

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

2018 CA 0417

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

PLAINTIFFS/APPELLANTS

VS.

BAYOU BRIDGE PIPELINE, LLC AND CHRIS MARTIN

DEFENDANTS/APPELLEES

**APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE, CIVIL CASE NO. 665373
THE HONORABLE R. MICHAEL CALDWELL, DIV. 24**

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CIVIL PROCEEDING

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JURISDICTIONAL STATEMENT

This is an appeal from a final judgment in a civil case, 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 January 25, 2018, after a hearing in Nineteenth Judicial District Court, East Baton Rouge Parish, Hon. Judge R. Michael Caldwell granted Defendant's Exception of No Cause of Action in an oral ruling in open court giving Appellants 15 days to amend their petition should they desire to do so; and providing that if not, the matter would be dismissed with prejudice. On February 5, 2018, Judge Caldwell signed a written order to that effect. R. 64. Plaintiffs-appellants timely filed their motion for appeal on February 21, 2018, in accordance with La. C.C.P. art. 2087(A)(1). R. 66. The order granting the motion for appeal was signed by the district court on February 26, 2018. R. 69. On May 29, 2018, the District Court issued a further order clarifying that because Plaintiffs had not amended their pleading within the time provided in the original order, the matter was dismissed with prejudice. R. 103. This appeal is timely filed pursuant to the orders of this Court.

STATEMENT OF THE CASE

This appeal presents the question of whether a private entity to which the state of Louisiana has delegated its sovereign power of eminent domain, which can only be exercised for a public and necessary purpose, is acting under color of law and as an instrumentality of the state and therefore subject to the Louisiana Public Records Law.

Atchafalaya Basinkeeper, Louisiana Bucket Brigade, and 350 New Orleans ("Appellants") brought this action under the Louisiana Public Records Law, La. R.S. § 44:1 *et seq.*, against Defendants Bayou Bridge Pipeline, LLC, ("BBP") and

Chris Martin (“Defendants” or “Appellees”).¹ Petition for Writ of Mandamus

Under the Louisiana Public Records Act and Memorandum of Law in Support, R.

3-32. BBP is a Delaware limited liability company formed by its members, Energy Transfer Partners and Phillips 66 Partners, LP, and is in the process of constructing a 162-mile oil pipeline through eleven parishes in Louisiana. R. 4, ¶ 5; 34, ¶ 5.

Claiming “common carrier” status, BBP has exercised the power of eminent domain over hundreds of properties along the pipeline route. R. 3, 5.

On December 6, 2017, Plaintiffs directed a public records request to BBP on the grounds that the “company has claimed authority to expropriate private property in Louisiana pursuant to ‘common carrier’ status under La. R.S. § 45:251(1),” and was “functioning as an instrumentality of the government.” R. 28. The request sought records relating to a) the acquiring of easements or rights of way, or expropriation of, private property in connection with the proposed pipeline; b) communications with local, parish, state and federal agencies and/or offices concerning the proposed pipeline and opposition thereto; c) public opposition to the proposed pipeline, including individuals and organizations opposing the pipeline, including records of surveillance or other operations by private security companies; d) records relating to communications with officials, staff, or entities affiliated with the Center for Energy Studies at Louisiana State University; and c) to public relations messaging about the pipeline including with regard to safety concerns. *Id.*

Counsel for Defendant BBP replied on December 15, 2017, that “we fundamentally disagree” that BBP “is subject to the Public Records Act in the manner that you have described” and was not obligated to produce the records

¹ Martin was sued as president of BBP and therefore as custodian of records for the company, pursuant to La. R.S. § 44:1(3). *See also New Orleans Bulldog Soc’y v. Louisiana Soc’y for the Prevention of Cruelty to Animals*, 2016-1809 (La. 5/3/17); 222 So.3d 679.

requested. R. 32. Plaintiffs then filed this action on January 16, 2018, pursuant to La. R.S. § 44:35(A) seeking to enforce their rights under the Public Records Law.

Defendants filed four exceptions prior to the hearing scheduled on the mandamus petition on January 25, 2018. R. 33. At the hearing, the trial court took up and addressed one of them – the peremptory exception of no cause of action “on the ground that Bayou Bridge is not a ‘public body’ with a ‘custodian’ under La. R.S. § 44:1.” *See id.*; R. 90-95. Following oral argument, the trial court sustained the exception in an oral ruling from the bench, holding in particular that “there is no basis for making this private, for-profit corporation subject to the public records act.” R. 94:7-8.

In arriving at that conclusion, the trial court based its ruling in large part on an erroneous reading of a key footnote in a recent decision from the Louisiana Supreme Court, and in the process misapplied several authorities referenced therein in a way that Court explicitly warned against. The trial court held that BBP did not meet the four criteria out in *State v. Smith*, 357 So.2d 505 (La. 1978) to determine when an entity is to be considered public. *See* R. 92:13-94:16.

However, in the same footnote relied upon by the trial judge, the Louisiana Supreme Court clearly stated that their cases applying the *Smith* factors were “distinguishable” and not applicable when it is undisputed that an entity is private for purposes other than applicability of the public records law. *See New Orleans Bulldog Soc’y v. Louisiana Soc’y for the Prevention of Cruelty to Animals*, 2016-1809 (La. 5/3/17, 10); 222 So.3d 679, 686 n. 5.

In “an abundance of caution,” the trial court allowed Plaintiffs 15 days to amend their petition even though it stated it could not “foresee any circumstances under which this corporation would become subject to the public records act.” R. 94:17-27. The trial court ruled that if Plaintiffs failed to amend within the time provided, the action would be dismissed. The oral ruling was followed by a signed

order to that effect without written opinion. R. 64. Plaintiffs did not amend the petition within the time allowed, rendering the petition dismissed. On May 29, 2018, the trial court issued a final judgment with decretal language clarifying that in light of the fact that Plaintiffs did not amend their petition, the action was dismissed without prejudice. R 103.

ASSIGNMENT OF ERROR

1. The trial court erred in finding that BBP, a private, for profit-corporation acting as a common carrier and exercising eminent domain for a public and necessary purpose, pursuant to the authority granted to it by the Louisiana Constitution and laws, was not acting under color of law and/or as an instrumentality of the state, and therefore not subject to the Louisiana Public Records Law.

ISSUE PRESENTED FOR REVIEW

1. Whether BBP, a private, for profit-corporation acting as a common carrier and exercising eminent domain over private property for a public and necessary purpose pursuant to the Louisiana Constitution and laws, is acting under color of law and as an instrumentality of the state, and therefore subject to the Louisiana Public Records Law?

STATEMENT OF FACTS

BBP is a Delaware limited liability company authorized to do business in Louisiana with its principal place of business in Texas. R. 4, ¶ 5. BBP is a joint venture between Energy Transfer Partners and Phillips 66 Partners, LP, for purposes of constructing a 162-mile pipeline through eleven parishes in Louisiana. *Id.* BBP has claimed “common carrier” status and the authority to expropriate private property 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... .” and La. R.S. § 19:2(8), which vests common carriers with expropriation authority. R. 5, ¶ 10; 23, ¶ 4.

While vesting private entities authorized by law with the power to take privately owned land, the Louisiana Constitution of 1974 provides that such entities may do so only for a “public and necessary purpose.” La. Const. art. I, § 4(B)(4). Additionally, as a common carrier, prior to pursuing takings of privately-owned property, BBP is required to comply with a number of legal requirements which are intended to serve as procedural due process safeguards. Specifically, prior to exercising the rights of expropriation, BBP is required to:

(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.

(c) 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.

La. R.S. § 19:2.2(A). In addition, the law places additional requirements on private entities with expropriating authority, like BBP, in the event an agreement cannot be reached with a property owner, including that BBP provide the owner a notice that includes:

(1) A statement that the property owner is entitled to receive just compensation for the property to be acquired to the fullest extent allowed by law.

(2) A statement that the property may be expropriated only by an authority authorized by law to do so.

(3) A statement that the property owner is entitled to receive from the expropriating authority a written appraisal or evaluation of the amount of compensation due.

(4) A statement identifying the website of the expropriating authority where the property owner can read the expropriation statutes upon which the expropriating authority relies or a copy of the expropriation statutes upon which the expropriating authority relies.

(5) A statement offering to provide upon request of the property owner a copy of the expropriation statutes upon which the expropriating authority relies.

(6) A statement identifying an agency responsible for regulating the expropriating authority, including the name, website, and telephone number of the agency.

(7) A statement that the property owner may hire an agent or attorney to negotiate with the expropriating authority and an attorney to represent the property owner in any legal proceedings involving the expropriation.

La. R.S. §19:2.2(B). In the event agreement still cannot be reached, at least thirty days prior to filing a petition for expropriation in court, expropriating authorities like BBP are required to send the property owner a letter by certified mail, return receipt requested, setting forth in detail or attaching the following:

(1) The basis on which the expropriating authority exercises its power.

(2) The purpose, terms, and conditions of the proposed acquisition.

(3) The compensation to be paid for the rights sought to be acquired.

(4) A complete copy of all appraisals of, or including, the subject property previously obtained by the expropriating authority.

(5) A plat of survey signed by a Louisiana licensed surveyor illustrating the proposed location and boundary of the proposed acquisition, and any temporary servitude or work spaces. If the expropriating authority is unable to obtain access to the property for formal surveying, a plat that fairly identifies the proposed boundary and servitude may be utilized.

(6) A description and proposed location of any proposed above-ground facilities to be located on the property.

(7) A statement by the entity of considerations for the proposed route or area to be acquired.

La. R.S. § 19:2.2(C).

By at least some point in 2016 and prior to receiving necessary permits for its proposed pipeline, BBP began exercising eminent domain in pursuit of easements and/or servitudes across hundreds of privately-owned properties and bringing expropriation proceedings when negotiations with landowners failed. R. 3-5, 12. In expropriation proceedings, BBP asserted that the pipeline “is in the public interest and necessity.” R. 5, ¶ 10; 23, ¶ 4. BBP further asserted that the pipeline “will be a much needed expansion to an integral part of the nation’s oil pipeline infrastructure and is being constructed to provide increased and needed access and to enable the transportation of larger volumes of domestically produced crude to existing Louisiana crude refining facilities.” R. 22, ¶ 3. BBP also asserted in those cases that it had complied with the legal requirements under La. R.S. § 19:2.2 prior to initiating the expropriation proceeding. R. 25, ¶ 10.

The proposed 162-mile route would have the pipeline running crude oil through public and private property, including through agricultural land, wetlands, 700 bodies of water, including the Atchafalaya Basin, as well as Bayou LaFourche, which the source of drinking water for surrounding communities. R. 3-4; R. 11. 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. R. 3; R. 5, ¶ 10.

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... .” R. 28. The request included:

- 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.

The request sought public records from BBP on the grounds that it claimed authority to expropriate private property as a “common carrier” as defined in La. R.S. § 45:251 and was functioning as an instrumentality of the government. *Id.*²

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.” R. 32.

On January 16, 2018, Plaintiffs filed the Petition for a Writ of Mandamus seeking to enforce their rights under the Public Records Law. A hearing on Defendants’ Peremptory Exception of No Cause of Action was held on January 25, 2018, at which time the Court sustained the exception, finding that BBP, as a for-

² Plaintiffs also requested a fee waiver on the basis that the “requested information” was not being sought for commercial purposes and was “in the public interest,” as evidenced by extensive news reporting about the controversy over the project. R 6, ¶ 14.

profit corporation exercising eminent domain for a public purpose was not subject to the Public Records Law. R. 90-94. Plaintiffs then brought this appeal.

SUMMARY OF THE ARGUMENT

BBP, through its common carrier status and exercise of the sovereign power of eminent domain over privately-owned properties in 11 parishes for a public and necessary purpose, is acting as a instrumentality of the state, or a “quasi-public corporation ” with “powers of a public nature,” and should be subject to the Louisiana Public Records Law. Its records are “public records” as defined in La. R.S. § 44:1(A)(2) because they relate to transactions, work, duties, or functions, conducted “under the authority of the constitution or laws of this state” and/or because they concern “the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state.”

The right of the public to have access to public records is a fundamental right, and is guaranteed by the Louisiana constitution. Access can only be denied when a law, specifically and unequivocally, provides otherwise. 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. *See In re Matter Under Investigation*, 2007-1853 (La. 7/1/09); 15 So. 3d 972, 989.

The Louisiana Constitution also grants to every person “the right to acquire, own, control, use, enjoy, protect, and dispose of private property.” La. Const, art. I, § 4(A). The Louisiana Supreme Court has observed, “[e]xpropriation, or eminent domain... is the power of the sovereign to take property for public use without the owner’s consent.” *Tennessee Gas Transmission Co. v. Violet Trapping Co.*, 176 So. 2d 425, 438 (1965) (internal citations omitted). The power is “inherent in all government” and the sovereign may delegate that power to “administrative officers or other agencies of the sovereign and to public and private corporations.” *Id.*

The Louisiana Constitution codifies the delegation of this sovereign power providing that private entities authorized by law to expropriate private property may only do so for a “public and necessary purpose.” La. Const. 1974 art. I, § 4(B)(4). Private corporations formed to construct and operate petroleum pipelines, or “engaged in the transportation of petroleum as public utilities and common carriers for hire,” are among those entities authorized by law to “expropriate needed property.” *See* La. R.S. § 19:2(8); La. R.S. § 45:251.

The Louisiana Supreme Court long ago identified private corporations that have been given the power of eminent domain as “quasi public corporations” or “corporations affected with a public interest” which “owe a duty to the public” – noting that they are different in kind from “ordinary private corporation[s].” *State ex rel. Coco v. Riverside Irr. Co.*, 76 So. 216, 218 (1917). Indeed, private entities to which 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. *See Mongrue v. Monsanto Co.*, 249 F.3d 422, 429 (5th Cir. 2001).

BBP, because it has been vested with the state’s power of eminent domain which it can only assert for a public and necessary purpose, is: a) acting as an instrumentality of the State when it does so and falls within the definition of “public body” for purposes of the Public Records Law; and b) its records constitute public records as defined in the statute because they relate to transactions, work, duties, or functions, conducted “under the authority of the constitution or laws of this state” and/or because they concern “the receipt or payment of any money received or paid by or under the authority of the constitution or the laws of this state.” La. R.S. § 44:1(A)(1-2).

Finally, the fact that a private entity exercising such a remarkable and invasive state power as eminent domain is for-profit weighs even more heavily in

favor of rendering it subject to the transparency intended under the Public Records Law. The Louisiana Supreme Court has held that a private, non-profit corporation in contract with the city of New Orleans to provide animal control services was subject to the Louisiana Public Records Law. *New Orleans Bulldog Soc'y v. Louisiana Soc'y for the Prevention of Cruelty to Animals*, 222 So.3d 679 (La. 2017). A private corporation vested with the exceptional “taking” power, which can dramatically affect the rights and properties of Louisiana landowners, should be no less subject to the transparency afforded by the Public Records Law.

LAW AND ARGUMENT

As an appeal of the trial court’s ruling sustaining BBP’s peremptory exception of no cause of action, the assignment of error in this matter is purely a question of law to be reviewed *de novo*. *Robinson v. N. Am. Royalties, Inc.*, 470 So.2d 112, 114 (La.1985); *see also, Specialized Loan Servicing, L.L.C. v. January*, 12-2668 (La. 06/28/13); 119 So. 3d 582, 584 (“*de novo* review means the court will render judgment after its consideration of the legislative provision at issue, the law and the record, without deference to the legal conclusions of the tribunals below”).

I. Access to Public Records Is a Fundamental Right and May Only Be Denied When a Law Specifically and Unequivocally Provides Otherwise.

The “right to see” is a fundamental right embodied in article XII 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.” La. Const. art. XII, § 3. 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 the records, and that *access*

can be denied only when a law, specifically and unequivocally, provides otherwise. 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 (La. 1997); 696 So.2d 562, 564. See also, *New Orleans Bulldog Society v LSPCA*, 222 So.3d at 684; *Shane v. The Parish of Jefferson*, 2014-2225 (La. 2015); 209 So.3d 726, 735-36; *Title Research Corp. v. Rausch*, 450 So.2d 933, 937 (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, supra* at 734-36. 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).

There is no authority that “specifically and unequivocally” denies access to the records sought from BBP in this matter. The Louisiana Supreme Court has emphasized that in determining whether an entity is subject to the Public Records Law, the proper focus is on the entity’s function. *New Orleans Bulldog Society v LSPCA*, 222 So.3d at 686.

II. BBP Is an Instrumentality of the State, Serving a Governmental or Proprietary Function, and a “Public Body” for Purposes of La. R.S. § 44:1.

As a common carrier vested by the legislature with the power to exercise eminent domain to perform a governmental or proprietary function for a public and necessary purpose, BBP is a public body for purposes of the Public Records Law.

The statute 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).

A. Eminent Domain Is an Exceptional and Quintessential State Power That Has Been Vested in Private Entities Serving as Common Carriers for a Public Purpose and Necessity.

The Louisiana Constitution grants to every person “the right to acquire, own, control, use, enjoy, protect, and dispose of private property.” La. Const., art. I, § 4(A). The Louisiana Supreme Court has observed, “[e]xpropriation, or eminent domain... is the power of the sovereign to take property for public use without the owner’s consent.” *Tennessee Gas Transmission Co. v. Violet Trapping Co.*, 176 So. 2d 425, 438 (La. 1965) (citations omitted). The power is “inherent in all government” and the sovereign may delegate that power to “administrative officers or other agencies of the sovereign and to public and private corporations.” *Id.* Expropriation “is special and exceptional in character, in derogation of common right, and as such must be strictly construed.” *Orleans-Kenner Elec. Ry. v. Metairie Ridge Nursery Co.*, 68 So. 93, 95 (La. 1915).

The Louisiana Constitution codifies the delegation of this sovereign power by providing that private entities authorized by law to expropriate private property may only do so for a “public and necessary purpose.” La. Const. 1974 art. I, § 4(B)(4). Private corporations formed to construct and operate petroleum pipelines, or “engaged in the transportation of petroleum as public utilities and common carriers for hire,” are among those entities authorized by law to “expropriate needed property.” *See* La. R.S. § 19:2(8); La. R.S. § 45:251.

The right of expropriation “is dependent not upon the public character and nature of the corporation but upon *the public purposes and public interests which are served* by such corporation.” *Central Louisiana Electric Company v. Pugh*, 96

So. 2d 523, 525 (La. Ct. App. 1957) (emphasis added). Courts in Louisiana have long held that in determining public purpose of operations by private entities, “It scarcely needs observation that the production, manufacture, transmission and sale of electricity or gas or any other source of power designed for use by the general public, is a legitimate *function* and purpose of a private business corporation.” *Id.* at 525-26 (emphasis added).

The Louisiana Supreme Court has clearly identified corporations vested with the power of eminent domain as “quasi public corporations” or “corporations affected with a public interest” which “owe a duty to the public.” *State ex rel. Coco v. Riverside Irr. Co.*, 76 So. 216, 218 (La. 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).

It is also significant that 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) (holding that because Monsanto was not among those entities authorized by law to expropriate private property, it could not be held liable for an unconstitutional taking or expropriation). Further, “all corporations endowed with the power of expropriation are public service corporations” obligated by law to “serve the public without discrimination.” *Illinois Cent. R. Co. v. Mayeux*, 301 F.3d 359, 363-64 at n. 18 (5th Cir. 2002) (quoting Melvin G. Dakin & Michael R. Klein, *EMINENT DOMAIN IN LOUISIANA* 360 (1970)).

BBP, asserting common carrier status, has exercised the power of eminent over privately-owned properties in 11 parishes in Louisiana. It has done so under color of law, under the authority delegated to it by the Constitution and by statute to expropriate for a public and necessary purpose. In legal pleadings before courts in this State, BBP has asserted that its function as a “common carrier” is “in the public interest and necessity” and further that its pipeline “will be a much needed expansion to an integral part of the nation’s oil pipeline infrastructure and is being constructed to provide increased and needed access and to enable the transportation of larger volumes of domestically produced crude to existing Louisiana crude refining facilities.” R. 23, ¶ 3.

Despite the jurisprudence acknowledging the special, “quasi public” status of corporations like BBP, vested with eminent domain power and which may only use that power for a public and necessary purpose, the trial court held that “there is no basis for making this private, for-profit corporation subject to the public records act.” R. 94:7-8. In arriving at that conclusion, the trial court based its ruling in large part on an erroneous reading of a key footnote in a recent decision from the Louisiana Supreme Court, and in the process misapplied several authorities in a way that Court warned against. The trial court held that BBP did not meet the four criteria set out in *State v. Smith*, 357 So.2d 505 (La. 1978) to determine when an

entity is to be considered public. *See* R. 92:13-93:22. The trial judge considered each factor and cases applying the *Smith* factors cited in footnote 5 of the *Bulldog* opinion, even noting case law which held that all factors must be present for an entity to be considered public. However, in the same footnote, the Louisiana Supreme Court clearly stated that their cases applying the *Smith* factors were “distinguishable” and not applicable when it is undisputed that an entity is private for purposes other than applicability of the public records law. *See New Orleans Bulldog Soc’y v. LSPCA*, 222 So.3d at 686 n. 5. Thus, the trial court applied an incorrect and inapplicable analysis in arriving at his conclusion that BBP is not subject to the Public Records Law.

The trial court also attempted to distinguish this matter from another aspect of *Bulldog*, where the Supreme Court held that a nonprofit corporation performing animal control services for the city of New Orleans was subject to the Public Records Law. The trial court observed: “But there [the LSPCA] was, number one, a nonprofit corporation; it was, number two, doing things for the city of New Orleans that the city of New Orleans would have had to do for itself.” R. 91:29-32.

The trial court’s attempt to distinguish the two situations also fails because their situations are analogous with respect to the trial court’s second point. Common carriers were deemed to carry out functions or provide services which were historically considered necessary and of benefit to the general public, which is why they were delegated the power of eminent domain in the first place. The limitation placed on private entities in the constitution – that the expropriation must be for a “public and necessary purpose” – is itself an acknowledgment that the functions or services provided by designated private entities were considered to be for the benefit of the public – *and* necessary. *See e.g., State ex rel. Coco v. Riverside Irr. Co.*, 76 So. at 218 (1917) (“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”) (emphasis added).

Given its stated status, purpose, and function, BBP is not an “ordinary private corporation.” It has been given a “special franchise,” or “certain powers of public nature” which it must use for the public benefit and which render it a “quasi public corporation” -- one that is “affected with a public interest” and “which owes a duty to the public.” *See id.* at 218.

B. BBP’s Records are ‘Public Records’ Because They Concern Transactions, Work, Duties, or Functions Performed ‘Under the Authority of the Constitution or Laws’ of the State of Louisiana.

Any documents or other types of records created, prepared, received, or maintained in connection with BBP’s function, public purpose, and exercise of eminent domain are public records. Public records are defined as:

(2)(a) All books, records, writings, accounts, letters and letter books, maps, drawings, photographs, cards, tapes, recordings, memoranda, and papers, and all copies, duplicates, photographs, including microfilm, or other reproductions thereof, or any other documentary materials, regardless of physical form or characteristics, including information contained in electronic data processing equipment, having been used, being in use, or prepared, possessed, or retained for use in the conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or *under the authority of the constitution or laws of this state*, or by or under the authority of any ordinance, regulation, mandate, or order of any public body or concerning the receipt or payment of any money received or paid by *or under the authority of the constitution or the laws of this state*, are “public records”, except as otherwise provided in this Chapter or the Constitution of Louisiana.

La. R.S. § 44:1(A)(2) (emphasis added).

In sustaining BBP’s exception of no cause of action, the trial court stated, “There is nothing to show that any records that the Plaintiffs seek in this case are public records.” R. 93:23-25. Yet BBP’s exercise of eminent domain is done under

the authority of the constitution *and* state law. La. Const. art. I, sec. 4(B)(4), provides that private entities may expropriate private property but only for a public and necessary purpose. La. R.S. § 19:2(8) and La. R.S. § 45:251 specifically provide that common carriers like BBP may expropriate. La. R.S. § 19:2.2 sets out the procedures BBP must follow prior to expropriating, i.e. the procedural due process safeguards attending its exercise of eminent domain, such as good-faith negotiation, appraisals, and specific notice requirements – including notifying the property owners that the company has the power to expropriate the property.

Records created or obtained in the course of BBP’s exercise of eminent domain are public records in that they relate to the “conduct, transaction, or performance of any business, transaction, work, duty, or function which was conducted, transacted, or performed by or *under the authority of the constitution or laws of this state.*” Records relating to the negotiation, purchase, and sale, of property by a corporation asserting eminent domain before or after expropriation fall squarely within the definition of public records in that it involves “the receipt or payment of any money received or paid by or *under the authority of the constitution or the laws of this state.*” La. R.S. § 44:1(A)(1-2) (emphasis added). *See also New Orleans Bulldog Society v. LaSPCA*, 222 So.3d 679 (the organization was required to disclose all documents that pertained to its functions, duties, and responsibilities to enforce city municipal code; not just recordkeeping undertaken in compliance with its contract with the city).

C. The Fact that the Expropriating Authority Is a Private Corporation Is More, Not Less, Reason to Hold It Subject to the Public Records Law.

As set out above, the Louisiana Supreme Court has already observed that private corporations with the power of eminent domain to exercise for a public and necessary purpose are different from “ordinary private corporations” and are in fact

“quasi public corporations” “affected with a public interest.” *State ex rel. Coco v. Riverside Irr. Co.*, 76 So. at 218 (1917)

The Louisiana Supreme Court early on expressed concern about the extension of the power of eminent domain to private corporations:

We think that the privilege of exercising that high prerogative power is extended only exceptionally, and that the favored corporation must qualify strictly within the exception, and that it does not so qualify if it is organized also for purposes purely private. Such a corporation might, on the pretense *910 of subserving the public purposes of its organization, exercise the sovereign power of eminent domain in aid of its purely private business; and thus perpetrate the enormity of forcibly divesting one citizen of his property for the benefit of the private business of another...

Louisiana Navigation & Fisheries Co. v. Doullut, 38 So. 613, 615 (La. 1905).

At the hearing on the exception of no cause of action, the trial court noted that BBP is not a nonprofit corporation so the inclusion of that type of entity in the statute’s definition of “public entity” would not apply. R. 91:16-19 (“...no one has alleged, and I don’t think anyone believes, that Bayou Bridge Pipeline is trying to do this as a nonprofit corporation so that would not apply”). In explaining his ruling that BBP was not subject to the public records law in part because the state “was not going to be the sole beneficiary” of “Bayou Pipeline’s activities,” the trial court went on to state, “I’m sure that Bayou Pipeline’s hope is that it will be the sole beneficiary of any monetary reward from... resulting from this pipeline.” R. 93:11-16.

While the Public Records Law explicitly references nonprofit corporations, it does not explicitly exclude for-profit corporations when they are acting as instrumentalities of the state. *See* La. R.S. 44:1(A)(1) (“public body” includes a “public or quasi-public nonprofit corporation designated as an entity to perform a governmental or proprietary function...”). The right of public access set out in the article XII, § 3 of the constitution “must be construed liberally in favor of free and

unrestricted access to the records, and “access can be denied only when a law, specifically and unequivocally, provides otherwise.” *In re Matter Under Investigation*, 15 So. 3d at 989. Further, whenever there is doubt, “the doubt must be resolved in favor of the public's right to see.” *Id.*

The Louisiana Supreme Court anticipated that its ruling in the *Bulldog* case could affect different types of private entities, whether non-profit or for-profit. In response to *amicus curiae* briefs submitted in that case expressing concern about the “chilling effect” of the Court’s ultimate ruling on an array of businesses and entities that typically contract with municipalities, the Court noted that it “must also be ever cognizant of the public’s well-established constitutional right to access information.” *New Orleans Bulldog Soc’y v. LSPCA*, 222 So.3d at 688, n. 8.

The fact that an entity exercising that “high prerogative power” of eminent domain for a public and necessary purpose is a for-profit corporation only adds to the necessity of ensuring they are subject to the transparency intended by the Public Records Law.

CONCLUSION

WHEREFORE, for the foregoing reasons, appellants pray this court reverse the trial court’s ruling below dismissing their action under the Public Records Law, and remand for further proceedings as appropriate.

June 6, 2018

Respectfully submitted,

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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 6th day of June 2018 by email to the following counsel for Appellees:

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Attorney for Plaintiffs-Appellants

APPENDIX

APPENDIX A

APPENDIX B

1 MONSANTO COULD THEN BE RESPONSIBLE FOR A TAKING. AGAIN,
2 THAT'S THE DISTINCTION. MONSANTO, EVEN IN THIS CASE, HAD
3 THEY HAD THE POWER -- IT WAS ULTIMATELY DETERMINED THEY
4 DIDN'T -- BUT HAD THEY HAD THE POWER, WHAT THE COURT IS
5 CLEARLY STATING IS MONSANTO THEN WOULD HAVE BEEN
6 RESPONSIBLE TO PAY DAMAGES FOR AN UNCOMPENSATED OR AN
7 UNCONSTITUTIONAL TAKING, NOT THE STATE OF LOUISIANA.

8 THAT IS THE POINT THAT I THINK THAT THE PLAINTIFFS,
9 NOT JUST MISS, BUT IGNORE. BUT WE WOULD URGE THE COURT
10 NOT TO IGNORE THAT. THIS IS A COMPLETELY DIFFERENT
11 SITUATION. AND, CLEARLY, UNDER THESE CIRCUMSTANCES,
12 BAYOU BRIDGE PIPELINE, UNDER THE PLAIN ALLEGATIONS OF THE
13 PETITION, IS NOT AN INSTRUMENTALITY OF THE STATE AND
14 CANNOT BE AN INSTRUMENTALITY OF THE STATE.

15 **THE COURT:** THANK YOU.

16 **MS. SPEES:** YOUR HONOR.

17 **THE COURT:** (TO MS. SPEES) NO, MA'AM. I DON'T ALLOW
18 SURREBUTTAL. I'M SORRY. THIS -- THIS HAS BEEN MY RULE
19 FOR TWENTY-ONE YEARS SO...

20 (TO COUNSELS) THIS IS SUIT NUMBER 665,373;

21 ***ATCHAFALAYA BASKINKEEPER VERSUS BAYOU BRIDGE PIPELINE.***

22 THIS IS A PUBLIC RECORDS REQUEST. I KNOW THIS IS A HOT
23 TOPIC: THIS PIPELINE AND ITS TRAVERSING THE ATCHAFALAYA
24 BASIN AND OTHER AREAS OF THE STATE. IT'S BEEN IN THE
25 NEWS QUITE A BIT LATELY; IT'S A MATTER OF GREAT PUBLIC
26 INTEREST. WHAT IS BEFORE ME TODAY THOUGH DOES NOT IN ANY
27 WAY ADDRESS THE MERITS OF THE PIPELINE, WHETHER IT'S A
28 GOOD IDEA OR NOT A GOOD IDEA. IT DOESN'T ADDRESS WHETHER
29 THEY PROPERLY HAVE THE RIGHT PERMITS OR THEY DON'T OR
30 WHETHER THE STATE WAS PROPER IN DOING IT OR WHATEVER.
31 BUT IT IS ONLY A PUBLIC RECORDS REQUEST.

32 WELL, LET ME FIRST ADDRESS ONE THING RAISED BY MS.

1 SPEES. MS. SPEES SAYS THAT THE CORPORATION CAN BE
2 SUBJECT TO MANDAMUS UNDER ARTICLE 3864; AND THAT IS
3 CORRECT BUT IT'S UNDER VERY LIMITED CIRCUMSTANCES SET
4 FORTH IN PARAGRAPHS "A" AND "B" OF THAT ARTICLE, AND NONE
5 OF THOSE CRITERIA UNDER THAT ARTICLE APPLY IN THIS CASE.
6 BUT THAT'S BESIDE THE POINT FOR ME, AS FAR AS I'M
7 CONCERNED. AS WITH MOST THINGS, AND AS DICTATED BY THE
8 SUPREME COURT IN THE **BULLDOG** DECISION EVERYBODY'S BEEN
9 REFERRING TO, WE MUST START WITH THE STATUTE AND THE
10 WORDS OF THE STATUTE. AND THE PUBLIC RECORDS STATUTE
11 FOUND IN R.S. 44:1, GENERAL DEFINITIONS, STATES THAT A
12 PUBLIC BODY MEANS ANY INSTRUMENTALITY OF THE STATE,
13 PARISH, OR MUNICIPAL GOVERNMENT, INCLUDING A PUBLIC OR
14 QUASI PUBLIC NONPROFIT CORPORATION DESIGNATED AS AN
15 ENTITY TO PERFORM A GOVERNMENTAL OR PROPRIETARY FUNCTION.

16 WELL, NUMBER ONE, NO ONE HAS ALLEGED, AND I DON'T
17 BELIEVE ANYONE BELIEVES, THAT BAYOU BRIDGE PIPELINE IS
18 TRYING TO DO THIS AS A NONPROFIT CORPORATION SO THAT
19 WOULD NOT APPLY. SO THE QUESTION IS: IS IT AN
20 INSTRUMENTALITY OF THE STATE, AND IS IT ATTEMPTING TO
21 PERFORM A GOVERNMENTAL OR PROPRIETARY FUNCTION? NOW,
22 IT'S THE ARGUMENT OF THE PLAINTIFFS THAT BY EXPROPRIATING
23 PROPERTY FOR A SO-CALLED "PUBLIC PURPOSE," THAT THAT
24 MAKES IT AN ENTITY THAT IS PERFORMING A GOVERNMENTAL
25 FUNCTION, BUT THERE'S MORE THAT GOES INTO THE DECISION.
26 AS MENTIONED IN THE **NEW ORLEANS BULLDOG SOCIETY VERSUS**
27 **LOUISIANA SOCIETY FOR THE PREVENTION OF CRUELTY TO**
28 **ANIMALS**, THE COURT FOUND THAT THE S.P.C.A. WAS A -- A
29 PUBLIC ENTITY PERFORMING A PUBLIC FUNCTION: BUT THERE IT
30 WAS, NUMBER ONE, A NONPROFIT CORPORATION; IT WAS, NUMBER
31 TWO, DOING THINGS FOR THE CITY OF NEW ORLEANS THAT THE
32 CITY OF NEW ORLEANS WOULD HAVE HAD TO DO FOR ITSELF

1 OTHERWISE.

2 THERE'S NO SHOWING HERE THAT THE STATE OF LOUISIANA
3 WOULD GO IN AND BUILD PIPELINES. I THINK THEY WOULD BE
4 PROHIBITED FROM BUILDING A FOR-PROFIT PIPELINE IN ANY
5 WAY. WHAT THE -- I FOUND MORE TELLING, HOWEVER, WAS THE
6 COURT'S REFERENCE IN THE **BULLDOG** CASE TO THE **STATE OF**
7 **LOUISIANA VERSUS NICHOLLS COLLEGE FOUNDATION** WHICH
8 ADDRESSED THE NONPROFIT CORPORATION OF THE FOUNDATION
9 ATTEMPTING TO RAISE MONEY FOR THE USE AND BENEFIT OF THE
10 PUBLIC ENTITY, NICHOLLS STATE UNIVERSITY, A STATE-RUN OR
11 A STATE-OWNED AND RUN UNIVERSITY; AND THAT WAS A QUESTION
12 OF WHETHER THAT FOUNDATION WAS SUBJECT TO THE PUBLIC
13 RECORDS LAW, WHICH IS THE QUESTION BEFORE ME. AND
14 FOOTNOTE FIVE OF THE SUPREME COURT DECISION STATES: IT
15 IS IMPORTANT TO NOTE THE DISTINCTION OF THIS CASE FROM
16 THE COURT'S OPINION IN **PROPERTY INSURANCE ASSOCIATION OF**
17 **LOUISIANA VERSUS THERIOT** WHERE THE COURT CONCLUDED THAT
18 THE PROPERTY INSURANCE ASSOCIATION OF LOUISIANA WAS A
19 PRIVATE ENTITY FINDING IT FIT UNDER FOUR FACTORS
20 PREVIOUSLY ITERATED IN **STATE VERSUS SMITH**.

21 **STATE VERSUS SMITH** WAS A CRIMINAL PROCEEDING AGAINST
22 INDIVIDUALS EMPLOYED WITH A NONPROFIT CORPORATION
23 PROVIDING SERVICES TO THE CITY/PARISH OF EAST BATON
24 ROUGE, AND IT'S EMPLOYEES WERE CHARGED WITH MALFEASANCE
25 AS BEING PUBLIC EMPLOYEES. THE COURT IN **SMITH** HELD THAT
26 THEY WERE NOT NOT, AND THE COURT SET FORTH FOUR CRITERIA
27 OF WHETHER AN ENTITY WOULD BE CONSIDERED A PUBLIC BODY OR
28 FIT UNDER THE INSTRUMENTALITY OF THE STATE. THOSE
29 CRITERIA ARE, NUMBER ONE, THAT IT WAS CREATED BY THE
30 LEGISLATURE. BAYOU BRIDGE PIPELINE WAS IN NO WAY CREATED
31 BY THE LEGISLATURE. NUMBER TWO, ITS POWERS WERE
32 SPECIFICALLY DEFINED BY THE LEGISLATURE. THAT OBVIOUSLY

1 DOES NOT APPLY IN THIS CASE; THE LEGISLATURE GAVE THEM
2 CERTAIN POWER BUT DID NOT SPECIFICALLY DEFINE ALL OF
3 THEIR POWERS. THIRD, WHETHER THE PROPERTY OF THE ENTITY
4 BELONGS TO THE PUBLIC. AS ARGUED BY MR. PERCY SEVERAL
5 TIMES, ANY RIGHTS IN THE PROPERTY THAT BAYOU PIPELINE
6 MIGHT ACQUIRE BELONG TO BAYOU PIPELINE. THEY DO NOT
7 BELONG TO THE PUBLIC IN ANY WAY. AND FORCE (PHONETIC) --
8 FOUR -- FOURTH, WHETHER THE ENTITY'S FUNCTIONS ARE
9 EXCLUSIVELY OF THE PUBLIC CHARACTER AND PERFORMED SOLELY
10 FOR THE PUBLIC BENEFIT.

11 CERTAINLY, THE STATE HAS INDICATED THAT IT MAY
12 BENEFIT FROM BAYOU PIPELINE'S ACTIVITIES, BUT THEY ARE
13 NOT GOING TO BE THE SOLE BENEFICIARY. I'M SURE THAT
14 BAYOU PIPELINE'S HOPE IS THAT IT WILL BE THE SOLE
15 BENEFICIARY OF ANY MONETARY REWARD FROM RESIL
16 (PHONETIC) -- RESULTING FROM THIS PIPELINE. AND THE
17 FOOTNOTE FROM THE SUPREME COURT GOES ON TO POINT OUT THAT
18 IT HAS HELD, AS IN **LOUISIANA HIGH SCHOOL ATHLETES**
19 **ASSOCIATION VERSUS THE STATE**, THAT ALL FOUR OF THESE
20 CRITERIA MUST BE MET IN ORDER FOR A PRIVATE ENTITY SUCH
21 AS THIS TO BE CONSIDERED A PUBLIC BODY OR SUBJECT TO BE
22 -- BEING CLASSIFIED AS AN INSTRUMENTALITY OF THE STATE.

23 NONE OF THOSE CRITERIA HAVE BEEN MET. THERE IS
24 NOTHING TO SHOW THAT ANY RECORDS THAT THE PLAINTIFFS SEEK
25 IN THIS CASE ARE PUBLIC RECORDS. THE PUBLIC RECORDS THAT
26 ARE OUT THERE ARE THE EXPROPRIATION SUITS WHICH HAVE BEEN
27 ACCESSED AND BY -- ACCESSED BY THE PLAINTIFFS, AND ONE IS
28 ATTACHED TO THE PETITION. THE OTHER PUBLIC RECORDS ARE
29 THINGS THAT BAYOU PIPELINE MAY HAVE FILED WITH THE
30 DEPARTMENT OF NATURAL RESOURCES OR WITH THE DEPARTMENT OF
31 ENVIRONMENTAL QUALITY TO GET PERMITS OR LICENSES FROM
32 THOSE STATE AGENCIES. I'M SURE UNDER FEDERAL LAW THAT

1 ANYTHING THEY FILED WITH THE CORPS OF ENGINEER TO GET A
2 PERMIT OR LICENSE FROM THEM WOULD ALSO BE PUBLIC RECORD.
3 BUT THE RECORDS THAT THE PLAINTIFFS SEEK HERE FROM THEM,
4 IF THEY ARE NOT THINGS THAT WERE MADE AVAILABLE TO
5 NATURAL RESOURCES OR D.E.Q. OR ANYBODY IN THE PUBLIC
6 SPHERE, THEN THEY ARE NOT PUBLIC RECORDS, AND THERE IS NO
7 BASIS FOR MAKING THIS PRIVATE, FOR-PROFIT CORPORATION
8 SUBJECT TO THE PUBLIC RECORDS ACT.

9 AS I STATED, I DON'T THINK THEY FIT UNDER THE
10 STATUTE. I DON'T THINK THERE'S ANY WAY THEY COULD FIT
11 UNDER THE STATUTE UNDER THE DECISION IN THE **BULLDOG**
12 DECISION AND OTHER CASES I'VE CITED: **STATE OF LOUISIANA**
13 **VERSUS SMITH, PROPERTY INSURANCE ASSOCIATION OF LOUISIANA**
14 **VERSUS THERIOT**; ALL OF THOSE CASES REQUIRE MORE THAN JUST
15 THE FACT THAT THE STATE AUTHORIZED THIS CORPORATION TO
16 EXERCISE EMINENT DOMAIN.

17 SO, FOR THOSE REASONS, THE EXCEPTION OF NO CAUSE OF
18 ACTION ON BEHALF OF ALL DEFENDANTS IS SUSTAINED, AND
19 PLAINTIFFS' CLAIMS IN THIS PARTICULAR PETITION ARE
20 DISMISSED. AS ARGUED, I DON'T THINK THERE'S ANY WAY YOU
21 IT CAN BE CURED BY AMENDMENT. I CAN'T FORESEE ANY
22 CIRCUMSTANCES UNDER WHICH THIS CORPORATION WOULD BECOME
23 SUBJECT TO THE PUBLIC RECORDS ACT; BUT, IN AN ABUNDANCE
24 OF CAUTION, I WILL ALLOW THE PLAINTIFF 15 DAYS FROM THIS
25 DAY IN WHICH TO ATTEMPT TO AMEND THEIR PETITION. FAILING
26 TO -- OR UPON THEIR FAILURE TO DO SO, OR IF THEY FAIL TO
27 DO SO, THAT WILL BE DISMISSED AT PLAINTIFFS' COST.

28 (TO MR. PERCY) SO, MR. PERCY, IF YOU WILL PREPARE A
29 JUDGMENT TO THAT EFFECT, PLEASE; SEND A COPY TO ALL
30 COUNSEL PURSUANT TO RULE 9.5 OF THE UNIFORM RULES OF
31 DISTRICT COURT, AND HAVE THE ORIGINAL FILED AND SENT TO
32 MY OFFICE.

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MR. PERCY: WE'LL DO SO, YOUR HONOR.

THE COURT: THANK YOU.

(END OF TRANSCRIPT)

APPENDIX C

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

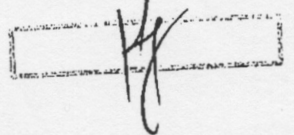
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MAY 22 2018
BY 11620/18
DY CLERK OF COURT

POSTED

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

Civil Action No. C665373 MAY 24 2018

Plaintiffs,



v.

Section 24 - Division I

BAYOU BRIDGE PIPELINE, LLC,
and CHRIS MARTIN

Defendants.

JUDGMENT

This matter came for hearing on Defendants' Exception of No Cause of Action on January 25, 2018, in Open Court.

Present were counsel for Plaintiffs, William P. Quigley and Pamela C. Spees; also present were James C. Percy, counsel for Defendants.

The Court, having considered the pleadings filed and the arguments of counsel, and for the reasons orally assigned, entered judgment sustaining Defendants' Exception of No Cause of Action and giving Plaintiffs 15 days from the date of the hearing to amend the petition to state a cause of action and, failing Plaintiffs' amendment of the petition within 15 days, ordering that the action shall be dismissed with prejudice;

Plaintiffs having not amended the petition within the time provided by the Court,

IT IS ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' action is hereby dismissed with prejudice, and further that this judgment constitutes the final order for purposes of appeal;

JUDGMENT READ AND SIGNED, Baton Rouge, Louisiana, this 29th day of

May 2018.

EBR4752540

FILED
EAST BATON ROUGE PARISH, LA
2018 MAY 22 AM 11:41
DEPUTY CLERK OF COURT

R. Michael Caldwell
HONORABLE R. MICHAEL CALDWELL
Judge, 19th Judicial District Court

REC'D
MAY 24 2018