CONSTITUTIONAL PROVISIONS**

**Louisiana**

La. Admin. Code tit. 43, pt. XI, § 121(D) .....	19
La. Admin. Code tit. 43, pt. XI, § 125 .....	19

La. Admin. Code tit. 43, pt. XI, § 125(D)	19
La. Const. Art. 1, § 2	12, 14, 22
La. Const. Art. 1, § 4	12, 14, 22
La. Const. Art. 1, § 4(B)(3)	10, 13, 28, 30
La. Const. Art. I, § 4(B)(4)	16
La. Const. Art. IV, § 21(B)	17, 19
La. Const. Art. V, § 10(A)	1
La. Code of Civ. Proc. Art. 2083	1
La. Code of Civ. Proc. Art. 2087(A)(1)	1
La. R.S. 19:2(8)	16
La. R.S. 19:2.2	9, 26
La. R.S. 19:2.2(A)	9, 26
La. R.S. 19:2.2(A)(1)(a-c)	26
La. R.S. 19:5	17
La. R.S. 19:8(A)	17
La. R.S. 30:501 <i>et seq.</i>	19
La. R.S. 30:554(A)	19
La. R.S. 30:555(C)	19
La. R.S. 45:164(A)	19
La. R.S. 45:164(B)(1)-(5)	19
La. R.S. 45:251	16
La. R.S. 45:254	16

## **Federal**

15 U.S.C. §717f(c), (e), (h)	18
18 C.F.R. § 157.1(d)	18

## **Other Jurisdictions**

Iowa Code § 479B <i>et seq.</i>	20
Iowa Code § 479B.1	20
Iowa Code § 479B.9	20
Neb. Rev. Stat. Ann. § 57-1101	20
Neb. Rev. Stat. Ann. § 57-1401	20
Neb. Rev. Stat. Ann. § 57-1503	20
Tex. Admin. Code tit. 16, pt. 1, ch. 3, rule § 3.70(a)	20

**OTHER**

CRS Report R44432, *Pipeline Transportation of Natural Gas and Crude Oil: Federal and State Regulatory Authority*, by Brandon J. Murrill, (Mar. 28, 2016). ..... 18

Louisiana Public Service Commission, General Order, Docket No. R-33390, Feb. 26, 2015. .... 17

Op. Att'y Gen. No. 07-0157 (Oct. 15, 2009) ..... 30

## **JURISDICTIONAL STATEMENT**

This is an appeal from a final judgment in an expropriation case, a civil matter, over which this Court has appellate jurisdiction pursuant to Article V, Section 10(A) of the Louisiana Constitution of 1974 and Art. 2083 of the Code of Civil Procedure. On December 6, 2018, after a trial in the Sixteenth Judicial District Court, St. Martin Parish, Hon. Keith R.J. Comeaux granted the expropriation sought by Plaintiff-Appellee but also ruled that Plaintiff-Appellee had committed trespass on the property at issue. Reasons for Judgment, attached hereto as Appendix B, *infra* p. 37. On December 18, 2018, Judge Comeaux signed a written order to that effect. Final Judgment, attached hereto as Appendix C, *infra* p. 43. Appellants timely filed their motion for appeal on February 20, 2019, in accordance with La. C.C.P. Art. 2087(A)(1). 5 R. 1092. The order granting the motion for appeal was signed by the district court on February 26, 2019. 5 R. 1095. This appeal is timely filed pursuant to the orders of this Court.

## **CONCISE STATEMENT OF THE CASE**

This case involves an out-of-state corporation which was so confident it could ignore the rights of property owners in Louisiana that it went ahead and trespassed on their land and destroyed their property knowing full well it had no legal authority to do so. 1 R. 6, ¶ 1; 7 R. 1692:31-1696:11. This appeal is about protecting the constitutional and statutory rights of property owners which have been unconstitutionally denied and diminished by the State of Louisiana through its grant of the power to take property to large corporations.

The Bayou Bridge Pipeline (“the Pipeline”) is a 162.5-mile crude oil pipeline running from Lake Charles to St. James. 4 Ex. R. 882. After Bayou Bridge Pipeline, LLC (“BBP”) had already entered onto the property at issue in this case and begun construction, and after one of the landowner appellants in this matter sued to enjoin the company’s trespass, the company filed this action against

hundreds of co-owners who had not agreed to the easement it sought or who could not be located. Reasons for Judgment *infra* p. 45-46; 7 R. 1682-1683:30; 1725:29-1727:6.

Appellants, landowners Katherine Aaslestad, her brother, Peter Aaslestad, and Theda Larson Wright (“Landowners” or “Appellants”), exercised their rights to resist the expropriation and counterclaimed for trespass and violations of the rights to property and due process under the U.S. and Louisiana constitutions. 1 R. 86, 141. They also asserted affirmative defenses challenging the constitutionality of the state’s delegation of the power of eminent domain to private oil pipeline companies and dilatory and peremptory exceptions, including exceptions of no right of action, non-joinder, prematurity, and vagueness. *Id.*

Prior to the trial, the court denied Appellants’ affirmative defenses and exceptions. Order Denying Defendants Constitutional Challenges and Exceptions, attached hereto as Appendix A, *infra* p. 34, ¶2 [hereinafter “Pre-Trial Order”]. In particular, the court denied Appellants’ exceptions of prematurity despite finding that the company had not fulfilled all the statutorily-mandated requirements prior to commencing litigation. *Id.*

During the trial, the court allowed, over Appellants’ objections, evidence of economic development and incidental benefits of oil and petroleum products generally despite the fact that the Louisiana Constitution prohibits such evidence in determinations of whether an expropriation is for a public purpose. 6 R. 1500:26-27; 7 R. 1508:14-30, 1512:3, 1543. Conversely, the court refused to allow questioning as to actual users and uses of the Pipeline, and adverse environmental and economic impacts. 7 R. 1551-1560:10; 1686:14-1689:17; 1553:6-1559:26; 1562:63. The trial court went on to rule there was a public purpose and necessity for the expropriation without having any evidence as to the actual shippers and customers and uses of the pipeline. Reasons for Judgment, *infra* p. 42.



After the trial, the court ruled that the company committed trespass but granted the expropriation. Final Judgment, *infra* p. 45-46. The court failed to render judgment as to the related reconventional demands for violations of Appellants' rights to property and due process under the U.S. and Louisiana constitutions based on the same conduct as the trespass claim – demonstrating in its ruling that it had confused these counterclaims with the affirmative defenses. Reasons for Judgment, *infra* p. 37. The landowners then timely brought this appeal.

### **ASSIGNMENTS OF ERROR**

1. The trial court erred when it denied Appellants' affirmative defenses asserting that Louisiana's grant of the power of eminent domain to private oil pipeline companies violates the Fifth Amendment of the U.S. Constitution, as well as the rights to property and due process protected by Art. I, Sections 2 and 4 of the Louisiana Constitution.
2. The trial court erred when it failed to render judgment as to Appellants' reconventional demands for violations of the rights to property and due process under the U.S. and Louisiana constitutions despite having found that Appellee committed trespass on Appellant Landowners' property.
3. The trial court erred when it denied Appellants' dilatory exceptions of prematurity despite having found that Appellee failed to comply with statutory notice requirements prior to commencing litigation.
4. The trial court erred in allowing impermissible evidence of economic development and incidental benefit to the public in determining whether the expropriation served a public and necessary purpose contrary to the prohibition of such in La. Const. Art. 1 Sec. 4(B)(3), and in refusing to allow evidence of the specific uses and users of the Pipeline and adverse impacts.

## **ISSUES PRESENTED FOR REVIEW**

1. In Louisiana, private oil pipeline companies have been granted the power of eminent domain. Unlike other private expropriators, oil pipeline companies do not need to seek certification or approval from any federal or state authority when they begin to exercise expropriation authority. Did the trial court err in denying Appellants' affirmative defenses that Louisiana's grant of the power of eminent domain to private oil pipeline companies violates the Fifth Amendment of the U.S. Constitution as well as the rights to property and due process protected by Art. I, Sections 2 and 4 of the Louisiana Constitution?
2. Did the trial court err when it failed to render judgment as to Appellants' reconventional demands for violations of the rights to property and due process under the U.S. and Louisiana constitutions despite having found that Appellee committed trespass on Appellant Landowners' property?
3. Did the trial court err in denying Appellants' dilatory exceptions of prematurity despite the fact that Appellee failed to comply with the statutory prerequisites before going to court?
4. The Louisiana Constitution was amended in 2006 to prohibit economic development, tax revenue, or any incidental benefit to the public from being considered in determining whether a taking is for a public purpose. Did the trial court err when it allowed evidence of economic development and incidental benefits in granting the expropriation, but excluded evidence of the users and uses of the Pipeline and adverse impacts?

## **STATEMENT OF FACTS**

### **Background: Bayou Chene and The Pipeline**

Appellants Katherine Aaslestad, Peter Aaslestad, and Theda Larson Wright, along with many other landowners, own an undivided interest in land that lies deep in the Atchafalaya Basin near what was once Bayou Chene and which has been in

their families for generations. *See* Reasons for Judgment, *infra* p. 42-47; 7 R. 1699-1700, 1720-21, 1741-46. The land is one of the many properties in eleven parishes targeted for expropriation for rights of way for the 162.5-mile crude oil pipeline project at issue in this case. 4 Ex. R. 882. The three landowners in this case opposed the expropriation because of their concern for damage to the property, as well as the impact on the Atchafalaya Basin, surrounding communities, and Louisiana’s environment, 7 R. 1707:5-16; 1711; 1724-1725:3; 1750, and because of a belief that eminent domain should not be used for private gain. 7 R. 1722:25-32.

BBP is a foreign corporation that decided to build a crude oil pipeline from Lake Charles to St. James in a state that, according to BBP’s own witness, already has one of the highest concentrations of pipelines in the world. 1 R. 6, ¶¶ 1, 8; 7 R. 1549:31-1550:25. BBP is a joint venture between Phillips 66 and Energy Transfer Partners, which merged with Sunoco. 8 R. 1763:6-21. These companies have records of pipeline spills and incidents which resulted in \$116,978,793.00 in property damage between the years 2006-2017. 4 R. 996-996B.

The Pipeline runs through wetlands, nearly 700 bodies of water, including in the Atchafalaya Basin, and Bayou LaFourche, a source of drinking water for surrounding communities. 4 Ex. R. 838, 885. The Atchafalaya Basin is the country’s largest river swamp, home to rare old growth cypress trees, tupelo forests, bottomland hardwoods, and habitats sustaining a wide variety of wildlife species. 1 R. 105 at n. 3. The Basin also plays a critical role in flood protection for the region, and in fact the country. *Id.* at n. 4.

**Reconventional Demands:  
BBP Trespassed Because “Time Is Money”;  
Trial Court Failed to Rule on Constitutional Counterclaims**

Appellants brought reconventional demands against BBP for trespass, property damage, and violations of the rights to property and due process under the

U.S. and Louisiana constitutions for BBP's unlawful entry and construction upon their land. 1 R. 86, 141. The trial court ruled that BBP trespassed when it knowingly entered onto Appellants' property and began construction of the Pipeline at least five months before it had legal authority to do so, awarding only minimal damages to each of the landowners in the amount of \$75.00. Reasons for Judgment, *infra* p. 47.

The trial court then failed to render judgment on the related reconventional demands for violations of Appellants' rights to property and due process, stating that, "[a]s referenced above, the constitutional issues have been ruled upon and will not be discussed here." Reasons for Judgment, *infra* p. 37. The trial court was referencing an earlier ruling on the Appellants' affirmative defenses challenging the constitutionality of the eminent domain scheme as it relates to private oil pipeline companies. The affirmative defenses were clearly distinct from Appellants' claims for violations of their rights to property and due process as a result of BBP's trespass. Reasons for Judgment, *infra* p. 37; Pre-Trial Order, *infra* p. 35.

The same evidence supporting the ruling that BBP trespassed also proves the violations of Appellant's rights to property and due process. At trial, BBP's corporate representative and Director of Right of Way, Kevin Taliaferro, explained at length that the company made a calculated business decision in early 2018 to green light construction on the property before BBP had obtained easement agreements from all of the landowners and well before commencing expropriation proceedings against holdouts or absentee landowners. 7 R. 1682:27-1683:30; 1692:31-1696:11. Taliaferro agreed with the trial court that "time is money" when it comes to some construction contracts. 7 R. 1696:2-11.

Taliaferro testified that construction crews entered the Appellants' property in the beginning of June 2018. 7 R. 1683:25-30. In July, Appellant Peter Aaslestad

brought a proceeding in the 16<sup>th</sup> Judicial District Court to enjoin BBP from continuing to illegally enter and construct upon the property. 7 R. 1725:29-32. The suit resulted in a stipulated agreement where BBP agreed to remain off the property as of September 10, 2018. 1 R. 154. However, by then, pipeline construction on the property was “over 90 percent complete.” 6 R. 1263:29-1264:2; *See also*, 7 R. 1729:16-17, 5 R. 1021-23.

Aaslestad testified that BBP’s willful actions in violating his rights as a property owner were upsetting and distressing and that making the decision to try to stop BBP’s trespass was a struggle because he is “just one individual” and BBP is a “billion dollar company.” 7 R. 1723-7. When he learned that construction had been completed by the time the company entered into a stipulation agreement in September, Aaslestad said he “felt outsmarted” and “defeated and terrified if I’m making the right decision to stick my neck out.” 7 R. 1726:13-31.

Likewise, landowner Theda Larson Wright testified that “it was very upsetting” when she learned BBP had gone on the land and was excavating because she and her sisters “had not signed anything.” 7 R. 1707:22-28. Larson Wright testified she felt “emotionally harmed” and was “very, very concerned about what’s been done to the land” and that her family “feels violated.” 7 R. 1713:27-32. She further testified, “I thought I had certain rights, and I don’t feel those were respected.” 7 R. 1714:1-3.

Katherine Aaslestad testified that it made her first depressed and then outraged when she learned the company had trespassed on the property and begun constructing without her permission. 8 R. 1752:27-1753:13. She testified that it was a difficult decision for her and her family to oppose the expropriation and counterclaim for the company’s trespass. 8 R. 1755:3-28.

**Affirmative Defenses:  
Trial Court Ruled Oil Pipeline Companies'  
Unchecked Exercise of Eminent Domain Power Is Constitutional**

BBP did not have to obtain any certification or approval from any state or federal agency before commencing the taking process against landowners along its chosen route. 5 R. 1249:28-30. As set out *infra*, unlike other private expropriators, such as gas pipelines, oil pipeline companies exercise the right of eminent domain in Louisiana with no certification or approval at the outset from any federal or state authority. BBP was entrusted with the power of eminent domain by the state of Louisiana to use against landowners and can do so, and did so, without any initial oversight, and chose to ignore the law governing expropriation. 7 R. 1692:31-1696:11. By the time BBP finally decided to commence an expropriation proceeding – *after* it was sued to enjoin its illegal conduct – the damage had already been done. 7 R. 1726:13-31.

At trial, Taliaferro, BBP's Director of Right of Way, testified how rare it is for the company to have to litigate to obtain expropriation judgments, explaining that in normal pipeline expropriations, they only have to "[go] all the way through expropriation, one maybe three percent of the entire tract count." 7 R. 1694: 23-27. Taliaferro also testified that there were thousands of landowners involved in this pipeline project. 4 R. 751:2-5. BBP's counsel informed the trial court in this case that only ten other expropriation judgments had to be obtained for this Pipeline and none had been contested. 5 R. 1241:16-1242:21.<sup>1</sup>

Appellants raised these concerns through affirmative defenses in response to the expropriation petition challenging, a) the constitutionality of the state's delegation of the power of eminent domain to private oil pipeline companies as a

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<sup>1</sup> Even in the rare cases where landowners do resist an expropriation, they rarely prevail. Out of 115 expropriation cases surveyed between 1943 and 2011 for briefing in the trial court, landowners were successful in defeating the expropriation in only three. 2 R. 273-75, n. i (collecting cases)

violation of the Fifth Amendment to the U.S. Constitution; and b) Louisiana's expropriation statutes as a violation of the rights to due process and property under the U.S. and Louisiana constitutions. 1 R. 86-87; 141-42; 246. After a pre-trial hearing on November 16, 2018, the Court denied the affirmative defenses. Pre-Trial Order, *infra* p. 35.

**Exceptions of Prematurity:  
BBP Did Not Comply with Statutory Requirements**

Appellants also raised dilatory and peremptory exceptions of prematurity, no right of action, non-joinder, and vagueness. 1 R. 100; 155. One of Appellants' exceptions of prematurity was based on the fact that BBP failed to comply with the basic legal requirements of La. R.S. 19:2.2 prior to commencing expropriation actions. 1 R. 114-5; 167-9. It was undisputed that both Theda Larson Wright and Peter Aaslestad had not been provided information and notices required by the statute but the trial court denied their exceptions. Pre-Trial Order, *infra* p. 34-35.

In particular, BBP did not provide Larson Wright with information regarding the appraisal of the property as required under La. R.S. 19:2.2(A). 6 R. 1264-1266; *See also* 6 R. 1342:4-1345:26. Nonetheless, the Court ruled that La. R.S. 19:2.2(A) had been satisfied when BBP sent the information, even though the statute requires that it be *provided* and even though BBP was aware that Appellant Larson Wright had not received it and did not make attempts over the course of the next year to resend it, and even though she accepted other documents related to the expropriation before and after that mailing. *Id.*; *see also*, 5 R 1234-1237.

BBP also admitted that Appellant Peter Aaslestad was never mailed information regarding the expropriation proceeding required under La. R.S. 19:2.2 but that they believed the requirement was not a prerequisite but just a "simple notice requirement." 6 R. 1357:4-15, 21-28. Despite finding that BBP failed to comply with the statute, the court reasoned that the provision was not a "statutory

prerequisite” and that “any failure to provide notice did not result in any prejudice” to Appellant Peter Aaslestad. Pre-Trial Order, *infra* p. 34, ¶2.

**Evidentiary Rulings:  
Evidence of Economic and Incidental Benefits Allowed  
But Evidence of Harm, Cost, Users and Purpose of Pipeline Excluded**

In advance of the trial, Appellants filed a motion *in limine* to exclude evidence of “economic development, tax revenue, and incidental benefits,” because they are prohibited by Art. I, Sec. 4(B)(3) of the Louisiana Constitution in determinations of public purpose for expropriations. 2 R. 277. At a pre-trial hearing, the trial court granted the motion. 6 R. 1405: 21-27. BBP also filed a motion to exclude Appellants’ witness, Scott Eustis, a wetlands expert. 6 R. 1411. The Court denied BBP’s motion, ruling that it would allow Mr. Eustis to testify as to environmental impacts of the Pipeline, which the Court deemed it was required to consider “in determining the necessity prong” of the constitutional requirements for expropriation. 6 R. 1424:20-25.

However, in a twist in the proceedings, the trial court inverted its rulings on these motions. Over Appellants’ objections, *see, e.g.*, 6 R. 1500:26-27; 7 R. 1508:14-30, 1512:3, 1543, the trial court allowed BBP’s expert witness, David Dismukes, to testify about the economic and incidental benefits of oil and petroleum products generally to prove the public purpose of the Pipeline. On the other hand, the court cut short Appellants’ cross examination of Dismukes, ruling out “any discussion of environmental harm and risk associated with pipelines” because such discussion would be “related to economic impact,” which the court believed to be excluded. 7 R. 1553:6-1559:26. Dismukes admitted under cross examination that he did not know who the actual shippers and buyers were for the Pipeline or what the oil would be used for. 7 R. 1547:13-1549:3. The court also refused to allow Appellants to question BBP’s corporate representative about the shippers and buyers and whether the oil flowing through the Pipeline would be for



export or domestic use. 7 R. 1686:14-1689:17. Additionally, the court limited Appellants' expert witness, Scott Eustis, only allowing him to testify to the environmental impacts of the Pipeline on the specific parcel of land at issue in this case, ruling out testimony on the negative environmental impacts of the Pipeline in Louisiana, as well as cumulative effects of pipelines on the Basin and coastal land loss. 7 R. 1562-63.

After reversing itself and severely curtailing questioning and evidence regarding the adverse impacts and costs of the Pipeline, and preventing Appellants' questioning as to the Pipeline's shippers and buyers, and whether the oil was for domestic use or export – in other words the Pipeline's actual purpose – the trial court ruled that the expropriation was for a public and necessary purpose and granted the expropriation. *See* Reasons for Judgment, *infra* p. 39-42. The court then unfairly criticized Appellants in its ruling for having “failed to call any witnesses to challenge the public purpose of the pipeline and minimally cross examined these witnesses concerning the public purpose of the pipeline.” *Id.*, p. 40.

## **SUMMARY OF THE ARGUMENT**

### **I. Constitutional Challenges to Louisiana's Delegation of Eminent Domain Power to Private Oil Pipeline Companies**

Louisiana's eminent domain scheme as it relates to oil pipeline companies violates the due process clause of the Fifth Amendment to the U.S. Constitution as an improper delegation of state power to a private entity. The U.S. Supreme Court has “consistently concluded the delegation of coercive power to private parties can raise [...] due process concerns.” *Ass'n of Am. Railroads v. U.S. Dep't of Transp.*, 821 F.3d 19, 31 (D.C. Cir. 2016). Rooted in the Due Process Clause, the private non-delegation doctrine holds that when “private parties have the unrestrained ability to decide whether another citizen's property rights can be restricted, any

resulting deprivation happens without ‘process of law.’” *Boerschig v. Trans-Pecos Pipeline, L.L.C.*, 872 F.3d 701, 708 (5th Cir. 2017).

As discussed *infra*, in contrast to other private expropriating entities such as gas pipeline companies, oil pipelines are not subject to any form of certification or approval prior to commencing expropriations against Louisiana landowners. As a result of this gap in regulation for oil pipeline companies, Louisiana’s delegation of eminent domain power places no restraints on their ability to restrict landowners’ property rights and runs afoul of the private non-delegation doctrine.

For the same reasons, the scheme also violates the rights to property and due process, protected by Art. I, Sections 2 and 4 of the Louisiana Constitution, intended “to protect citizens against arbitrary or unauthorized governmental takings.” *Gray v. State Through Dept. of Highways*, 191 So.2d 802, 809 (La. App. 3 Cir. 1966), *writ refused* 250 La. 22, 193 So.2d 529, *writ issued* 250 La. 27, 193 So.2d 531, *affirmed as amended* 250 La. 1045, 202 So.2d 24.

## **II. Failure to Render Judgment on Reconventional Demands**

The trial court ruled that BBP trespassed but failed to render judgment on Appellants’ constitutional claims for the same conduct, conflating them with affirmative defenses challenging Louisiana’s delegation of the power of eminent domain to private oil pipeline companies.

Private entities expressly delegated the power of eminent domain under Louisiana law qualify as agents of the government for purposes of establishing constitutional liability for an unconstitutional taking. *See Mongrue v. Monsanto*, 249 F.3d 422 (5th Cir. 2001). This Court may review and rule upon Appellants’ claims that BBP’s trespass also violated Appellants’ due process and property rights under the Fifth Amendment to the U.S. Constitution and Art. I, Sections 2 and 4 of the Louisiana Constitution. *See, e.g., Prejean v. Commonwealth for Cmty.*

*Change, Inc.*, 503 So.2d 661 (La. App. 3 Cir. 1987) (reviewing and rendering judgment on claim disregarded by trial court).

### **III. Exceptions of Prematurity: Failure to Comply with Statutorily-Mandated Prerequisites to Litigation**

This Court has held that, “[e]xpropriation laws and proceedings are ‘special and exceptional in character’ by the simple fact that they are in derogation of the common right to own property, and thus must be strictly construed and highly scrutinized.” *Texas Gas Transmission Corp. v. Soileau*. 251 So.2d 104 (La. App. 3 Cir. 1971) (further holding that “[e]very step in the proceeding must bear the same degree of thorough examination to insure that the landowner is at all times afforded protection against the power of the taker.”) (emphasis added). Expropriation statutes “are to be construed strictly *against* the expropriator and *liberally for* the property owner” because they are in “derogation of the common right to own property.” *Louisiana Intrastate Gas Corp. v. Gulf Outlet Lands, Inc.*, 542 So.2d 705, 706 (La. App. 4 Cir. 1989) (emphasis added); *see also So. Natural Gas Co. v. Poland*, 406 So.2d 657, 669 (La. App. 2 Cir. 1981), *writ denied* 412 So.2d 86, *certiorari denied* 103 S.Ct. 75, 459 U.S. 833, 74 L.Ed.2d 73

By its terms, the statute’s requirements are mandatory and must be fulfilled as prerequisites to litigation. The trial court erred when it denied the exception of prematurity based on BBP’s failure to comply with the statutory mandates.

### **IV. Arbitrary and Capricious Evidentiary Rulings**

The Louisiana Constitution prohibits "economic development, enhancement of tax revenue, or any incidental benefits to the public" from being considered in "determining whether the taking or damaging of property is for a public purpose ...". La. Const. Art. I, Sec. 4(B)(3). The trial court erred when it allowed and relied upon such evidence over Appellants’ objections in determining that the Pipeline served a public purpose. The trial court also erred when it refused to allow

evidence of the users and uses of the Pipeline, and of adverse environmental and economic impacts. The rulings were arbitrary and capricious and significantly prejudiced Appellants' case.

## **LAW AND ARGUMENT**

“The power of expropriation is fraught with the possibility of abuse and injustice and, accordingly must be strictly construed.” *Kimble v. Bd. of Comm'rs for Grand Prairie Levee Dist.*, 94-1134 (La. App. 4 Cir. 1/19/95); 649 So.2d 1112, 1113, *writ denied*, 95-0405 (La. 4/7/95); 652 So.2d 1347, and *writ denied*, 95-0416 (La. 4/7/95); 652 So.2d 1347. The danger of abuse and injustice is heightened when the expropriator is an economically self-interested private corporation unaccountable to the electorate nor subject to checks and balances of government, and lacking certification or approval by state or federal agencies prior to its exercise of the eminent domain power.

### **I. Louisiana's Delegation of the Power of Eminent Domain to Private Oil Pipeline Companies Violates the Fifth Amendment of the U.S. Constitution and Art. I, Sections 2 and 4 of the Louisiana Constitution.**

The trial court's ruling on Appellants' constitutional challenges is a question of law that is reviewed *de novo* and without deference to the legal conclusion of the tribunal below. *Cleco Evangeline, LLC, v. Louisiana Tax Comm'n*, 2001-2162 (La. 4/3/02); 813 So.2d 351, 353.

The Fifth Amendment of the U.S. Constitution provides that “private property shall not be taken for public use, without just compensation” and “[n]o person... shall be deprived of life, liberty, or property, without due process of law.” The U.S. Supreme Court has “consistently concluded the delegation of coercive power to private parties can raise [...] due process concerns.” *Ass'n of Am. Railroads*, 821 F.3d at 31. Rooted in the Due Process Clause, the private non-delegation doctrine holds that when “private parties have the unrestrained ability to

decide whether another citizen's property rights can be restricted, any resulting deprivation happens without ‘process of law.’” *Boerschig*, 872 F.3d at 708.

Louisiana’s delegation of the inherently coercive power of eminent domain to private oil pipeline companies does just that – it provides these companies with the “unrestrained ability to decide whether [Louisiana landowners’] property rights can be restricted.” *Id.*

For the same reasons, and as discussed further below, Louisiana’s eminent domain scheme also violates the rights to property and due process in the Louisiana Constitution. Article I, sec. 2 provides that “[n]o person shall be deprived of life, liberty, or property, except by due process of law.” Article I, sec. 4 provides that “[e]very person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property.” These constitutional protections were “designed to protect and preserve right of private ownership of property, to prevent the arbitrary taking of private property without prior payment of just compensation by or on behalf of an all powerful government, whether that governing authority be local, state or national.” *Louisiana Power & Light Co. v. Lasseigne*, 220 So.2d 462 (La. App. 4 Cir. 1969), *writ issued* 254 La. 277, 223 So.2d 407, *reversed on other grounds* 255 La. 579, 232 So.2d 278. *See also Gray*, 191 So.2d at 809.

“Procedural due process” concerns the means or processes used by the State to effect the deprivation of a fundamental right or property interest. *Johnson v. Motiva Enterprises LLC*, 13-305 (La. App. 5 Cir. 10/30/13); 128 So.3d 483 *writ denied* 2013-2791 (La. 2/14/14); 132 So.3d 966. Although a state may establish certain statutory procedural safeguards to protect property rights, the safeguards may still be judged insufficient to guard the particular property interest at risk. *Hewitt v. Lafayette City-Par. Consol. Gov't*, 2017-45 (La. App. 3 Cir. 4/4/18); 243 So.3d 79, 86, *reh'g denied* (May 16, 2018), *writ denied*, 2018-0980 (La. 10/8/18).

The current legal and regulatory scheme for oil pipelines in Louisiana does not adequately protect the rights to property and due process of Louisiana landowners.

**A. Louisiana’s Delegation of the Power of Eminent Domain to Private Oil Pipeline Companies Lacks Any Form of Pre-Taking Certification or Approval by Any State or Federal Agency.**

The legal regime governing expropriations by private entities in Louisiana gives private oil pipeline companies unfettered access to landowners and unlimited discretion in beginning the expropriation process. The Louisiana Constitution of 1974 allows takings of property by private entities authorized by law to expropriate for a “public and necessary purpose and with just compensation paid to the owner.” La. Const. Art. 1, sec. 4(B)(4). Pursuant to La. R.S. 45:251, “all persons engaged in the transportation of petroleum as public utilities and common carriers for hire; or which on proper showing may be legally held a common carrier from the nature of business conducted, or from the manner in which such business is carried on” are included in the definition of “common carrier.” La. R.S. 45:254 further declares that such common carriers have the “authority to expropriate private property under the state expropriation laws for use in its common carrier pipe line business... .”

The expropriation statute in Title 19 of the Louisiana Revised Statutes includes common carriers as defined in La. R.S. 45:251 among the entities that may file an expropriation suit if unable to reach agreement with the owner “as to compensation.” La. R.S. 19:2 and 19:2(8). Title 19 contains a series of mandatory requirements, procedures, and notices the expropriating entity must undertake and provide before commencing litigation against a landowner. While the question of whether a given expropriation is for a public and necessary purpose is supposed to be a judicial determination per La. Const. Art. I, sec. 4(B)(4), such assessments can only arise in those rare instances where landowners resist the taking and are sued

by the taker in expedited expropriation proceedings.<sup>2</sup> 7 R. 1694: 23-27 (BBP’s director of right of way testifying that in normal expropriations they only have to bring expropriation actions in “one maybe three percent of the entire tract count”). The Louisiana Constitution endows the Louisiana Public Service Commission (“LPSC”) with authority to regulate all common carriers, including oil pipelines, and requires the LPSC to “adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties.” La. Const. Art. IV, Sect. 21(B). The Louisiana Supreme Court has long held that the provision “gives the Commission constitutional jurisdiction” and “independent and plenary power to regulate” such entities. *See Global Tel\*Link, Inc. v. Louisiana Public Serv. Comm’n*, 97-0645 (La. 1/21/98); 707 So.2d 28, 33; *Bowie v. Louisiana Public Serv. Comm’n*, 627 So.2d 164 (La. 1993).

However, with regard to oil pipelines, the LPSC only regulates tariffs and only requires them to register prior to initiation of service – not prior to expropriation. *See Louisiana Public Service Commission, General Order, Docket No. R-33390, Feb. 26, 2015, available at <http://lpscstar.louisiana.gov/star/ViewFile.aspx?Id=a909fc03-9b1f-42c9-bdad-2b807c049bb5>*. This is long after the oil pipeline company has wielded its self-designated expropriating authority against unsuspecting Louisiana landowners. The LPSC’s regulation of these entities does not address the question of takings nor does it mandate any kind of certification prior to oil pipelines’ exercise of eminent domain against Louisiana landowners. 5 R. 1249:28-30 (BBP corporate

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<sup>2</sup> Pursuant to La. R.S. 19:8(A)(1), expropriation suits “shall be tried by preference and shall be conducted with the greatest possible dispatch.” Although La. R.S. 19:5 provides that the “clerk of court shall issue an order fixing the time of the suit which shall not be less than sixty days from the filing of the suit”, if defendant landowner files an answer challenging any issue other than compensation, 19:8(A)(2) demands the court to set the matter for hearing “within thirty days after filing of the pleading.”

representative testifies he is not aware of any approval BBP has to seek to begin expropriating).

### **B. Other Common Carriers Are Subject to Certification and Approval Processes.**

The regulatory and certification void that exists for private oil pipeline companies' expropriation power set out above is in contrast to that required for gas pipelines. Interstate natural gas pipelines are governed by the Natural Gas Act of 1938 ("NGA"), 15 U.S.C. § 717 *et seq.*, and must obtain a certificate of public convenience and necessity from the Federal Energy Regulatory Commission ("FERC") prior to exercising eminent domain power. *See* 15 U.S.C. §717f(c) and (h). FERC must set it for public hearing and notify interested persons of applications for certificates, including all affected landowners. *Id.* at §717f(c); 18 C.F.R. § 157.1(d). FERC will issue the certificate if, after consideration of market need and whether the public benefits of the project outweigh the harms, it finds that the proposed project "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e); *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017).

Conversely, there is no federal law establishing an approval process for the siting of oil pipelines<sup>3</sup> or their exercise of eminent domain. *See, e.g.* CRS Report R44432, *Pipeline Transportation of Natural Gas and Crude Oil: Federal and State Regulatory Authority*, by Brandon J. Murrill, at 7 (Mar. 28, 2016), *available at*

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<sup>3</sup> *See Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 50 n.8 (D.D.C. 2015):

Pipelines transporting oil within the United States are not subject to any general requirement of federal governmental evaluation and approval. In that way, oil pipelines are less regulated than natural gas pipelines, which must be supported by a certificate of public convenience and necessity from the Federal Energy Regulatory Commission before they may be built.



<https://fas.org/sgp/crs/misc/R44432.pdf>. Any oversight of siting decisions for oil pipelines and the exercise of eminent domain is left to the states. *Id.*

Unfortunately, Louisiana law does not fill the gap. Similar to the federal oversight of interstate gas pipelines, intrastate natural gas pipelines within Louisiana are subject to the Natural Resources and Energy Act of 1973, La. R.S. 30:501 *et seq.*, and must obtain a certificate of transportation from the Office of Conservation in the Louisiana Department of Natural Resources before obtaining authorization to expropriate private property. La. R.S. 30:554(A)(1)-(2), La. R.S. 30:555(C); La. Admin. Code. tit. 43, pt. XI, § 125. Moreover, the issuance of any certificate must be preceded by a public hearing and a determination by the commissioner that “it is or will be in the present or future public interest to do so,” with all interested parties, including impacted landowners, receiving notice of all applications filed with the commissioner. La. R.S. 30:554(A(1); La. Admin. Code tit. 43, pt. XI, §§ 121(D), 125(D).

Likewise, motor carriers, which are regulated by the LPSC, are required to obtain a common carrier certificate after submitting a written application, which is only granted after the LPSC provides public notice, conducts a hearing, and finds that the applicant is fit to receive a certificate before operating in the state. La. R.S. 45:164(A). To obtain a common carrier certificate, the applicant must prove its fitness before an administrative law judge or hearing officer by showing, among other things, that the applicant is financially able to provide the transportation in a safe and efficient manner, that it has or is capable of acquiring all additional authorizations from regulatory authorities for the transportation purpose, and that the applicant has safety protocols to provide for safe and efficient transportation. La. R.S. 45:164(B)(1)-(5).

By contrast and as noted above, while Art. IV, Sec. 21(B) of the Louisiana Constitution places common carrier oil pipelines under the control of and subject

to regulation by the LPSC, the LPSC does not have any regulations or rules comparable to those for motor carriers, requiring oil pipeline companies to demonstrate their fitness to run and operate pipelines through the state, nor to obtain any kind of certificate of transportation or other authorization prior to exercising eminent domain. 5 R. 1249:28-30 (BBP corporate representative testifies he is not aware of any approval BBP has to seek to begin expropriating).

Louisiana’s eminent domain scheme also affords far less due process protection for landowners than other states that also have expansive fossil fuel infrastructure, which have created statutory procedures to plug the federal regulatory hole in ways that provide far more protection for their landowners than exists in Louisiana with oil pipelines.<sup>4</sup>

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<sup>4</sup> Iowa Code § 479B *et seq.* governs the authority of the Iowa Utilities Board (“IUB”) to oversee hazardous liquid pipelines in the state, and in particular “to protect landowners . . . from environmental or economic damages which may result from construction, operation or maintenance of a hazardous liquid pipeline . . . , to approve the location and route . . . , and to grant rights of eminent domain.” § 479B.1. The IUB can issue a permit for pipelines that “will promote the public convenience and necessity,” only after providing public notice to impacted landowners, informational meetings, and ultimately an evidentiary hearing before the Board. *See* § 479B *et seq.*; § 479B.9. Likewise, in Nebraska, major oil pipelines must obtain prior approval from either the Public Service Commission or the Governor for pipeline routes before acquiring rights to exercise the power of eminent domain. Neb. Rev. Stat. Ann. §§ 57-1101; 57-1401, *et seq.*; 57-1503. Also, like in Iowa, there is opportunity for public involvement and hearings, and an involved weighing of public interest criteria before approving an application and authorizing eminent domain power. *See TransCanada Keystone Pipeline, LP v. Dunavan*, 303 Neb. 872, 876-77; 896-97; 902-905 (Neb. 2019) (explaining the different avenues for approval through the PSC’s “evaluate of multifaceted statutory criteria” and the supplemental environmental impact statement prepared pursuant to National Environmental Policy Act for submission to the Governor). Texas also provides comparatively more protections for landowners in takings by private pipeline expropriators, requiring them to obtain a pipeline permit. Tex. Admin. Code tit. 16 pt. 1, ch. 3, rule § 3.70(a). If the parties fail to reach an agreement, Texas law provides for an administrative review process, followed if necessary by a judicial challenge. *See, e.g., Texas Rice Land v. Denbury Green Pipeline*, 363 S.W. 3d 192 (Tex. 2012). If a landowner contests, a court appoints three special commissioners who assess the value of the property and if the landowner objects to the commissioner’s finding, a case is opened in state court at which time the landowner may challenge the question of public necessity. *See*

The non-delegation doctrine “stand[s] for the proposition that a legislative body may not constitutionally delegate to private parties the power to determine the nature of rights to property in which other individuals have a property interest, without supplying standards to guide the private parties' discretion.” *Boerschig*, 872 F.3d at 708, citing *Gen. Elec. Co. v. New York State Dep't of Labor*, 936 F.2d 1448, 1455 (2d Cir.1991). *See also Ass'n of Am. Railroads*, 821 F.3d at 32, citing *Carter v. Carter Coal Co.*, 298 U.S. 238, 311, 56 S.Ct. 855, 873, 80 L.Ed. 1160 (1936).

For oil pipeline companies in Louisiana, there are no standards guiding their discretion in commencing an expropriation process against Louisiana landowners along pipeline routes, or even determining that they are fit and proper entities for such undertakings. This leaves landowners extremely vulnerable in the pre-litigation stages when much harm can be done. As the testimony of BBP's Director of Right of Way illustrates, most landowners never get a day in court because in “normal” expropriations, the company only has to proceed all the way through expropriation in only one to three percent of an entire tract count. 7 R. 1694: 23-27. Out of thousands of landowners affected by the Pipeline, BBP only had to obtain expropriation judgments in ten other cases, none of which were contested. *See* 4 R. 751:2-5; 5 R. 1241:16-1242:21. The Appellants testified how difficult it was to challenge the expropriation. 7 R. 1723-1727; 8 R. 1755:3-28.

BBP's actions in this case illustrate how exposed and unprotected Louisiana landowners are in these scenarios. Not only did BBP make a business decision to forego expropriation proceedings, 7 R. 1692:31-1696:11, choosing instead to trespass and construct on the property, it also did not comply with the basic

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*Boerschig*, 872 F.3d at 704. Texas also has a transparency law that requires expropriating authorities to provide specific information for posting on publicly accessible databases. Government Code, sec. 2206.151-157. Database available at <https://comptroller.texas.gov/transparency/local/ eminent-domain/>.

statutory prerequisites and notices due landowners prior to commencing litigation, which are the *only* procedural protections for landowners against private oil pipeline companies. 6 R. 1346-8; 1357. Out of hundreds of co-owners of the property at issue in this case, only three chose to stand up to BBP's trespass and challenge the expropriation – and, as noted above, they wrestled with the decision to do so. Without some oversight on the front end over the exercise of eminent domain, the expedited judicial determination on the back end is wholly insufficient to pass constitutional muster.

**II. The Trial Court Erred In Failing To Render Judgment On Appellants' Reconventional Demands For Violations of the Takings Clause and Due Process Clauses of the U.S. and Louisiana Constitutions.**

The trial court failed to render judgment on Counts I through IV of Appellants' reconventional demands, mistakenly confusing the claims with other "constitutional issues," raised in Appellants' affirmative defenses, that had been addressed in a prior ruling by the court. Reasons for Judgment, *infra* p. 47. However, these reconventional demands for violations of Appellants' rights to property and due process arising from BBP's trespass on the property are distinct from their affirmative defenses challenging the constitutionality of Louisiana's eminent domain scheme. *Compare* 1 R. 86-7 with 93-5.

Irrespective of whether this Court affirms or reverses the trial court's ruling on Appellants' affirmative defenses challenging the constitutionality of the eminent domain and regulatory scheme as it relates to oil pipelines generally, this Court must separately review Appellants' claims that BBP's trespass also violated Appellants' due process and property rights under the Fifth Amendment to the U.S. Constitution and Art. I, Sections 2 and 4 of the Louisiana Constitution. *See, e.g., Prejean*, 503 So.2d at 661 (reviewing and rendering judgment on claim that trial court decided not to address).

Private entities expressly delegated the power of eminent domain under Louisiana law qualify as agents of the government for purposes of establishing constitutional liability for an unconstitutional taking. *See Mongrue*, 249 F.3d at 429. In order to determine whether property rights have been “taken” under La. Const. Art. 1 § 4, the court must determine (1) if a property right has been affected; (2) whether the property has been taken or damaged in a constitutional sense; and (3) whether the taking is for a public purpose under art. I, sec. 4. *Anderson v. Bossier Par. Police Jury*, 45, 639 (La. App. 2 Cir. 12/15/10, 25–26); 56 So.3d 275, 287. *See also, Fields v. State Through Dept. of Public Safety and Corrections*, 98-0611 (La. 7/8/98); 714 So.2d 1244, 1251 (“Generally, before a person is deprived of a protected interest, he must be afforded some kind of hearing.”). A procedural due process violation is actionable and compensable without regard to any other injury. *Archbold-Garrett v. New Orleans City*, 893 F.3d 318, 322 (5th Cir. 2018).

The trial court found that BBP committed a trespass when it entered on Appellants’ property, cleared trees, dug trenches, and constructed the Pipeline prior to having any other legal authority to do so. Reasons for Judgment, *infra* p. 46.<sup>5</sup> The trial court found that BBP committed a trespass but granted the expropriation after finding there was a public purpose. Reasons for Judgment, *infra* p. 42, 46. If this Court affirms the trial court’s ruling as to public purpose and necessity of the Pipeline, then BBP’s actions are also an unconstitutional taking in violation of Appellants’ rights to property and due process.

Moreover, BBP flouted the law knowingly and intentionally. BBP’s representative testified at trial that the company made a business decision to violate the law on expropriation and trespass, agreeing with the trial court that “time is

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<sup>5</sup> *See also*, La. R.S. 19:8 (“the expropriating authority shall not be entitled to possession or ownership of the property until a final judgment has been rendered and payment has been made to the owner or paid into the registry of the Court except as may otherwise be stipulated by the parties.”)

money.” 7 R. 1696:2-4; *see also*, 1692:31-1696:11. Appellants are thus entitled to additional damages beyond the value of the land taken for the bad-faith, illegal taking because it was not an inverse condemnation where the illegal taking was through oversight or technical error. The Louisiana Supreme Court has held that when the trespasser acts in bad faith, it is liable in tort for trespass and “all the resultant damages under Article 2315.” *Williams v. City of Baton Rouge*, 98-1981 (La. 4/13/99); 731 So.2d 240, 246. In *Williams*, the Louisiana Supreme Court held that the City of Baton Rouge was a bad faith trespasser because it did not fail to undertake expropriation proceedings “through oversight or lack of foresight,” or as a result of a “good faith error,” but, knowing it lacked legal authority and that it needed a court order to enter onto the property, “took the matter into their own hands” and did so anyway. *Id.* at 247.

Likewise, this Court has held that damages awards for such bad-faith, illegal takings must go beyond the value of the land taken or they would render,

...expropriation proceedings required by the constitution a useless formality, while at the same time depriving the landowner of the additional compensation to which he is entitled as compensatory damages for the violation of his constitutional property right to be free of unlawful trespasses upon and takings of his land, whether by the municipality or by private persons.

*Belgarde v. City of Natchitoches*, 156 So. 2d 132, 135-136 (La. App. 3 Cir. 1963).

In *Belgarde*, this Court allowed damages for “humiliation, worry and mental anguish” because the landowner testified that she was “considerably angered and aroused by the fact that the municipality had in her absence and without her consent constructed the streets through her property.” *Id.* at 134.

In this case, Appellants testified they were angered, depressed, outraged, and distressed. 7 R. 1723-1727; 1707; 1713-1714; 8 R. 1752-1753. Katherine Aaslestad testified to feeling scared and afraid, for herself and her family, in challenging the actions of the for-profit, pipeline company. 8 R. 1755. Theda

Larson Wright testified that she felt “very, very concerned” for the land, and “emotionally harmed” and “violated” by the trespass. 7 R. 1713:27-32. Peter Aaslestad struggled with whether to challenge BBP’s trespass and subsequent expropriation because he was “just one individual” and Bayou Bridge is a “billion dollar company.” 7 R. 1723-1727. He later “felt outsmarted” and “defeated and terrified if I’m making the right decision to stick my neck out.” 7 R. 1726:21-32.

The trial court erred in failing to render judgment on the remainder of Appellants’ reconventional demands. This Court may do so now.

### **III. The Trial Court Erred in Denying Appellants’ Dilatory Exceptions of Prematurity Despite Having Found That BBP Failed to Comply with the Statutory Prerequisites to Litigation.**

This Court has held that,

[e]xpropriation laws and proceedings are ‘special and exceptional in character’ by the simple fact that they are in derogation of the common right to own property, and thus *must be strictly construed and highly scrutinized. Every step in the proceeding must bear the same degree of thorough examination to insure that the landowner is at all times afforded protection against the power of the taker.*

*Texas Gas Transmission Corp.*, 251 So.2d at 107 (affirming trial court’s sustaining of exception of vagueness) (emphasis added). Expropriation statutes “are to be construed strictly *against* the expropriator and *liberally* for the property owner” because they are in “derogation of the common right to own property.” *Louisiana Intrastate Gas Corp.*, 542 So.2d at 706 (emphasis added); *see also So. Natural Gas Co.*, 406 So.2d at 669.

Appellants brought exceptions of prematurity on the grounds that BBP failed to comply with the statutory prerequisites prior to filing the expropriation suit. 1 R. 100; 155. It was undisputed that information required by the statute was not provided to Theda Larson Wright and Peter Aaslestad but the trial court still denied their exceptions of prematurity. Pre-Trial Order, *infra* p. 34, ¶2. *See also*, 6 R.

1346-8; 1357. The trial court’s ruling is a question of law subject to *de novo* review and without deference to its legal conclusions. *Cleco Evangeline, LLC*, 813 So. 2d at 353. *See also, Rebel Distributors Corp. v. LUBA Workers’ Comp.*, 2013-0749 (La. 10/15/13); 144 So.3d 825, 833; *Bossier v. Garber*, 2017-349 (La. App. 3 Cir. 1/10/18); 235 So.3d 1200, 1202, *reh’g denied* (Mar. 7, 2018), *writ granted, cause remanded*, 2018-0541 (La. 6/15/18); 257 So.3d 684.

Louisiana’s expropriation statutes require that private expropriating authorities follow very clear steps prior to commencing an expropriation proceeding. These requirements are mandatory and must occur before an expropriation action. *See* La. R.S. 19:2 (“[p]rior to filing an expropriation suit, an expropriating authority *shall*... comply with all of the requirements of R.S. 19:2.2”) (emphasis added).

La. R.S. 19:2.2 requires, *inter alia*, that a landowner be *provided* with notice detailing that they are entitled to certain information regarding the property to be acquired, as well as information about the appraisal, *see, e.g.* 19:2.2(A)(1)(a-c).<sup>6</sup> BBP’s own records showed that Appellant Larson Wright never received appraisal information as required by La. R.S. 19:2.2(A)(1)(a-c) and that the packet was sent back to the company with the U.S. Postal Service noting “no secure location available” at the address listed on April 3, 2017. 6 R. 1264-1266. BBP successfully

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<sup>6</sup> La. R.S. 19:2.2(A) requires that:

- A. Before exercising the rights of expropriation provided by R.S. 19:2, any expropriating authority referred to in R.S. 19:2 *shall comply* with the following:
- (1) **Provide** the owner whose property is to be taken with the following information from its appraisal or evaluation as to the amount of compensation due the owner for the full extent of his loss:
    - (a) The name, address, and qualifications of the person or persons preparing the appraisal or evaluation.
    - (b) The amount of compensation estimated in the appraisal or evaluation.  
A description of the methodology used in the appraisal or evaluation.
  - (2) Offer to compensate the owner a specific amount not less than the lowest appraisal or evaluation.



sent other correspondence to Larson Wright before and after the appraisal information had been returned. 5 R 1234-1237. BBP had more than a year to comply with the statute and provide her with the appraisal information between the time the packet was returned in April 2017 and when BBP commenced the expropriation proceeding in July 2018 (after BBP had already started construction on her property). *Id.* The statute is clear that such information must be *provided*, not merely *sent* – particularly when the expropriating authority has confirmation that the information was not in fact provided.

It was also undisputed that the company failed to provide Peter Aaslestad with notices required by La. R.S. 19:2.2. 6 R. 1357. However, the trial court ruled that the notice is not a statutory prerequisite and “any failure to provide such notice did not result in any prejudice.” Pre-Trial Order, *infra* p. 34, ¶2.

First, a procedural due process violation is a harm in and of itself. *See Archbold-Garrett*, 893 F.3d at 322, citing *Carey v. Piphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 1054, 55 L.Ed.2d 252 (1978) (“Because the right to procedural due process is ‘absolute’ in the sense that it does not depend upon the merits of a claimant’s substantive assertions... the denial of procedural due process should be actionable for nominal damages without proof of actual injury.”). Thus, whether or not Aaslestad was prejudiced by BBP’s failure to provide the notice is not the question the trial court should have asked.

Second, the statute is clear that these are mandatory steps that must be taken “[p]rior to filing an expropriation suit.” La. R.S. 19:2. (emphasis added). When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written, and no further interpretation may be made in search of the intent of the legislature. La. Civil Code art. 9. A statute must be “applied and interpreted in a manner that is logical and consistent with the

presumed fair purpose and intention the Legislature had in enacting it.” *Sultana Corp. v. Jewelers Mut. Ins. Co.*, 2003-0360 (La. 12/03/03); 860 So.2d 1112, 1116.

The trial court’s ruling that the requirements of section 19:2.2 are not prerequisites directly contradicts the plain language of the statute. Appellants Larson Wright and Peter Aaslestad were denied the process due them as landowners under Louisiana’s expropriation statute. Their exceptions of prematurity should have been granted.

**IV. The Trial Court Erred in Allowing Inadmissible Evidence of Economic Development and Incidental Benefits, and Not Allowing Evidence of Environmental and Economic Harm and the Users and Purpose of the Pipeline.**

The Louisiana Constitution prohibits "economic development, enhancement of tax revenue, or any incidental benefits to the public" from being considered in "determining whether the taking or damaging of property is for a public purpose ...". La. Const. Art. I, Sec. 4(B)(3). Rulings on the admissibility of evidence are reviewed for abuse of discretion. *Bridgers v. Sw. Louisiana Hosp. Ass’n*, 99-520 (La. App. 3 Cir. 11/3/99); 746 So.2d 731, 735, *writ denied*, 1999-3402 (La. 2/18/00); 754 So.2d 965.

Prior to the trial of the expropriation, Appellants filed a motion *in limine* to exclude evidence BBP intended to offer of economic benefits of oil and petroleum products generally as inadmissible pursuant to La. Const. Art. I, Sec. 4(B)(3). 6 R at 1396:17-31. The trial court initially agreed with Appellants and granted the motion to exclude the evidence. 6 R. 1405: 22-27 (“I’ll grant the motion . . . I will not consider any tax revenue or economic development, but I will allow [BBP] to present evidence of the public benefit and the public purpose.”).

However, over Appellants’ objection, *see, e.g.*, 6 R. 1500:26-27; 7 R. 1508:14-20, 1512:4, 1543, the trial court subsequently allowed lengthy testimony from BBP’s expert, David Dismukes, on the purported economic and incidental

benefits of oil and petroleum products. *See* 7 R. 1508 (allowing Dismukes to testify as to whether the increased diversity of supply of crude oil as a result of the Pipeline would lower prices for consumers), 1509 (discussing how greater crude oil transportation alternatives increase Louisiana refinery competitiveness), 1514 (discussing how pipelines create new opportunities for commerce). However, on cross examination, Dismukes testified that he did not know who BBP's shippers and customers were or how the oil would be used, rendering his testimony about the benefits entirely hypothetical, vague, and speculative and not connected to the actual Pipeline at issue in this matter. 7 R. 1547:13-1549:3. Later, the trial court refused to allow Appellants to question BBP's Director of Right of Way, Taliaferro, about the Pipeline's shippers and customers and even whether the oil would be for domestic use or export. 7 R. 1686:13-1689:17.

The trial court refused to allow Appellants to pursue questioning of Dismukes as to the negative impacts of pipelines, whether environmental or economic. 7 R. 1551-1560:10. The trial court also prevented Appellants' own wetlands expert, Scott Eustis, from testifying as to the negative environmental impacts of pipelines in Louisiana, including on flood control and land loss prevention efforts, the harms created by this particular Pipeline along its route, as well as cumulative effects of pipelines on the Basin, requiring that he limit his testimony to the specific parcel of land at issue. 7 R. 1562-63; 1614:24-1616:7.

These rulings were in error. The Louisiana Constitution prohibits economic development, tax revenue, and other incidental benefits from being considered in determinations as to whether an expropriation is for a public purpose. It does not prohibit negative impacts from being considered. In 2006, in the wake of the U.S. Supreme Court's controversial ruling in *Kelo v. City of New London*, 545 U.S. 469 (2005), the people of Louisiana voted to amend the Constitution to explicitly prohibit "economic development, enhancement of tax revenue, and incidental

benefit to the public” from considerations as to whether takings or damage to private property are for a public purpose. La. Const. Art. I, Sec. 4(B)(3); *See also*, Op. Att’y Gen. No. 07-0157 (Oct. 15, 2009) (the “...Louisiana Legislature expressly intended to create a constitutional protection for property owners in opposition to the decision handed down by the [U.S.] Supreme Court in [*Kelo*].”).

The Louisiana Legislature sought to “narrow the scope of eminent domain authority in the state by providing more rigorous regulations on takings as well as providing a clear definition for the term ‘public purpose.’” *Id.* In doing so, the Legislature (affirmed by Louisiana voters) “effectively overruled all prior Louisiana jurisprudence created under the former constitutional provision.” *Id.*

In addition to allowing extensive evidence on economic development, the trial court allowed wide-ranging, far-flung, and speculative testimony about the many uses and purported incidental benefits of petroleum-based products. But when the trial court ruled that the Pipeline was necessary and for a public purpose it was without knowledge of whether any of these purported benefits were tied directly to the Pipeline because Dismukes testified that he did not know who the Pipeline’s actual shippers or customers were, to what uses the oil would be directed, 7 R. 1547:13-1549:3, and the trial court prohibited Appellants from questioning BBP’s representative about this matter, and whether the oil would be for domestic use or export, i.e. the purpose it would serve. 7 R. 1686:13-1689:17. *See, e.g.*, Reasons for Judgment at 3-4. *See cf. City of Oberlin v. FERC*, 2019 WL 4229074 (D.C. Cir. Sept. 6, 2019) (remanding back to FERC to explain whether serving foreign customers via foreign shippers satisfies the public convenience and necessity requirement for certification).

These rulings were the very definition of arbitrary and capricious and severely prejudiced Appellants’ case. *See Eldridge v. Carrier*, 2004-203 (La. App. 3 Cir. 11/17/04); 888 So.2d 365, 371, *writ denied*, 2004-3174 (La. 3/11/05); 896

So.2d 66. The trial court relied heavily and specifically on evidence that was improper and speculative when it ruled that the Pipeline was for a necessary and public purpose; and refused to allow evidence as to the Pipeline's actual users and purpose, as well as adverse impacts in terms of environmental harms and costs.

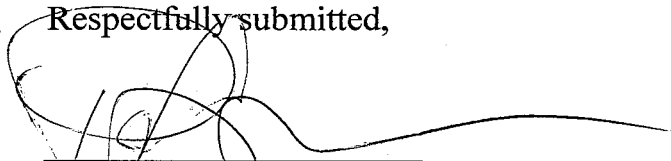
### CONCLUSION

WHEREFORE, for the foregoing reasons, Appellants pray this Court:

- a) reverse the trial court's ruling denying Appellants' affirmative defenses that the delegation of eminent domain power to private oil pipeline companies violates the U.S. and Louisiana constitutions;
- b) render judgment as to Appellants' reconventional demands for violations of the rights to property and due process under the U.S. and Louisiana constitutions;
- c) reverse the trial court's denial of Appellants' dilatory exceptions of prematurity; and
- d) reverse the trial court's grant of expropriation.

September 19, 2019

Respectfully submitted,



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*Attorneys for Appellants Katherine  
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Theda Larson Wright*

# APPENDIX

## A

VERSUS

FILE DOCKET NO. 087011-e

38.00 ACRES, MORE OR LESS, LOCATED  
IN ST. MARTIN PARISH; BARRY SCOTT  
CARLINE, ET AL.

ST. MARTIN PARISH, LOUISIANA

**ORDER DENYING DEFENDANTS EXCEPTIONS  
AND CONSTITUTIONAL CHALLENGES**

THIS MATTER came before the Court for hearing on November 16, 2018, on the exceptions and affirmative defenses filed by Defendants Theda Larson Wright, Peter K. Aaslestad, and Katherine Aaslestad (a/k/a Katherine A. Lambertson) (collectively herein, “**Defendants**”). Having considered the pleadings, witness testimony, exhibits, and arguments of counsel, and being otherwise fully advised in the premises, the Court finds as follows:

1. Bayou Bridge Pipeline, LLC (“Bayou Bridge”) is a common carrier pipeline as that term is defined by Louisiana Revised Statute 45:251. Defendants’ peremptory exception of no right of action is therefore **DENIED**.

2. With respect to Defendants’ dilatory exception of prematurity on the basis that Bayou Bridge failed to meet the statutory prerequisites prior to commencing the expropriation litigation, the Court finds that Section 19:2.2(c) is not a statutory prerequisite and any failure to provide such notice did not result in any prejudice. With respect to the appraisal information under Section 19:2.2(A), the Court finds that Bayou Bridge sent the appraisal information and therefore satisfied the requirement. Defendants’ dilatory exception of prematurity on the basis that Bayou Bridge failed to meet the statutory requirements prior to commencing the expropriation litigation is therefore **DENIED**.

3. Defendants’ dilatory exception of prematurity on the basis that permits granted by the United States Army Corps of Engineers and Louisiana Department of Natural Resources are subject to legal challenge is **DENIED**.

4. Defendants do not have standing to raise due process claims for other defendants. Defendants’ exceptions related to Alberta Stevens, Judy Hernandez, and any other absentee defendants are therefore **DENIED**.

5. Karen A. Aubouy is a party defendant in *Bayou Bridge Pipeline, LLC v. Akers*. That case was filed subsequent to the above-captioned matter, and is pending before this Court and set for trial on the same date as this case. Accordingly, the Court hereby consolidates those

{HD098212.1}



cases. Defendants' peremptory exception of Nonjoinder of a Party as to Ms. Aubouy is therefore **DENIED AS MOOT.**

6. Elizabeth A. Read and Janet Read Gordon are not indispensable parties to this proceeding. Defendants' peremptory exception of Nonjoinder of a Party as to Ms. Read and Ms. Gordon is therefore **DENIED.**

7. Defendants withdrew their exceptions for vagueness and ambiguity in the Petition for Expropriation.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendant Theda Larson Wright's Dilatory and Peremptory Exceptions are **DENIED** in accordance with the foregoing and for the reasons orally stated by the Court at the hearing.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Peter Aaslestad and Katherine Aaslestad's Dilatory and Peremptory Exceptions are **DENIED** in accordance with the foregoing and for the reasons orally stated by the Court at the hearing.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants' affirmative defenses challenging the constitutionality of Louisiana expropriation laws are **DENIED.**


**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that this matter and the companion case of *Bayou Bridge Pipeline v. Akers, et al.*, Docket No. 87235E, also pending before this Court and set for trial on November 27, 2018, are hereby consolidated.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all court costs for the hearing on Defendants' exceptions and affirmative defenses shall be assessed to Defendants.

**THUS DONE AND SIGNED**, this 27 day of November, 2018, at St. Martinville, Louisiana.

  
\_\_\_\_\_  
HON. KEITH R.J. COMEAUX  
DISTRICT COURT, 16<sup>TH</sup> JUDICIAL DISTRICT

RECEIVED AND FILED

NOV 27 2018  
  
DEPUTY CLERK OF COURT  
ST. MARTIN PARISH

# **APPENDIX**

## **B**

BAYOU BRIDGE PIPELINE, LLC

16<sup>TH</sup> JUDICIAL DISTRICT COURT

VS. DOCKET NO. 87011

PARISH OF ST. MARTIN

38 ACRES, MORE OR LESS, LOCATED IN  
ST. MARTIN PARISH; BARRY SCOTT  
CARLINE, ET AL

STATE OF LOUISIANA

FILE

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**REASONS FOR JUDGMENT**

This matter came before the Court for trial of an expropriation matter along with the defendant's trespass claim that was heard by the Court on November 27-November 29, 2018. On November 16, 2018, the Court heard various exceptions to the claim for expropriation by Bayou Bridge Pipeline, LLC. The Court ruled on these exceptions, including constitutional challenges to the proceedings by the defendants/landowners and denied these exceptions and tests of constitutionality filed by the defendants, Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad (hereinafter referred to as Landowners). The rulings on those exceptions and constitutional issues are the law of the case and will not be revisited by this Court in these Reasons. The issues before the Court on November 27, 2018 were the right of Bayou Bridge to expropriate property as a public and necessary purpose in accordance with the Louisiana Constitution and Title 19 of the Louisiana Revised Statutes, and if public and necessary, then what compensation is just compensation to be paid to the Landowners for this expropriation. See La. R.S. 19:2 and La. Const. Art. 1 Sec. 4.

The Landowners, Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad, filed Claims in Reconviction for trespass, property damage, the unconstitutional taking in violation of the Fifth Amendment, a violation of due process under the Fifth Amendment of the United States Constitution and the unconstitutional taking and due process in violation of Article 1 Section 4 and Article 1 Section 2 of the Louisiana Constitution. As referenced above, the constitutional issues have been ruled upon and will not be discussed here.

The factual background of this case is as follows: In 2016, Energy Transfer Partners conducted an "open season" or survey of its clients to determine the reasonableness and feasibility of a pipeline from Lake Charles, Louisiana to St. James hub in Louisiana. Energy Transfer had previously built a pipeline from Nederland, Texas to Lake Charles, Louisiana in order to provide crude oil transportation to Louisiana refineries at or near Lake Charles, Louisiana from Nederland, Texas, a hub for both pipeline infusion of oil and also tanker infusion

of oil. Energy Transfer determined through its client responses that a pipeline was in fact feasible and commenced the work necessary to build a pipeline from Lake Charles, Louisiana to St. James, Louisiana. It determined the proper path and size of the pipeline and commenced obtaining permits and public hearings concerning the feasibility of the pipeline. All necessary permitting and location of the pipeline was established and permits were obtained from all necessary governmental agencies.

It is clear from the record that Bayou Bridge Pipeline, LLC, the entity used by Energy Transfer to obtain right of way pipelines in this matter, did title examination work on the 38 acres more or less located in St. Martin Parish. It was discovered by Bayou Bridge Pipeline, LLC that over 400 owners of the property existed in its chain of title. Negotiations occurred and were established by Bayou Bridge Pipeline, LLC with all the record owners that Bayou Bridge Pipeline could obtain through its search of the public records in St. Martin Parish. Numerous rights of way were obtained from hundreds of owners of the 38 acres more or less, but others were either not located or refused to sign right of way agreements with Bayou Bridge Pipeline, LLC. Landowners herein fit into the latter category and oppose the pipeline and refuse to sign right of way agreements on this particular tract.

On July 27, 2018, Bayou Bridge Pipeline, LLC filed the instant action for expropriation against numerous landowners of the 38 acres of land including the defendants in this proceeding. Bayou Bridge Pipeline alleged that it needed to construct a 24 inch pipeline to transport oil from Lake Charles, Louisiana to St. James, Louisiana. Bayou Bridge also alleged that it was a common carrier within the meaning of La. R.S. 45:251 (1) and that it was engaged in the transportation of petroleum as a public utility common carrier for hire. It further stated that Louisiana law grants it the authority to expropriate property as a common carrier pursuant to La. R.S. 19:2 (8) and that the pipeline is in the public interest and a necessity. Bayou Bridge also alleged that it determined the overall route of the pipeline and identified the proper right of ways necessary for its installation. Bayou Bridge stated that it selected the current route that was used in this particular case based on technical experience and sound engineering principles after considering a number of factors including environmental impacts or damages, possible alternative routes, cultural impacts or damages, minimal crop interference and minimal interference with property in commerce.

Bayou Bridge further stated that the route crossed the property in question, and it sought to expropriate a 50 foot right of way permanent servitude for the installation, construction and maintenance of the pipeline right of way. It also sought to expropriate a temporary right of way and servitude needed for the construction of the right of way as additional temporary work space outlined on the map attached to the petition. The temporary right of way would be from the commencement of construction until six months after the pipeline is placed into service. Bayou Bridge further alleged that if Bayou Bridge completed its use of the temporary access road and/or work space prior to the expiration of the six month period then the temporary access road and the temporary work space shall immediately terminate.

The Court heard the testimony of Kevin Taliaferro, an employee of Bayou Bridge Pipeline, LLC. He testified in the November 16 hearing and also in the present hearing that the public purpose of the pipeline is to produce products to end users which benefit the public at large. This pipeline was to be constructed from Lake Charles, Louisiana to St. James, Louisiana. He explained that the St. James hub feeds numerous refineries along the Mississippi River corridor of refineries which provide many products to Louisiana, the United States and the world. He has previously testified also that the pipeline would stabilize the market commodity produced and generated to the St. James hub by connecting it to the Nederland and Lake Charles hubs. This would stabilize the oil to be delivered to the refineries along the Mississippi River corridor. It would also have a positive effect upon the consumers in that whenever there is competition for production of certain products, it usually stabilizes the price on commodities.

Testimony of Dr. David Dismukes with the LSU Center for Energy Studies corroborated the testimony of Mr. Taliaferro and explained that there was increased oil production in the Permian Basin of west Texas. This oil could be piped to the Nederland hub into the St. James hub that currently supplies the Mississippi River refining corridor with its products. He testified that Bayou Bridge will allow for diversification of these products in St. James and will support the petrochemical industries along the Mississippi River through the St. James hub. Dr. Dismukes further explained that the petrochemical industry along the Mississippi River uses byproducts from the refining of petroleum products and makes numerous products for consumers and industry. These include blood bags for hospitals and plastic milk jugs used in everyday life by Louisianans, Americans and others throughout the world.

Dr. Dismukes also testified as to the importance that Bayou Bridge Pipeline would have on a constant stream of product by making Louisiana energy independent of foreign oil or tanker transportation of oil. He testified that providing transportation of crude oil from the Permian Basin to St. James is important to maintain a steady supply to the refining capacity along the Mississippi River in spite of any disruption from political upheaval in foreign countries to hurricanes in the Gulf of Mexico. Dr. Dismukes agreed that other crude oil pipelines exist in Louisiana, but Bayou Bridge has conducted an open season (evaluation from its clients) to gauge the market need for this particular transportation avenue from Lake Charles to St. James which concluded that a pipeline was needed and determined the size of the pipeline. The Court further notes that the defendants failed to call any witnesses to challenge the public purpose of the pipeline and minimally cross examined these witnesses concerning the public purpose of the pipeline. Therefore, the Court finds that the public purpose of the pipeline is satisfied by the testimony of these two individuals.

The next item that Bayou Bridge must prove is a necessary purpose for the expropriation. Bayou Bridge argues that the word necessary refers to the necessity of the purpose for the expropriation rather than the necessity for a specific location. It argues that the expropriation acreage must be reasonably necessary for the accomplishment of the proposed project. The Louisiana Supreme Court stated that the criteria to be considered by the expropriator in determining the location and extent of the property to be expropriated includes factors such as cost, environmental impact, long range area planning and safety considerations. ExxonMobil Pipeline Co. v. Union Pacific R. Co., 2009-C-1629 (La. 3/16/10), 35 So.3d 192. ExxonMobil, supra, stated that a landowner must prove that the expropriator has abused its discretion arbitrarily, capriciously or in bad faith in order to be successful in a challenge of the necessity of the taking. Kevin Taliaferro testified at both the November 16 hearing and the November 27 hearing that Bayou Bridge determined the size of the pipeline based on the numerous shippers that committed during the open season and determined that a 24 inch pipeline was the proper size to be constructed. Bayou Bridge further carefully considered location of the pipeline based on technical experience, regulatory requirements and sound engineering principles. Only after considering a number of factors including public safety, environmental impacts or damages, possible alternative routes, cultural impacts or damages, minimal crop interference, minimal interference with property and commerce and other regulatory requirements was the site chosen.

It should be noted that Bayou Bridge Pipeline routed the pipeline to avoid new green field construction by paralleling this pipeline to an existing infrastructure. Similarly Bayou Bridge attempted to locate the pipeline near property lines to minimize the impact to landowners while attempting to avoid heavily populated areas and limit the impact of the project to the Louisiana Coastal Zone. On this particular piece of property, Bayou Bridge located its pipeline next to an existing pipeline, and the right of way is adjacent to the existing pipeline right of way.

The landowners presented the testimony of Scott Eustis to rebut the necessity of the pipeline. Mr. Eustis was qualified as a wetlands expert. He indicated that he is very familiar with the 38 acre tract in question. He testified that the old pipeline (ie. the Enterprise Pipeline) had been placed on the property in question improperly by producing elevated spoils that created a "levee type" obstruction on this property which obstructed water flow in the Buffalo Cove area of the Atchafalaya Basin. He also testified that because the Bayou Bridge Pipeline was layed incorrectly in the spoils of the Enterprise Pipeline, the "levee or dam" effect was more pronounced and would impede the flow even more. He testified under cross examination that he opposed the Bayou Bridge Pipeline at all permitting applications because of this issue but to no avail. The permits were granted over his objections. Additionally, Mr. Eustis indicated he had filed complaints with the Army Corps of Engineers concerning the misplacement of the Bayou Bridge Pipeline within the spoils of the Enterprise Pipeline. Landowners failed to bring any testimony as to the actual location of the pipeline, and Bayou Bridge offered plats as to the location of its pipeline adjacent to the Enterprise Pipeline. Mr. Eustis produced no evidence that he used metal detectors or other instrumentation to locate the exact location of the Bayou Bridge Pipeline in relation to the spoils or the actual Enterprise Pipeline.

Bayou Bridge called Michael Aubele who is their environmental compliance manager for the pipeline. Mr. Aubele testified that the pipeline is not laid within the spoils of the Enterprise Pipeline and produced engineering sheets of the depth of the pipeline on the tract in question. This engineering plat shows the depth of the pipeline in relation to the grade of the land. The permits obtained by Bayou Bridge require the depth of the pipeline to be at least 4 feet below the grade of the land. The engineering plat produced by Mr. Aubele shows that throughout the tract of the Bayou Bridge Pipeline through the 38 acres in question, a depth of at least 4 feet was maintained between the grade of the land surface and the top of the Bayou Bridge Pipeline. (See BBP Exhibit 40) Bayou Bridge offered the exact location of the pipeline on the plat entered into

evidence. (See BBP Exhibit 17 and Exhibit 30) The Court accepts the plat as prepared by Bayou Bridge and not the self-serving unscientifically corroborated testimony of Mr. Eustis. Mr. Aubele also testified that, if the Army Corps of Engineers or other governmental agency finds problems or noncompliance with the requirements of the permit, then Bayou Bridge is required to and will remedy these problems or noncompliance issues to the requirements mandated by the Army Corps of Engineers.

The Court notes that the defendants would want the Court to supplant the findings of the various agencies that permitted this project. All the permits have been introduced into evidence, and the findings of those permitting agencies and the expertise of those permitting agencies should be considered by the Court, but the Court should not supplant the well thought and well researched opinions of the various agencies that permitted this project. Therefore, the Court finds that the proper permitting has been done, and that the public purpose and necessity has been proven by Bayou Bridge Pipeline, LLC. The Court finds that the testimony of Mr. Eustis and the mere allegations by the defendants of the adverse effects of the pipeline do not overcome Bayou Bridge's proof that the necessity for the expropriation has been met. Therefore, the Court finds that the public purpose and necessity of the pipeline have been proven by Bayou Bridge Pipeline, LLC.

The next issue for the Court to determine is the amount of damages for the taking pursuant to the expropriation. In determining the amount of damages to be awarded to the defendants/landowners, the Court has considered that Bayou Bridge is expropriating a 50 foot wide permanent easement which allows it the minimum width necessary to ensure adequate distance from the existing Enterprise Pipeline just south of the Bayou Bridge Pipeline and necessary access and maintenance to maintain the integrity of its pipeline in the future. There is also a minimal temporary work area that will automatically revert to the landowners six months following the pipeline's end service date or earlier if the space is no longer needed. The temporary work space in this particular case is 1.84 acres, and the permanent pipeline work space to be expropriated is 1.75 acres.

Bayou Bridge Pipeline introduced a calculation in a joint stipulation with defendants of the calculation of the interest of Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad in Bayou Bridge Exhibit #33 that was calculated by Philip Asprodites. The interest of Theda Larson Wright was 0.0000994. The interests of Peter K. Aaslestad and Katherine



Aaslestad were 0.0005803 each. The Court accepts this undisputed document as the proper calculation of the interests of these parties.

David Dominy testified as a real estate expert to determine the value of the land that was taken in this expropriation proceeding. He testified that the land is classified in its best use as recreational area and will be classified as recreational area in the future. He indicated that the pipeline will not affect the recreational use of the property once the pipeline is laid and in use. He further testified that the value of timber on this tract is not marketable because of the location, and the mobilization to harvest 3.59 acres of timber is not reasonable. David Dominy calculated the damages for the fair market value computation of the acreage lost in both the temporary and the permanent right of ways appraised at \$871. (see BBP Exhibit 30) The Court has accepted and copied the fair market value computation of the total loss for the three defendants as outlined by Bayou Bridge in its brief as follows:

**Table 1: Fair Market Value Computation**

<p><b><u>Theda Larson Wright</u></b> 0.0000994 (interest) x \$871 (appraised value) = <b>\$0.09</b> (rounded up)</p> <p><b><u>Peter K. Aaslestad</u></b> 0.0005803 (interest) x \$871 (appraised value) = <b>\$0.51</b> (rounded up)</p> <p><b><u>Katherine Aaslestad</u></b> 0.0005803 (interest) x \$871 (appraised value) = <b>\$0.51</b> (rounded up)</p>
---

Although Mr. David Dominy testified that the timber valuation is not marketable, the Court finds that the loss of timber in this particular matter is compensable by the taking pursuant to the expropriation and eminent domain factors. Therefore, the Court finds the timber damage computation as follows.

**Table 2: Best Case Scenario Timber Damages Computation**

<p><b><u>Theda Larson Wright</u></b> 0.0000994 (interest) x \$2854.05 (highest value) = <b>\$0.28</b> (rounded up)</p> <p><b><u>Peter K. Aaslestad</u></b> 0.0005803 (interest) x \$2854.05 (highest value) = <b>\$1.66</b> (rounded up)</p> <p><b><u>Katherine Aaslestad</u></b> 0.0005803 (interest) x \$2854.05 (highest value) = <b>\$1.66</b> (rounded up)</p>
---

The total value of the land and timber in the best case scenario given the defendant's interest in this property according to David Dominy is set forth as below.

Therefore, the total compensation due the defendants is as follows.

**Table 3: Best Case Scenario Total Just Compensation**

<p><b><u>Theda Larson Wright</u></b> \$0.09 (land) + \$0.28 (timber) = <b>\$0.37</b></p> <p><b><u>Peter K. Aaslestad</u></b> \$0.51 (land) + \$1.66 (timber) = <b>\$2.17</b></p> <p><b><u>Katherine Aaslestad</u></b> \$0.51 (land) + \$1.66 (timber) = <b>\$2.17</b></p>
---

The defendants have claimed that treble damages are due for the removal of the trees in this particular case. The merchantable value of the trees that were removed according to the testimony and report presented by the defendants is \$2854.05. Plaintiff, Bayou Bridge, argues that this should not be the market value or compensatory damage value of the trees. The Court agrees with Bayou Bridge that the fair market value of the tract is zero due to the nonmarketability of the tract. However, even if the Court would accept the position of the landowners that they are due treble damages for the loss of the trees, Bayou Bridge has offered a tender that would more than adequately compensate them for this loss. If the Court trebled the damages for the trees, then the landowners would be entitled as follows:

**Table 4: Treble Timber Damages**

<p><b><u>Theda Larson Wright</u></b> \$0.28 x 3 = <b>\$0.84</b></p> <p><b><u>Peter K. Aaslestad</u></b> \$1.66 x 3 = <b>\$4.98</b></p> <p><b><u>Katherine Aaslestad</u></b> \$1.66 x 3 = <b>\$4.98</b></p>
--

Therefore, even if the Court were to find and award treble damages for the trees, the total award would be as follows:

**Table 5: Total Award with Trebled Damages**

<p><b><u>Theda Larson Wright</u></b> \$0.09 (fair market for right of way) + \$0.84 (treble damages for trees) = <b>\$0.91</b></p>
<p><b><u>Peter K. Aaslestad</u></b> \$1.66 (right of way compensation) + 4.98 (treble damages for trees) = <b>\$6.64</b></p>
<p><b><u>Katherine Aaslestad</u></b> \$1.66 (right of way compensation) + 4.98 (treble damages for trees) = <b>\$6.64</b></p>

Bayou Bridge had previously tendered to each of the defendants the sum of \$75 to pay for their interest in the right of way. The Court will award the sum of \$75 to each of the three plaintiffs for their interest in the right of way pursuant to the expropriation filed by Bayou Bridge Pipeline. This is the highest offer made to these defendant landowners pursuant to La. R.S. 19:2 et seq. and far exceeds the amount due the landowners according to the evidence presented.

The last issue to be determined by the Court is that of trespass as claimed by the defendants. The Court has considered the issue of criminal trespass. Bayou Bridge Pipeline, LLC instituted these legal proceedings for expropriation in July 27, 2018. The Court heard testimony from Scott Eustis that the pipeline work on this tract had commenced in July of 2018 and that pipeline activity was ongoing on the property in August of 2018 as viewed by Mr. Eustis from aerial observations. The Court notes that Bayou Bridge at that particular time had numerous right of ways from various owners in ownership interests in the property in question. However, a large number of landowners were either absent, deceased or heirs of deceased landowners or had not executed proper right of ways. The expropriation proceedings were to cure these issues. This Court also finds that the pipeline on the property in question was substantially completed by the middle of September 2018, some 2 months prior to the hearings on this case.

The Court has considered the claim of trespass in light of the recent case of W & T Offshore LLC v Texas Brine Corporation, 250 So.3d 970 (La App 1<sup>st</sup> Cir. 2018). Writs by the Louisiana Supreme Court have been granted. This Court is not aware of any action taken by the Supreme Court. Therefore, the Court will consider W & T Offshore LLC, supra in its analysis. The landowners in this case argue that Bayou Bridge should not have constructed the pipeline

without consent of all the co-owners of the property. In W & T Offshore LLC, supra, the Court noted that “Louisiana Civil Code Article 805 provides that consent of all the co-owners is required for the lease, alienation or encumbrance of the entire thing held in indivision. *Id.* Louisiana Civil Code Article 804 provides that substantial alteration or improvements to the thing held in indivision may be undertaken only with the consent of all the co-owners. Louisiana Civil Code Article 801 provides that the use and management of the thing held in indivision is determined by agreement of all the co-owners.”

The Court notes that La. R.S. 19:8 (A)(3) states that “the expropriating authority shall not be entitled to possession or ownership of the property until a final judgment has been rendered and payment has been made to the owner or paid into the registry of the Court except as may otherwise be stipulated by the parties.” Therefore, it is clear under Louisiana law that the Aaslestads’ and Ms. Wright’s consents were required to the granting of the right of way to Bayou Bridge or expropriation judgments obtained as to their interests prior to the construction of the pipeline on this property. The facts show that this was not done; therefore, the claim for trespass is valid by the defendants.

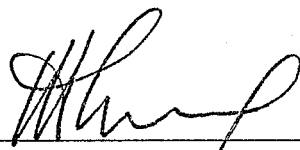
Trespass is defined as an unlawful physical invasion of the property or possession of another. Davis v. Culpepper, 794 So.2d 68, 75 (La App 2<sup>nd</sup> Cir. 2001), writ denied 804 So.2d 646 A trespasser is one who goes upon another’s property without his consent. *Id.* A person damaged by trespass is entitled to full indemnification. *Id.* This Court finds that Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad have a trespass claim against Bayou Bridge Pipeline, LLC for the unauthorized construction of the pipeline on their property because they, as co-owners, did not consent to the construction prior to the commencement of the pipeline. However, while there is a legal right for recovery, the Court must assess the damages to the defendants to determine the proper remedy in this particular case. The Court notes that a judgment against all the balance of the co-owners has been effectuated through the proceedings either on November 16, 2018 or as a result of these proceedings on November 27. The only remaining co-owners that have claims that have not been resolved by judgment of expropriation or through obtaining consensual right of way are Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad. The Court finds that their total ownership interest is very minor compared to the ownership interests of the other numerous landowners. Additionally, all the defendants testified that they had very little contact with the property. The Aaslesteds testified that they had

never been on the property prior to November 25, 2018, and Ms. Wright testified that she had never been on the property. Parties indicated that they had never leased the property and had not paid any taxes on the property. The parties further testified they made no effort to possess the property as owner other than filing legal documentations in the chain of title. The Court notes that although all the defendants claim some mental anguish for this property, no party has sought medical attention and all the defendants are self-admitted advocates against pipelines. The Court is vested with the task of determining what are the damages for the trespass prior to the expropriation judgment. The Court finds that an award of \$75 each for the trespass of the approximately 5 months of activity on the property prior to the final expropriation is just damages to the defendants based on their ownership interests. Therefore, the Court will award a total to Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad the sum of \$150 each as compensation and damages pursuant to the claims fostered by them.

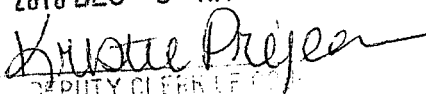
The Court also notes and finds the provisions of La. R.S. 19:12 are applicable in this case. It states "if the highest amount offered prior to the filing of the expropriation suit is equal to or more than the final award the Court may in its discretion order the defendant to pay all or a portion of the cost of the expropriation proceeding." Id. The Court in this case finds that the defendants were sent proper documentation pursuant to La. R.S. 19:2.2 and the final tender made to the defendants was that of \$75. Bayou Bridge has prevailed on its expropriation case pursuant to La. R.S. 19:12. However, the landowners have prevailed on their trespass claim. Therefore, this Court orders that each party will bear its own costs.

The Court orders the counsel for Bayou Bridge Pipeline, LLC to prepare a judgment to comply with these reasons and forward same to counsel for the defendants. Once counsel for the defendants and the plaintiff have agreed on a mutually accepted judgment, the Court will sign upon presentation by the counsel for Bayou Bridge Pipeline, LLC.

New Iberia, Louisiana this 6<sup>th</sup> day of December, 2018.



KEITH R. J. COMEAUX  
DISTRICT JUDGE

RECEIVED AND FILED  
Please <sup>notify</sup> ~~serve~~ all counsel of record  
2018 DEC -6 AM 11:19  
  
DEPUTY CLERK OF COURT  
ST. MARTIN PARISH

# APPENDIX

## C

FILE

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT COURT

VERSUS

DOCKET NO. 087011-e

38.00 ACRES, MORE OR LESS, LOCATED  
IN ST. MARTIN PARISH; BARRY SCOTT  
CARLINE, *ET AL.*

ST. MARTIN PARISH, LOUISIANA

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT COURT

VERSUS

DOCKET NO. 87235E

38.00 ACRES, MORE OR LESS, LOCATED  
IN ST. MARTIN PARISH; ANNE  
DELAHOUSSAY AKERS, *ET AL.*

ST. MARTIN PARISH, LOUISIANA

FINAL JUDGMENT

THESE MATTERS came before the Court for hearing and trial on October, 23, 2018, November 16, 2018, and November 27, 2018. Having considered the pleadings, witness testimony, exhibits, and arguments of counsel, and being otherwise fully advised in the premises, the Court finds as follows:<sup>1</sup>

1. The Court consolidated the cases of *Bayou Bridge Pipeline, LLC v. Carline*, Docket 087011 E, and *Bayou Bridge Pipeline, LLC v. Akers*, Docket 087235 E, for the purposes of trial and final judgment.

2. The Court entered a Final Judgment of Expropriation as to Certain Defendants on October 23, 2018 (the "October 23 Final Judgment"). The October 23 Final Judgment is incorporated in full in this Final Judgment but is amended to correct a scrivnor's error with respect to the property description, which description is hereby amended to read as follows:

That certain tract of land composed of 38 acre(s), more or less, located in the NE/4 of the SE/4 of Section 4, T11S, R9E, in St. Martin Parish, Louisiana, and being more particularly described in Book 784, Page 176, Instrument 186257 of the public records of said Parish.

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<sup>1</sup> Defendants Theda Larson Wright, Peter Aaslestad, and Katherine Aaslestad objected to certain aspects of the form of this Final Judgment. Their objections, along with Bayou Bridge's correspondence on the issues, are attached hereto as **Exhibit E**.

3. The Court entered a Final Judgment of Expropriation as to Certain Defendants on November 27, 2018 (the “November 27 Final Judgment”). The November 27 Final Judgment is incorporated in full in this Final Judgment of Expropriation.

4. Pursuant to the orders entered by the Court on September 21, 2018, and October 23, 2018, Archie Joseph was appointed as Curator Ad Litem to represent the Defendants in the attached Exhibit A (the “Absentee Defendants”). Mr. Joseph fulfilled his duties as court-appointed attorney for the Absentee Defendants.

5. The Defendants in Exhibit B (referred to collectively herein as “Default Defendants”) did not answer or file other pleadings within the time prescribed by law or the Court. Bayou Bridge filed written motions for preliminary default with respect to the Default Defendants. The motions were granted and the preliminary defaults were entered in the minutes of the Court on November 19, 2018.

6. At the trial, Bayou Bridge confirmed these defaults by proof of its demand sufficient to establish a *prima facie* case through evidence admitted on the record. Bayou Bridge satisfied the requirements of Louisiana Code of Civil Procedure articles 1701 through 1703.

7. Three Defendants, Theda Larson Wright, Peter K. Aaslestad, and Katherine Aaslestad (a/k/a Katherine A. Lambertson), opposed the expropriation and brought reconventional demands for trespass, property damage, and violations of the right to property and due process under the United States and Louisiana constitutions, and presented evidence at the trial. These Defendants are referred to collectively herein as “Defendants.”

8. Following the November 16, 2018 exceptions hearing, the Court determined that Bayou Bridge is a common carrier pipeline as that term is defined by Louisiana Revised Statute 45:251. The Court denied Defendants’ constitutional affirmative defenses and peremptory and dilatory exceptions to the Petition in accordance with the reasons orally stated by the Court at the hearing. *See Order Denying Defendants’ Exceptions and Constitutional Challenges*. The Court’s findings at the November 16, 2018 hearing and its subsequent Order are incorporated in full in this Final Judgment.

9. Based on the evidence presented at trial and hearings, and as set forth in this Court’s Reasons for Judgment issued December 6, 2018, which are incorporated herein, the Court finds that a) Bayou Bridge’s expropriation is for a public and necessary purpose consistent with the requirements of the Louisiana Constitution; b) Bayou Bridge satisfied the statutory prerequisites



to file this expropriation; and c) Defendants stated a trespass claim against Bayou Bridge because Defendants, as co-owners of one-tenth of one percent interest, did not consent to the construction of the pipeline prior to Bayou Bridge's entry and commencement of construction of the pipeline on the property.

Based on the foregoing, and on the evidence presented at trial, it is hereby:

**ORDERED, ADJUDGED, AND DECREED** that a **FINAL DEFAULT JUDGMENT** in this action is rendered against the Default Defendants.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that pursuant to Louisiana Revised Statute 45:254, Bayou Bridge has a right to expropriate a servitude as depicted in **Exhibit C** across the property of Defendants, Absentee Defendants, and Default Defendants described as follows ("**Property**"):

That certain tract of land composed of 38 acre(s), more or less, located in the NE/4 of the SE/4 of Section 4, T11S, R9E, in St. Martin Parish, Louisiana, and being more particularly described in Book 784, Page 176, Instrument 186257 of the public records of said Parish.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that there be judgment in favor of Defendants and against Bayou Bridge for trespass, with damages assessed as set forth below in this Final Judgment;

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that:

(a) There be judgment in favor of Bayou Bridge and against Defendants, Absentee Defendants, and Default Defendants granting to Bayou Bridge, upon the payment by Bayou Bridge into the registry of the Court the sums set forth in this Final Judgment as just compensation, the following right of way, servitude, and other rights:

**Permanent Right of Way**

A fifty foot (50') wide permanent and perpetual right of way and servitude (the "Permanent Right of Way") for the purpose of laying, constructing, maintaining, operating, altering, replacing, repairing, watering up, dewatering, changing the size of (with the same or smaller size pipeline), relocating within the Permanent Right of Way, abandoning and/or removing one (1) underground pipeline having a nominal diameter of twenty-four inches (24") or less, together with such above- or below-grade valves, fittings, meters, tie-overs, cathodic/corrosion protection, electrical interference mitigation, data acquisition and communications lines and devices, electric lines and devices, pipeline markers required by law, and other appurtenant facilities for the transmission of crude oil and all by-products and constituents thereof, under, upon, across, and through the

(HD098742.1)

Property, which is more particularly described and shown in **Exhibit C**. The Permanent Right of Way described in **Exhibit C** will be used for purposes of establishing, laying, constructing, reconstructing, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, relocating and changing the route of, abandoning in place and removing at will, in whole or in part, the Pipeline, and any and all necessary or useful appurtenances thereto, in a manner consistent with applicable laws and regulations.

Bayou Bridge shall have the right to select the exact location of the Pipeline within the Permanent Right of Way. Bayou Bridge shall have the right to construct, maintain, and change slopes of cuts and fills to ensure proper lateral and subjacent support and drainage for the Pipeline. Bayou Bridge shall have the right to have a right of entry and access in, to, through, on, over, under, and across the Permanent Right of Way for all purposes necessary and at all times convenient and necessary to exercise the rights granted to it. To the extent practicable, such ingress and egress should be exercised over the Permanent Right of Way or such roads or ways as may exist at the time of each particular exercise of Bayou Bridge's rights hereunder. The Permanent Right of Way shall extend to and include contiguous public roads and ways to the full extent of Defendants' interest therein for the purpose of ingress and egress to the Permanent Right of Way.

#### **Temporary Right of Way**

Bayou Bridge is also granted a temporary right of way and servitude (the "Temporary Right of Way") needed during construction and shown on **Exhibit C**: temporary work space (the "Temporary Work Space") adjacent to and generally parallel with the Permanent Right of Way for construction, operation and maintenance of the Pipeline. Bayou Bridge is granted the Temporary Work Space for Bayou Bridge's exclusive use from the commencement of construction until six (6) months after the date the Pipeline is placed in service. However, if Bayou Bridge has completed its use of the Temporary Work Space prior to the expiration of the six (6) month period and so states in writing, then the Temporary Work Space shall immediately terminate.

#### **Other Rights**

Bayou Bridge shall have the right, from time to time, to clear the Permanent Right of Way, during the term thereof, of all trees, undergrowth, and other natural or manmade obstructions that, in Bayou Bridge's sole and absolute discretion, may injure or endanger the Pipeline, appliances, appurtenances, fixtures, and equipment or interfere with Bayou Bridge's access to, monitoring of,

or construction, maintenance, operation, repair, relocation, and/or replacement of same. In addition, Defendants, Absentee Defendants, and Default Defendants are prohibited from altering or changing the grade of, filling, and/or flooding the Permanent Right of Way without consulting with and obtaining approval of Bayou Bridge if such alterations or changes of grade may interfere with pipeline operations or integrity. Bayou Bridge shall have full right and authority to lease, sell, assign, transfer, and/or convey to others the Permanent Right of Way, servitude, interests, rights, and privileges sought here, in whole or in part, or to encumber the same.

(b) Defendants, Absentee Defendants, and Default Defendants reserve the right to cultivate or otherwise make use of the Property for other purposes in a manner that will not interfere with the enjoyment or use of the servitude rights and the rights of way granted to Bayou Bridge.

(c) The above-described rights of way and servitudes are granted to Bayou Bridge free and clear of all liens, privileges, and encumbrances upon the payment of just compensation.

(d) The Court determines that just compensation owed to Absentee Defendants and Default Defendants, collectively, for the rights herein granted to Bayou Bridge is the total sum of \$7,875.00. The Court's award exceeds the total valuation of the Permanent and Temporary Right of Way as appraised by a Louisiana licensed appraiser.

(e) The Court determines that the just compensation owed to Defendant Theda Larson Wright is \$75.00 along with additional damages in the amount of \$75.00, based on her interest and lack of connectivity to the property. The Court's expropriation award exceeds Ms. Wright's proportionate share of the valuation of the Permanent and Temporary Right of Way as appraised by a Louisiana licensed appraiser.

(f) The Court determines that the just compensation owed to Defendant Peter K. Aaslestad is \$75.00 along with additional damages in the amount of \$75.00, based on his interest and lack of connectivity to the property. The Court's expropriation award exceeds Mr. Aaslestad's proportionate share of the valuation of the Permanent and Temporary Right of Way as appraised by a Louisiana licensed appraiser.

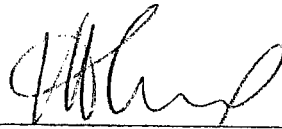
(g) The Court determines that the just compensation owed to Defendant Katherine Aaslestad is \$75.00 along with additional damages in the amount of \$75.00, based on her interest and lack of connectivity to the property. The Court's expropriation award exceeds Ms. Aaslestad's

proportionate share of the valuation of the Permanent and Temporary Right of Way as appraised by a Louisiana licensed appraiser.

(h) The Court hereby authorizes Bayou Bridge to deposit the amount of just compensation into the registry of the Court. The Court further authorizes the release of these funds in accordance with its Order to Disburse Funds from the Court Registry attached as **Exhibit D** to this Final Judgment of Expropriation at Bayou Bridge's cost.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that each party is to bear its own costs with regard to the matters heard from November 27-29, 2018.

**THUS DONE AND SIGNED**, this 18 day of December, 2018, at St. Martinville, Louisiana.



HON. KEITH R.J. COMEAUX  
DISTRICT COURT, 16<sup>TH</sup> JUDICIAL DISTRICT

# EXHIBIT A

**The Unopened Successions of:**

Lillie Bougeois Harrison	George L. Thibeau, Jr.	Anna Mae Smith Chaisson
Forrest J. Champagne	Silver Jean Carline Latiolais	Woodrow G. Larson
Rita Evans Burke	Clemence Otemont Romero	Anaise Bertrand Theriot
Florence Bertrand Derise	May Broussard Derise	Hilda Bergeron Block
Sue Anne Medlen Dupre	Thelma Bertrand Goulas	Elbert E. Carline
Gerald Morales	Louis (Widley) Bourque	Ann Amy Stevens Shoultz
Howard Adam Verret	Anna Belle Musso	Ida B. Falgout
Nettie Doris Goulas Himel Templet	Sydney P. Barrilleaux	Anna May Evans Hayles
Adrina Snellgrove Andrus	Murray Verret	Agnes Lasseigne Courville
James Bertrand		

**And the following Absentee Defendants:**

Arnold Santacruze	Rita Boudwin Elzey	Rose Verret Darby
Rebecca Boudwin	Lee L. Bourgeois	Pauline Goulas Verret
Anne Denise Delahoussaye	Linda Lou Johnston	Vicki Verret Chase
Anne Mae Lancon Coburn	Jack Brupbacher	Rosemary Boudwin Freeman
Dorothy Enos Himel	Johnny Carline	Lois Fay Smith Guyon
Allen J. Bertrand		Donald J. Santacruze, Jr.
Alexina Rodriguez Hebert	Jack Willard St. Germain	Jeanne Rodriguez Escoyne
Leroy Penn	Cecil Bertrand	Lois Smallman, as Tutrix for Alfred Mark Smallman and Issac William Smallman, Minors
Connie Verret Byrd	Emile Bertrand, Jr.	Edward Bertrand
Agnes Bertrand Royer	Glenn K. Barbay	Deola Bertrand Gwin
Gladys Bourgeois Broussard	John Bourgeois	Hazel Bergeron Martin
Helen Bergeron	Leonard Verret	Joseph William Bruno
Lawrence Bergeron	Raymond Bergeron	Lucia Bourgeois Burton
Lucille Bourgeois Bland	Marie Broussard Washespode	Rita Evans Burke

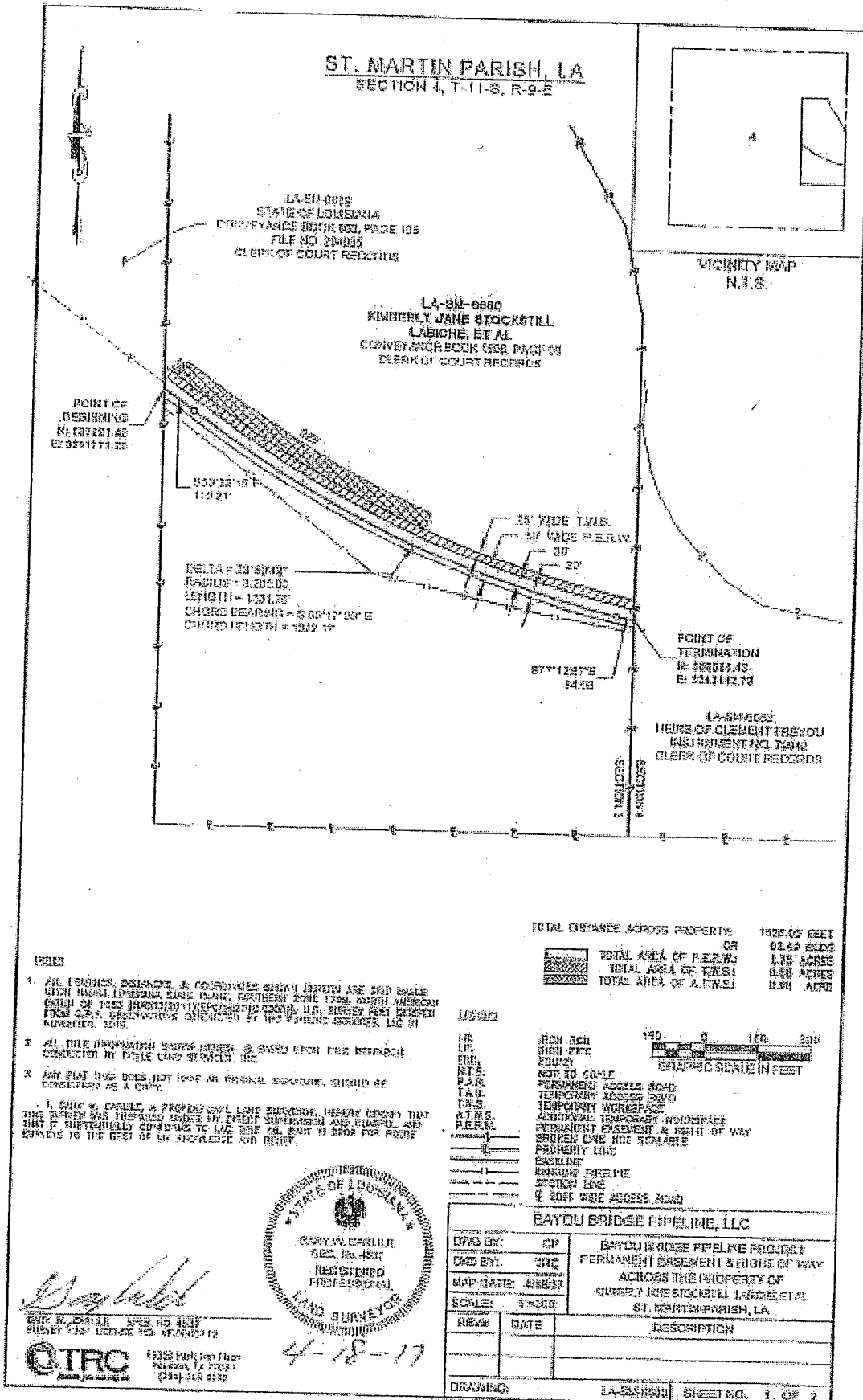
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Roy Bergeron	Mark Ira Carlin	Lynwood Hernandez
Karen Aubouy	Evan Scott Ducker	Carlton Tedrick
Melissa Gail Carline Camp		

# EXHIBIT B

Annagelle Marie Hebert Son	Justin Paul Chauvin	Richard Bourque
Bert Thomas Carlin	Janet Moore Lagrappe	Peggy Verret
Beverly Smith Authement	Karen Sue Lagrappe Daigle	Christopher LaForte
Carolyn Verret		Karen Dale Edgerton
Craig Judge Lagrappe	Rosie Lee Marie Rodriguez Menard	Wilson Robicheaux, Jr.
Deborah K. Verret	Paul Francis Carline	Bennie Mendoza
Deeya R. Wyble Rodriguez	Robin Dale Carline	Gladys Lottie Fish Piccirelli
		Lynn James Leleaux
Harry L. Delahoussaye, Jr.	Travis Paul Carline	
Jeffrey Paul Lagrappe	William Curtis Butcher	

# EXHIBIT C





**PERMANENT EASEMENT AND RIGHT OF WAY**

Description of a fifty (50) foot wide Permanent Easement and Right of Way (P.E.R.W.) in Section 4, Township 11 South, Range 9 East, St. Martin Parish, Louisiana being over, through and across a parcel conveyed to Kimberly Jane Stockstill Labiche, Et Al, recorded in Conveyance Book 1608, Page 09 of the Clerk of Court records of St. Martin Parish, Louisiana, being thirty (30) feet on the northerly and twenty (20) feet on the southerly side of the herein described baseline, the sidelines being lengthened or shortened to meet the boundary lines of said parcel;

**BEGINNING** on the west line of said parcel having grid coordinates **NORTHING: 587221.421**, **EASTING: 3211771.201**;

**THENCE** South  $53^{\circ} 22' 15''$  East, 110.21 feet to the beginning of a 3200.00 foot radius curve to the left;

**THENCE** with said 3200.00 foot radius curve to the left having an arc length 1331.76 feet, a central angle of  $23^{\circ} 58' 42''$  with a chord bearing South  $65^{\circ} 17' 36''$  East and a distance of 1,322.17';

**THENCE** South  $77^{\circ} 12' 57''$  East 84.88 feet to the **POINT OF TERMINATION** on the west line of said Kimberly Jane Stockstill Labiche, Et Al parcel, having grid coordinates **NORTHING: 586584.431**, **EASTING: 3213142.781**, said baseline having a total distance of 1526.05 feet (92.49 rods), containing 1.75 acres, more or less.

**TEMPORARY WORKSPACE**

A twenty five (25.00) foot wide strip of land along the northerly side parallel with and adjacent to the above described Permanent Easement and Right of Way, and depicted on Sheet 1; the ends of the Temporary Workspace being lengthened or shortened to meet with the boundaries of said Kimberly Jane Stockstill Labiche, Et Al parcel, containing 0.88 acres, more or less.

**ADDITIONAL TEMPORARY WORKSPACE**

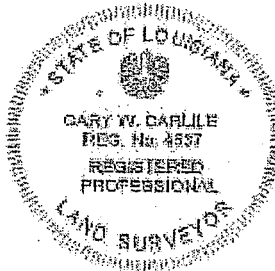
A fifty (50) foot wide strip of land, parallel with and adjacent to the northerly boundary of the above described Temporary Workspace, as depicted on Sheet 1 of 2.

All bearings, distances, and coordinates shown herein are grid, based upon NAD83, Louisiana South Zone, U.S. Survey Feet, as derived from an on the ground survey performed by TRC Pipeline Services, LLC conducted in November of 2016.

For reference and further information see Exhibit "B", Sheet 1, drawing number LA-SM-6680, same date.

*Gary W. Carlile* 4-15-17

Gary W. Carlile  
Professional Land Surveyor  
Louisiana Registration No. 4537  
Survey Firm License No. VF-0000712



# EXHIBIT D

{HD098742.1}

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1040

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT COURT

VERSUS

DOCKET NO. 087011-e

38.00 ACRES, MORE OR LESS, LOCATED  
IN ST. MARTIN PARISH; BARRY SCOTT  
CARLINE, ET AL.

ST. MARTIN PARISH, LOUISIANA

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT COURT

VERSUS

DOCKET NO. 87235E

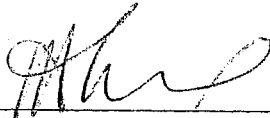
38.00 ACRES, MORE OR LESS, LOCATED  
IN ST. MARTIN PARISH; ANNE  
DELAHOUSSAY AKERS, ET AL.

ST. MARTIN PARISH, LOUISIANA

**ORDER TO DISBURSE FUNDS FROM THE COURT REGISTRY**

Considering the Final Judgment in these consolidated matters, it is hereby ORDERED, ADJUDGED, and DECREED that, upon presentation of appropriate identification, the Clerk of Court shall pay \$75.00 from the deposit into the court registry made by Bayou Bridge Pipeline, LLC pursuant to the Final Judgment in the above matter to each of the Defendants identified in the attached Exhibit 1.

IT IS SO ORDERED this 19 day of December, 2018, at St. Martinville, Louisiana.



HON. KEITH R.J. COMEAUX  
DISTRICT COURT, 16<sup>TH</sup> JUDICIAL DISTRICT

RECEIVED AND FILED

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*Miller*<sup>13</sup>  
CLERK OF COURT  
ST. MARTIN PARISH

{HD098742.1}

1041

# EXHIBIT 1

## TO THE ORDER TO DISBURSE FUNDS FROM THE COURT REGISTRY

Arnold Santacruze	Rita Boudwin Elzey	Rose Verret Darby
Rebecca Boudwin	Lee L. Bourgeois	Pauline Goulas Verret
Anne Denise Delahoussaye	Linda Lou Johnston	Vicki Verret Chase
Anne Mae Lancon Coburn	Jack Brupbacher	Rosemary Boudwin Freeman
Dorothy Enos Himel	Johnny Carline	Lois Fay Smith Guyon
Allen J. Bertrand		Donald J. Santacruze, Jr.
Alexina Rodriguez Hebert	Jack Willard St. Germain	Jeanne Rodriguez Escoyne Lois Smallman, as Tutrix for Alfred Mark Smallman and Issac William Smallman, Minors
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Connie Verret Byrd	Emile Bertrand, Jr.	Edward Bertrand
Agnes Bertrand Royer	Glenn K. Barbay	Deola Bertrand Gwin
Gladys Bourgeois Broussard	John Bourgeois	Hazel Bergeron Martin
Helen Bergeron	Leonard Verret	Joseph William Bruno
Lawrence Bergeron	Raymond Bergeron	Lucia Bourgeois Burton
Lucille Bourgeois Bland	Marie Broussard Washespode	Rita Evans Burke
Roy Bergeron	Mark Ira Carlin	Lynwood Hernandez
Karen Aubouy	Evan Scott Ducker	Carlton Tedrick
Melissa Gail Carline Camp	Peter K. Aaslestad	Katherine Aaslestad (a/k/a Katherine A. Lambertson)
Theda Larson Wright		

Annagelle Marie Hebert Son	Justin Paul Chauvin	Richard Bourque
Bert Thomas Carlin	Janet Moore Lagrappe	Peggy Verret
Beverly Smith Authement	Karen Sue Lagrappe Daigle	Christopher LaForte
Carolyn Verret		Karen Dale Edgerton
Craig Judge Lagrappe	Rosie Lee Marie Rodriguez Menard	Wilson Robicheaux, Jr.
Deborah K. Verret	Paul Francis Carline	Bennie Mendoza

(HD098742.1)

Deeya R. Wyble Rodriguez	Robin Dale Carline	Gladys Lottie Fish Piccirelli
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Harry L. Delahoussaye, Jr.	Travis Paul Carline	
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**The Unopened Successions of:**

Lillie Bougeois Harrison	George L. Thibeau, Jr.	Anna Mae Smith Chaisson
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Gerald Morales	Louis (Widley) Bourque	Ann Amy Stevens Shoultz
Howard Adam Verret	Anna Belle Musso	Ida B. Falgout
Nettie Doris Goulas Himel Templet	Sydney P. Barrilleaux	Anna May Evans Hayles
Adrina Snellgrove Andrus	Murray Verret	Agnes Lasseigne Courville
James Bertrand		

# EXHIBIT E

centerforconstitutionalrights

December 13, 2018

Via email to: kcomeaux@16jdc.org

Hon. Judge Keith Comeaux  
300 Iberia Street  
Courthouse Building, Suite 210  
New Iberia, LA 70560

Re: *Bayou Bridge Pipeline, LLC v. 38 Acres, More or Less, in St. Martin Parish*  
Case No. 87011

Dear Judge Comeaux,

With regard to the proposed judgment submitted this date by counsel for Bayou Bridge, we write to advise the Court of a key objection by the Landowners.

In paragraph 9 of the proposed judgment, Bayou Bridge includes its interpretation of a ruling this Court made on November 16, 2018. As a preliminary matter, because this Court already issued the Order denying Defendants' exceptions, the order speaks for itself and the matter does not need to be revisited or restated in the Final Judgment concerning the trial conducted from November 27-29 which only addressed the questions of public purpose and necessity, compensation, and the Landowners' counterclaims.

Beyond that, the proposed language is an oversimplification of the Court's earlier ruling. In the Court's previous order denying the Landowners' exceptions, the Court ruled at paragraph 2:

2. With respect to Defendants' dilatory exception of prematurity on the basis that Bayou Bridge failed to meet the statutory prerequisites prior to commencing the expropriation litigation, the Court finds that Section 19:2.2(C) is not a statutory prerequisite and any failure to provide such notice did not result in any prejudice. With respect to the appraisal information under Section 19:2.2(A), the Court finds that Bayou Bridge sent the appraisal information and therefore satisfied the requirement. Defendants' dilatory exception of prematurity on the basis that Bayou Bridge failed to meet the statutory requirements prior to commencing the expropriation litigation is therefore **DENIED**.

The Court's Order denying the exceptions further states:

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants Peter Aaslestad and Katherine Aaslestad's Dilatory and Peremptory Exceptions are **DENIED** in accordance with the foregoing and for the reasons orally stated by the Court at the hearing.

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In the proposed Final Judgment submitted for the Court's review, counsel for Bayou Bridge inserted the following in Paragraph 9: "b) Bayou Bridge satisfied the statutory prerequisites to file this expropriation..."

Defendant Landowners believe this insertion is a) unnecessary and extraneous in this Final Judgment since it is already the subject of a previous Order; and b) is misleading and an oversimplification of the previous ruling on the exceptions, which speaks for itself.

As an interlocutory ruling, the order denying the exceptions is incorporated into the final judgment and does not need to be restated here in a judgment after trial which only addressed the questions of public purpose and necessity of the expropriation, compensation, and the reconventional demands.


Therefore, Landowners' submit the attached proposed Final Judgment, which omits the offending clause.

The Landowners' proposed judgment also differs from that submitted by Bayou Bridge as follows:

- Costs. In the Court's earlier Order denying the exceptions, costs were clearly assessed to Defendants for the hearing on the exceptions and affirmative defenses. That fact does not need to be restated in this judgment.
- Trespass finding. The fractional interest of the co-owners having an undivided ownership interest in the property is not relevant or essential to the Court's determination of whether the company entered upon and constructed the pipeline on the property without the consent of the landowners. It was, however, relevant to the Court's determination of the question compensation and as such is properly referenced in the portion of the judgment pertaining thereto.

We thank the Court in advance for its consideration of the Landowners' concerns as to the Final Judgment.

With regards,

  
Pamela C. Spees

Enclosure





Michael B. Donald  
Partner  
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December 13, 2018

**By Email – kcomeaux@16jdc.org**  
**and Fax - 337-369-4456**

Hon. Keith R.J. Comeaux  
300 Iberia Street  
Courthouse Building, Suite 210  
New Iberia, LA 70560

Re: Bayou Bridge Pipeline, LLC v. Carline et al; Akers et al  
Consolidated Cases: Docket No 087011E and 087235E Final Judgment

Dear Judge Comeaux:

Enclosed for Your Honor's consideration is Bayou Bridge Pipeline, LLC's ("Bayou Bridge") proposed Final Judgment with respect to the above-referenced consolidated matters. Bayou Bridge respectfully requests that the Court enter this Final Judgment.

Counsel for Mr. Aaslestad, Ms. Aaslestad, and Ms. Wright ("Defendants") were first provided with Bayou Bridge's proposed final judgment on November 30. When Bayou Bridge received the Court's Reasons for Judgment on December 6, 2018, Bayou Bridge inserted the damages awarded by the Court into its previously circulated final judgment and forwarded again to Defendants' counsel that same day, December 6, 2018.

After two follow-up emails, Bayou Bridge received Defendants' proposed revisions on December 12, 2018. Bayou Bridge accepted the majority of Defendants proposed revisions. After the parties exchanged another two redlined drafts, however, they are at an impasse with respect to the below issues:

1.) **Incorporation of November 16, 2018 Hearing Findings.** At the start of the November 27, 2018 trial, Bayou Bridge requested, and the Court agreed (without objection), that the evidence and findings from the November 16, 2018 hearing would apply just as if the evidence were presented at the November 27, 2018 trial. This was a matter of judicial efficiency as the very same testimony and evidence would have been presented otherwise. The evidence and findings made by the Court at the November 16, 2018 hearing are necessary to this Final Judgment because (a) it is a **Final Judgment** and should necessarily reflect that it is resolving all of the issues in the entire case and (b) it is resolving the claims of the absentee and default defendants in the consolidated *Akers* matter that were not automatically incorporated in the order following the November 16, 2018 hearing.

{HD098693.1}

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2.) **Statement of Defendants' Interest.** The Court's finding with respect to Defendants' de minimis interest is essential to the trespass claim, as well as the Court's determination of compensation for the expropriated property, and should be included in the Final Judgment.

3.) **Assessment of Costs.** The Court's assessment of costs related to the November 16, 2018 hearing should be included to avoid confusion with respect to the Court determination that the parties' should each bear their own costs with respect to the other aspects of the case.

Bayou Bridge respectfully requests that the Court consider the enclosed Final Judgment and enter same. As the Court is aware, and as Defendants are aware, Bayou Bridge is working as expeditiously as possible to close this matter so it may proceed with completing its pipeline construction. Accordingly, should the Court wish to hear from the parties' on this matter, Bayou Bridge respectfully requests a telephone conference as soon as it is convenient for the Court.

We appreciate Your Honor's consideration.

Sincerely,



Michael B. Donald

MBD

{HD098693.1}

December 13, 2018

Page 2



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**087011; 087235 Bayou Bridge v. Carline; Akers - proposed FINAL JUDGMENT**

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Pam Spees <PSpees@ccrjustice.org>

Mon, Dec 17, 2018 at 5:23 PM

To: "Raush, Tiffany" <traush@joneswalker.com>, "kcomeaux@16jdc.org" <kcomeaux@16jdc.org>, "kcaffery@16jdc.org" <kcaffery@16jdc.org>

Cc: "Donald, Michael" <mcdonald@joneswalker.com>, "Vazquez, Amy" <avazquez@joneswalker.com>, "Macdonald, Ian" <imacdonald@joneswalker.com>, bill quigley <quigley77@gmail.com>, Misha Mitchell <basinkeeperlegal@gmail.com>

Dear Judge Comeaux,

As requested, we are confirming that the correspondence from Ms. Raush and attachments are in accord with the Court's decisions made on the conference call with the parties this morning.

As discussed, we reiterate the landowners' objections to the order proposed by Plaintiff as set out in the Exhibit E, the landowners' letter to the Court.

With regards,

**Pam Spees**

Senior Staff Attorney

**Center for Constitutional Rights**

666 Broadway, 7th Fl New York, NY 10012

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**From:** Raush, Tiffany [mailto:traush@joneswalker.com]

**Sent:** Monday, December 17, 2018 12:11 PM

**To:** kcomeaux@16jdc.org; kcaffery@16jdc.org

**Cc:** Donald, Michael; Vazquez, Amy; Macdonald, Ian; Pam Spees; bill quigley; Misha Mitchell

**Subject:** 087011; 087235 Bayou Bridge v. Carline; Akers - proposed FINAL JUDGMENT

[Quoted text hidden]

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CERTIFICATE OF SERVICE

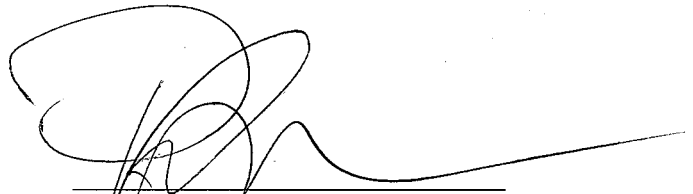
I hereby certify that a copy of the foregoing has been transmitted via electronic means to all known parties of record this 19<sup>th</sup> day of September 2019 to the following counsel for Appellees:

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PAMELA C. SPEES  
*Attorney for Plaintiffs-Appellants*