

BAYOU BRIDGE PIPELINE, LLC

16TH JUDICIAL DISTRICT COURT

VS. DOCKET NO. 87011

PARISH OF ST. MARTIN

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

STATE OF LOUISIANA

REASONS FOR JUDGMENT

This matter came before the Court for trial of an expropriation matter along with the defendant's trespass claim that was heard by the Court on November 27-November 29, 2018. On November 16, 2018, the Court heard various exceptions to the claim for expropriation by Bayou Bridge Pipeline, LLC. The Court ruled on these exceptions, including constitutional challenges to the proceedings by the defendants/landowners and denied these exceptions and tests of constitutionality filed by the defendants, Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad (hereinafter referred to as Landowners). The rulings on those exceptions and constitutional issues are the law of the case and will not be revisited by this Court in these Reasons. The issues before the Court on November 27, 2018 were the right of Bayou Bridge to expropriate property as a public and necessary purpose in accordance with the Louisiana Constitution and Title 19 of the Louisiana Revised Statutes, and if public and necessary, then what compensation is just compensation to be paid to the Landowners for this expropriation. See La. R.S. 19:2 and La. Const. Art. 1 Sec. 4.

The Landowners, Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad, filed Claims in Reconviction for trespass, property damage, the unconstitutional taking in violation of the Fifth Amendment, a violation of due process under the Fifth Amendment of the United States Constitution and the unconstitutional taking and due process in violation of Article 1 Section 4 and Article 1 Section 2 of the Louisiana Constitution. As referenced above, the constitutional issues have been ruled upon and will not be discussed here.

The factual background of this case is as follows: In 2016, Energy Transfer Partners conducted an "open season" or survey of its clients to determine the reasonableness and feasibility of a pipeline from Lake Charles, Louisiana to St. James hub in Louisiana. Energy Transfer had previously built a pipeline from Nederland, Texas to Lake Charles, Louisiana in order to provide crude oil transportation to Louisiana refineries at or near Lake Charles, Louisiana from Nederland, Texas, a hub for both pipeline infusion of oil and also tanker infusion

of oil. Energy Transfer determined through its client responses that a pipeline was in fact feasible and commenced the work necessary to build a pipeline from Lake Charles, Louisiana to St. James, Louisiana. It determined the proper path and size of the pipeline and commenced obtaining permits and public hearings concerning the feasibility of the pipeline. All necessary permitting and location of the pipeline was established and permits were obtained from all necessary governmental agencies.

It is clear from the record that Bayou Bridge Pipeline, LLC, the entity used by Energy Transfer to obtain right of way pipelines in this matter, did title examination work on the 38 acres more or less located in St. Martin Parish. It was discovered by Bayou Bridge Pipeline, LLC that over 400 owners of the property existed in its chain of title. Negotiations occurred and were established by Bayou Bridge Pipeline, LLC with all the record owners that Bayou Bridge Pipeline could obtain through its search of the public records in St. Martin Parish. Numerous rights of way were obtained from hundreds of owners of the 38 acres more or less, but others were either not located or refused to sign right of way agreements with Bayou Bridge Pipeline, LLC. Landowners herein fit into the latter category and oppose the pipeline and refuse to sign right of way agreements on this particular tract.

On July 27, 2018, Bayou Bridge Pipeline, LLC filed the instant action for expropriation against numerous landowners of the 38 acres of land including the defendants in this proceeding. Bayou Bridge Pipeline alleged that it needed to construct a 24 inch pipeline to transport oil from Lake Charles, Louisiana to St. James, Louisiana. Bayou Bridge also alleged that it was a common carrier within the meaning of La. R.S. 45:251 (1) and that it was engaged in the transportation of petroleum as a public utility common carrier for hire. It further stated that Louisiana law grants it the authority to expropriate property as a common carrier pursuant to La. R.S. 19:2 (8) and that the pipeline is in the public interest and a necessity. Bayou Bridge also alleged that it determined the overall route of the pipeline and identified the proper right of ways necessary for its installation. Bayou Bridge stated that it selected the current route that was used in this particular case based on technical experience and sound engineering principles after considering a number of factors including environmental impacts or damages, possible alternative routes, cultural impacts or damages, minimal crop interference and minimal interference with property in commerce.

Bayou Bridge further stated that the route crossed the property in question, and it sought to expropriate a 50 foot right of way permanent servitude for the installation, construction and maintenance of the pipeline right of way. It also sought to expropriate a temporary right of way and servitude needed for the construction of the right of way as additional temporary work space outlined on the map attached to the petition. The temporary right of way would be from the commencement of construction until six months after the pipeline is placed into service. Bayou Bridge further alleged that if Bayou Bridge completed its use of the temporary access road and/or work space prior to the expiration of the six month period then the temporary access road and the temporary work space shall immediately terminate.

The Court heard the testimony of Kevin Taliaferro, an employee of Bayou Bridge Pipeline, LLC. He testified in the November 16 hearing and also in the present hearing that the public purpose of the pipeline is to produce products to end users which benefit the public at large. This pipeline was to be constructed from Lake Charles, Louisiana to St. James, Louisiana. He explained that the St. James hub feeds numerous refineries along the Mississippi River corridor of refineries which provide many products to Louisiana, the United States and the world. He has previously testified also that the pipeline would stabilize the market commodity produced and generated to the St. James hub by connecting it to the Nederland and Lake Charles hubs. This would stabilize the oil to be delivered to the refineries along the Mississippi River corridor. It would also have a positive effect upon the consumers in that whenever there is competition for production of certain products, it usually stabilizes the price on commodities.

Testimony of Dr. David Dismukes with the LSU Center for Energy Studies corroborated the testimony of Mr. Taliaferro and explained that there was increased oil production in the Permian Basin of west Texas. This oil could be piped to the Nederland hub into the St. James hub that currently supplies the Mississippi River refining corridor with its products. He testified that Bayou Bridge will allow for diversification of these products in St. James and will support the petrochemical industries along the Mississippi River through the St. James hub. Dr. Dismukes further explained that the petrochemical industry along the Mississippi River uses byproducts from the refining of petroleum products and makes numerous products for consumers and industry. These include blood bags for hospitals and plastic milk jugs used in everyday life by Louisianans, Americans and others throughout the world.

Dr. Dismukes also testified as to the importance that Bayou Bridge Pipeline would have on a constant stream of product by making Louisiana energy independent of foreign oil or tanker transportation of oil. He testified that providing transportation of crude oil from the Permian Basin to St. James is important to maintain a steady supply to the refining capacity along the Mississippi River in spite of any disruption from political upheaval in foreign countries to hurricanes in the Gulf of Mexico. Dr. Dismukes agreed that other crude oil pipelines exist in Louisiana, but Bayou Bridge has conducted an open season (evaluation from its clients) to gauge the market need for this particular transportation avenue from Lake Charles to St. James which concluded that a pipeline was needed and determined the size of the pipeline. The Court further notes that the defendants failed to call any witnesses to challenge the public purpose of the pipeline and minimally cross examined these witnesses concerning the public purpose of the pipeline. Therefore, the Court finds that the public purpose of the pipeline is satisfied by the testimony of these two individuals.

The next item that Bayou Bridge must prove is a necessary purpose for the expropriation. Bayou Bridge argues that the word necessary refers to the necessity of the purpose for the expropriation rather than the necessity for a specific location. It argues that the expropriation acreage must be reasonably necessary for the accomplishment of the proposed project. The Louisiana Supreme Court stated that the criteria to be considered by the expropriator in determining the location and extent of the property to be expropriated includes factors such as cost, environmental impact, long range area planning and safety considerations. ExxonMobil Pipeline Co. v. Union Pacific R. Co., 2009-C-1629 (La. 3/16/10), 35 So.3d 192. ExxonMobil, supra, stated that a landowner must prove that the expropriator has abused its discretion arbitrarily, capriciously or in bad faith in order to be successful in a challenge of the necessity of the taking. Kevin Taliaferro testified at both the November 16 hearing and the November 27 hearing that Bayou Bridge determined the size of the pipeline based on the numerous shippers that committed during the open season and determined that a 24 inch pipeline was the proper size to be constructed. Bayou Bridge further carefully considered location of the pipeline based on technical experience, regulatory requirements and sound engineering principles. Only after considering a number of factors including public safety, environmental impacts or damages, possible alternative routes, cultural impacts or damages, minimal crop interference, minimal interference with property and commerce and other regulatory requirements was the site chosen.

It should be noted that Bayou Bridge Pipeline routed the pipeline to avoid new green field construction by paralleling this pipeline to an existing infrastructure. Similarly Bayou Bridge attempted to locate the pipeline near property lines to minimize the impact to landowners while attempting to avoid heavily populated areas and limit the impact of the project to the Louisiana Coastal Zone. On this particular piece of property, Bayou Bridge located its pipeline next to an existing pipeline, and the right of way is adjacent to the existing pipeline right of way.

The landowners presented the testimony of Scott Eustis to rebut the necessity of the pipeline. Mr. Eustis was qualified as a wetlands expert. He indicated that he is very familiar with the 38 acre tract in question. He testified that the old pipeline (ie. the Enterprise Pipeline) had been placed on the property in question improperly by producing elevated spoils that created a “levee type” obstruction on this property which obstructed water flow in the Buffalo Cove area of the Atchafalaya Basin. He also testified that because the Bayou Bridge Pipeline was layed incorrectly in the spoils of the Enterprise Pipeline, the “levee or dam” effect was more pronounced and would impede the flow even more. He testified under cross examination that he opposed the Bayou Bridge Pipeline at all permitting applications because of this issue but to no avail. The permits were granted over his objections. Additionally, Mr. Eustis indicated he had filed complaints with the Army Corps of Engineers concerning the misplacement of the Bayou Bridge Pipeline within the spoils of the Enterprise Pipeline. Landowners failed to bring any testimony as to the actual location of the pipeline, and Bayou Bridge offered plats as to the location of its pipeline adjacent to the Enterprise Pipeline. Mr. Eustis produced no evidence that he used metal detectors or other instrumentation to locate the exact location of the Bayou Bridge Pipeline in relation to the spoils or the actual Enterprise Pipeline.

Bayou Bridge called Michael Aubele who is their environmental compliance manager for the pipeline. Mr. Aubele testified that the pipeline is not laid within the spoils of the Enterprise Pipeline and produced engineering sheets of the depth of the pipeline on the tract in question. This engineering plat shows the depth of the pipeline in relation to the grade of the land. The permits obtained by Bayou Bridge require the depth of the pipeline to be at least 4 feet below the grade of the land. The engineering plat produced by Mr. Aubele shows that throughout the tract of the Bayou Bridge Pipeline through the 38 acres in question, a depth of at least 4 feet was maintained between the grade of the land surface and the top of the Bayou Bridge Pipeline. (See BBP Exhibit 40) Bayou Bridge offered the exact location of the pipeline on the plat entered into

evidence. (See BBP Exhibit 17 and Exhibit 30) The Court accepts the plat as prepared by Bayou Bridge and not the self-serving unscientifically corroborated testimony of Mr. Eustis. Mr. Aubele also testified that, if the Army Corps of Engineers or other governmental agency finds problems or noncompliance with the requirements of the permit, then Bayou Bridge is required to and will remedy these problems or noncompliance issues to the requirements mandated by the Army Corps of Engineers.

The Court notes that the defendants would want the Court to supplant the findings of the various agencies that permitted this project. All the permits have been introduced into evidence, and the findings of those permitting agencies and the expertise of those permitting agencies should be considered by the Court, but the Court should not supplant the well thought 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 by Bayou Bridge Pipeline, LLC. The Court finds that the testimony of Mr. Eustis and the mere allegations by the defendants of the adverse effects of the pipeline do not overcome Bayou Bridge's proof that the necessity for the expropriation has been met. Therefore, the Court finds that the public purpose and necessity of the pipeline have been proven by Bayou Bridge Pipeline, LLC.

The next issue for the Court to determine is the amount of damages for the taking pursuant to the expropriation. In determining the amount of damages to be awarded to the defendants/landowners, the Court has considered that Bayou Bridge is expropriating a 50 foot wide permanent easement which allows it the minimum width necessary to ensure adequate distance from the existing Enterprise Pipeline just south of the Bayou Bridge Pipeline and necessary access and maintenance to maintain the integrity of its pipeline in the future. There is also a minimal temporary work area that will automatically revert to the landowners six months following the pipeline's end service date or earlier if the space is no longer needed. The temporary work space in this particular case is 1.84 acres, and the permanent pipeline work space to be expropriated is 1.75 acres.

Bayou Bridge Pipeline introduced a calculation in a joint stipulation with defendants of the calculation of the interest of Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad in Bayou Bridge Exhibit #33 that was calculated by Philip Asprodites. The interest of Theda Larson Wright was 0.0000994. The interests of Peter K. Aaslestad and Katherine

Aaslestad were 0.0005803 each. The Court accepts this undisputed document as the proper calculation of the interests of these parties.

David Dominy testified as a real estate expert to determine the value of the land that was taken in this expropriation proceeding. He testified that the land is classified in its best use as recreational area and will be classified as recreational area in the future. He indicated that the pipeline will not affect the recreational use of the property once the pipeline is laid and in use. He further testified that the value of timber on this tract is not marketable because of the location, and the mobilization to harvest 3.59 acres of timber is not reasonable. David Dominy calculated the damages for the fair market value computation of the acreage lost in both the temporary and the permanent right of ways appraised at \$871. (see BBP Exhibit 30) The Court has accepted and copied the fair market value computation of the total loss for the three defendants as outlined by Bayou Bridge in its brief as follows:

Table 1: Fair Market Value Computation

<p><u>Theda Larson Wright</u> 0.0000994 (interest) x \$871 (appraised value) = \$0.09 (rounded up)</p> <p><u>Peter K. Aaslestad</u> 0.0005803 (interest) x \$871 (appraised value) = \$0.51 (rounded up)</p> <p><u>Katherine Aaslestad</u> 0.0005803 (interest) x \$871 (appraised value) = \$0.51 (rounded up)</p>

Although Mr. David Dominy testified that the timber valuation is not marketable, the Court finds that the loss of timber in this particular matter is compensable by the taking pursuant to the expropriation and eminent domain factors. Therefore, the Court finds the timber damage computation as follows.

Table 2: Best Case Scenario Timber Damages Computation

<p><u>Theda Larson Wright</u> 0.0000994 (interest) x \$2854.05 (highest value) = \$0.28 (rounded up)</p> <p><u>Peter K. Aaslestad</u> 0.0005803 (interest) x \$2854.05 (highest value) = \$1.66 (rounded up)</p> <p><u>Katherine Aaslestad</u> 0.0005803 (interest) x \$2854.05 (highest value) = \$1.66 (rounded up)</p>

The total value of the land and timber in the best case scenario given the defendant's interest in this property according to David Dominy is set forth as below.

Therefore, the total compensation due the defendants is as follows.

Table 3: Best Case Scenario Total Just Compensation

<p><u>Theda Larson Wright</u> \$0.09 (land) + \$0.28 (timber) = \$0.37</p> <p><u>Peter K. Aaslestad</u> \$0.51 (land) + \$1.66 (timber) = \$2.17</p> <p><u>Katherine Aaslestad</u> \$0.51 (land) + \$1.66 (timber) = \$2.17</p>

The defendants have claimed that treble damages are due for the removal of the trees in this particular case. The merchantable value of the trees that were removed according to the testimony and report presented by the defendants is \$2854.05. Plaintiff, Bayou Bridge, argues that this should not be the market value or compensatory damage value of the trees. The Court agrees with Bayou Bridge that the fair market value of the tract is zero due to the nonmarketability of the tract. However, even if the Court would accept the position of the landowners that they are due treble damages for the loss of the trees, Bayou Bridge has offered a tender that would more than adequately compensate them for this loss. If the Court trebled the damages for the trees, then the landowners would be entitled as follows:

Table 4: Treble Timber Damages

<p><u>Theda Larson Wright</u> \$0.28 x 3 = \$0.84</p> <p><u>Peter K. Aaslestad</u> \$1.66 x 3 = \$4.98</p> <p><u>Katherine Aaslestad</u> \$1.66 x 3 = \$4.98</p>
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Therefore, even if the Court were to find and award treble damages for the trees, the total award would be as follows:

Table 5: Total Award with Trebled Damages

<p><u>Theda Larson Wright</u> \$0.09 (fair market for right of way) + \$0.84 (treble damages for trees) = \$0.91</p> <p><u>Peter K. Aaslestad</u> \$1.66 (right of way compensation) + 4.98 (treble damages for trees) = \$6.64</p> <p><u>Katherine Aaslestad</u> \$1.66 (right of way compensation) + 4.98 (treble damages for trees) = \$6.64</p>

Bayou Bridge had previously tendered to each of the defendants the sum of \$75 to pay for their interest in the right of way. The Court will award the sum of \$75 to each of the three plaintiffs for their interest in the right of way pursuant to the expropriation filed by Bayou Bridge Pipeline. This is the highest offer made to these defendant landowners pursuant to La. R.S. 19:2 et seq. and far exceeds the amount due the landowners according to the evidence presented.

The last issue to be determined by the Court is that of trespass as claimed by the defendants. The Court has considered the issue of criminal trespass. Bayou Bridge Pipeline, LLC instituted these legal proceedings for expropriation in July 27, 2018. The Court heard testimony from Scott Eustis that the pipeline work on this tract had commenced in July of 2018 and that pipeline activity was ongoing on the property in August of 2018 as viewed by Mr. Eustis from aerial observations. The Court notes that Bayou Bridge at that particular time had numerous right of ways from various owners in ownership interests in the property in question. However, a large number of landowners were either absent, deceased or heirs of deceased landowners or had not executed proper right of ways. The expropriation proceedings were to cure these issues. This Court also finds that the pipeline on the property in question was substantially completed by the middle of September 2018, some 2 months prior to the hearings on this case.

The Court has considered the claim of trespass in light of the recent case of W & T Offshore LLC v Texas Brine Corporation, 250 So.3d 970 (La App 1st Cir. 2018). Writs by the Louisiana Supreme Court have been granted. This Court is not aware of any action taken by the Supreme Court. Therefore, the Court will consider W & T Offshore LLC, *supra* in its analysis. The landowners in this case argue that Bayou Bridge should not have constructed the pipeline

without consent of all the co-owners of the property. In W & T Offshore LLC, *supra*, the Court noted that “Louisiana Civil Code Article 805 provides that consent of all the co-owners is required for the lease, alienation or encumbrance of the entire thing held in indivision. *Id.* Louisiana Civil Code Article 804 provides that substantial alteration or improvements to the thing held in indivision may be undertaken only with the consent of all the co-owners. Louisiana Civil Code Article 801 provides that the use and management of the thing held in indivision is determined by agreement of all the co-owners.”

The Court notes that La. R.S. 19:8 (A)(3) states that “the expropriating authority shall not be entitled to possession or ownership of the property until a final judgment has been rendered and payment has been made to the owner or paid into the registry of the Court except as may otherwise be stipulated by the parties.” Therefore, it is clear under Louisiana law that the Aaslestads’ and Ms. Wright’s consents were required to the granting of the right of way to Bayou Bridge or expropriation judgments obtained as to their interests prior to the construction of the pipeline on this property. The facts show that this was not done; therefore, the claim for trespass is valid by the defendants.

Trespass is defined as an unlawful physical invasion of the property or possession of another. Davis v. Culpepper, 794 So.2d 68, 75 (La App 2nd Cir. 2001), writ denied 804 So.2d 646 A trespasser is one who goes upon another’s property without his consent. *Id.* A person damaged by trespass is entitled to full indemnification. *Id.* This Court finds that Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad have a trespass claim against Bayou Bridge Pipeline, LLC for the unauthorized construction of the pipeline on their property because they, as co-owners, did not consent to the construction prior to the commencement of the pipeline. However, while there is a legal right for recovery, the Court must assess the damages to the defendants to determine the proper remedy in this particular case. The Court notes that a judgment against all the balance of the co-owners has been effectuated through the proceedings either on November 16, 2018 or as a result of these proceedings on November 27. The only remaining co-owners that have claims that have not been resolved by judgment of expropriation or through obtaining consensual right of way are Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad. The Court finds that their total ownership interest is very minor compared to the ownership interests of the other numerous landowners. Additionally, all the defendants testified that they had very little contact with the property. The Aaslesteds testified that they had

never been on the property prior to November 25, 2018, and Ms. Wright testified that she had never been on the property. Parties indicated that they had never leased the property and had not paid any taxes on the property. The parties further testified they made no effort to possess the property as owner other than filing legal documentations in the chain of title. The Court notes that although all the defendants claim some mental anguish for this property, no party has sought medical attention and all the defendants are self-admitted advocates against pipelines. The Court is vested with the task of determining what are the damages for the trespass prior to the expropriation judgment. The Court finds that an award of \$75 each for the trespass of the approximately 5 months of activity on the property prior to the final expropriation is just damages to the defendants based on their ownership interests. Therefore, the Court will award a total to Theda Larson Wright, Peter K. Aaslestad and Katherine Aaslestad the sum of \$150 each as compensation and damages pursuant to the claims fostered by them.

The Court also notes and finds the provisions of La. R.S. 19:12 are applicable in this case. It states “if the highest amount offered prior to the filing of the expropriation suit is equal to or more than the final award the Court may in its discretion order the defendant to pay all or a portion of the cost of the expropriation proceeding.” Id. The Court in this case finds that the defendants were sent proper documentation pursuant to La. R.S. 19:2.2 and the final tender made to the defendants was that of \$75. Bayou Bridge has prevailed on its expropriation case pursuant to La. R.S. 19:12. However, the landowners have prevailed on their trespass claim. Therefore, this Court orders that each party will bear its own costs.

The Court orders the counsel for Bayou Bridge Pipeline, LLC to prepare a judgment to comply with these reasons and forward same to counsel for the defendants. Once counsel for the defendants and the plaintiff have agreed on a mutually accepted judgment, the Court will sign upon presentation by the counsel for Bayou Bridge Pipeline, LLC.

New Iberia, Louisiana this _____ day of December, 2018.

Signed by Keith R. J. Comeaux 12/6/2018

KEITH R. J. COMEAUX
DISTRICT JUDGE

Please serve all counsel of record.