

BAYOU BRIDGE PIPELINE, LLC

16<sup>TH</sup> 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

**ANSWER TO PETITION  
AND RECONVENTIONAL DEMAND**

NOW INTO COURT, through undersigned counsel, comes Defendant THEDA LARSON WRIGHT who, without waiving her rights under any answer, motion, exception, or reconventional demand filed with this pleading, or the right to file any other exception or pleadings as may be provided by law, excepts to and answers Plaintiff's Petition for Expropriation as follows:

**EXCEPTIONS**

Pursuant to La. Code of Civ. Proc. Articles 926 and 927, Defendant asserts the dilatory exceptions of prematurity, vagueness or ambiguity of the petition, and the peremptory exceptions of no right of action and failure to join indispensable parties as set forth in her Joint Dilatory and Peremptory Exception pleading filed simultaneously with this Answer.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The statutes and provision under the Louisiana Constitution of 1974 which form the basis of Plaintiff's claimed authority to expropriate are unconstitutional as they violate the right to due process and the right to property protected by the Fifth Amendment of the United States Constitution, made applicable to the states through the Fourteenth Amendment. In particular, art. I, sec. 4(B)(4) of the Louisiana Constitution of 1974, La. R.S. 19.2 and La. R.S. 45:251 constitute impermissible delegations of state power to private parties.

**SECOND AFFIRMATIVE DEFENSE**

The statutes and constitutional provision pursuant to which Plaintiff claims authority to expropriate are unconstitutional as applied to oil pipeline companies because they violate the

right to due process and to property protected by the Fifth Amendment of the United States Constitution made applicable to the states through the Fourteenth Amendment. In particular, and in contrast to gas pipeline companies, there is no oversight or certification process whatsoever over oil pipeline companies in the determination of their route and in the commencement of their exercise of eminent domain, leaving landowners subject to the whim of private companies with no regulation over the early phase of the process. Private oil pipeline companies pursue takings of property, either through easement agreements with individual landowners, and failing that, eminent domain suits against landowners to expropriate their property under a self-designated status as a common carrier pipeline with the power of eminent domain.

#### **THIRD AFFIRMATIVE DEFENSE**

The statutes pursuant to which Plaintiff claims authority to expropriate are unconstitutional as applied to Plaintiff and other oil pipeline companies because they violate the right to due process and to property protected by Louisiana Constitution of 1974. In particular, and in contrast to gas pipeline companies, there is no oversight whatsoever over oil pipeline companies in the determination of their route nor in the commencement of their exercise of eminent domain, leaving landowners subject to the whim of private companies with no regulation over the early phase of the process.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims violate art. I, sec. 4 of the Louisiana Constitution of 1974 and are therefore unconstitutional.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are premature because the company has not complied with the statutory requirements for filing an expropriation suit as outlined in La. R.S. 19:2.2.

#### **ANSWER**

1. Larson Wright admits the allegations of paragraph 1 of the Petition.
2. Larson Wright lacks knowledge or information sufficient to form a belief whether Paragraph 2 of the Petition is true.
3. Larson Wright lacks knowledge or information sufficient to form a belief whether Paragraph 3 of the Petition is true.

4. Larson Wright denies the allegations in Paragraph 4 of the Petition.

5. Larson Wright lacks knowledge or information sufficient to form a belief whether Paragraph 5 of the Petition is true.

6. Larson Wright lacks knowledge or information sufficient to form a belief whether Paragraph 6 of the Petition is true.

7. Larson Wright admits that she owns an interest in the property described in Paragraph 7.

8. Larson Wright denies that the Pipeline will be a much needed expansion to and an integral part of the nation's oil pipeline infrastructure. Larson Wright lacks knowledge and information sufficient to form a belief as to the remainder of the allegations contained in Paragraph 8.

9. Larson Wright denies the allegations in Paragraph 9, in particular that Plaintiff has authority to expropriate property and that the Pipeline is in the public interest and necessity, particularly in light of spill and leak record of the companies that formed BBP, the danger of increased flooding in the area resulting from additional pipelines in the Atchafalaya Basin, the coastal erosion crisis in Louisiana, the ways in which oil and gas pipelines and infrastructure contribute to climate change, the abundance of pipeline infrastructure already present in the state, and controversy over the safety of transporting environmentally hazardous materials like oil and gas through pipelines. Larson Wright further avers that that the pipeline is intended to serve a private, business purpose and not a public and necessary purpose.

10. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of Paragraph 10, and reserves the right to contest the route selection.

11. Larson Wright admits that the Pipeline route chosen by Plaintiff crosses the property inasmuch as, upon information and belief, the Plaintiff has already entered upon and begun construction and laying pipe on the property without waiting to complete easement agreements with all owners or for a judgment of expropriation. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 11.

12. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12.
13. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.
14. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14.
15. Larson Wright denies that Plaintiff made good faith efforts to identify, locate, and negotiate with Defendants. Larson Wright lacks knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 15.
16. Larson Wright denies that Plaintiff made good faith efforts to identify, locate, and negotiate with Defendants. Larson Wright lacks knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 16.
17. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17.
18. Larson Wright denies that all of the Absentee Defendants cannot be found or served after a diligent effort. Larson Wright lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 18.
19. Paragraph 19 states a legal conclusion requiring no answer, but to the extent an answer is required, Larson Wright denies the same.
20. Larson Wright denies the allegations of Paragraph 20 of the Petition.
21. Paragraph 21 states a legal conclusion requiring no answer.
22. Paragraph 22 states a legal conclusion requiring no answer.
23. Larson Wright denies any fact not specifically admitted herein.
24. Larson Wright denies any facts contained in any unnumbered paragraphs, headings, caption, and/or the prayer for relief.
25. Larson Wright reserves the right to amend and supplement her Answer and Affirmative Defenses.

## RECONVENTIONAL DEMAND

AND NOW COMES THEDA LARSON WRIGHT as Plaintiff-in-Reconvention, who brings this Reconventional Demand for violation of her rights to due process and to property under the Fifth Amendment of the United States Constitution and Art. I, secs. 2 and 4 of the Louisiana Constitution of 1974, and for Trespass and Property Damage. In furtherance thereof, she respectfully avers as follows:

1. Plaintiff-in-Reconvention Larson Wright owns an undivided interest in the Property described in Paragraph 7 of the Expropriation Petition brought by Defendant-in-Reconvention Bayou Bridge Pipeline, LLC (“BBP” or “Defendant-in-Reconvention”), as follows:

That certain tract of land composed of 38 acre(s), more or less, located in the NE/4 of the SE/4 of Section 4, Township 11 South, Range 9 East, in St. Martin Parish, Louisiana, and being more particularly described as Northeast Quarter of the Southeast Quarter (NE/4 of SE/4) in Book 784, Page 176, Instrument 186257 of the public records of the official public records of said St. Martin Parish.

(hereinafter referred to as “the Property”).

2. BBP is a Delaware limited liability company authorized to do business in the State of Louisiana with its principal office in Houston, Texas. BBP is a joint-venture between Energy Transfer Partners, which merged with Sunoco Logistics Partners, and Phillips 66 Partners, LP, for purposes of constructing a 162-mile pipeline through 11 parishes in Louisiana.

3. BBP claims to be a common carrier under 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 that it has the authority under Louisiana law to expropriate property, pursuant to La. R.S. 19:2(8).

4. BBP is in the process of constructing its 24-inch, 163- mile long crude oil pipeline (the “pipeline”) commencing in Lake Charles, Louisiana and terminating in St. James, Louisiana.

5. BBP’s route crosses through the Atchafalaya Basin in St. Martin and Iberville Parishes, including across the immovable property owned by Larson Wright in indivision with others.

6. The Atchafalaya Basin is the largest river swamp in the United States and features rare old growth (or “legacy”) cypress trees, bottomland hardwoods, swamps and lakes that serve

as diverse habitats sustaining a wide variety of wildlife species including some that are listed as endangered. The Basin also plays a critical role in flood protection.

7. Plaintiff-in-Reconvention Larson-Wright is strongly opposed to the Pipeline project and firmly believes the Atchafalaya Basin should be protected against further environmental degradation and hazards posed by pipelines as they contribute to increasing flooding, coastal erosion, and climate change.

8. Even though permits authorizing the pipeline have been challenged in court and are still uncertain, including the permit for construction in the Atchafalaya Basin, BBP is continuing to construct the pipeline through the Basin. *See, Atchafalaya Basinkeeper v. U.S. Army Corps of Engineers*, 310 F.Supp.3d 707 (M.D. La.2018), *vacated and remanded sub nom. Atchafalaya Basinkeeper v. United States Army Corps of Engineers*, 894 F.3d 692 (5th Cir. 2018).

9. On July 27, 2018, BBP filed the Expropriation Petition in this matter, seeking to expropriate a perpetual right of way and servitude through the Property in question for the purpose of laying, constructing, maintaining, and operating its pipeline.

10. However, long before it filed its expropriation proceeding on July 27th, BBP and/or its agents had already entered onto and commenced construction activities on the Property, including clearing trees and trenching, despite not having legal rights to do so.

11. On June 28, 2018, during a monitoring flight of the Pipeline route, Scott Eustis, a wetlands expert, documented that the area encompassing the right of way sought by BBP through the Property had already been cleared of trees along the pipeline route. *See* Petition for Injunction in *Aaslestad v. Bayou Bridge Pipeline, LLC.*, Case No. 87070, 16<sup>th</sup> Judicial District Court, St. Martin Parish.

12. On July 23, 2018, Dean A. Wilson, Executive Director of Atchafalaya Basinkeeper, a nonprofit organization dedicated to protecting and restoring the Basin, conducted another monitoring flight over BBP's pipeline route and observed equipment and construction activities on the Property. It appeared that construction activities had begun, with at least one excavator actively digging the trench where the pipeline would be laid through the Property.

13. On August 30, 2018, Eustis again flew over the route and observed active construction and the presence of equipment on the Property in question.

14. Eustis was also joined on that day by a civil engineer and professional land surveyor, Charles St. Romain, who likewise observed the presence of construction equipment on the Property, as well as signs of ongoing construction related to the pipeline.

15. In addition to its agents or employees who entered upon and commenced construction of the Pipeline on the Property, BBP also contracted with private security firms which deployed off-duty commissioned law enforcement officers to occupy and control the Property.

16. On September 10, 2018, in a separate proceeding brought by a co-owner of the property in the 16<sup>th</sup> Judicial District Court to enjoin BBP from continuing to enter and construct upon the same property also at issue in this matter, BBP agreed that as of that date:

(a) No officer, employee, agent, contractor, subcontractor, or other at the direction of or on behalf of Bayou Bridge shall enter onto the property that is the subject [of that matter]; and (b) no officer, employee, agent, contractor, subcontractor, or other at the direction of or on behalf of Bayou Bridge shall clear, trench, string, lay pipe, backfill, tie-in pipeline segments, or perform any other preconstruction and/or construction-related activities for Bayou Bridge's pipeline on the property that I the subject [of that matter].

*See Aaslestad v. Bayou Bridge Pipeline, LLC, Case No. 87010, Agreement of the Parties, Sept 10, 2018 (annexed hereto as Exhibit A).*

17. Like the co-owner who brought the injunction proceeding to enjoin the company from entering on and further constructing on the Property without his consent and absent full legal rights to do so, Larson Wright has never given her consent or authorization to BBP to enter onto the Property and/or commence construction activities.

18. Larson Wright has never entered into an agreement with BBP for a right of way, servitude or other easement.

19. BBP to date has not obtained a judgment of expropriation granting it any such right of way or servitude, or authorization to enter onto the Property and construct its Pipeline.

20. BBP only commenced an expropriation proceeding well after it had entered onto and taken control of the property to began constructing its pipeline, demonstrating that it was

fully aware it did not have a legal right to take possession of the proposed route through the Property, clear the path, destroy trees, trench, and construct the pipeline.

21. If BBP is determined by this Court to be a common carrier with the power of expropriation under Louisiana law, it flouted the statutory requirements governing the power to expropriate private property when it trespassed onto the Property and began construction of its pipeline, destroying trees and land in the process, without having full legal rights to do so.

22. If BBP is not found to be a common carrier with the power of expropriation, then it still flouted basic state laws prohibiting trespass and damage to property belong to another.

23. Larson Wright, as an owner in indivision of the Property, who did not consent to or negotiate a right of way or servitude for BBP and who wished to assert her rights in that regard was denied the ability to do so by BBP's illegal actions.

24. Larson Wright has suffered harm to her interests in the Property and as a result of the denial of her rights to due process.

**COUNT I**  
**Violation of the Fifth Amendment to the United States Constitution**  
**Due Process**

25. Larson Wright hereby incorporates the facts and allegations contained in paragraphs 1-24 as if the same were fully sort forth herein.

26. The Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides that "No person shall... be deprived of life, liberty, or property, without due process of law..."

27. If determined to be acting as a common carrier with the power of eminent domain under Louisiana law, BBP's actions in entering onto the Property and constructing the pipeline were taken without the consent and authorization of Larson Wright and other landowners and without having first sought and obtained a judgment of expropriation and therefore violate the Due Process clause of the Fifth Amendment of the United States Constitution.

**COUNT II**  
**Violation of the Fifth Amendment of the United States Constitution**  
**Takings Clause**

28. Larson-Wright hereby incorporates the facts and allegations contained in paragraphs 1-27 as if the same were fully sort forth herein.



29. The Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment, provides that “private property shall not be taken for public use, without just compensation.”

30. If determined to be acting as a common carrier with the power of eminent domain under Louisiana law and that its pipeline is for a public use, BBP’s actions in entering onto the Property and destroying portions of that property through clearing trees and trenching along its predetermined route, and laying pipe, were taken without consent or legal authority, and without providing just compensation, and violate the takings clause of the Fifth Amendment.

**COUNT III**  
**Violation of the Right to Due Process of Law, Art. I, Sec. 2**  
**of the Louisiana Constitution of 1974**

31. Larson Wright hereby incorporates the facts and allegations contained in paragraphs 1-30 as if the same were fully set forth herein.

32. Article I, sec. 2 of the Louisiana Constitution provides that “[n]o person shall be deprived of life, liberty, or property, except by due process of law.”

33. If determined to be acting as a common carrier with the power of eminent domain under Louisiana law, BBP’s actions in entering onto the Property and constructing the pipeline were taken without the consent and authorization of Larson Wright and other landowners and without having first sought and obtained a judgment of expropriation as required by state law, and therefore violate the right to due process of law in the Louisiana Constitution.

**COUNT IV**  
**Violation of the Right to Property, Art. I, Sec. 4**  
**of the Louisiana Constitution of 1974**

34. Larson Wright hereby incorporates the facts and allegations contained in paragraphs 1-33 as if the same were fully set forth herein.

35. Article I, sec. 4 of the Louisiana Constitution provides that “[e]very person has the right to acquire, own, control, use, enjoy, protect, and dispose of private property” and that the “right is subject to reasonable statutory restrictions and the reasonable exercise of the police power.”

36. Art. I, sec. 4(B)(4) further provides that “[p]roperty shall not be taken or damaged by any private entity authorized by law to expropriate except for a public and necessary purpose and with just compensation paid to the owner...”

37. If determined to be acting as a common carrier with the power of eminent domain under Louisiana law, BBP’s actions in entering onto the Property and constructing the pipeline were taken without the consent and authorization of Larson Wright and without just compensation to her and without having first sought and obtained a judgment of expropriation as required by state law, and therefore violate her right to property under Art. I, sec. 4 of the Louisiana Constitution.

**COUNT V: Trespass**

38. Larson Wright hereby incorporates the facts and allegations contained in paragraphs 1-37 as if the same were fully set forth herein.

39. Trespass is the unlawful invasion of property or possession of another.

40. BBP and/or its agents unlawfully invaded the Property co-owned by Larson-Wright in indivision, when it entered upon the Property without her consent or authorization and without first obtaining a judgment giving it rights to do so, and is therefore liable to her for trespass.

**COUNT VI: Property Damage**

41. Larson Wright hereby incorporates the facts and allegations contained in paragraphs 1-40 as if the same were fully set forth herein.

42. BBP and/or its agents entered onto the Property that Larson Wright co-owns in indivision, cleared trees, trenched, and constructed its pipeline without her consent and authorization, and without first obtaining a judgment giving it rights to do so, and in doing so, caused damage to her property, for which it is liable to her.

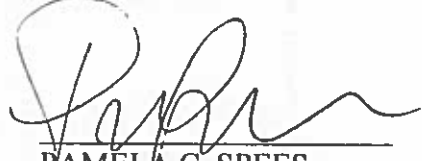
WHEREFORE, Plaintiff-in-Reconvention Theda Larson Wright prays that her Exceptions and Answers to BBP’s Petition be deemed good and sufficient and that, after due proceedings had, this honorable Court enter judgment in her favor:

- a) dismissing the expropriation petition filed by BBP, at its costs and for reasonable attorney's fees and litigation fees incurred; and
- b) granting all other general and equitable relief to which she is entitled;

ACCORDINGLY, Plaintiff-in-Reconvention prays that a copy of this reconventional demand be served on Defendant-in-Reconvention, and that there be judgment in her favor and against BBP for all general and special damages reasonable in the premises, together with judicial interest, costs, attorneys fees, expert fees, and for all other general and equitable relief to which she is entitled.

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

*Attorney for Defendant / Plaintiff-in-Reconvention Theda Larson Wright*

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ST. MARTIN PARISH

# Exhibit A

PETER K. AASLESTAD

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

vs.

DOCKET NO. 087010  
DIVISION C

BAYOU BRIDGE PIPELINE, LLC

ST. MARTIN PARISH, LOUISIANA

**PARTIES AGREEMENT TO PASS PRELIMINARY INJUNCTION HEARING**

Plaintiff, Peter K. Aaslestad, and Defendant, Bayou Bridge Pipeline, LLC ("Bayou Bridge"), hereby stipulate and agree as follows:

Plaintiff filed a Verified Petition for Declaratory and Injunctive Relief against Bayou Bridge on July 27, 2018. Plaintiff's Motion for Preliminary Injunction is set for hearing before the Court on September 10, 2018. In consideration of Plaintiff's agreement to pass the preliminary injunction hearing on September 10, 2018, Bayou Bridge agrees that, as of the date of this agreement and until such time as its claim for expropriation of the property that is the subject of this proceeding is tried and adjudicated in its favor by this Court in the pending expropriation in accordance with La. R.S. 19:1, *et seq.* (a) no officer, employee, agent, contractor, subcontractor, or other at the direction of or on behalf of Bayou Bridge shall enter onto the property that is the subject of the above-captioned matter; and (b) no officer, employee, agent, contractor, subcontractor, or other at the direction of or on behalf of Bayou Bridge shall clear, trench, string, lay pipe, backfill, tie-in pipeline segments, or perform any other preconstruction and/or construction-related activities for Bayou Bridge's pipeline on the property that is the subject of the above-captioned matter.

PETER K. AASLESTAD

BAYOU BRIDGE PIPELINE, LLC

PLAINTIFF

BY: Charles Frey

TITLE: VP Engineering

DATED: Sept. 10, 2018

DATE: September 10, 2018

[Signature]  
Counsel for Plaintiff

[Signature]  
Counsel for Defendant

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