THIRD CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

2019 CA 00565

BAYOU BRIDGE PIPELINE, LLC

PLAINTIFF / DEFENDANT-IN-RECONVENTION
APPELLEE

VS.

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

DEFENDANTS / PLAINTIFFS-IN-RECONVENTION
APPELLANTS

APPEAL FROM THE 16TH JUDICIAL DISTRICT COURT
PARISH OF ST. MARTIN, CIVIL CASE NO. 87011

HON. KEITH COMEAUX, DIV. E

REPLY BRIEF OF APPELLANTS

Misha L. Mitchell
La. Bar Roll No. 37506
Atchafalaya Basinkeeper
411 Walnut Street #15255
Green Cove Springs, FL 32043
Tel. (225) 692-1133
Fax. (888) 920-6418
basinkeeperlegal@gmail.com

Pamela C. Spees
La. Bar Roll No. 29679
Astha Sharma Pokharel
(admitted *pro hac vice*)
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel. and Fax (212) 614-6431
pspees@ccrjustice.org
asharmapokharel@ccrjustice.org

William P. Quigley
La. Bar Roll No. 7769
Professor of Law
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

Attorneys for Appellants Katherine Aaslestad, Peter Aaslestad, and Theda Larson Wright

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Summary

Appellee's brief in opposition to this appeal helps demonstrate the fundamental flaws in the legal framework governing the exercise of eminent domain by private oil pipeline companies in Louisiana – and why placing this power in the hands of private corporations, without more safeguards, poses such a danger to the rights of landowners. In attempting to counter Appellants' arguments that there are insufficient protections for landowners on the front end of expropriations by private oil pipeline companies, BBP actually demonstrates how even the purported protections on the back end, i.e. statutory notice requirements and judicial determinations as to the public and necessary purpose of the expropriation, have little real meaning and effect.

In BBP's version of the law, the few statutory protections for landowners that do exist are not requirements to be fulfilled prior to expropriation proceedings, Appellee Br. at 17-19; courts are superfluous in the determination of whether an expropriation serves a public and necessary purpose – because that has already been decided for them, *id.* at 23; and oil pipeline companies don't have to identify the entities that will be shipping and receiving the oil, and whether it is for export or domestic use because any transport of oil is presumed to serve a public and necessary purpose. *Id.* The upshot of their argument is that, in Louisiana, private oil pipeline companies can take property to build pipelines when and where they want, and for almost any reason.

Also, in BBP's view, the rights of landowners, who, for whatever reason, do not want an oil pipeline running through their property are an inconvenience that can serve to "scuttle" such projects. *Id.* at 16. BBP spends a good portion of its brief emphasizing and decrying what it describes as Appellants' "*de minimus*" interest in the property. *Id.* at 1, 3, 6, 12-13. The implication seems to be that their rights should be regarded as *de minimis* as well. What BBP fails to emphasize, and

what this Court should take note of, is that the company knowingly, willfully trespassed against *hundreds* of landowners who co-owned the property at issue. Appellants' Br. at 1-2; Appellee Br. at 3. While the Appellants in this matter chose to stick their necks out, confront the trespass, and exercise their rights under the expropriation statute to question the public and necessary purpose of the pipeline, BBP's willful violation of the law impacted numerous landowners. These hundreds of landowners were *only* brought to court in the expropriation proceeding *after* an Appellant in this matter sued to get the company off the property.[1]

Finally, BBP and the trial court suggest that there is no problem with the delegation of Louisiana's eminent domain power to private oil pipeline companies because it has been this way for a long time. 6 R. 1294:21-23, 27-28 (Trial court: "We've been putting gas pipelines and oil pipelines for fifty, sixty, seventy years in Louisiana. . . . And they've been granted this expropriation ability probably that long."); Appellee Br. at 7, 12 (Louisiana's eminent domain scheme is "longstanding"). History is shot through with examples of unjust and ill-conceived laws that existed for long stretches of time before they were undone. The mere fact that this scheme has been around a while does not mean it should continue – particularly when even the State of Louisiana has acknowledged that pipelines have contributed to the State's land loss crisis. *See* 1 R. 105 at n. 7.

POINTS IN REBUTTAL

I. Unconstitutionality of Louisiana's Legal Scheme Governing Expropriations by Private Oil Pipeline Companies.

BBP and the Attorney General incorrectly urge that the Texas expropriation scheme that survived a recent constitutional challenge in the U.S. Fifth Circuit

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[1] Appellant Peter Aaslestad first filed an injunction action in St. Martin Parish to stop BBP from continuing to enter and construct on the property. Appellants' Br. at 1-2. Aaslestad's filing was followed by BBP's expropriation action against him and hundreds of landowners of the property. *Id.* BBP subsequently sued an additional 112 co-owners of the same property for expropriation who had not been included in the original suit. 5 R. 1130. That suit was joined with the instant matter. Appellants' Br. Appendix A at 34-35.

Court of Appeals provides less protection for landowners than the Louisiana scheme. Appellee Br. at 11; Atty. Gen. Br. at 11. *See Boerschig v. Trans-Pecos Pipeline, L.L.C.*, 872 F.3d 701 (5th Cir. 2017). However, the Texas scheme is actually broader and provides additional steps and protections for landowners. In addition to the statutory notice requirements similar to those required in Louisiana, TEX. PROP. CODE §§ 21.0111-0113, if a landowner objects to the expropriation, Texas law provides for an administrative phase during which a court appoints three independent special commissioners to assess the value of the property. *Id. at* §§ 21.041, 21.042, 21.061. If the landowner objects to the compensation amount, they can proceed to court to review the amount and the determination of whether a pipeline serves a public purpose. *Id.* at § 21.018. While the law allows an expropriator to take possession after the administrative phase, a district court can reverse that decision. *Id.* at § 21.062. Texas law also prohibits expropriating entities from including confidentiality provisions in their offers and agreements. *Id.* at §§ 21.0111(c). Rather, they must affirmatively inform landowners of the rights to discuss the offer or agreement with others. *Id.* In addition, Texas law requires that private expropriators produce certain categories of records upon request and make other information about its expropriations publicly available through a website operated by the Comptroller pursuant to the transparency law. *Id.* at §§ 21.023, 21.025; *See also,* Eminent Domain Reporting and Public Database, *available at* https://comptroller.texas.gov/transparency/local/eminent-domain/.

BBP argues that front-end oversight of private corporations in the exercise of eminent domain power is not constitutionally mandated by the private non-delegation doctrine, "*so long as* the eminent domain scheme provides for the required standard *and* opportunity for judicial review." Appellee Br. at 11 (emphasis added). However, while BBP and the Attorney General cite the constitutional and statutory provisions for judicial review – which as a practical

matter comes into play rarely and late in the process when landowners challenge a given expropriation (Appellants' Br. at 21-22) – they argue that by definition all crude oil pipelines are common carriers and *per se* serve a public purpose. *See* Atty. Gen. Br. at 5 (La. R.S. 45:251 defines common carrier to include "all persons engaged in the transportation of petroleum as public utilities and common carriers for hire"[2] and "these statutes support a public purpose—they provide for the transportation of petroleum to and for the public"); *Id.* at 6 ("Crude oil common carrier pipelines serve public and necessary purposes"); Appellee Br. at 21 ("well-established principle that petroleum pipelines serve a public purpose"); 6 R. 1402:14-18, 1403:1-3 ("*ExxonMobil Pipeline Company v. Union Pacific Railroad Company* . . . says that the pipeline serves a public purpose merely by placing more natural gas in the stream of commerce"); 6 R. 1404:22-27 ("the pipeline serves a public purpose merely by placing more petroleum product in the stream of commerce.").

The Attorney General also suggests that the expropriation scheme provides guidance at the front end in terms of which entities meet the definition of common carrier by pointing to La. R.S. 45:252, which defines *intra*state petroleum pipelines and places them under the jurisdiction of the Louisiana Public Service Commission ("LPSC"). Atty. Gen. Br. at 8-9. However, BBP has in fact designated itself as an *inter*state pipeline and not subject to the jurisdiction of the LPSC – even though it begins in Lake Charles and ends in St. James – because it connects to a larger network of out-of-state pipelines. 5 R. 1121:14-28.

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[2] At no point in these proceedings have Appellants conceded that BBP meets the definition of a common carrier for hire. Despite many attempts to acquire information bearing on its common carrier claim and the public and necessary purpose of the pipeline – namely regarding committed shippers/customers and the destination of the product – BBP refused to provide the information and the trial court likewise denied its disclosure and relevance to the questions before the court. Appellants' Br. 28-29.

The Attorney General also goes as far as to suggest that oil pipelines fall within the list of presumptive valid public purposes set out in the Louisiana Constitution for expropriations by the "state or its political subdivisions" in particular as "transportation" or "public utilities for the benefit of the public generally" Atty. Gen. Br. at 6; La. Const. Art. I, Sec. 4(B)(1) and (2). However, the plain language of the statute makes clear that this exhaustive list applies to expropriations by the state or its political subdivisions – not private entities, which are addressed at La. Const. Art. I, Sec. 4(B)(4). Moreover, the trial court refused to allow any questioning as to the pipeline's shippers and customers and whether the oil was for domestic use or export, so there would have been no basis for determining whether the pipeline was for the benefit of the public generally even if the provision did apply. Appellants' Br. 28-29.

Rather than giving private oil pipeline companies a presumptive public purpose as the Attorney General suggests, the Louisiana Legislature in 1974 added what was supposed to be another layer of protection for landowners against private takers – the requirement that an expropriation not only serve a public purpose, but also a necessary one. *See Louisiana Res. Co. v. Stream,* 351 So.2d 517, 521 (La. App. 3 Cir. 1977), *writ granted sub nom. Louisiana Res. Co. v. Stream.,* 353 So.2d 1047 (La. 1978), *and writ recalled sub nom. Louisiana Res. Co. v. Stream.,* 357 So.2d 559 (La. 1978) (Watson, J. concurring). In his concurrence, Judge Watson noted that the provision was "adopted after great controversy and was intended to make expropriation by private entities *more difficult*." *Id.* (emphasis added). Reviewing the legislative history, he concluded the drafters of the 1974 Constitution required a new standard of proof that was "considerably more onerous" for such takings. *Id.*

The Attorney General and BBP put forward interpretations of the expropriation law in Louisiana that would render the law purely symbolic:

"Common carriers for hire" no longer need to be hireable – any pipeline transporting oil automatically qualifies. And any movement of oil through any pipeline automatically serves a public and necessary purpose, which is what the trial court basically ruled as he did not even allow evidence into the actual users and customers of BBP's Pipeline and whether the oil was for domestic use or export. Appellants' Br. at 29-30, Appendix C at 1029. If this is true, then the legal scheme governing expropriation by private entities is even more constitutionally deficient because judicial review at the back end is a purely symbolic, *pro forma* exercise because oil pipelines *per se* serve a public purpose and necessity.[3, 4]

II. Failure of the Trial Court to Render Judgment on Appellants' Reconventional Demands.

Even though the trial court itself stated it was not rendering judgment on the constitutional claims for violations of the rights to property and due process (because it conflated them with affirmative defenses), Appellee somehow asserts that the trial court did in fact render judgment on the counterclaims because the court awarded damages on the trespass claim. Appellee Br. at 12-13. Appellee fails to cite any legal authority for this proposition, which is not surprising since claims for constitutional violations are distinct from the trespass claim, and should have been separately ruled upon. Any person or entity can liable for trespass; but only

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[3] The Attorney General also erroneously claims that Appellants challenge the Louisiana Constitution as violating the Louisiana Constitution. However, Appellants challenge the Louisiana expropriation *statutes* as violating the Louisiana Constitution – not the Constitution itself. *See e.g.*, 1 R. 86 (Appellant Larson Wright's Answer and Exceptions, Third Affirmative Defense: "The *statutes* pursuant to which Plaintiff claims authority to expropriate are unconstitutional …") (emphasis added).

[4] BBP also suggests that Appellants did not brief what is lacking in the eminent domain laws vis-à-vis what is required for the rights to due process and property in the Louisiana Constitution. Appellee Br. at 11. However, Appellants set out in detail how the eminent domain scheme works and the gaps in oversight that exist that allow private oil pipeline companies to operate without sufficient due process protections, along with Louisiana cases that discuss the requirements of due process and property rights. *See* Appellants' Br. at 14-25. *See, e.g.*, *Anderson v. Bossier Par. Police Jury*, 45, 639 (La. App. 2 Cir. 12/15/10, 25-26); 56 So.3d 275, 287; *Fields v. State Through Dept. of Public Safety and Corrections*, 98-0611 (La. 7/8/98); 714 So.2d 1244; *Hewitt v. Lafayette City-Par. Consol. Gov't*, 2017-45 (La. App. 3 Cir. 4/4/18); 243 So.3d 79, 86, *reh'g denied* (May 16, 2018), *writ denied*, 2018-0980 (La. 10/8/18) ("this right to notice and opportunity to be heard must be extended at a meaningful time and in a meaningful manner.").

entities "expressly delegated the power of eminent domain" can be deemed agents of the State for "purposes of establishing liability for an unconstitutional taking." *Mongrue v. Monsanto Co.,* 249 F.3d 422, 429 (5th Cir. 2001).

In Counts I-IV, Appellants claim that BBP violated their rights to property and due process under the Louisiana and U.S. Constitutions when it trespassed and began construction on Landowners' property prior to obtaining their permission, or an expropriation judgment. Appellants are entitled to declaratory relief for their claims of violations of the U.S. and Louisiana Constitutions, which the trial court failed to rule on. Appellants' Br. at 22-25. Moreover, a monetary award to compensate for BBP's trespass does not automatically satisfy the monetary award that Appellants would be entitled to for a violation of their rights to property and due process. *See* Appellants' Br. at 24-25. An unconstitutional taking and a procedural due process violation are each independently compensable without regard to any other injury. *See e.g., id.* citing *Archbold-Garrett v. New Orleans City,* 893 F.3d 318, 322 (5th Cir. 2018) (noting that one concerns "the means by which the deprivation was effected" and the other "the deprivation itself").

III. Statutory Notice Requirements and Exceptions of Prematurity.

La. R.S. 19:2.2 sets out the *only* procedural protections afforded to landowners before a private oil pipeline can expropriate private property, and BBP concedes that Appellants Theda Larson Wright and Peter Aaslestad did not receive the notices required under this statute. Appellee Br. at 15, 17-18. Appellee disingenuously argues that a ruling on this issue in favor of Appellants would allow them to "scuttle an entire expropriation project merely by staying inside and refusing to accept legally required notice," despite the fact that the record evidence shows that neither of these Appellants attempted to avoid these notices. *See, e.g.,* 5 R. 1234:5-1237 (Appellant Larson Wright regularly accepted mail from BBP); 6 R. 1238:22-1239:1 (describing correspondence with Peter Aaslestad).

Appellee cites to *Thomas v. New Orleans Redevelopment Authority* to argue that they satisfied La. R.S. 19:2.2(A) when they mailed notice required under the statute to Appellant Larson Wright, although they knew that she did not receive it.[5] But in *Thomas*, the relevant landowners' addresses were unknown. 2004-1964 (La. App. 4 Cir. 10/6/06), 942 So. 2d 1163, 1165-7. The expropriator's counsel found some of the landowners' addresses through telephone directory and internet database searches, but did not know for sure that those were the correct addresses. *Id.* The notices sent to some of the addresses were returned undelivered. *Id.* at 1167. The expropriator had no reason to think that subsequent attempts to resend the notices to the same addresses would "have been any more effective than previous attempts." *Id.* at 1170. Here, Appellee knew Appellant Larson Wright's address. Appellee made a single attempt to send the notice required under 19:2.2(A), and knew that she had not received it. But Appellee also knew that the address was valid and that Larson Wright was accepting mail, as she had previously and subsequently received and accepted other mail from Appellee at that same address. 5 R. 1234:5-2337. Instead of making, at the very least, one additional attempt to re-send the required notice, BBP chose to do nothing at all.

With regard to BBP's admitted failure to mail notices required under La. R.S. 19:2.2(B) to Appellant Peter Aaslestad, BBP urges three unsupported grounds: (1) Subsection B is not a statutory prerequisite; (2) Appellant Aaslestad was not prejudiced by BBP's failure; and (3) Subsection B is not applicable to him because BBP sent his initial offer letter in December, 2016 prior to when the amendment went into effect in January 2017. Appellee Br. at 17-18.

BBP's suggestion that Subsection B of La. R.S. 19:2.2 is not mandatory like subsections A and C are is incorrect. La R.S. 19:2 unequivocally states "Prior to

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[5] *N. Causeway Blvd. Corp. v. Penney*, 07-CA-883 (La. App. 5 Cir. 3/11/08); 982 So.2d 195, cited by Appellee, does not interpret this statute at all.

filing an expropriation suit, an expropriating authority *shall* . . . comply with *all of the requirements of R.S. 19:2.2*." (emphasis added). All subsections in 19:2.2 are mandatory prior to commencing litigation. And the very fact that Mr. Aaslestad was denied his procedural due process *is* the prejudice. *See Carey v. Piphus,* 435 U.S. 247, 266 (1978) (the right to procedural due process is "absolute" and actionable even "without proof of actual injury").

BBP also cites to distinguishable caselaw and an inapplicable code provision to suggest that Subsection B does not apply to Mr. Aaslestad because substantive laws cannot apply retroactively.[6] Appellee Br. at 17. However, BBP's assertion mischaracterizes the facts -- there is simply no retroactivity issue here. Subsection B was added to the statute by Act No. 108 in 2016, effective January 1, 2017, and requires that a series of notices set out in 19:2.2(B)(1-7) be provided no more than "thirty days after making an offer to acquire an interest in property, if no agreement has been reached with the property owner." La. R.S. 19:2.2(B).

BBP sent its initial offer letter to acquire easements to Mr. Aaslestad on December 15, 2016, and a final offer letter, which was sent on March 9, 2017. *See* 6 R. 1238:23, (BBP's Exhibit 25 correspondence with Peter Aaslestad), 6 R. 1238:29-31 (Mr. Aaslestad received an initial offer letter, final offer letter, but no attorney letter). The expropriation lawsuit was filed over a year and a half after the law came into effect, in July 2018.

After January 1, 2017, BBP was required to comply with the notice requirements of the statute under Subsection B. The fact that BBP sent the first offer letter in December 2016 is irrelevant, given that the expropriation proceeding

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[6] *Grambling State Univ. v. Walker*, 44,995 (La. App. 2 Cir. 3/3/10); 31 So.3d 1189 is easily distinguishable from the present case where the incident in question (treatment for a work-related injury) preceded the effective date of the statute in question by more than a decade. In any event, Louisiana courts have declined to retroactively apply substantive laws absent express legislative intent to do so. However, procedural and interpretative laws apply both prospectively and retroactively. LSA C.C. art. 6.

was commenced a year and a half after the law went into effect. Even if the court finds that the provision is not applicable to the initial offer in December 2016, any subsequent offer letter sent to Mr. Aaslestad after January 2017, including the offer letter sent on March 9, 2017, should have complied with the statute.

If Appellee's view that these notice requirements are not mandatory pre-requisites to litigation prevails, then the expropriation scheme is even more constitutionally deficient as what minimal procedural due process ostensibly exists, is not to be taken seriously and enforced.

IV. Public and Necessary Purpose Finding and Erroneous Evidentiary Rulings.

BBP erroneously suggests that Appellants do not challenge the trial court's ruling that the expropriation was for a public and necessary purpose. Appellee Br. at 11. However, Appellants challenge the trial court's evidentiary rulings underpinning that ruling. If the trial court has made one or more prejudicial legal errors that interdict the fact-finding process, then the Appellate Court should make its own independent review of the record and determine the facts *de novo*. *St. Bernard Port, Harbor & Terminal Dist. v. Violet Dock Port, Inc., LLC*, 2017-0434 (La. 1/30/18); 239 So.3d 243, *cert. denied*, 139 S. Ct. 375 (2018). Before remanding a case to introduce additional evidence, an Appellate Court must consider what is in the record to see if it can still make a determination on the merits. *Mayer v. Barrow*, 182 La. 983, 989, 162 So. 748, 750 (1935).

Despite BBP's attempt to portray the contrary, it is clear in the record that the trial court reversed itself, or inverted itself, in its rulings with respect to the admission and exclusion of evidence by both the parties and the court. *See* Appellants' Br. at 10-11; 28-31.[7] BBP also misstates the scope of testimony the

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[7] BBP suggests that Appellants did not timely object to testimony the trial court allowed from BBP's expert David Dismukes. Appellee Br. at 20. However, Appellants did timely object to the testimony more than once. Appellants' Br. at 28-29. Appellants were only required to make one contemporaneous objection. Fed. R. of Evid. 103(b) ("Once the court rules definitively

court let in through Appellants' expert, Scott Eustis, suggesting that Mr. Eustis was allowed "to testify extensively as to the environmental impacts" of the pipeline, and was not limited to the parcel of land at issue in the expropriation. Appellee Br. at 25. However, the transcript illustrates otherwise. *See* 7 R. 1574:22-30 (even in the context of Mr. Eustis testifying as a fact witness to observations of pipeline construction the court excluded evidence of ongoing construction on the adjacent parcel); 7 R. 1611:28-1616:7 (refusal to allow testimony of noncompliance because it did not specifically relate to the property at issue); 7 R. 1618:5-1619:2 (sustained objection to testimony on environmental impacts beyond the property).

The limitations placed on Appellants' expert were severe and prejudicial especially as compared to the wide-ranging, far-flung testimony the trial court allowed from BBP's expert as to the benefits of the pipeline while refusing to allow cross-examination as to harm. Appellants' Br. at 28-30. The impact of that error is even more apparent in that the trial court itself referred to Dismukes' testimony on direct as to matters which pertained to energy infrastructure and benefits in its ruling. Appellants' Br., Appendix B at 1015-16 (Reasons for Judgment); *see also*, 7 R. 1553:6-1559:26. BBP also suggests that Appellants have not identified any specific area of testimony not allowed from Mr. Eustis. Appellee Br. at 25. However, Appellants pointed directly to portions of the transcript where this occurred. Appellants' Br. at 29. The trial court refused to allow testimony from Mr. Eustis that was pertinent to the questions of public and necessary purpose, in particular when it refused to allow testimony regarding the status of permit

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on the record – either before or at trial – a party need not renew an objection or offer of proof to preserve a claim of error for appeal"). Moreover, a party who obtains a pretrial ruling excluding evidence does not have to object contemporaneously if another party violates the pretrial ruling by eliciting excluded material. The granted motion in limine "served as a continuing objection to that line of testimony." *Sweet Lake Land & Oil Co., LLC v. Oleum Operating Co., L.C.,* 2016-429 (La. App. 3 Cir. 3/8/17), *writ denied sub nom. Sheet [sic] Lake Land & Oil Co., LLC v. Oleum Operating Co., L.C.,* 2017-1107 (La. 10/27/17), 228 So.3d 1224.

compliance in the Basin because the non-compliance concerns were not tied to the specific parcel at issue. *Id.* at 29; *see also,* 7 R. 1611:28-1616:7. The evidence of permit noncompliance was relevant as rebuttal to BBP's attempt to use state and federal permits to show public and necessary purpose, and the trial court's ultimate deferral to that permitting processes. 6 R. 1414:21-14:15:6; 1416:1-1418:10; 6 R. 1291:9-17, 21. *See also* Appellants' Br. Appendix B at 6.

The trial court's reliance on state and federal permits is erroneous for several reasons. First, the considerations for state and federal environmental permits are separate and distinct from the constitutional requirement of a public and necessary purpose, which must be a judicial determination, pursuant to La. Const. Art. I, sec. 4(B)(4). The court may not rely on these permits as *per se* proof of public or necessary purpose of the project. *See Tenneco v. Harold,* 394 So.2d 744, 748-49 (La. App. 3 Cir. 1981) (where the court found that the filing of a FERC issued Certificate of Public Convenience and Necessity was not conclusive of the right to expropriate and the company must carry its burden that the taking was for a public and necessary purpose). However, it is clear the trial court deferred to the permitting agencies' determinations. Appellants' Br., Appendix B at 1018 (Reasons for Judgment) ("...the Court *should not supplant* the well thought *[sic]* and well researched opinions of the various agencies that permitted this project. Therefore, the Court finds that the proper permitting has been done, and that the public purpose and necessity has been proven...") (emphasis added). Rather, the trial court may not allow its responsibility for the determination to be supplanted by other agencies. La. Const. Art. I, Sec. 4(B)(4).

Second, two permits – the Clean Water Act Sections 404 and 408 permits issued by the Army Corps of Engineers – remain subject to ongoing legal challenge in federal court. *Atchafalaya Basinkeeper, et al. v. U.S. Army Corps of Eng'rs*, No. 3:18-CV-23 (M.D. La. 2018). Third, these permits are predicated on

public interest determinations that presume compliance with permit conditions. *See* 7 R. 1607:24-25; 7 R. 1608:12-1609:3 (permit requires "compliance with the terms and conditions of this permit"). The trial court's refusal to allow testimony regarding documented observations of permit noncompliance further undermines any reliance on these permits in the trial court's public and necessary purpose evaluation. *See* Appellants' Br., Appendix B at 6.

CONCLUSION

Louisiana's eminent domain scheme is unconstitutional as applied to oil pipeline companies as it grants them the "unrestrained ability to decide whether another citizen's property rights can be restricted." *Boerschig,* 872 F.3d at 708. This is made even clearer by BBP's arguments that, on the one hand, no oversight is needed on the front end because the expropriation statute affords judicial review on the back end, but, on the other hand, any oil pipeline automatically serves a public and necessary purpose, rendering any judicial review of this question superfluous. BBP fails to explain how a ruling on its trespass claim could possibly satisfy the relief that Appellants are entitled to for BBP's violations of the U.S. and Louisiana constitutions, and also fails to explain why a court should countenance BBP's admitted failure to follow statutory requirements prior to litigation. Finally, the trial court's manifest evidentiary errors significantly prejudiced Appellants, and thoroughly corrupted the trial court's finding of public and necessary purpose.

Appellants respectfully pray this Court grant the relief requested in Appellants' Original Brief.

October 21, 2019

Respectfully submitted,

Misha L. Mitchell
La. Bar Roll No. 37506
Atchafalaya Basinkeeper
411 Walnut Street #15255
Green Cove Springs, FL 32043

Pamela C. Spees
La. Bar Roll No. 29679
Astha Sharma Pokharel
Admitted *pro hac vice*
Center for Constitutional Rights

Tel. (225) 692-1133
Fax. (888) 920-6418
basinkeeperlegal@gmail.com

666 Broadway, 7th Floor
New York, NY 10012
Tel & Fax (212) 614-6431
pspees@ccrjustice.org
asharmapokharel@ccrjustice.org

William P. Quigley
La. Bar Roll No. 7769
Professor of Law
Loyola University College of Law
7214 St. Charles Avenue
New Orleans, LA 70118
Tel. (504) 710-3074
Fax (504) 861-5440
quigley77@gmail.com

Attorneys for Appellants Katherine Aaslestad, Peter Aaslestad, and Theda Larson Wright

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 21st day of October 2019 to the following counsel for Appellees:

Michael B. Donald
Tiffany Raush
811 Main Street, Suite 2900
Houston, Texas
Tel. (713) 437-1800
Fax (713) 437-1810
mdonald@joneswalker.com
traush@joneswalker.com

Ian A. MacDonald
600 Jefferson Street, Suite 1600
Lafayette, LA 70501
Tel. (337) 593-7600
Fax (337) 593-7748
imacdonald@joneswalker.com

Archie Joseph
Attorney at Law
707 Berard Street
Breaux Bridge, LA 70517
(337) 332-5287
ajosephlaw@cox-internet.com

Jeff Landry
Attorney General
Harry J. Vorhoff
Ryan M. Seidemann
P.O. Box 94005
Baton Rouge, LA 70804
VorhoffH@ag.louisiana.gov
SeidemannR@ag.louisiana.gov

PAMELA C. SPEES
Attorney for Plaintiffs-Appellants