

registered agent's address is also 228 St. Charles Avenue, Suite 1424, New Orleans, Louisiana. While Castle is therefore domiciled in Orleans Parish, Louisiana.

5. Defendant Jeanerette Lumber¹ is a Louisiana limited liability company with its principal office address at 228 St. Charles Avenue, Suite 1424, New Orleans, Louisiana. Jeanerette Lumber's registered agent's address is also 228 St. Charles Avenue, Suite 1424, New Orleans, Louisiana. Jeanerette Lumber is therefore domiciled in Orleans Parish, Louisiana.

6. Defendants are properly joined in the same action because (1) there is a common interest in that Bayou Bridge's action against each arises out of the same facts and presents the same legal issues, (2) each action is within the jurisdiction of the Court and is brought in a proper venue, and (3) the actions are mutually consistent and employ the same form of procedure. *See* La. C.C.P. art. 463.

FACTUAL BACKGROUND

7. Bayou Bridge is constructing a common carrier interstate liquid petroleum transmission pipeline and appurtenant facilities from Lake Charles, Louisiana, to St. James, Louisiana (the "Pipeline"). Bayou Bridge does not own the crude oil being transported by the Pipeline, but merely acts as a common carrier transporter for the oil commodity owned by others. In 2015-2016, Bayou Bridge constructed a 30-inch oil pipeline from Nederland, Texas, to Lake Charles, Louisiana. That pipeline was constructed by Bayou Bridge to facilitate the movement of crude oil from an existing large crude oil terminal and hub facility in Nederland, Texas, to refining infrastructure in and around Lake Charles, Louisiana.

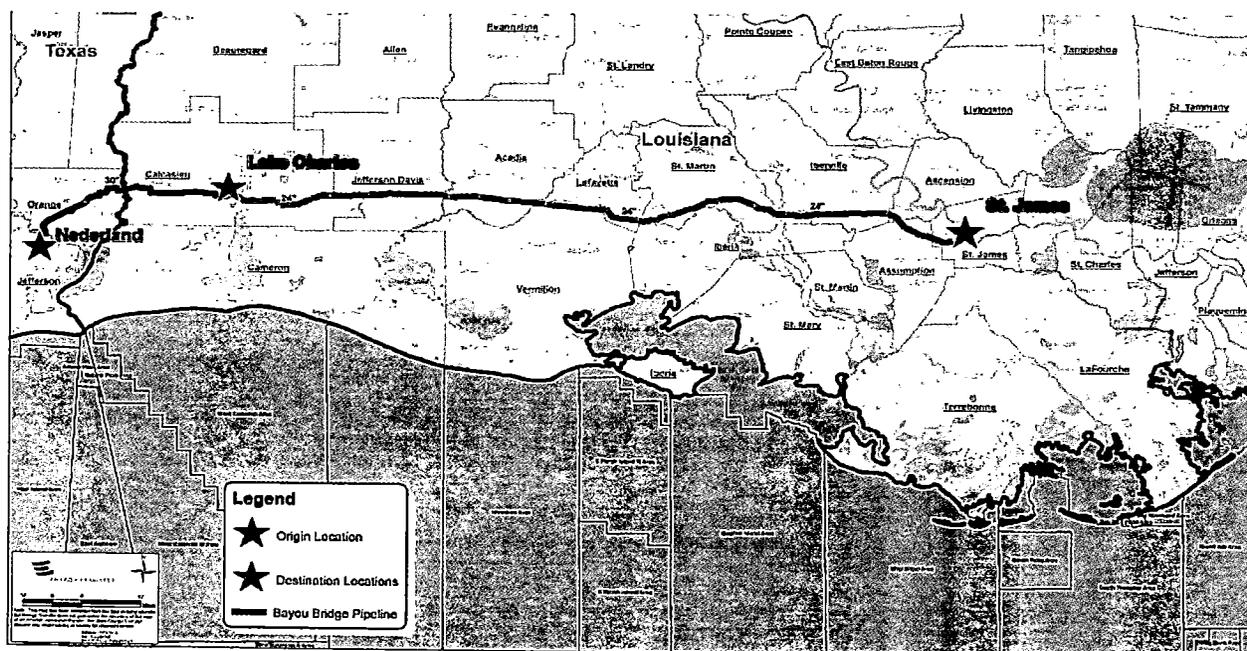
8. As construction of the Nederland-Lake Charles pipeline was underway, it became apparent that other refining capacity in Louisiana could be made available to shippers of crude oil if a crude pipeline, a reliable method of transportation, could be constructed to open up this refining capacity to domestic sources of production that were being sourced to the hub and storage facilities in Nederland. Historically, Louisiana refining capacity and crude markets have been dependent on limited/constrained, less reliable, more expensive, and slower marine and rail delivery. An additional crude pipeline connecting existing hub and terminaling facilities in the Gulf Coast to Louisiana's existing refineries would provide enhanced opportunities to deliver varying mixes of domestic crude oil to Louisiana markets, greatly improving the efficiency and

¹ In 2001, Jeanerette Lumber & Shingle Co., Limited merged with Jeanerette Lumber & Shingle Co., L.L.C. with the latter company left as the surviving company. Reference to Jeanerette Lumber in this Petition therefore is meant to encompass both entities.

expanding the reach of Louisiana's refining facilities. Based on these market factors, in October 2015, Bayou Bridge initiated an open season² to gauge market interest in expanding the Nederland-Lake Charles pipeline across Louisiana to St. James. The open season process resulted in several binding commitments from third-party shippers. In addition, four third-party companies contracted with Bayou Bridge to connect their terminals and refineries in the Lake Charles or St. James area to the pipeline.

9. Accordingly, Bayou Bridge embarked on a multi-million-dollar expansion of the Nederland-Lake Charles pipeline. After months of reviewing and assessing the route possibilities, Bayou Bridge arrived at the current configuration for the Pipeline through eleven Parishes in Louisiana from Lake Charles to St. James. The entire pipeline will ultimately span approximately 212 miles, with the section from Lake Charles to St. James spanning approximately 162 miles. See Figure 1.

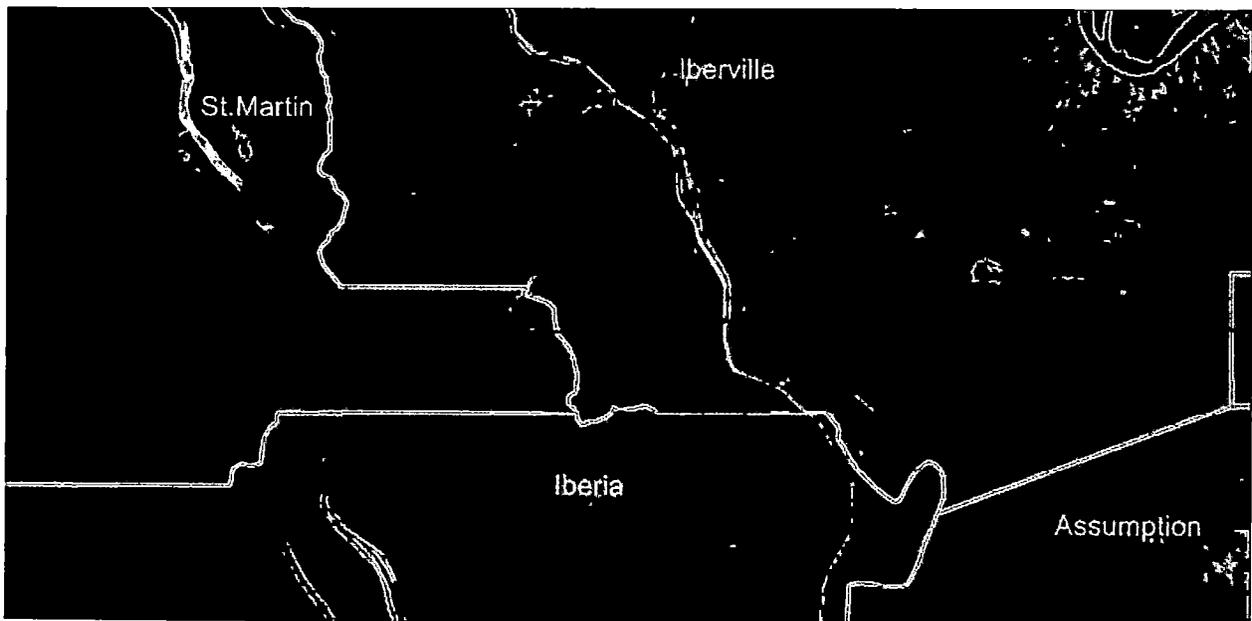
FIGURE 1



² The term “Open Season” refers to a recognized process whereby the commercial need for an infrastructure project is assessed openly in the commercial market place. The open season period refers to a specific period of time when all those who may be interested in contracting the transport of crude oil are notified by the pipeline company about a potential pipeline project and given equal consideration to bid on various types of transportation services to be provided by that pipeline. “The open season can be binding or non-binding. If it is binding, the participation is documented in the form of a Precedent Agreement (PA) between the shipper and the pipeline. This agreement obligates the shipper to execute a Transportation Agreement in the future prior to commencement of service.” Bob Bookstaber, *As Time Goes By – the Long Gestation for Gas Pipeline Projects*, Oil & Gas Finance Journal, Oct. 11, 2012, <http://www.ogfj.com/articles/2012/10/as-time-goes-by-the-long-gestation-for-gas-pipeline-projects.html>. In the context of gas pipelines, “[t]he executed PA is very important to demonstrate to the regulators, primarily the Federal Energy Regulatory Commission (FERC) that the capacity will be used and useful and thus in the public need and necessity.” *Id.*

10. Defendants own property along the Pipeline route. After negotiations between the parties, Bayou Bridge and Defendants entered into separate easement agreements with identical terms and conditions on February 22, 2016, (collectively, the “Easements”). *See* Ex. A, “White Castle–Bayou Bridge Easement”; Ex. B, “Jeanerette Lumber–Bayou Bridge Easement.” Defendants drafted the Easements. The Easements grant to Bayou Bridge a 50-foot permanent servitude for construction and operation of the Pipeline in addition to certain temporary work space during construction. The Easements cover 12 separate tracts of land located in the Atchafalaya Basin (the “Basin”) in St. Martin and Iberville Parishes (the “Property”). *See* Figure 2.

FIGURE 2³



11. The Property is more particularly identified and described in the Easements attached as Exhibits A and B. Together, the Easements encompass approximately ten miles of the Pipeline route.

12. With its real right in the Property secured by the Easements, Bayou Bridge began its preconstruction activities for installation and construction of the Pipeline on the Property. Preliminary phases of construction commenced in the summer of 2017. During this time, third party electric utility companies commenced construction on electric utility lines that will provide electrical power to pump station facilities that are to be constructed by Bayou Bridge that will service the portion of the Pipeline covered by the Easements. During this time, Bayou Bridge also surveyed and installed construction stakes on the Property and used the Property under its Easement rights to access other tracts of land in this area.

³ White Castle and Jeanerette Lumber tracts are colored red.

13. Over the course of 2017, Bayou Bridge was also actively pursuing the necessary regulatory permits for construction and operation of the Pipeline. At the same time, Bayou Bridge marshalled its contractor, supplies, equipment, pipe, and land needed for construction and performed all permissible construction activities so that it would be ready to proceed without delay once its final permits were approved. For example, as stated above, in addition to construction staking in mid-2017, two pump stations for the Pipeline were purchased, designed, related power easements secured, and power lines constructed. By May 2017, Bayou Bridge's construction plans were fully in place as it awaited the final necessary permits—most crucially, approval of Bayou Bridge permit pending before the U.S. Army Corps of Engineers (“Corps Permit”). Upon granting of these final permits, Bayou Bridge could initiate the next phase—construction of the Pipeline itself. Timing of these permit approvals were beyond Bayou Bridge's control.

14. When the Corps Permit was approved on December 14, 2017, Bayou Bridge was prepared. It had already mobilized its contractor and held a construction kick-off meeting in mid-November in anticipation of the Corps Permit approval. The next phase of construction, additional staking and surveying, began on December 27, 2017.

15. On January 5, 2018, Defendants indicated that they intended to demand that Bayou Bridge issue a written release of the Easements and that Bayou Bridge could not proceed with scheduled construction activities on the Property. Defendants advised that they were repudiating the Easements based on their incorrect belief that the Easements had terminated.

16. Paragraph 1 in the Easements provides that if Bayou Bridge fails to install or construct the pipeline then the rights granted shall cease and terminate unless the failure to complete construction is due to a force majeure or other conditions beyond Bayou Bridge's control. *See* Ex. A and B. Separately, Paragraph 1 also provides that ***once the Pipeline is installed***, if Bayou Bridge ceases to use the Pipeline for a period of 18 ***consecutive*** months then the rights granted shall cease and terminate unless such nonuse is due to a force majeure or other conditions beyond Bayou Bridge's control. *Id.*

17. Defendants incorrectly read the 18-month period as a deadline within which Bayou Bridge must install or construct the pipeline. This is contrary to the plain reading of Paragraph 1, which is clear and unambiguous.

18. In addition to their incorrect reading of Paragraph 1, Defendants ignore the crucial language expressly providing that failure to construct will not result in termination of the Easements if the failure is beyond Bayou Bridge's control. The *only* circumstance preventing Bayou Bridge from moving forward with a full construction schedule for the past eight months was approval of the Corps Permit. Issuance of the final permit, the application for which had been pending since February 1, 2017, was beyond Bayou Bridge's control to grant and Bayou Bridge could not move forward with additional construction activities until it received this permit. Bayou Bridge received its Corps Permit approval in December 2017, and immediately moved forward with construction activities.

19. Moreover, to the extent possible, construction activities on the Pipeline have been ongoing over the past year. For example, initial construction staking of the Pipeline route began as early as May 2017 and construction of the power lines to the two pump stations on the Pipeline began in August 2017. Now that it has received its Corps Permit, Bayou Bridge is currently undertaking the second phase of construction staking and survey, which is expected to be completed by January 19, 2018. Beginning January 11, 2018, Bayou Bridge commenced clearing activities. Bayou Bridge is also ready to move into the grading phase of construction followed shortly thereafter by ditching, stringing, welding, lowering the pipe in the trench, and eventually restoration.

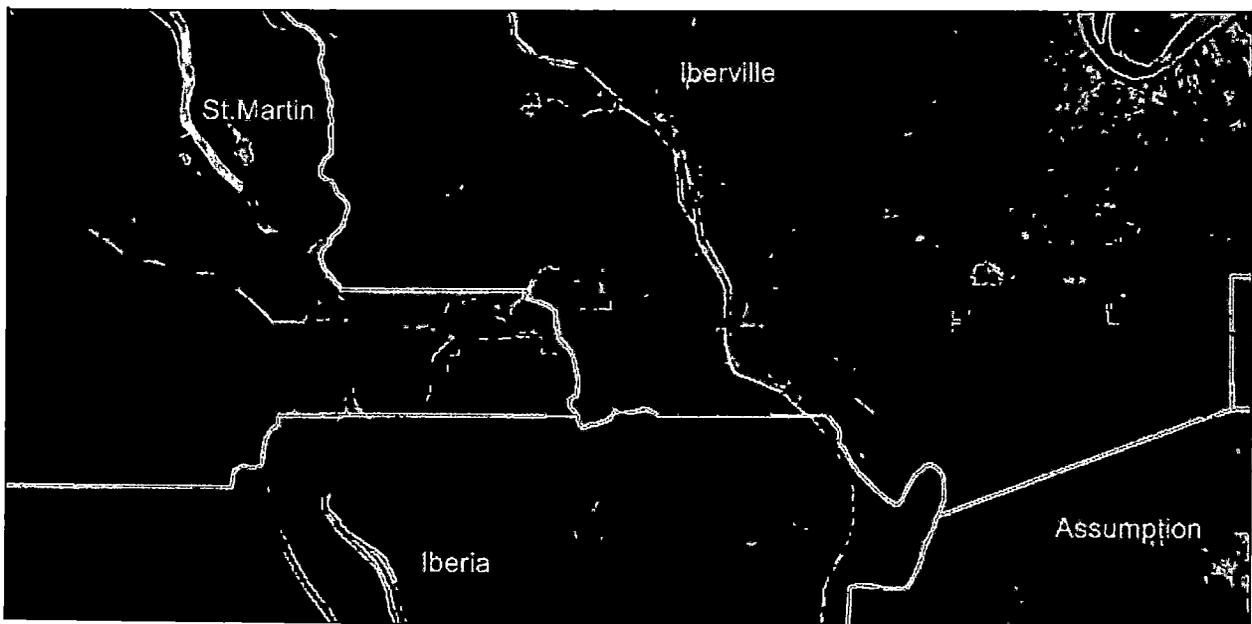
20. Construction of the Pipeline across 162 miles is a carefully-orchestrated, costly, sequentially-planned process moving from tract to tract along the Pipeline route. To illustrate, as previously mentioned, Bayou Bridge began clearing activities on January 11, 2018. Clearing began at two points along the Pipeline route and will move seriatim in an east-west direction along the route until each tract of the 162 miles has been cleared. As clearing is completed, grading will begin and likewise move seriatim in an east-west direction along the entire route, followed by ditching, stringing, welding, lowering the pipe in the trench, etc.

21. Any disruption to this sequentially-planned process causes Bayou Bridge to incur massive costs and delays that reverberate throughout the project. The costs are frequently referred to in the industry as "move-around costs" and include the costs incurred by moving around a tract of land to which servitude/easement rights are disputed – *i.e.*, costs for moving all equipment and work crews around the tracts of land at issue on approved access roads to a point down the right of way that can be accessed and for which servitude rights are not disputed. The

sequential construction activity is then begun anew and proceeds as planned until access to the by-passed tract is resolved, at which time another move-around must occur to complete the sequential construction activities on the by-passed tract. When each sequential construction activity is complete on the by-passed tract, then yet another move-around occurs to return to the point where construction left off.

22. Yet, the potential move-around costs associated with disruption along the Pipeline route crossing the Property far exceed typical move-around costs. First, the Property covers approximately ten miles of the Pipeline route. Not only that, but the Property is the access point for nearly 25 other tracts under the construction sequence. See Figure 3 below. Without access from Defendants' Property, Bayou Bridge will be forced to double-back, change direction, and construct some 25 tracts out of sequence, all of which further compounds move-around costs.

FIGURE 3⁴



23. In addition to the typical costs associated with stopping work on one tract and resuming work on a non-contiguous parcel, the Basin location of the Property adds the additional expense and coordination challenges of airboats and barges. Moreover, delaying construction activities in the Basin area places Bayou Bridge at risk of rising water levels with the potential to delay completion of the Pipeline by several months pushing completion into 2019.

24. Indeed, Defendants' repudiation of the Easements threatens Bayou Bridge with irreparable injury that exceeds the potential loss of millions of dollars in move-around costs and project delays. Defendants' repudiation and interference will leave gaping holes in Bayou

⁴ As in Figure 2, White Castle and Jeanerette tracts are colored red. Tracts that are not owned by Defendants, but for which the Property is the access point under the construction sequence, are colored yellow.

Bridge's Pipeline covering ten miles until Bayou Bridge can be heard on the merits of its declaratory action. Bayou Bridge would be unable to meet its contracts with shippers and refineries putting the entire multi-million-dollar project in jeopardy. Thus, Bayou Bridge would be forced to breach multiple contracts threatening its business reputation, goodwill, and competitive edge in the marketplace. If Defendants are not enjoined from their improper repudiation of the Easements and prohibited from interfering with Bayou Bridge's construction activities on the Property, Bayou Bridge will suffer injury to its reputation, good will, competitive advantage, and market share—an egregious harm immeasurable by any pecuniary standard.

25. In addition, Louisiana's economy will suffer a severe blow if the Bayou Bridge Project is not timely brought to fruition. An Economic Impact Study performed by the Center for Energy Studies at Louisiana State University, projected that during construction the Bayou Bridge Project would lead to "over \$800 million in direct Louisiana economic impacts, over 4,000 jobs, more than \$400 million dollars of total wages and over \$50 million in taxes." Further, "[d]uring the first 5 years of operations, the Project is estimated to lead to over \$9.5 million in direct Louisiana economic output, 19 jobs/year, close to \$7 million in total wages and over \$200,000 in taxes." (Emphasis in original). But these are merely the jobs and wages associated with direct contracts with Bayou Bridge. Considering subcontracts, and further considering the effect on the housing, retail, and service industry, the projected job growth attributable to just the construction and operation of the pipeline was another 2,500 jobs and just over \$100 million in wages. The overall benefit is further elevated considering the in-direct downstream benefits that will accrue at the refineries and oil marketing hubs, where improved infrastructure utilization will have a positive impact on the Louisiana and national economies. This boon to Louisiana's economy as well as an important component of National energy infrastructure is jeopardized if Defendants are permitted to improperly repudiate the Easements and interfere with Bayou Bridge's construction activities on the Property.

COUNT I

DECLARATORY RELIEF

26. Bayou Bridge adopts and incorporates by reference the allegations in Paragraphs 1-25.

27. Pursuant to Article 1871 *et. seq.* of the Louisiana Code of Civil Procedure, Bayou Bridge asks the Court declare that the Easements are not terminated, that Bayou Bridge is not required by the Easements to construct the Pipeline within 18 months of execution, and that any delay Bayou Bridge experienced in construction of the Pipeline was due to conditions beyond Bayou Bridge's control.

COUNT 2

TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION

28. Bayou Bridge adopts and incorporates by reference the allegations in Paragraphs 1-25.

29. Bayou Bridge's servitude is a real right in immovable property that Bayou Bridge has held for more than a year. Defendants' repudiated and materially-breached the Easements threatening Bayou Bridge's real right in the Property. Bayou Bridge seeks injunctive relief in this action to protect and restore its real right in the Property pursuant to Article 3663 of the Louisiana Code of Civil Procedure.

30. In addition, as set forth above, Bayou Bridge will suffer an irreparable injury if Defendants are not enjoined from improperly repudiating their Easements and prevented from interfering with Bayou Bridge's construction of the Pipeline on the Property. The harm to Bayou Bridge outweighs any alleged harm or inconvenience to Defendants as Defendants will merely be required to honor contracts they drafted and for which they were well-compensated. Also, as indicated above, the public interest is served by issuing the injunctive relief and allowing Bayou Bridge to proceed with construction of the Pipeline. Bayou Bridge therefore also seeks temporary, preliminary, and permanent injunctive relief pursuant to Article 3601 *et seq.* of the Louisiana Code of Civil Procedure.

31. Bayou Bridge seeks an immediate hearing on its application for preliminary injunction pursuant to Article 3602 of the Louisiana Code of Civil Procedure. Bayou Bridge has demonstrated by this Verified Petition that it will prevail on the merits of its claim for injunctive relief and therefore is entitled to a preliminary injunction enjoining Defendants from repudiating the Easements and preventing them from interfering with Bayou Bridge's construction of the Pipeline on the Property.

32. Bayou Bridge is entitled to and seeks a temporary restraining order pursuant to Article 3603 of the Louisiana Code of Civil Procedure given the immediate and irreparable harm

threatened by Defendants' repudiation of the Easements and refusal to allow construction activities on the Property. Bayou Bridge submits that the grounds for a temporary restraining order exist because of the foregoing.

33. Bayou Bridge is prepared to post security, as contemplated by Louisiana Code of Civil Procedure Article 3610, in an amount deemed reasonable by the Court. Notably, Bayou Bridge has already paid Defendants a significant sum for the clearing of timber on the Property. As such, Bayou Bridge submits that the deposit of \$50,000, for any potential incidental damages over and above what Defendants have already been paid for, provides more than enough security under these circumstances, such deposit to be made into the Registry of the Court within 24 hours of the issuance of the temporary restraining order.

34. Counsel for Bayou Bridge certifies that before filing this Verified Petition and Plaintiff's Motion and Memorandum in Support for Temporary Restraining Order and to Set Hearing on Preliminary Injunction ("Motion") with the Court, counsel for Bayou Bridge made attempts to identify and contact Defendants' counsel to discuss the relief requested. On Friday, January 12, 2018, Bayou Bridge twice called Defendants' Registered Agent to ascertain the contact information for Defendants' legal counsel. However, Bayou Bridge has not heard back as of the time of this filing on Tuesday, January 16, 2018. In addition, prior to filing the Verified Petition and Motion, counsel certifies that a copy of the Verified Petition and Motion were hand-delivered to the Registered Agent's physical address and sent to him by email.

RELIEF SOUGHT

Bayou Bridge requests a judgment in its favor, and against Defendants, awarding temporary, preliminary, and permanent injunctive relief, a declaratory judgment, and all other relief to which Bayou Bridge is entitled in law and equity, including but not limited to the following relief:

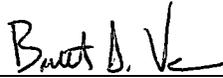
1. A temporary restraining order, preliminary injunction, and permanent injunction in accordance with applicable law and procedure, enjoining and restraining Defendants and their agents, representatives, attorneys, or employees from repudiating the Easements and interfering with Bayou Bridge's construction activities on the Property;
2. A declaration that the Easements are not terminated, that Bayou Bridge is not required by the Easements to construct the Pipeline within 18 months of

execution, and that any delay Bayou Bridge experienced in construction of the Pipeline was due to conditions beyond Bayou Bridge's control;

3. Compensatory damages and applicable penalties;
4. Reasonable and necessary attorney's fees and costs;
5. Pre- and post-judgment interest from the earliest date permitted by law and at the maximum rate permitted by law; and
6. All other equitable relief to which Bayou Bridge may be entitled.

Respectfully submitted,

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SHERIFF – PLEASE ISSUE A CITATION OF SERVICE AND SERVE

- **BAYOU BRIDGE PIPELINE, LLC'S VERIFIED PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, PERMANENT INJUNCTION, AND DECLARATORY RELIEF; AND**
- **PLAINTIFF'S MOTION AND MEMORANDUM OF LAW FOR TEMPORARY RESTRAINING ORDER AND TO SET HEARING ON PRELIMINARY INJUNCTION**

ON:

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