

NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

**ATCHAFALAYA BASINKEEPER,
LOUISIANA BUCKET BRIGADE,
and 350 NEW ORLEANS,**

Civil Action No. _____

Plaintiffs,

v.

Division ____

**BAYOU BRIDGE PIPELINE, LLC,
and CHRIS MARTIN**

Defendants.

Filed: _____

Deputy Clerk _____

**MEMORANDUM OF LAW IN SUPPORT
OF PETITION FOR WRIT OF MANDAMUS
UNDER THE LOUISIANA PUBLIC RECORDS ACT**

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Atchafalaya Basinkeeper, the Louisiana Bucket Brigade, and 350 New Orleans, who respectfully submit this memorandum of law in support of their Petition for Writ of Mandamus Under the Louisiana Public Records Act.

SUMMARY OF THE ARGUMENT

The premise of this action is simple. A Delaware corporation, Bayou Bridge Pipeline, LLC, (“BBP”) has taken or expropriated over 400 pieces of private property in Louisiana to build a pipeline. BBP asserts that it has legal authority to take private property because it is a "common carrier" under Louisiana law and that its proposed pipeline is "in the public interest and necessity." In asserting that inherently sovereign power, an essential governmental function, for a claimed public purpose, Defendant BBP is functioning as an instrumentality of the State and must be subject to the Public Records Law as recently affirmed by the Louisiana Supreme Court. *See New Orleans Bulldog Society v LSPCA*, 2016-C-1809 (La. 2017) 222 So.3d 679, 684-85.

FACTUAL BACKGROUND

I. The Public Records Request

On December 6, 2017, Plaintiffs sent Defendant BBP and its majority owner and operator Energy Transfer Partners (“ETP”) a written request for “any and all public records... related to the proposed Bayou Bridge Pipeline... .” *See* Plaintiffs’ Records Request to BBP and ETP, December 6, 2017, annexed to Plaintiffs’ Petition for Writ of Mandamus (“Pl. Petition”) as Exhibit B. The request included, “but [was] not limited to”:

- all records relating to acquiring of easements or rights of way through, or expropriation of, private property in connection with the proposed Bayou Bridge Pipeline (“the proposed pipeline”);
- all records relating to communications with local, parish, state, and federal agencies and/or officials, including law enforcement agencies and regulatory or permitting agencies, concerning the proposed pipeline, including opposition thereto;
- all records relating to public opposition to the proposed pipeline, including individuals and organizations opposing the pipeline, including any records of surveillance or other operations concerning opponents by private security companies such as TigerSwan, or others;
- all records relating to communications with officials, staff, or entities affiliated with Louisiana State University, including David Dismukes, and the Center for Energy Studies;
- all records relating to public relations messaging about the pipeline, including safety concerns, and communications with public relations and public affairs consultants or agents, journalists, media, spokespeople, and lobbyists;

Id.

Plaintiffs also requested a fee waiver on the basis that the “requested information is in the public interest” and that the information was being sought for “news gathering purposes” and not for “commercial purposes.” *Id.*

On December 15, 2017, counsel for BBP and ETP sent counsel for Plaintiffs a letter acknowledging service of the records request and indicating that they “fundamentally disagree that Bayou Bridge or Energy Transfer Partners is subject to the Public Records Act in the manner that you have described, nor is either entity obligated to produce the records requested.” *See* Letter from James Percy to P. Spees, W. Quigley, December 15, 2017, annexed to Pl. Petition as Exhibit C.

To date, Plaintiffs have received no further communications or records from Defendant.

II. Factual Basis of the Request

A. ETP and Phillips 66 form BBP, Claim Common Carrier Status and Begin Expropriating Private Property.

ETP and Phillips 66 formed Defendant BBP as a joint venture to pursue construction of the Bayou Bridge Pipeline (“the pipeline”), which would span 162 miles from Lake Charles to a terminus in St. James.¹ ETP owns a 60 percent interest and serves as operator of the pipeline.² The proposed route would have the pipeline running crude oil through 700 bodies of water, agricultural land, wetlands, the Atchafalaya Basin, and through Bayou LaFourche, the source of drinking water for surrounding communities.³

There has been a significant level of public interest in the Bayou Bridge Pipeline in part because the company which owns a majority interest in BBP, ETP (which merged with Sunoco Logistics) and the other owner, Phillips 66, have been the subjects of controversy and news reporting about their record of leaks, environmental damage, violations of construction requirements, and safety concerns.⁴

¹ See http://energytransfer.com/ops_bayou_bridge.aspx.

² *Id.*

³ Sabrina Canfield, *Pipeline Plan Inspires Spirited Debate in Rural Louisiana*, Courthouse News, Feb. 10, 2017, <https://www.courthousenews.com/pipeline-plan-inspires-spirited-debate-in-louisiana/>.

⁴ See, e.g., *Same co. behind Bayou Bridge ordered to stop Pennsylvania pipeline construction*, Associated Press, Jan. 3, 2018, available at <http://www.katc.com/story/37184083/bayou-bridge-pipeline-mariner-east-sunoco-etp>; Alleen Brown, *Five Spills, Six Months in Operation: Dakota Access Track Record Highlights Unavoidable Reality – Pipelines Leak*, The Intercept, Jan. 9, 2018, <https://theintercept.com/2018/01/09/dakota-access-pipeline-leak-energy-transfer-partners/>; Yessenia Funes, *In 2 Years, Company Behind DAPL Reported 69 Accidents, Polluting Rivers in 4 States: Energy Transfer Partners is the focus of a new report by a Louisiana-based environmental organization*, Colorlines, Feb. 6, 2017, <https://www.colorlines.com/articles/2-years-company-behind-dapl-reported-69-accidents-polluting-rivers-4-states>; Sam Levin, *Firm behind Dakota Access pipeline faces intense scrutiny for series of leaks: Documents suggest that a major spill from the Rover pipeline in Ohio described as 2m gallons of ‘drilling fluids’ might now be more than twice as large*, The Guardian, May 25, 2017, <https://www.theguardian.com/environment/2017/may/25/energy-transfer-partners-dakota-access-oil-leaks-ohio>; Liz Hampton, *Sunoco, behind protested Dakota pipeline, tops U.S. crude spill chart*, Reuters, September 23, 2016, available at <https://www.reuters.com/article/us-usa-pipeline-nativeamericans-safety-i/sunoco-behind-protested-dakota-pipeline-tops-u-s-crude-spill-charts-idUSKCN11T1UW>; *Phillips 66 pipeline blaze in Paradis ‘could burn for hours, this could go on for days,’* The Advocate, Feb. 9, 2017, http://www.theadvocate.com/new_orleans/news/crime_police/article_1699947c-ef30-11e6-a25e-c3225ffa4ee.html; Beau Evans, *Phillips 66 pipeline worker ID’d, considered dead after Paradis explosion*, New Orleans Times-Picayune, Feb. 11, 2017, http://www.nola.com/traffic/index.ssf/2017/02/pipeline_worker_believed_dead.html; Julia Carrie Wong and Sam Levin, *Dakota pipeline operator to defy Obama and prepare for final phase of drilling*, The Guardian, November 8, 2016, <https://www.theguardian.com/us-news/2016/nov/08/dakota-access-pipeline-project-continues-operator-oil-obama>; James

In 2016, long before it obtained permits necessary for the project, Defendant BBP began pursuing easements and/or servitudes across privately-owned property and expropriating the properties when negotiations with landowners failed. In court filings in expropriation cases, BBP asserted “common carrier” status pursuant to La. R.S. § 45:251(1), which includes “all persons engaged in the transportation of petroleum as public utilities and common carriers for hire... .” *See, e.g.,* Petition for Expropriation, ¶ 4, *Bayou Bridge Pipeline, LLC, v. 80.00 Acres, More or Less, Located in Calcasieu Parish*, No. 2016-5195, 14th Judicial District Court, Oct. 28, 2016, annexed to Pl. Petition as Exhibit A. It also claimed the authority to expropriate property under Louisiana law, La. R.S. § 19.2(8) and that its pipeline is “in the public interest and necessity.” *Id.*

By December 2017, asserting authority extended to it by the state of Louisiana, BBP had obtained easements, rights of way, and/or servitudes from well over 400 property owners in parishes through which the pipeline would run. The company also brought holdout landowners to court to expropriate their property.^{5, 6}

B. Agency Permits Granted Over Public Opposition Now Face Legal Challenges

While Defendant BBP was exercising eminent domain in eleven parishes, the proposed pipeline drew intense opposition and public interest, exemplified by the fact that hundreds of people turned out for hearings conducted by the Department of Natural Resources and the Department of Environmental Quality in early 2017 to express their opposition to the proposal.⁷

MacPherson, *North Dakota hits Energy Transfer Partners with more oversight charges: North Dakota assesses a fee to pay a contractor to monitor construction*, Tulsa World, Feb. 25, 2016, http://www.tulsaworld.com/business/energy/north-dakota-hits-energy-transfer-partners-with-more-oversight-charges/article_e9dbc0-b311-5ae7-8a95-1ba8b2a37749.html.

⁵ This estimate is based on a review of land records from ten of the eleven affected parishes on file with undersigned counsel.

⁶ For landowners, holding out against a “common carrier,” armed with the state’s power to expropriate when it decides to take one’s property is a costly, uphill battle particularly when the entity taking the property is a powerful and wealthy corporation. *See, e.g.,* Adam Millsap, *The Injustice of Eminent Domain*, U.S. News, Nov. 17, 2015, <https://www.usnews.com/opinion/economic-intelligence/2015/11/17/the-injustice-of-eminent-domain>. *See also,* Bryan Gruley, *Pipeline Billionaire Kelcy Warren Is Having Fun in the Oil Bust*, Bloomberg Markets, May 19, 2015, <https://www.bloomberg.com/news/features/2015-05-19/pipeline-billionaire-kelcy-warren-is-having-fun-in-the-oil-bust>. Consequently, those most often impacted and burdened by eminent domain are those with fewer financial and political resources, including the elderly, and minority communities. *See, e.g.,* Report: The Civil Rights Implications of Eminent Domain Abuse, U.S. Commission on Civil Rights, http://www.usccr.gov/pubs/FINAL_FY14_Eminent-Domain-Report.pdf; Brandon Gaille, *21 Eminent Domain Statistics*, BrandonGaille.com, May 25, 2017, <https://brandongaille.com/19-eminent-domain-statistics/>.

⁷ Dalfred Jones, *Supporters, opponents of Bayou Bridge Pipeline turn out for first public hearing*, KLFY.com, January 12, 2017, <http://klfy.com/2017/01/12/supporters-opponents-of->

Diverse opposition to the project has continued since the hearings, and has included crawfishers and others living and working in communities that would be affected by the pipeline.⁸

Despite extensive opposition and ongoing protests of the pipeline project by people from affected communities and environmental justice advocates, the Louisiana Department of Natural Resources granted the company a coastal use permit for the project.⁹ However, that decision is being challenged in court by people living in St. James who stand to be affected by the pipeline. Their suit is based, in part, on the grounds that the agency did not take into account the potential effects of spills on wetlands and drinking water, did not consider alternative routes and transportation methods, and did not follow the agency's own permitting guidelines.¹⁰

On December 14, 2017, the U.S. Army Corps of Engineers ("USACE") permitted the project without conducting an environmental impact study despite repeated requests for one by

[bayou-bridge-pipeline-turn-out-for-first-public-hearing/](#); Steve Hardy, *Showdown in Napoleonville: Supporters, opponents clash over Bayou Bridge Pipeline proposal*, The Advocate, February 8, 2017, http://www.theadvocate.com/acadiana/news/article_6b7ca9ce-ec93-11e6-8fbb-8fd900ee73c6.html.

⁸ See e.g., Sabrina Canfield, *Resistance Builds to New Louisiana Oil Pipeline*, Courthouse News, November 1, 2017, <https://www.courthousenews.com/resistance-builds-new-louisiana-oil-pipeline/>; Jody Meche, *Guest Column: Crawfishermen under threat as oil, gas companies show flagrant disregard for our way of life*, The Advocate, October 24, 2017, http://www.theadvocate.com/baton_rouge/opinion/article_7afdfae2-b83a-11e7-ad90-f77b6e7597e0.html.

One report supportive of the project was published by the Center for Energy Studies at Louisiana State University and has been cited in the media for the proposition that the pipeline will have a favorable economic impact in Louisiana. See, e.g., Lanie Lee Cook, *U.S. Army Corps of Engineers issues permit for Bayou Bridge*, KATC.com, Dec. 14, 2017, <http://www.katc.com/story/37070948/bayou-bridge-pipeline-energy-transfer-partners-tigerswan> However, that study was produced "on the behalf of," ETP. Rob Galbraith, *Bayou Bridge Pipeline report highlights oil industry capture at Louisiana State University*, Eyes on the Ties, Nov. 29, 2017, <https://news.littlesis.org/2017/11/29/bayou-bridge-pipeline-report-highlights-oil-industry-capture-at-louisiana-state-university/>

⁹ Julie Dermansky, *Breaking: Louisiana's Bayou Bridge Pipeline Is One Permit Closer to Reality as Groups Plan Continued Resistance*, Desmog, April 3, 2017, <https://www.desmogblog.com/2017/04/03/breaking-louisiana-s-bayou-bridge-pipeline-one-permit-closer-reality-groups-opposing-pipeline-plan-resistance>.

¹⁰ Mark Schleifstein, *Bayou Bridge Pipeline permit challenged in lawsuit*, The Times-Picayune, June 27, 2017, http://www.nola.com/environment/index.ssf/2017/06/st_james_residents_enviros_cha.html; Steve Hardy, *Bayou Bridge pipeline winds up in court as environmentalists, state square off*, The Advocate, Jan. 5, 2018, http://www.theadvocate.com/baton_rouge/news/environment/article_fb91e052-f254-11e7-a8ba-831cd3f1603d.html.

people from communities that stand to be affected by the pipeline. That permit is also being challenged in federal court by concerned groups.¹¹

C. BBP's Majority Owner and Operator ETP Retained Controversial Private Military Company for Security, Surveillance, Coordination with Law Enforcement Agencies, and Propaganda Campaign.

Plaintiffs asked specifically for BBP and ETP records having to do with private security firms because in the conduct of its activities as a common carrier elsewhere, ETP, the majority owner and operator of BBP, previously contracted with TigerSwan, LLC, a controversial private military company that provided security coordination, surveillance, and counter-messaging for ETP's operations around the Dakota Access Pipeline in North Dakota. Leaked internal documents revealed the company's characterization of and approach to pipeline opponents as "jihadist insurgencies."¹² TigerSwan applied for and was denied a license to operate in Louisiana by the Louisiana State Board of Private Security Examiners on July 7, 2017, presumably to support ETP's efforts in connection with the Bayou Bridge pipeline. It is now appealing the denial of its license application.¹³

As with other aspects of the pipeline project, there has been a high level of public interest in the role that TigerSwan has played in other ETP operations. The company has been the subject of in-depth reporting and public criticism as a result of its controversial tactics on behalf of ETP.¹⁴ Local reporting has noted that pipeline opponents are concerned that TigerSwan tactics

¹¹ Mark Schleifstein, *Environmental groups sue Corps to block Bayou Bridge Pipeline Permit*, The Times-Picayune, Jan. 11, 2018, http://www.nola.com/environment/index.ssf/2018/01/environmental_groups_sue_corps.html

¹² Alleen Brown, Will Parrish, Alice Speri, *Leaked Documents Reveal Counterterrorism Tactics Used at Standing Rock to 'Defeat Pipeline Insurgencies'*, The Intercept, May 27, 2017, <https://theintercept.com/2017/05/27/leaked-documents-reveal-security-firms-counterterrorism-tactics-at-standing-rock-to-defeat-pipeline-insurgencies/>.

¹³ *Private security firm that surveilled DAPL protests denied Louisiana license*, KATC.com, Jul. 20, 2017, available at [http://www.katc.com/story/35902508/private-security-firm-that-surveilled-dapl-protests-seekslouisiana-license-\(also-quote-one-former-military-official-who-denounced-the-tactics-as-extreme-by-all-measures\)](http://www.katc.com/story/35902508/private-security-firm-that-surveilled-dapl-protests-seekslouisiana-license-(also-quote-one-former-military-official-who-denounced-the-tactics-as-extreme-by-all-measures)); *See* <http://ethics.la.gov/LobbyistData/ResultsByCompRep.aspx?SearchParams=RepName.{tigerswan}&OrderBy=1>.

¹⁴ *See supra* n. 12; *See also*, Alleen Brown, Will Parrish, Alice Speri, *Part 5: TigerSwan Faces Lawsuit Over Unlicensed Security Operations in North Dakota*, The Intercept, June 28, 2017, <https://theintercept.com/2017/06/28/tigerswanfaces-lawsuit-over-unlicensed-security-operations-in-north-dakota/>; *Part 2: Standing Rock Documents Expose Inner Workings of 'Surveillance Industrial Complex'*, The Intercept, June 3, 2017, <https://theintercept.com/2017/06/03/standing-rock-documentsexpose-inner-workings-of-surveillance-industrial-complex/>.

are already having an impact in the state.¹⁵ In at least one case local opponents of the pipeline were so concerned that “none agreed to an on camera interview to prevent security operatives from identifying their faces.”¹⁶

D. Significant Public Interest in and Need for Relevant Records.

The records requested of BBP have to do with matters affecting property rights of Louisiana residents and landowners, environmental safety, and civil protest protected by the First Amendment to the U.S. Constitution and Art. I §§ 7, 9 of the Louisiana Constitution. The significant public interest in and media coverage of this matter are amply set out above. One other reported incident involving ETP underscores why access to relevant records is critical. Recently, the Federal Energy Regulatory Commission denied ETP a blanket certification for construction of its natural gas pipeline in Ohio – the Rover Pipeline – after reviewing emails that revealed that the company had purposefully demolished a historic home “to avoid additional costs and prolonged regulatory proceedings.”¹⁷

LAW AND ARGUMENT

The “right to know” is a fundamental right embodied in Article 12 section 3 of the Louisiana Constitution, which provides that “[n]o person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” The Louisiana Supreme Court has repeatedly instructed a broad reading of this provision:

The right of the public to have access to the public records is a fundamental right, and is guaranteed by the constitution. La. Const. art. 12, § 3. The provision of the constitution must be construed liberally in favor of free and unrestricted access to

¹⁵ *Supra* n. 16.

¹⁶ *Id.*

A civil rights lawsuit brought by opponents of a pipeline in Pennsylvania that is also being pursued by ETP alleges TigerSwan’s connection to smear campaigns targeting pipeline opponents in that state as well as in Louisiana. *See*, Complaint, ¶¶ 104-122, *Gerhart v. Energy Transfer Partners, L.P.*, No. 1:17-cv-01726-YK (M.D. Pa. Sept. 25, 2017).

¹⁷ Jamison Cocklin, *Emails Show Rover Demolished Historic House to Avoid Regs*, *FERC Says*, Dec. 1, 2017, <http://www.naturalgasintel.com/articles/112610-emails-show-rover-demolished-historic-house-to-avoid-regs-ferc-says>. Public access to the requested records under the Louisiana Public Records Act is even more critical in this case because oil pipelines, such as the proposed Bayou Bridge Pipeline are not regulated by the Federal Energy Regulatory Commission to the same extent as gas pipelines are. *See* <https://www.ferc.gov/industries/oil/enviro.asp> (noting “FERC has no jurisdiction over construction or maintenance of production wells, oil pipelines, refineries, or storage facilities. The Environmental Protection Agency has jurisdiction over oil spills.”). *See also*, Mark K. Lewis and D. Kirk Morgan II, *An uneven playing field exists in oil vs gas pipeline development*, *Oil & Gas Financial Journal*, Oct. 1, 2011, <http://www.ogfj.com/articles/print/volume-8/issue-10/features/an-uneven-playing-field-exists.html>.

the records, *and that access can be denied only when a law, specifically and unequivocally, provides otherwise.* Id. Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see. To allow otherwise would be an improper and arbitrary restriction on the public's constitutional rights.

In re Matter Under Investigation, 2007-1853 (La. 7/1/09), 15 So. 3d 972, 989 (emphasis in original) (internal citations omitted) citing *Capital City Press v. East Baton Rouge Parish Metropolitan Council*, 96-1979, p. 4 (La. 1997), 696 So.2d 562, 564. *See also*, *New Orleans Bulldog Society v LSPCA*, 2016-C-1809 (La. 2017) 222 So.3d 679, 684; *Shane v. The Parish of Jefferson*, 2014-2225, p. 9-10 (La. 2015), 209 So.3d 726, 735-36; *Title Research Corp. v. Rausch*, 450 So.2d 933, 936 (La. 1984). The Public Records Law gives effect to the right set out in the Louisiana Constitution and was not intended to qualify the right in any way. *Shane v. The Parish of Jefferson*, 2014-2225, p. 9-10 (La. 2015), 209 So.3d 726, 734-36 citing *Landis v. Moreau*, 00-1157 (La. 2001), 779 So.2d 691, 694-95. Rather, the law “must be liberally interpreted to enlarge rather than restrict the public’s access to public records.” *Treadway v. Jones*, 583 So.2d 119, 121 (La. App. 4 Cir. 1990).

I. Defendant Is an Instrumentality of the State and “Public Body” for Purposes of La. R.S. § 44:1.

The Public Records Law defines “public body” as:

“[A]ny branch, department, office, agency, board, commission, district, governing authority, political subdivision, or any committee, subcommittee, advisory board, or task force thereof, **any other instrumentality** of state, parish, or municipal government, including a public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function, or an affiliate of a housing authority.”

La. R.S. § 44:1(A)(1) (emphasis added).

The Louisiana Supreme Court recently affirmed that this definition includes a private nonprofit corporation serving as an instrumentality of government. *New Orleans Bulldog Society v LSPCA*, 2016-C-1809 (La. 2017) 222 So.3d 679. In doing so, the Court reiterated its earlier holding that the proper focus is on a given entity’s function when determining whether it is subject to the Public Records Law. *Id.* at 686, citing *State of Louisiana, et al. v. Nicholls College Foundation and Donald L. Peltier*, 564 So.2d 682 (La. 1990).

Defendant, by assuming common carrier status and exercising the power of eminent domain is operating as an instrumentality of the State and performing a governmental function.

Eminent domain is defined as “[t]he inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.” Black’s Law Dictionary (8th ed. 2004). *See also, Tennessee Gas Transmission Co. v. Violet Trapping Co.*, 248 La. 49, 84, 176 So. 2d 425, 438 (1965) (expropriation or eminent domain is the “power of the sovereign to take property for public use without the owner’s consent...,” “inherent in all government” and the “sovereign may delegate the power to... to public and private corporations”). Private entities to whom the power of eminent domain has been expressly delegated qualify under Louisiana law as agents of the government for purposes of establishing liability for unconstitutional takings. *Mongrue v. Monsanto Co.*, 249 F.3d 422, 429 (5th Cir. 2001).

BBP, as a common carrier, has been expressly delegated the power of eminent domain and is thus acting as an agent of the government. The Louisiana Constitution of 1974 specifically provides that private entities, to which the power to expropriate is delegated by law, may not take or damage property “except for a public and necessary purpose.” La. Const. Ann. Art. 1, § 4. Under state law, “all persons included in the definition of common carrier pipelines as set forth in R.S. 45:251” “may expropriate needed property.” La. R.S. § 19:2(8). “Common carrier” is defined as “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 the business conducted, or from the manner in which such business is carried on.” La. R.S. § 45:251.

The Louisiana Supreme Court has clearly identified corporations that have been given the power of eminent domain as “quasi public corporations” or “corporations affected with a public interest” and which “owe a duty to the public.” *State ex rel. Coco v. Riverside Irr. Co.*, 142 La. 10, 13, 76 So. 216, 218 (1917). In distinguishing such corporations from “ordinary private corporation[s],” the Court noted:

There is a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. This was [*sic*] of corporations is known as public service corporations, and in legal phraseology as quasi public corporations, or corporations affected with a public interest. A quasi public corporation may be said to be a private corporation which has given to it certain powers of a public nature, such, for instance, as the power of eminent domain, in order to enable it to discharge its duties for the public benefit, in which respect it differs from an ordinary private corporation, the powers of which are given and exercised for the exclusive advantage of its stockholders. Corporations strictly private are those the direct object of which is to promote private interests, and in which the public has no concern, except the indirect benefits

resulting from the promotion of trade and the development of the general resources of the country. They derive nothing from the government, except the right to be corporations and to exercise the powers granted. In all other respects, to the extent of their powers, they stand on the footing of natural persons, having such property as they may legally acquire, and holding and using it ultimately for the benefit of their stockholders.

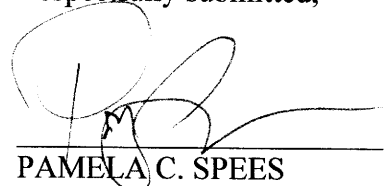
Id. at 218 (internal citation omitted).

In legal pleadings before courts in this State, Defendant BBP has itself asserted that its function is as a “common carrier” and “in the public interest and necessity.” *See e.g.*, Ex. A at ¶ 4. Common carriers, because of their function, serve as instrumentalities of the State and have been delegated the State’s power to take private property. This governmental function, in particular the power to expropriate, is such a weighty and profound authority with significant and profound impacts on Louisiana landowners and residents, the public interest in the matter requires that the company acting under color of law be subject to the transparency requirements of the Public Records Law.¹⁸

Conclusion

Defendant BBP, as a common carrier, is functioning as an instrumentality of the state and under color of law and as such must be subject to the Public Records Law.

Respectfully submitted,



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