

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT

VERSUS

DOCKET NO. 87011-E

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

ST. MARTIN PARISH

STATE OF LOUISIANA

FILED: _____

DEPUTY CLERK OF COURT

DEFENDANTS' DILATORY AND PEREMPTORY EXCEPTIONS

NOW INTO COURT, comes Defendants Peter K. Aaslestad and Katherine Aaslestad (Lambertson)¹ ("the Aaslestads"), through undersigned counsel, who, without waiving their rights under any answer, affirmative defense,² motion or exception previously filed or filed with this pleading, or without waiving the right to file any other exception or pleadings as may be provided by law, excepts as follows to the Petition for Expropriation filed by Plaintiff Bayou Bridge Pipeline, LLC ("BBP") on the grounds set forth more fully in the incorporated memorandum:

Pursuant to Rule 9.8(a) of the Uniform Rules of Court, the Aaslestad Defendants state that this case is currently set for trial on November 27, 2018, and that they plan to introduce testimony at the hearing on the exceptions.

**I.
Peremptory Exception of No Right of Action**

Pursuant to La. Code of Civ. Proc. Art. 927(A)(6), Defendants assert the peremptory exception of no right of action on the grounds that BBP is not an entity to which the law grants the remedy sought in this matter. Article I, sec 4(B)(4) of the Louisiana Constitution of 1974 requires that private entities authorized by law to expropriate may do so for a public and necessary purpose only. Common carriers having the power to expropriate private property have long been considered "quasi-public corporations" which "owe a duty to the public." *State ex rel.*

¹ Katherine Aaslestad was sued and listed as "Katherine A. Lambertson" in Plaintiff's "Located Defendants" list. Her official name is Katherine Aaslestad.

² In their Answer, the Aaslestads separately entered affirmative defenses challenging the constitutionality of the delegation of the power of eminent domain to private entities, generally, and to private oil pipeline companies in particular. the Aaslestads submit these exceptions without waiving those constitutional challenges and in the event the delegation of the power is found to pass constitutional muster.

Coco v. Riverside Irr. Co., 76 So. 216, 218 (1917); *See also, e.g., Crooks v. Placid Ref. Co.*, writ denied, 2005-1756 (La. 1/13/06), 920 So.2d 242. Any expropriation they undertake must be for a public and necessary purpose. La. Const. art. I, sec. 4(B)(4). Yet BBP has asserted in separate, unrelated proceedings that it is not a quasi-public corporation which owes a duty to the public but is instead a “private, for-profit entity” that is not operating its “pipeline business” pursuant to any delegation or contract with the state, but rather as a “private, for-profit business.”³

**II.
Peremptory Exception of Nonjoinder of a Party**

Pursuant to La. Code of Civ. Proc. Art. 927(A)(4), the Aaslestad’s assert the peremptory exception of failure to join an indispensable party as BBP has failed to name their sister Karen Aaslestad, as a party to this proceeding as, upon information and belief, she is a co-owner of the Property in question.

**III.
Dilatory Exception of Vagueness or Ambiguity in the Petition**

Pursuant to La. Code of Civ. Proc. Art. 926(A)(5), the Aaslestads assert the dilatory exception of vagueness or ambiguity in the petition. Article I, sec. 4(B)(4) of the Louisiana Constitution of 1974 requires that any taking by a private entity be for a public and necessary purpose only. BBP’s allegations as to the necessity of the pipeline are simply conclusory statements and so vague and ambiguous as to be virtually non-existent, and there is no mention at all of its public purpose. As a result, the Aaslestads are unable to adequately prepare their defense against the expropriation.

**III.
Dilatory Exception of Prematurity**

Pursuant to La. Code of Civ. Proc. Art. 926(A)(1), Defendants assert the dilatory exception of prematurity on two grounds:

- 1) The company did not carry out all of the statutory requirements set out in La. R.S. 19:2.2 prior to initiating this proceeding, including by not adequately describing the public purpose for the expropriation;

³ See Original Appellee Brief of Bayou Bridge Pipeline, LLC, in *Atchafalaya Basinkeeper et al v. Bayou Bridge Pipeline, LLC*, No. 2018-CA-0417, (La. App. 1st Cir. 6/21/18).

- 2) Permits authorizing the pipeline project for which BBP seeks this expropriation are still being challenged in court and it is possible the company may not obtain them which would nullify its need for the expropriation.

WHEREFORE Peter K. Aaslestad and Katherine Aaslestad pray that after contradictory hearing, the Court grant their exceptions and dismiss Plaintiff's Petition for Expropriation, and for such other and further relief as this Court deems appropriate.

Date: September 12, 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 12th day of September 2018 by email to the following counsel of record for Plaintiff:

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PAMELA C. SPEES

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RULE TO SHOW CAUSE

Considering the Peremptory and Dilatory Exceptions filed by Defendants Peter K. Aalsestad and Katherine Aalsestad to Plaintiff's Petition for Expropriation,

IT IS ORDERED that Plaintiff Bayou Bridge Pipeline, LLC., appear in this Court on the ____ day of _____, 2018 at _____ a.m./p.m. to show cause why the Aalsestad Defendants' Peremptory and Dilatory Exceptions should not be granted.

IT IS SO ORDERED in St. Martinville, Louisiana, this ____ day of _____ 2018.

Judge, 16th Judicial District Court

Please serve:

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**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT
OF DILATORY AND PEREMPTORY EXCEPTIONS**

MAY IT PLEASE THE COURT:

Defendants Peter K. Aaslestad and Katherine Aaslestad (“the Aaslestads”) submit this memorandum in support of their peremptory and dilatory exceptions filed in the above-captioned matter.¹

Introduction

After it had already entered upon the property at issue in this case, tore down trees, cleared the route, and commenced construction of the pipeline without the consent of all the landowners, Plaintiff Bayou Bridge Pipeline, LLC (“BBP”) brought this expropriation proceeding. Defendants’ acquired ownership in this parcel by an Act of Donation from their father, Halvor G. Aaslestad in 2007. The property is in the heart of the Atchafalaya Basin, the country’s largest river swamp, home to rare old growth (or “legacy”) cypress trees, tupelo forests, bottomland hardwoods, habitats sustaining a wide variety of wildlife species, including several that are listed as endangered.² The Basin also plays a critical role in flood protection for the region, and in fact the country.³

¹ The Aaslestads separately entered affirmative defenses challenging the constitutionality of the delegation of the power of eminent domain to private entities, generally, and to private oil pipeline companies in particular. The Aaslestads submit these exceptions without waiving those constitutional challenges and in the event the delegation of the power is found to pass constitutional muster.

² See, e.g., Louisiana Department of Natural Resources, FY 2018 Annual Plan, Atchafalaya Basin Program, Supplement, available at http://www.dnr.louisiana.gov/assets/OCM/ABP/2018_Plan/Supplemental_Narrative.pdf.

³ *Id.* See also e.g., Coastal Protection and Restoration Authority of Louisiana, *Louisiana’s Comprehensive Master Plan for a Sustainable Coast*, June 2, 2017, available at http://coastal.la.gov/wp-content/uploads/2017/04/2017-Coastal-Master-Plan_Web-Single-Page_CFinal-with-Effective-Date-06092017.pdf; Coastal Protection and Restoration Authority, *Louisiana’s 2012 Comprehensive Master Plan for a Sustainable Coast*, available at <http://coastal.la.gov/resources/library/reports/>.

BBP is a joint venture, registered as a limited liability company in Delaware with its principle place of business in Texas, and it is comprised in part of a company with one of the worst track records in the nation for spills and leaks.⁴ Together, the companies forming BBP and/or their subsidiaries and joint ventures reported 527 hazardous liquids pipeline incidents to federal regulators, which released a total of 87,273 barrels, or 3.6 million gallons, of hazardous liquids between 2002 and 2017.⁵

Now, BBP is in the process of constructing its 162-mile petroleum pipeline through 11 parishes in Louisiana, 700 bodies of water, including Bayou Lafourche, which is the source of drinking water for surrounding communities like the Houma Nation, and, not least, through the Atchafalaya Basin, where the property it now seeks to expropriate is located.⁶ It is constructing its pipeline even though the project's permits are still being challenged in court – including the permit that would allow the pipeline to run through the Basin.

BBP claims in this proceeding that it is a common carrier to which the state of Louisiana has delegated the power to expropriate private property for its pipeline, which it claims is in the public interest and necessity. In a separate, unrelated proceeding, however, it has forcefully asserted that it is not a quasi-public corporation – as common carriers are referred to in Louisiana jurisprudence – but rather a “private, for-profit entity” that is “not operating its pipeline business pursuant to any delegation or contract with the state,” but rather as a “private, for-profit business.”⁷ According to billionaire Kelcy Warren, CEO of BBP's parent company Energy

⁴ BBP is comprised of Energy Transfer Partners, which merged with Sunoco Logistics Partners, and Phillips 66. See https://energytransfer.com/ops_bayou_bridge.aspx and <https://www.energytransfer.com/> announcing completion of merger between Energy Transfer Partners and Sunoco Logistics Partners. See also, 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-usapipeline-nativeamericans-safety-i/sunoco-behind-protested-dakota-pipeline-tops-u-s-crude-spillcharts-idUSKCN11T1UW>.

⁵ See, Timothy Donaghy and Donna Lisenby, *Oil and Water: ETP & Sunoco's History of Pipeline Spills*, Greenpeace and Waterkeeper Alliance, p. 3, April 17, 2018, available at <https://waterkeeper.org/wp-content/uploads/2018/04/Oil-and-Water-Waterkeeper-Report.pdf>. See also, *Report: Energy Transfer Partners and Sunoco Accidents, 2015-2016*, Louisiana Bucket Brigade, Feb. 6, 2017, available at <http://www.labucketbrigade.org/sites/default/files/ETP%202015%202016%20Accidents%20Full%20Report.pdf>.

⁶ The Bayou Bridge pipeline is to serve as the southern end of the network that includes the Dakota Access Pipeline.

⁷ See Original Appellee Brief of Bayou Bridge Pipeline in *Atchafalaya Basinkeeper et al v. Bayou Bridge Pipeline, LLC*, Case No. 2018-CA-0417 (La. App. 1 Cir. June 21, 2018).

Transfer Partners, that private for-profit business is booming, and even “a monkey could make money in this business right now.”⁸

But an expropriation by a private corporation for a private purpose is unconstitutional and *ultra vires*. Even if it were determined to be a common carrier, BBP’s petition is vague and ambiguous as to the public and necessary purpose of the pipeline. And, even if BBP is found to be a common carrier *and* has sufficiently pled that its pipeline fulfills a public purpose and necessity, it did not comply with the legal requirements imposed on private expropriators before bringing this action and it is thus premature. In addition to barging onto the land and beginning construction without having a legal right to do so, BBP also skipped several steps with respect to the Aaslestads that it was required to take before commencing an expropriation action against them including, but not limited to, providing statements related to the rights of the landowners and the authorities under which the company seeks to expropriate the property.

BBP has also failed to name the Aaslestad’s sister, Karen Aaslestad-Aubouy, in this proceeding and claims that it engaged in good faith efforts to identify, locate, and negotiate with “absentee defendants” and seeks to make “unknown defendants” party to this proceeding as well. Expropriation Petition, ¶¶ 4-5. However, Karen Aaslestad-Aubouy shares the same ownership interest by way of Act of Donation from Halvor G. Aaslestad as do Peter and Katherine. Karen is alive, well and findable. BBP’s failure to locate and attempt to negotiate in good faith with Karen Aaslestad and, failing an agreement, name her as a party to this proceeding, requires that the matter be dismissed.

LAW AND ARGUMENT

Expropriation laws and proceedings are in derogation of a common right to own property and must be strictly construed and highly scrutinized; every step in the proceeding must insure that the landowner is at all times afforded protection against the power of the taker. *Texas Gas Transmission Corp. v. Soileau*, 251 So.2d 104, 107 (La. Ct. App. 1971).

⁸ According to ETP CEO, *Running Pipelines Is Easy*, Seeking Alpha, Aug. 5, 2018, available at <https://seekingalpha.com/article/4195083-according-etp-ceo-running-pipelines-easy>. See also, Bryan Gruley, *Pipeline Billionaire Kelcy Warren Is Having Fun in the Oil Bust*, Bloomberg Markets, May 19, 2015.

I. Peremptory Exception of No Right of Action.

Pursuant to La. Code of Civ. Proc. Art. 927(A)(6), the Aasletad Defendants assert the peremptory exception of no right of action on the grounds that BBP has claimed in other legal proceedings a status that does not entitle it to the remedy it seeks here. An exception of no right of action determines “whether the plaintiff belongs to the particular class to which the law grants a remedy for the particular harm alleged.” *Treasure Chest Casino, L.L.C. v. Parish of Jefferson*, 96-1010, p. 4 (La.App. 1st Cir. 3/27/97), 691 So.2d 751, 754, writ denied, 97-1066 (La. 6/13/97), 695 So.2d 982; *Louisiana Paddlewheels v. Louisiana Riverboat Gaming Commission*, 94-2015, p. 4 (La. 11/30/94), 646 So.2d 885, 888. Article 931 of the Louisiana Code of Civil Procedure permits the introduction of evidence to support or controvert an exception of no right of action.

The Louisiana Constitution of 1974 requires a private entity authorized by law to expropriate may only do so for a public and necessary purpose. La. Const. art. I, sec. 4(B)(4). Common carriers having the power to expropriate private property have long been considered “quasi-public corporations” because they have powers of a “public nature” and “owe a duty to the public.” *State ex rel. Coco v. Riverside Irr. Co.*, 76 So. 216, 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.”); *See also, e.g., Crooks v. Placid Ref. Co.*, 2005-119 (La. App. 3 Cir. 6/1/05, 10-11), 903 So.2d 1154, 1161, writ denied, 2005-1756 (La. 1/13/06), 920 So.2d 242 (another pipeline expropriation case where the court describes “private entit[ies]” upon which Article 1, §4 of the Louisiana Constitution of 1974 confers the power of expropriation as “public or quasi public corporations”).

Yet BBP has asserted in separate, unrelated legal proceedings that it is not a quasi-public corporation owing any duty to the public and is instead a “private, for-profit entity” that is “not operating its pipeline business pursuant to any delegation or contract with the state, but rather as

a private, for-profit business.”⁹ As if underscoring this assertion, billionaire CEO Kelcy Warren of Energy Transfer Partners, which owns 60 percent of the BBP venture, has suggested that “running pipelines is easy” and that even “a monkey could make money in this business.”¹⁰

In 2006, in the wake of the United States Supreme Court’s controversial ruling in *Kelo v. City of New London*, 545 U.S. 469 (2005), the Louisiana legislature amended the constitution to make clear that “economic development, enhancement of tax of revenue, or any incidental benefit to the public” may not be considered in determining whether a taking or damage to property is for a public purpose. La. Const. art. I, sec. 4(B)(3). If taken at its own words, BBP is not a quasi-public corporation common carrier working in the public interest to serve and fulfill a public purpose and necessity, and therefore is not a proper party to bring an expropriation suit necessitating that the matter should be dismissed with prejudice.

II. Dilatory Exception of Vagueness and Ambiguity in the Petition as to the Public and Necessary Purpose of This Pipeline.

If BBP is allowed to bring this action because the Court finds it to be a common carrier with standing to commence expropriation proceedings, pursuant to La. Code of Civ. Proc. Art. 926(A)(5), the Aaslestads assert the dilatory exception of vagueness or ambiguity in the petition as to the question of the public and necessary purpose of the expropriation sought. The purpose of the exception is to require plaintiff to furnish the nature of the facts to be proved in order to enable a defendant to prepare her defense. *Texas Gas Transmission Corp. v. Soileau*, 251 So.2d 104, 107 (La. Ct. App.1971) (sustaining an exception of vagueness as to pipeline company’s allegations of public and necessary purpose).

Article I, sec. 4(B)(4) of the Louisiana Constitution of 1974 requires that any taking by a private entity be for a public and necessary purpose only, and, further, that “whether the purpose is public and necessary shall be a judicial question.” BBP’s allegations as to the necessity of the pipeline are simply conclusory statements and so vague and ambiguous as to be meaningless. At paragraph 9 of the petition, BBP simply states that “the Pipeline is in the public interest and necessity.” It makes no mention whatsoever of public purpose and provides no factual

⁹ See Original Appellee Brief of Bayou Bridge Pipeline, LLC, in *Atchafalaya Basinkeeper et al v. Bayou Bridge Pipeline, LLC*, No. 2018-CA-0417 (La. App. 1st Cir. 6/21/18), at p. 15.

¹⁰ *Supra* at n. 8.

allegations to support public purpose or necessity even absent the mention. In *Texas Gas Transmission Corp. v. Soileau*, the Third Circuit Court of Appeal held that a landowner's exception of vagueness was properly sustained when the expropriation petition failed to allege why or for what purpose the gas pipeline was to be constructed, why it was necessary for public purposes, the location of gas reserves, where reserves were to be transported, etc., despite the fact that the gas pipeline had obtained and pled the fact of a certificate of public convenience and necessity from the federal regulator. 251 So.2d at 107. Similarly, BBP does not include any allegations as to where the crude oil it will transport originates, where it is ultimately destined, whether it is intended for export or domestic use, nor any other indication of why or how it fulfills a public purpose and is necessary.

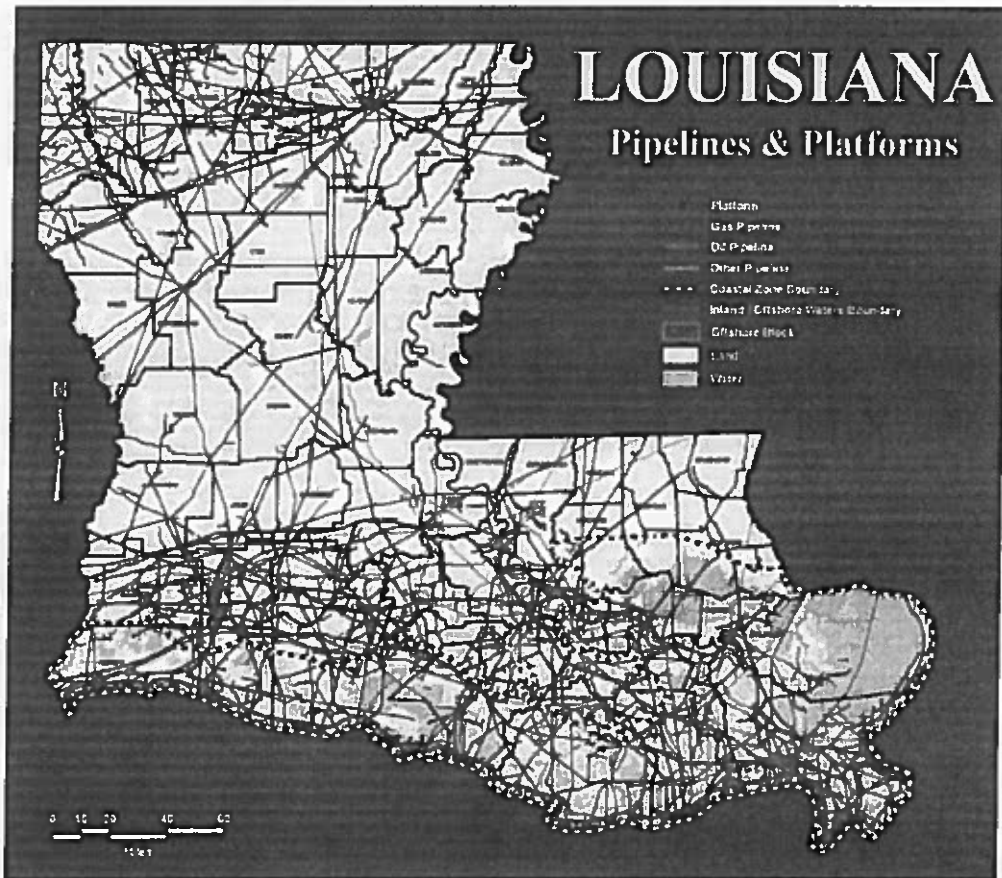
In addition to questions about the intended use and actual purposes to be served by the pipeline, the questions of public necessity and public purpose are particularly critical at this moment in time given that there are already over 70,000 miles of gas and oil pipelines in Louisiana, according to the Pipeline and Hazardous Materials Safety Administration,¹¹ and in light of the accumulated impacts of the proliferation of pipelines on the Atchafalaya Basin, the critical role the Basin plays in flood control and prevention,¹² and the fact that pipelines have contributed to Louisiana's coastal erosion and land loss,¹³ and of course, the role that reliance on fossil fuels has played in fueling the climate crisis.¹⁴

¹¹ Approximate amount of mileage taken from data gathered from website of Pipeline and Hazardous Materials Safety Administration, <https://www.phmsa.dot.gov/>. The Louisiana Department of Natural Resources estimates mileage of pipelines to be close to 50,000 miles. See <http://www.dnr.louisiana.gov/index.cfm/page/150>.

¹² See generally, Louisiana Department of Natural Resources, FY 2018 Annual Plan, Atchafalaya Basin Program, Supplement, available at http://www.dnr.louisiana.gov/assets/OCM/ABP/2018_Plan/Supplemental_Narrative.pdf.

¹³ See e.g., Coastal Restoration and Protection Authority Master Plan 2012; Coastal Protection and Restoration Authority Master Plan 2017, *supra* n. 4 at ES-6.

¹⁴ See e.g., Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report Summary for Policymakers*, at p. 5 ("Emissions of CO₂ from fossil fuel combustion and industrial processes contributed about 78% of the total GHG emissions increase from 1970 to 2010, with a similar percentage contribution for the increase during the period 2000 to 2010."), available at https://ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf.



Map of existing oil and gas pipelines in Louisiana.¹⁵

The burden of proving the right and necessity of a taking rests with the plaintiff in an expropriation case. *Interstate Oil Pipe Line Company v. Friedman*, 137 So.2d 700 (La. App. 3 Cir. 1962). As the Third Circuit has held, that necessarily means that a “plaintiff’s petition must allege sufficient facts to apprise defendants of all the elements of its claim to allow defendants to properly prepare their defense.” *Texas Gas Transmission Corp. v. Soileau*, 251 So.2d 104, 107 (La. Ct. App. 1971). In the face of ever-increasing concerns about flooding, land loss, and other environmental degradation attributed to the reliance on and use of fossil fuels, the questions of public necessity and purpose must take into account these concerns. Would-be takers must be required to plead and prove why new projects intended to expand infrastructure to *increase* the flow of crude oil, especially through sensitive wetlands and terrain, are necessary, in the public interest, and how they serve a public purpose.

¹⁵ Louisiana Department of Natural Resources, Pipeline Map available at http://www.dnr.louisiana.gov/assets/images/oilgas/refineries/LA_pipelines_2008.jpg

As a result of the vagueness and ambiguity in BBP's pleading as it relates to the public and necessary purpose of its taking, the Aaslestads are unable to adequately prepare their defense against the expropriation and the petition must be dismissed.

III. Peremptory Exception of Nonjoinder of an Indispensable Party

The Aaslestads also file this peremptory exception of nonjoinder of an indispensable party because they have a sister, Karen Aaslestad-Aubouy who is also a co-owner of this property and who was not named either among the purportedly "absentee defendants" or otherwise as a party to this proceeding.

If this matter is allowed to proceed through to an expropriation judgment, it will unquestionably alter the unnamed owners' rights. *See Tennessee Gas Transmission Co. v. Derouen*, 239 La. 467, 471 (La. 1960) (reversing and remanding a trial court's denial of defendant's exception of lack of indispensable parties). Moreover, "[i]t is elementary that every party who may be affected by a decree must be made a party to a suit, because no one should be condemned without a hearing." *Id.* at 471-472 citing *Heirs of Burney v. Ludeling*, 41 La. Ann. 627, 6 So. 248, 251 (La. 1889); *Jamison v. Superior Oil Co.*, 220 La. 923, 57 So.2d 896 (La. 1952); *Ashbey v. Ashbey*, 41 La. Ann. 138, 5 So. 546 (La. 1889); *Taylor v. Dunn*, 233 La. 617, 97 So.2d 415 (La. 1957). This is so critical that when "an appellate court notices the absence of indispensable parties to a suit on appeal, the appropriate remedy is to set aside the judgment and remand the matter for joinder of the absent parties and retrial." *Suire v. Oleum Operating Co.*, 2017-117 (La.App. 3 Cir. 11/2/17, 17), 235 So.3d 1215, 1228-29, *reh'g denied* (Jan. 10, 2018), *writ denied*, 2018-0279 (La. 4/6/18), 239 So.3d 827, and *writ denied*, 2018-0271 (La. 4/6/18), 240 So.3d 184.

The matter should be dismissed and BBP should be required to undertake diligent efforts, following more reliable and accepted practices, to locate purportedly absentee defendants and join as parties those unnamed in the instant proceeding.

IV. Dilatory Exception of Prematurity

If BBP is allowed to bring this action because the Court finds it to be a common carrier with standing to bring expropriation proceedings, pursuant to La. Code of Civ. Proc. Art.

926(A)(1), the Aaslestad Defendants assert the dilatory exception of prematurity on the grounds that A) the company failed to carry out all of the statutory prerequisites with respect to the Aasletads prior to commencing this proceeding; B) the permits required for the project are still being challenged in court and it is uncertain whether the pipeline will ultimately obtain them and thus whether this expropriation is necessary.

The function of the dilatory exception of prematurity is to allow a party to raise the issue that a judicial cause of action has not come into existence because some prerequisite condition has not been fulfilled. *Bayou Orthotic & Prosthetics Ctr., L.L.C. v. Morris Bart, L.L.C.*, 17-557 (La. App. 5 Cir. 3/28/18), 243 So.3d 1276. That is precisely the case in this matter in the following ways.

A. The company failed to carry out all of the statutory prerequisites with respect to the Aaslestad prior to commencing this proceeding.

Louisiana law requires that private expropriating authorities follow very clear steps prior to commencing an expropriation proceeding. La. R.S. 19:2.2(A). These procedures are set out at La. R.S. 19:2.2 and require, among other things, that a landowner be provided notice detailing that he/she is entitled to certain information regarding the property to be acquired. *See, e.g.*, La. R.S. 19:2.2(B)(1)-(7). Because expropriation laws and proceedings are in derogation of a common right to own property, they must be strictly construed and highly scrutinized; every step in the proceeding must insure that the landowner is at all times afforded protection against the power of the taker. *Texas Gas Transmission Corp. v. Soileau*, 251 So.2d 104 (La. Ct. App.1971).

The company skipped several of these important steps with respect to the Aaslestad. For instance, the Aaslestad do not recall ever receiving a notice letter from the company in accordance with La. R.S. 19:2.2(B)(1)-(7). Thus, BBP did not comply with key requirements set out in La. R.S. 19:2.2 when it brought this expropriation proceeding against the Aaslestad.

Exceptions of prematurity on the grounds that a condemnor failed to negotiate in good faith prior to commencing the lawsuit are waived if not filed at the time that other declinatory and dilatory exceptions are filed. *See Texas Gas Transmission Corp. v. Pierce*, 192 So.2d 561 (La. Ct. App. 1966). An expropriation suit may be dismissed as premature if the condemnor has

not first negotiated with and been refused by the landowner. *Id. See also, City of Thibodeaux v. Hillman*, 464 So.2d 370, 372 (La. App. 1st Cir. 1985).

Here, BBP skipped key steps the law requires of a condemnor prior to commencing expropriation proceedings – steps that are intended to protect the rights and interests of property owners in possible takings by powerful expropriating entities. As a result, the matter must be dismissed.

B. Permits authorizing the pipeline project for which BBP seeks this expropriation are still being challenged in court and it is possible the company may not obtain them which would nullify its need for the expropriation.

The expropriation proceeding is premature in light of ongoing court challenges to the permits authorizing construction of the pipeline project across wetlands and within the Coastal Zone. Two trial courts – one federal and one state – have issued rulings calling into question the validity of the permits for the project issued by federal and state agencies.

On May 31, 2017, members of a community impacted by the pipeline project and advocacy organizations petitioned the 23rd Judicial District Court to declare the Louisiana Department of Natural Resources' ("LDNR") permit to BBP to be invalid under Coastal Use Guidelines and in violation of its duty as a public trustee. *See Pastor Harry Joseph, Sr., et al. v. Secretary, Louisiana Department of Natural Resources*, 2017-38, 163-E, 23rd JDC, May 31, 2017. On April 30, 2018, Judge Alvin Turner, Jr. issued his Reasons for Judgment ruling in favor of Petitioners and finding that LDNR violated the Coastal Use Guidelines in issuing the permit to BBP to construct its pipeline in the Coastal Zone. *See Reasons for Judgment, Pastor Harry Joseph Sr., et al. v. Secretary, Louisiana Department of Natural Resources*, 2017-38, 163-E, 23rd JDC, April 30, 2018. In particular, the court ordered LDNR to require BBP "to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster . . . PRIOR to the continued issuance of said permit." *Id.* at 4 (emphasis in original).

On May 15, 2018, the court entered a final Judgment in the matter consistent with its April 30, 2018 ruling in favor of Petitioners and against LDNR and BBP, as intervenor, and remanded the matter back to LDNR for further proceedings consistent with the court's ruling. *See Judgment, Pastor Harry Joseph Sr., et al. v. Secretary, Louisiana Department of Natural*

Resources, 2017-38, 163-E, 23rd JDC, May 15, 2018. However, BBP filed a suspensive appeal and has continued to construct in the Coastal Zone. The matter is pending before the Louisiana Fifth Circuit Court of Appeal and has been set for an expedited hearing on September 19, 2018.

Additionally, a number of advocacy organizations filed suit on January 11, 2018, in federal district court in the Middle District of Louisiana challenging the federal permit granted by the U.S. Army Corps of Engineers (“the Corps”) to BBP in December 2017 authorizing construction across the Atchafalaya Basin’s wetlands. *See Atchafalaya Basinkeeper, et al. v. U.S. Army Corps of Eng’rs*, No. 3:18-CV-23 (M.D. La. 2018). Plaintiffs successfully petitioned the court to issue a preliminary injunction in the matter enjoining all construction in the Basin pending resolution on the merits of the case, with the court finding a likelihood plaintiffs would prevail on the merits and a preliminary injunction was warranted to prevent irreparable harm. *See Ruling and Order*, filed 02/23/18 in *Atchafalaya Basinkeeper, et al. v. U.S. Army Corps of Eng’rs*, No. 3:18-CV-23 (M.D. La. 2018), 310 F.Supp. 3d 707. However, on appeal, a divided panel on the Fifth Circuit overturned the preliminary injunction and remanded the matter back to the district court for a trial on the merits of the challenge to the permit. *Atchafalaya Basinkeeper v. United States Army Corps of Engineers*, 894 F.3d 692 (5th Cir. 2018). The matter is currently pending before the district court for resolution of the merits of Plaintiffs’ claims that the Corps inappropriately issued the federal permits to BBP in contravention of the Clean Water Act and the National Environmental Policy Act.

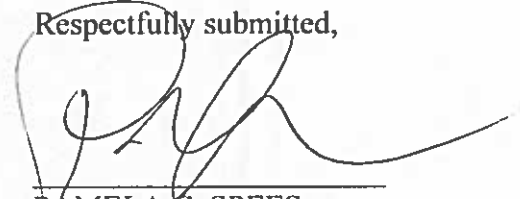
The dilatory exception of prematurity “questions whether the cause of action has matured to the point where it is ripe for judicial determination, because an action will be deemed premature when it is brought before the right to enforce it has accrued.” *See Berry v. Volunteers of Am., Inc.*, 08-184 (La.App. 5 Cir. 9/16/08), 996 So.2d 299, 301 (portion of plaintiffs’ suit against parish was subject to dismissal on exception of prematurity where parish had not yet rezoned property, and landowners had not yet applied for a building permit).

Depending on the outcome of these proceedings, the pipeline may ultimately not obtain the permits needed and the company would be unable to traverse key areas in the state, including the Atchafalaya Basin, as well as through the coastal zone where the planned end-point of the

pipeline is located in the low-income, minority, industry-saturated community of St. James. Such rulings would render the expropriations sought here unnecessary.

Date: September 12, 2018

Respectfully submitted,



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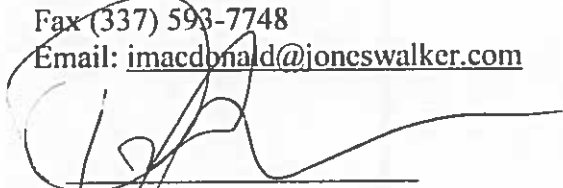
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been transmitted via electronic means to all known parties of record this 12th day of September 2018 by email to the following counsel of record for Plaintiff:

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