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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS  
STATE OF LOUISIANA

NO. 13-6911

DIVISION Q-5

BOARD OF COMMISSIONERS OF THE SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY – EAST, INDIVIDUALLY AND AS THE BOARD GOVERNING THE ORLEANS LEVEE DISTRICT, THE LAKE BORGNE BASIN LEVEE DISTRICT, AND THE EAST JEFFERSON LEVEE DISTRICT

V.

TENNESSEE GAS PIPELINE COMPANY, LLC; ALTA MESA SERVICES, LP; ANADARKO E&P ONSHORE, LLC; APACHE CORP.; ATLANTIC RICHFIELD CO.; BEPCO, LP; BHP BILLITON PETROLEUM (KCS RESOURCES), LLC; BOARDWALK PIPELINE PARTNERS, LP; BOPCO, LP; BP AMERICA PRODUCTION CO.; BP OIL PIPELINE CO.; BP-PIPELINES (NORTH AMERICA), INC.; CALLON OFFSHORE PRODUCTION, INC.; CALLON PETROLEUM CO.; CASKIDS OPERATING CO.; CASTEX ENERGY, INC.; CEMEX, INC.; CENTERPOINT ENERGY RESOURCES CORP.; CHEVRON PIPE LINE CO.; CHEVRON U.S.A., INC.; CHROMA OPERATING, INC.; CLAYTON WILLIAMS ENERGY, INC.; CLOVELLY OIL CO., LLC; COASTAL EXPLORATION AND PRODUCTION, LLC; COLLINS PIPELINE CO.; CONOCOPHILLIPS CO.; CONTINENTAL OIL CO.; COX OPERATING, LLC; CRAWFORD HUGHES OPERATING CO.; CROSSTEX LIG, LLC; DALLAS EXPLORATION, INC.; DAVIS OIL CO.; DEVON ENERGY PRODUCTION CO., LP; ENERGEN RESOURCES CORP.; ENTERPRISE INTRASTATE, LLC; EOG RESOURCES, INC.; EP ENERGY MANAGEMENT, LLC; ESTATE OF WILLIAM G. HELIS; EXXON MOBIL CORP.; EXXONMOBIL PIPELINE CO.; FLASH GAS & OIL NORTHEAST, INC.; GRAHAM ROYALTY, LTD.; GREKA AM, INC.; GULF PRODUCTION CO., INC.; GULF SOUTH PIPELINE CO., LP; HARVEST OIL & GAS, LLC; HELIS ENERGY, LLC; HELIS OIL & GAS CO., LLC; HESS CORPORATION, A DELAWARE CORPORATION; HILLIARD OIL & GAS, INC.; HKN, INC.; INTEGRATED EXPLORATION & PRODUCTION, LLC; J.C. TRAHAN DRILLING CONTRACTOR, INC.; J.M. HUBER CORP.; KENMORE OIL CO., INC.; KEWANEE INDUSTRIES, INC.; KILROY CO. OF TEXAS, INC.; KOCH EXPLORATION CO., LLC; KOCH INDUSTRIES, INC.; LIBERTY OIL & GAS CORP.; LLOG EXPLORATION CO.; MANTI OPERATING CO.; MARATHON OIL CO.; MCMORAN EXPLORATION CO.; MOEM PIPELINE, LLC; MOSBACHER ENERGY CO.; MURPHY EXPLORATION & PRODUCTION CO.; NATURAL RESOURCES CORP. OF TEXAS; NEWFIELD EXPLORATION GULF COAST, LLC; NOBLE ENERGY, INC.; O'MEARA, LLC; ORX RESOURCES, LLC; P.R. RUTHERFORD; PLACID OIL CO.; PLAINS PIPELINE, LP; PXP PRODUCING CO., LLC; REPUBLIC MINERAL CORP.; RIPCO, LLC; ROZEL OPERATING CO.; S. PARISH OIL CO., INC.; SENECA RESOURCES CORP.; SHELL OIL CO.; SOURCE PETROLEUM, INC.; SOUTHERN BAY ENERGY, LLC; SOUTHERN NATURAL GAS CO., LLC; STATOIL EXPLORATION (US), INC.; SUN OIL CO.; SUNDOWN ENERGY LP; THE LOUISIANA LAND AND EXPLORATION CO., LLC (MARYLAND); THE MERIDIAN RESOURCE & EXPLORATION, LLC; THE PICKENS CO., INC.; UNION OIL CO. OF CALIFORNIA; VINTAGE PETROLEUM, LLC; WHITE OAK OPERATING CO., LLC; WHITING OIL & GAS CORP.; WILLIAMS EXPLORATION CO.; YUMA EXPLORATION AND PRODUCTION CO., INC.

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DEPUTY CLERK

## **PETITION FOR DAMAGES AND INJUNCTIVE RELIEF**

Plaintiff, the Board of Commissioners of the Southeast Louisiana Flood Protection Authority – East (“the Authority”), individually and as the board governing the Orleans Levee District, the Lake Borgne Basin Levee District, and the East Jefferson Levee District (collectively, “Plaintiff”), files this Petition for Damages and Injunctive Relief against the defendants named herein (“Defendants”) as follows:

### **INTRODUCTION**

The Authority is a public entity that governs the levee districts of Orleans, the Lake Borgne Basin, and East Jefferson. Charged with operating the flood protection system that guards millions of people and billions of dollars’ worth of property in south Louisiana from destructive floodwaters, the Authority has one of the most important and challenging jobs in the state. The Authority is entrusted, per La. Const. Art. IX §1, with monitoring the integrity of Louisiana’s coastal lands, which are an essential complement to the Authority’s flood protection system and which assist the Authority in protecting the people and properties behind the flood walls and levees. The Authority’s job has become exponentially more challenging because of the deterioration and disappearance of Louisiana’s coastal lands. This land loss is not simply a point of handwringing for the fishermen, hunters, and naturalists who have plied their trades and found recreation in these lands for generations, nor is it a mere matter of academic concern. Coastal lands have for centuries provided a crucial buffer zone between south Louisiana’s communities and the violent wave action and storm surge that tropical storms and hurricanes transmit from the Gulf of Mexico. Coastal lands are a natural protective buffer, without which the levees that protect the cities and towns of south Louisiana are left exposed to unabated destructive forces.

This natural protective buffer took 6,000 years to form. Yet, as described below, it has been brought to the brink of destruction over the course of a single human lifetime. Hundreds of thousands of acres of the coastal lands that once protected south Louisiana are now gone as a result of oil and gas industry activities – all as specifically noted by the United States Geological Survey. Unless immediate action is taken to reverse these losses and restore the region’s natural

defense, many of Louisiana's coastal communities will vanish into the sea. Meanwhile, inland cities and towns that once were well insulated from the sea will be left to face the ever-rising tide at their doorsteps.

For nearly a century, the oil and gas industry has continuously and relentlessly traversed, dredged, drilled, and extracted in coastal Louisiana. It reaps enormous financial gain by exploiting Louisiana's abundant natural resources, sharing some of that bounty with the many residents whom it employs. Yet it also has ravaged Louisiana's coastal landscape. Racing to extract the region's resources, it has created an extensive network of oil and gas access and pipeline canals that slashes the coastline at every angle. This canal network is a mercilessly efficient, continuously expanding system of ecological destruction that injects seawater, which contains corrosively high levels of salt, into interior coastal lands, killing vegetation and carrying away mountains of soil. What remains of these coastal lands is so seriously diseased that if nothing is done, it will slip into the Gulf of Mexico by the end of this century, if not sooner.

The Authority is responsible for protecting a majority of the Greater New Orleans region from the mortal threat of hurricane storm surge. It alone manages the levee system that is designed to check the floodwaters that threaten to inundate the city each year during hurricane season. It alone must confront the reality that with the disappearance of the land buffer that protects the levees from the ocean, its mission could become a physical and fiscal impossibility. For these reasons, it is uniquely, if not solely, capable of asserting its legal authority to demand that the catastrophic effects of the oil and gas industry's canal dredging be abated and reversed, and the damage to the coastal landscape be undone.

This case is about the future of south Louisiana. It is also about the Authority's duty to avert the dire end described above by demanding that Defendants honor their obligations to safeguard and restore the coastal treasures entrusted to them and from which they have so richly profited. Only by making this demand, as set forth in this action, can the Authority fulfill its mission and confront the unnatural threat that now imperils the region's ecology and its people's way of life – in short, its very existence.

## PARTIES

### 1. Plaintiff:

- 1.1. The Board of Commissioners of the Southeast Louisiana Flood Protection Authority – East individually, and which maintains its principal office at UNO Technology Park, CCRM Building, Suite 422, 2045 Lakeshore Drive, New Orleans, Louisiana 70122; and
- 1.2. The Authority as the board governing certain levee districts, namely:
  - 1.2.1. The Orleans Levee District (“Orleans Dist.”), which maintains its principal office at 6920 Franklin Avenue, New Orleans, Louisiana 70122;
  - 1.2.2. The Lake Borgne Basin Levee District (“Lake Borgne Dist.”), which maintains its principal office at 6136 E. St. Bernard Highway, P.O. Box 216, Violet, Louisiana 70092; and
  - 1.2.3. The East Jefferson Levee District (“E. Jeff. Dist.”), which maintains its principal office at 203 Plauche Court, Harahan, Louisiana 70123.
- 1.3. The Authority’s capacity to sue in the foregoing regard is pursuant to La. R.S. §38:309(B), as well as §§38:291 and 38:330.1 – 38:330.13.<sup>1</sup>

### 2. Defendants:

- 2.1. The approximately 100 oil and gas production and pipeline companies identified on the attached **Exhibit A** – which Defendants are, by virtue of mergers, acquisitions, name changes, etc., responsible for the approximately 150 identified entities also listed on Exhibit A. Exhibit A identifies Defendants by:

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<sup>1</sup> Specifically, La. R.S. § 38:309(B) provides that levee district boards may sue and be sued. La. R.S. § 38:291 (D)(2), (G)(2), and (K)(2) provide with regard to the E. Jeff. Dist., the Lake Borgne Dist., and the Orleans Dist., respectively, that “[o]n and after January 1, 2007, the district shall be governed by the board of commissioners of the Southeast Louisiana Flood Protection Authority-East pursuant to authority granted by Article VI, Sections 38 and 38.1 of the Constitution of Louisiana and as provided in this Chapter.” And, as explained herein, the Authority succeeded the previously-existing levee districts per 2006 La. Sess. Law. Serv. 1<sup>st</sup> Ex. Sess. Act 1, which amended La. R.S. §§ 38:330.1 – 38:330.13. As specifically provided by La. R.S. § 38:330.1(B), “[e]ach flood protection authority, through its board of commissioners as provided for in this Section, shall exercise all authority over and have management, oversight, and control of the following territories as provided by law for the boards of commissioners of such levee districts to which the authority is a successor[.]” La. R.S. § 38:330.2(A)(1)(a), in turn, provides that “[t]he board of commissioners of the Southeast Louisiana Flood Protection Authority-East shall be the successor to the boards of commissioners of the East Jefferson Levee District, Lake Borgne Basin Levee District, and Orleans Levee District.” And, finally, La. R.S. § 38:330.10 provides that when references to the “board of commissioners,” “levee board” or “board of levee commissioners” of the E. Jeff. Dist., the Lake Borgne Dist., and the Orleans Dist. “appears in any statute, contract, legal pleading, or any other document, that reference shall be deemed to be a reference to the board of commissioners of the Southeast Louisiana Flood Protection Authority-East[.]”

- 2.1.1. Name
  - 2.1.2. Domicile
  - 2.1.3. Principal business office, and
  - 2.1.4. Agent for service of process.
- 2.2. Defendants are jointly and solidarily liable for the damages to Plaintiff.

### JURISDICTION AND VENUE

3. Venue is proper in this court pursuant to Louisiana Code of Civil Procedure article 74, as wrongful conduct occurred and damages were sustained in Orleans Parish, among other parishes, and the principal place of business of the Authority and certain Defendants is located in Orleans Parish.

### BACKGROUND FACTS

#### 4. The Authority

- 4.1. The Authority was created pursuant to Acts 2006, 1<sup>st</sup> Ex. Sess., No. 1 amending Louisiana Revised Statutes §§ 38:330.1 – 38:330.13, effective January 1, 2007.
- 4.2. “[T]he primary purpose of the [Authority] is regional coordination of flood protection in order to promote such coordination over parochial concerns.”<sup>2</sup> Its mission is to ensure the physical and operational integrity of the regional flood risk management system, and to work with local, regional, state and federal partners to plan, design and construct projects that will reduce the probability and risk of flooding of the residents within the Authority’s jurisdiction.
- 4.3. The Authority is statutorily charged to “devise and adopt rules and regulations for the carrying into effect and perfecting of a comprehensive levee system, having for its object the protection of the entire territory of the authority from overflow.”<sup>3</sup>
- 4.4. As depicted in the figure attached hereto as **Exhibit B**, the Authority governs three levee districts – the Orleans Dist., Lake Borgne Dist. and E. Jeff. Dist.

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<sup>2</sup> La. R.S. § 38:330.1(F)(2)(a).

<sup>3</sup> La. Rev. Stat. § 38:330.2(G).

4.5. The Orleans Dist., Lake Borgne Dist. and E. Jeff. Dist. are responsible for the following:

4.5.1. Orleans Dist.:

- 4.5.1.1. 48.74 miles of federal levees;
- 4.5.1.2. 15.62 miles of non-federal levees;
- 4.5.1.3. 26.79 miles of federal floodwalls;
- 4.5.1.4. 13.64 miles of non-federal floodwalls;
- 4.5.1.5. 107 drainage structures – specifically, valves; and
- 4.5.1.6. 201 floodgates (railroad, road, channel, industrial and other).

4.5.2. Lake Borgne Dist.:

- 4.5.2.1. 36 miles of federal levees;
- 4.5.2.2. 26 miles of non-federal levees;
- 4.5.2.3. 1.5 miles of federal floodwalls;
- 4.5.2.4. 8 pump stations;
- 4.5.2.5. 26 drainage structures – specifically, 21 canals and 5 valves/gates;  
and
- 4.5.2.6. 13 floodgates (railroad, road, channel, industrial and other).

4.5.3. E. Jeff. Dist.:

- 4.5.3.1. 30 miles of federal levees;
- 4.5.3.2. 8.7 miles of federal floodwalls; and
- 4.5.3.3. 13 floodgates (railroad, road, channel, industrial and other).

4.6. As explained below, the Authority’s mission of protecting the communities within its jurisdiction from catastrophic storm surge and consequent flooding is increasingly impracticable as a direct result of Defendants’ acts and omissions.

## 5. The Crisis

5.1. The extensive flood protection system that the Authority oversees is designed with the primary objective of protecting the residents, businesses, and properties within

that system from the destructive flooding that hurricane storm surges and waves introduce.

5.2. Coastal lands, including wetlands and marshes, are an integral natural complement to the Authority's man-made flood protection system.

5.2.1. Coastal lands are the first line of defense for south Louisiana's communities against the destructive force of hurricanes.

5.2.2. Those lands form a buffer that reduces the height and energy of hurricane storm surge and waves, thereby aiding the Authority in its mission to protect south Louisiana.

5.2.3. Hurricanes lose intensity as they travel over land. Hence, the more land that a given hurricane must traverse before reaching Louisiana's coastal cities, the weaker that hurricane's impact on those communities, and, concomitantly, the more effective the levee system.

5.3. The coastal landscapes and levee systems thus work in harmony, with the former acting as a natural first line of defense in abating the flood threat, and the latter serving as the last line of defense against the widespread inundation of inhabited areas. The natural first line of defense at issue here – that is, the buffer area essential to protecting the area over which the Authority has jurisdiction – extends from East of the Mississippi River through the Breton Sound Basin, the Biloxi Marsh, and the coastal wetlands of eastern New Orleans and up to Lake St. Catherine ("the Buffer Zone"). That Buffer Zone is highlighted in the figure attached hereto as **Exhibit C**.

5.4. Land loss in the Buffer Zone has raced on unabated since the early 1930's, averaging thousands of acres lost per year.

5.5. Since the 1930's, land loss in the Mississippi Deltaic Plain has been extraordinary in scale and is anticipated to grow at an aggressive pace.

5.6. Estimates conclude that the coastal lands that have historically protected New Orleans in particular have been reduced *by more than half* in recent decades, and the rest is rapidly disappearing.

- 5.7. The coastal lands that remain have been left severely diseased by the constant intrusion of corrosive saltwater, leaving them highly susceptible to being washed away by the next storm. This consequence was demonstrated by the tremendous excavation of wetlands caused by Hurricane Isaac in August 2012.
- 5.8. That lost land has been, and continues to be, replaced by open water. Projections anticipate that most of what remains will disappear by the end of the century, if not sooner.
- 5.9. What remains of coastal Louisiana is slipping into the Gulf of Mexico through a combination of direct removal, erosion, and submergence, sinking at the fastest rate of any coastal landscape on the planet.
- 5.10. As coastal land loss spirals towards a point of no return and the Buffer Zone dwindles, it will become increasingly difficult to build levees high and strong enough to protect the communities inside those levees; indeed, it will become impossible. In the coming years, the levees will be rendered *de facto* sea walls, a stress that the levee system was not designed to withstand.
- 5.11. In short, the Buffer Zone is essential to the flood protection that the Authority must provide. Without that Buffer Zone, the Authority faces not only exponentially increased costs of providing flood protection, but also the very real possibility that it will be incapable of providing the flood protection for which it was established. The natural first line of defense against flooding will be gone, with the man-made levee system left bare and ill-suited to safeguard south Louisiana.

## 6. The Cause

- 6.1. The oil and gas industry began exploration and development in Louisiana's coastal zone in the early 1900s, prompting nearly 100 years of profitable oil and gas production.
- 6.2. Thousands of wells have been drilled in Louisiana, and a majority of our nation's offshore oil and gas has been produced off Louisiana's coast, while a significant



percentage of our foreign and domestic oil has come ashore on Louisiana's roads and waterways.

6.3. In connection with exploration and development, oil and gas production and pipeline companies together dredged a network of canals to access oil and gas wells and to transport the many products and by-products of oil and gas production.

6.4. Continuous and ongoing oil and gas activity has scarred Louisiana's coast with an extensive network of thousands of miles of oil and gas access and pipeline canals. This canal network intersects with pre-existing natural channels and water bodies, chopping the once thriving and cohesive coastal ecosystem into thousands of smaller, decaying patches.

6.5. The oil and gas canal network, as well as the altered hydrology associated with oil and gas activities in general, has been ranked among the primary causes of coastal land loss by the United States Geological Survey.

6.6. In particular, the canal network and the altered hydrology associated with oil and gas activities have been identified as causing the following, all of which lead to coastal land loss:

6.6.1. Vegetation die-off;

6.6.2. Sedimentation inhibition;

6.6.3. Erosion; and

6.6.4. Submergence.

6.7. Oil and gas activities continue to transform what was once a stable ecosystem of naturally occurring bayous, small canals, and ditches into an extensive – and expanding – network of large and deep canals that continues to widen due to Defendants' ongoing failure to maintain this network or restore the ecosystem to its natural state.

6.7.1. That canal network continues to introduce increasingly larger volumes of damaging saltwater, at increasingly greater velocity, ever deeper into Louisiana's coastal landscape and interior wetlands.

- 6.7.2. The increasing intrusion of saltwater stresses the vegetation that holds wetlands together, weakening – and ultimately killing – that vegetation. Thus weakened, the remaining soil is washed away even by minor storms.
- 6.7.3. The canal network thus comprises a highly effective system of coastal landscape degradation. The product of this network is an ecosystem so seriously diseased that its complete demise is inevitable if no action is taken.
- 6.7.4. Additional dredging, and the failure of the oil and gas production and pipeline companies to maintain the existing canal work and the canal banks, by not preventing erosion, has caused the canal network to continually expand. As a result, the widths and depths of the canals increase unremittingly, facilitating even more saltwater intrusion.
- 6.8. Additional, ongoing oil and gas activities contributing to land loss include:
- 6.8.1. Road dumps;
  - 6.8.2. Ring levees;
  - 6.8.3. Drilling activities;
  - 6.8.4. Fluid withdrawal;
  - 6.8.5. Seismic surveys;
  - 6.8.6. Marsh buggies;
  - 6.8.7. Spoil disposal/dispersal;
  - 6.8.8. Watercraft navigation;
  - 6.8.9. Impoundments; and
  - 6.8.10. Propwashing/maintenance dredging.
- 6.9. The above-listed additional oil and gas activities drastically inhibit the natural hydrological patterns and processes of the coastal lands, contributing to vegetation die-off, sedimentation inhibition, erosion, submergence, and the ultimate destruction of the coastal landscape. Indeed, the removal of fluid from beneath coastal lands is causing subsidence of those lands, contributing to a rate of relative sea level rise in coastal Louisiana that is staggeringly higher than other places in the country.

- 6.10. In the Buffer Zone alone, Defendants identified in **Exhibit A** have dredged, used, and/or bear responsibility for the network of access canals and pipelines throughout 20-plus inland oil and gas fields. Defendants' concerted actions and ongoing failure to comply with their obligations throughout those oil and gas fields have caused direct land loss and increased erosion and submergence in the Buffer Zone, resulting in increased storm surge risk, attendant increased flood protection costs, and, thus, damages to Plaintiff.
- 6.11. The following Exhibits identify the wells, pipelines, and a sampling of permits and/or rights of way, with which Defendants (or the entity(s) upon which a Defendant's liability is based) are associated:
- 6.11.1.1. **Exhibit D – Well Spreadsheet**
  - 6.11.1.2. **Exhibit E – Pipeline Spreadsheet and Corresponding Map**
  - 6.11.1.3. **Exhibit F – Dredging Permit Spreadsheet**
  - 6.11.1.4. **Exhibit G – Right of Way Spreadsheet**
- 6.12. Defendants also exacerbate direct land loss by failing to maintain the canal network and banks of the canals that Defendants have dredged, used, or otherwise overseen. Those act and omissions, which continue through today, have caused both the erosion of the canal banks and the expansion beyond their originally permitted widths and depths of the canals comprising that network, resulting in the steady infiltration of saltwater into the coastal lands described above. The consequent ecological degradation to these areas has produced weakened coastal lands and extensive land loss. This in turn has created markedly increased storm surge risk, attendant flood protection costs, and, thus, damages to Plaintiff.
- 6.13. Defendants have further contributed to land loss in the Buffer Zone and resultant damages to Plaintiff by virtue of the other oil and gas activities listed above, which have further altered the hydrology of the coastal lands and, thus, also contributed directly to the degradation of those lands.

6.14. Defendants knew or should have known of the consequences of their acts and/or omissions, including the continuously emerging and increasing loss of Louisiana's coastal lands and the heightening storm surge risk to Louisiana's coastal communities.

## 7. The Costs

7.1. The increased storm surge risk resulting from the extensive and continuing land loss in southeast Louisiana – and, in particular, the Buffer Zone – has required, and will continue to require, increased flood protection at increasingly high cost. As described below, a variety of highly costly but necessary remedial measures have been or will be taken to reduce the risk to the region. The Authority and the levee districts it governs will bear many of these costs, which will escalate in the years to come.

### 7.2. Abatement and Restoration

7.2.1. To restore the natural first line of defense against storm surge, the coastal land loss detailed above must be remediated through abatement and restoration of the coastal land loss at issue, including, but not limited to, backfilling and revegetating each and every canal dredged by Defendants, used by them, and/or for which they bear responsibility; as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including but not limited to, extensive wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, ridge restoration, and diversion projects.

7.2.2. If no action is taken, flood damages will increase steadily and steeply in years to come – all as a direct result of Defendants' activities as described above.

### 7.3. The Hurricane and Storm Damage Risk Reduction System

7.3.1. In response to the intensifying risk of catastrophic storm surge and consequent flooding due to coastal land loss, made apparent by Hurricanes Katrina, Rita and Ike, the federal government has undertaken a substantial risk mitigation and fortification effort to protect the communities of southern Louisiana. The

costs of this effort will be partially shared with the state of Louisiana and the Authority.

- 7.3.2. Specifically, the United States Army Corps of Engineers (“Corps”) designed and began construction of the Hurricane and Storm Damage Risk Reduction System (“the Risk Reduction System”), which is designed to provide 100-year level storm protection.
- 7.3.3. Major features of the Risk Reduction System include the Lake Borgne Storm Surge Barrier, the Seabrook Structure, Sector Gates at Bayou Dupre and Caernarvon Canal, 30 miles of T-Walls, and improved levee embankments and floodgates.
- 7.3.4. The Corps has begun, and is in the continuing process of, turning over the Risk Reduction System to the State of Louisiana.
- 7.3.5. The State, in turn, has, and will continue to, look to the local levee districts to bear responsibility for the operation, maintenance, repair, rehabilitation, and replacement (“OMRR&R”) and operation and maintenance (“O&M”) for the components of the Risk Reduction System falling within their respective jurisdictions.
- 7.3.6. The Authority and the levee districts it governs – Orleans Dist., Lake Borgne Dist., and E. Jeff. Dist. – are responsible for the increased OMRR&R and O&R costs associated with these components of the Risk Reduction System.
- 7.3.7. The Authority and the levee districts it governs also understand that the State will shift to them the responsibility for the OMRR&R and O&R for the remaining – and costlier – components of the Risk Reduction System, as the Corps hands over those components.
- 7.3.8. Furthermore, there is construction cost-share associated with components of the Risk Reduction System, and one or more of the levee districts that the Authority governs, thus, bears a percentage of the costs of the construction of

components of the Risk Reduction System falling within their respective jurisdictions.

7.3.9. For the reasons set forth above, the Buffer Zone is essential if the Risk Reduction System is to provide even a baseline level of protection against 100-year flood events, and the continued loss of coastal lands within the Buffer Zone will reduce the Risk Reduction System's efficacy further still. During the next few decades, periodic – and frequent – fortification and augmentation of that system will be required to maintain a 100-year level of protection.

7.3.9.1.1. Indeed, periodic – and frequent – levee lifts have been and will need to be made such that the levees continue to qualify as providing 100-year level protection.

7.3.9.1.2. These past and future efforts come at a cost to the Authority and the levee districts that it governs.

#### 7.4. Mandatory Levee Certification Costs

7.4.1. Aside from the Risk Reduction System, the levee districts that the Authority governs are responsible for obtaining certification for all other components of the protection systems to ensure their compliance with governing standards. Those components require initial certification and subsequent recertification for years to come as the risk of storm surge continues to increase.

7.4.2. That certification process requires extensive and costly engineering investigation, as well as the cost of redressing any deficiencies identified during such investigation.

7.4.3. These expenses will persist and increase due to the intensifying storm surge risk caused by Defendants' activities.

#### 7.5. Additional Flood Protection Expenses

7.5.1. The Authority and the levee districts that it governs have also borne, and will continue to bear, additional flood protection expenses, including, but not

limited to, the fortification and construction of additional “safe houses” in which their employees can survive dangerous flood conditions.

- 7.5.2. These additional flood protection expenses will persist and increase due to the intensifying storm surge risk caused by Defendants’ activities.
- 7.6. The acts of Defendants have been, and continue to be, a substantial factor in the costs described above. In sum, these costs include, but are not limited to:
  - 7.6.1. Costs associated with the OMRR&R and/or O&M with respect to components of the Risk Reduction System falling within the respective jurisdictions of the levee districts that the Authority governs;
  - 7.6.2. Construction cost-share expenses for components of the Risk Reduction System falling with the respective jurisdictions of the levee districts that the Authority governs;
  - 7.6.3. Costs of ensuring that the Risk Reduction System components that fall within the respective jurisdictions of the levee districts that the Authority governs provide at least 100-year level storm protection in years to come;
  - 7.6.4. Costs associated with the certification of the components of the flood protection systems other than the Risk Reduction System and for which the levee districts that the Authority governs are responsible;
  - 7.6.5. Additional costs associated with flood protection, including, but not limited to, more and stronger safe houses; and
  - 7.6.6. Costs of abating and rebuilding the coastal land loss at the core of this action – a necessary remedy to restore the first line of defense against storm surge, without which the levee system’s purpose and the Authority’s mission are impracticable.

## REGULATORY FRAMEWORK

8. Defendants' dredging and maintenance activities at issue in this action are governed by a longstanding and extensive regulatory framework under both federal and state law specifically aimed at protecting against the deleterious effects of dredging activities.
9. Specifically, the relevant components of this regulatory framework that buttress the Authority's claims, all of which arise and are alleged herein under Louisiana law, include, but are not limited to, the following:
  - 9.1. The Rivers and Harbors Act of 1899 ("RHA"), which, *inter alia*, grants to the Corps exclusive authority to permit modification of navigable waters of the United States and prohibits the unauthorized alteration of or injury to levee systems and other flood control measures built by the United States:

It shall not be lawful for any person or persons to ... alter, deface, destroy, move, injure ... or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, levee, wharf, pier, or other work built by the United States . . . for the preservation and improvement of any of its navigable waters or to prevent floods[.]<sup>4</sup>
  - 9.2. The Clean Water Act of 1972 ("CWA"); and the regulations promulgated over time by the Corps, including Part 209 – Rules Relating to Administrative Procedure, which were contained in permits issued to Defendants regarding the activities at issue in this lawsuit and generally require, *inter alia*, Defendants to:
    - 9.2.1. Maintain canals and other physical alterations as originally proposed;
    - 9.2.2. Restore dredged or otherwise modified areas to their natural state upon completion of their use or their abandonment; and
    - 9.2.3. Make all reasonable efforts to minimize the environmental impact of Defendants' activities.
  - 9.3. Regulations related to rights-of-way granted across state-owned lands and water bottoms administered by the Louisiana Office of State Lands (commonly referred to as the "State Land Office") that, *inter alia*:
    - 9.3.1. Set forth maximum right-of-way widths;

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<sup>4</sup> 33 U.S.C. § 408.



9.3.2. Required Defendants to minimize the environmental effect of their activities;  
and

9.3.3. Mandated that Defendants indemnify the State in the event of damages  
inflicted on a third party.

9.4. The Coastal Zone Management Act of 1972 (“CZM”) and related Louisiana coastal zone regulations bearing directly on oil and gas activities, including the dredging and maintenance of the canal network, which impose, in conjunction with the issuance of permits licensing the oil and gas exploration and production activities at issue here, a litany of duties and obligations expressly designed to minimize the adverse ecological, hydrological, topographical, and other environmental effects associated with such activities in the state’s coastal region.

10. This regulatory framework establishes a standard of care under Louisiana law that Defendants owed and knowingly undertook when they engaged in oil and gas activities as described herein, and which Defendants have breached.

11. Furthermore, the above-mentioned permitting schemes created numerous individual obligations under Louisiana law between Defendants and governmental bodies of which Plaintiff is the third-party beneficiary.

#### **COUNT 1: NEGLIGENCE**

12. Plaintiff incorporates by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

13. Defendants’ continuing acts and/or omissions as outlined above have caused, and will continue to cause, extensive weakening of coastal lands and loss of lands in the Buffer Zone, in turn resulting in increased storm surge risk and attendant increased flood protection costs to the Authority and the levee districts that it governs, all in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express obligations and duties contained in the permit(s) and right(s)-of-way identified in the Exhibits hereto, all governing Defendants’ activities at issue in this action.

14. Thus, in accordance with Louisiana Civil Code article 2315, Defendants are bound to redress the damages to the Authority and the levee districts that it governs caused by Defendants' acts and/or omissions. The Authority is entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including, but not limited to, backfilling and revegetating each and every canal dredged by them, used by them, and/or for which they bear responsibility, as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration. In addition, the Authority is entitled to recover damages, as determined to be appropriate, including, but not limited to, current and future expenses occasioned by Defendants' acts and/or omissions.

#### **COUNT 2: STRICT LIABILITY**

15. Plaintiff incorporates by reference all previous allegations in the preceding paragraphs as if fully set forth herein.
16. Defendants have, or have had, custody and garde of the canals at issue in this action and/or sufficient control over those canals to constitute custody and garde.
17. Those canals, by dint of the corrosive saltwater they continue to introduce to the interior coastal lands with increasing volume and velocity, have caused, and will continue to cause, the extensive weakening and loss of coastal lands in the Buffer Zone, which in turn has caused and will continue to cause increased storm surge risk and attendant increased flood protection costs to the Authority and the levee districts that it governs.
18. Defendants knew or, in the exercise of reasonable care, should have known of that defect in the canals over which they have, or have had, custody and garde; and the damage outlined herein could have been prevented by the exercise of reasonable care, yet Defendants failed and continue to fail to exercise such reasonable care.
19. Thus, in accordance with Louisiana Civil Code articles 2317 and 2317.1, Defendants are strictly liable and bound to redress the damages to the Authority and the levee districts that it governs caused by Defendants' canals. The Authority is entitled to injunctive relief in the

form of abatement and restoration of the coastal land loss at issue, including, but not limited to, backfilling and revegetating each and every canal dredged by them, used by them, and/or for which they bear responsibility, as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration. In addition, the Authority is entitled to recover damages, as determined to be appropriate, including, but not limited to, current and future expenses occasioned by Defendants' acts and/or omissions.

### **COUNT 3: NATURAL SERVITUDE OF DRAIN**

20. Plaintiff incorporates by reference all previous allegations in the preceding paragraphs as if fully set forth herein.
21. Defendants' continuing acts and/or omissions as outlined above have caused, and will continue to cause, extensive weakening of coastal lands and loss of lands in the Buffer Zone, in turn resulting in increased storm surge risk and attendant increased flood protection costs to the Authority and the levee districts that it governs, all in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express obligations and duties contained in the permit(s) and right(s)-of-way identified in the Exhibits hereto, all governing Defendants' activities at issue in this action.
22. Defendants have possessed or possess temporary rights of ownership in the lands that they dredged to create the canal network at issue in this action. These lands, which constitute "dominant estates" under the Civil Code, have carried a natural servitude of drain over Plaintiff's property, the "servient estate," by which water naturally flows from the dominant estates onto the servient estate.
23. Parties, such as Defendants, may not take actions that increase the flow of water across another party's land, as the Defendants' activities in Louisiana's coastal lands certainly and demonstrably have done. These activities have changed not only the topography of the coastal lands, but the location, flow and natural pulsing patterns of the waters moving through those lands, and the process of sediment deposition that naturally renourishes them.

The result has been to accelerate land loss and leave much of those coastal lands that remain in a diminished and vulnerable state.

24. Defendants' acts and/or omissions have directly altered and continue to alter the natural course, flow, and volume of water from the dominant estates to the servient estate by causing the loss of coastal lands in the Buffer Zone. Defendants have rendered the natural servitude of drain more burdensome in violation of Louisiana Civil Code article 656.

25. Thus, Defendants are bound to alleviate that burden and/or redress the damages to the Authority and the levee districts that it governs. The Authority is entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including, but not limited to, backfilling and revegetating each and every canal dredged by them, used by them, and/or for which they bear responsibility, as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, ridge restoration, and restoring the drainage burden to its former condition. In addition, the Authority is entitled to recover damages, as determined to be appropriate, including, but not limited to, current and future expenses occasioned by Defendants' acts and/or omissions.

#### **COUNT 4: PUBLIC NUISANCE**

26. Plaintiff incorporates by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

27. Defendants' continuing acts and/or omissions as outlined above have caused, and will continue to cause, the extensive weakening and loss of coastal lands in the Buffer Zone constituting an unreasonable interference with the health, safety, peace, and/or comfort of southeast Louisiana communities as those acts and/or omissions have, and continue to, expose those communities to increased storm surge risk.

28. That unreasonable interference has been and continues to be a proximate cause of particularized damage to the Authority and the levee districts that it governs in the form of the increased flood protection costs borne, and to be borne, by the Authority and the levee

districts that it governs. This damage is different in kind than that sustained by the public at large.

29. That unreasonable interference is in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express obligations and duties contained in the permit(s) and right(s)-of-way identified in the Exhibits hereto, all governing Defendants' activities at issue in this action.

30. That unreasonable interference is continuing to produce effects.

31. That unreasonable interference is known or knowable by Defendants.

32. Thus, Defendants are bound to abate the nuisance and/or redress the damages to the Authority and the levee districts that it governs. The Authority is entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including, but not limited to, backfilling and revegetating each and every canal dredged by them, used by them, and/or for which they bear responsibility, as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration. In addition, the Authority is entitled to recover damages, as determined to be appropriate, including, but not limited to, current and future expenses occasioned by Defendants' acts and/or omissions.

#### **COUNT 5: PRIVATE NUISANCE**

33. Plaintiff incorporates by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

34. Defendants' continuing acts and/or omissions as outlined above have caused, and will continue to cause, extensive weakening of coastal lands and loss of lands in the Buffer Zone, in turn resulting in increased storm surge risk and attendant increased flood protection costs to the Authority and the levee districts that it governs, all in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express obligations and duties contained in the permit(s) and right(s)-of-way identified in the Exhibits hereto, all governing Defendants' activities at issue in this action.

35. Those acts and omissions constitute a violation of the limitations on use of property and continuing duty not to aggravate the servient estate outlined in Louisiana Civil Code article 667, *et seq.*
36. Defendants knew or, in the exercise of reasonable care, should have known that the acts and/or omissions outlined herein would cause the damage outlined herein and that the damage could have been prevented by the exercise of reasonable care, and yet Defendants have failed and continue to fail to exercise such reasonable care.
37. Thus, Defendants are bound to abate the nuisance and/or redress the damages to the Authority and the levee districts that it governs. The Authority is entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including, but not limited to, backfilling and revegetating each and every canal dredged by them, used by them, and/or for which they bear responsibility, as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration. In addition, the Authority is entitled to recover damages, as determined to be appropriate, including, but not limited to, current and future expenses occasioned by Defendants' acts and/or omissions.

#### **COUNT 6: BREACH OF CONTRACT – THIRD PARTY BENEFICIARY**

38. Plaintiff incorporates by reference all previous allegations in the preceding paragraphs as if fully set forth herein.
39. The express obligations and duties contained in the permit(s) and right(s)-of-way identified in the Exhibits hereto and governing Defendants' activities at issue in this action all require that Defendants not impair the Buffer Zone.
40. Those provisions and the regulatory framework pursuant to which those permit(s) and right(s)-of-ways and/or other related documents are subject all manifest an intent to confer a direct and certain benefit to the Authority and/or the levee districts that it governs. Accordingly, those provisions afford the Authority and the levee districts that it governs third-party beneficiary status.

41. Defendants' acts and/or omissions outlined above constitute a direct violation of the express obligations and duties contained in the permit(s) and right(s)-of-way in the Exhibits hereto and governing Defendants' activities at issue in this action.

42. Accordingly, Defendants are in continuing breach of those obligations and duties such that Defendants are bound to redress the damages caused by their breach and sustained by the Authority and the levee districts that it governs. The Authority is entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, by, including, but not limited to, backfilling and revegetating each and every canal dredged by them, used by them, and/or for which they bear responsibility, as well as undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration. In addition, the Authority is entitled to recover damages, as determined to be appropriate, including, but not limited to, current and future expenses occasioned by Defendants' acts and/or omissions.

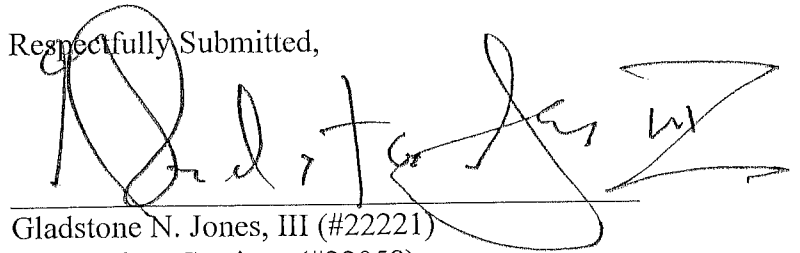
**WHEREFORE**, the Authority and the levee districts that it governs pray that, after due proceedings be had, there be judgment rendered in their favor and against Defendants finding that Defendants are liable and indebted to the Authority and the levee districts that it governs, jointly and solidarily, for:

- a) All damages as are just and reasonable under the circumstances;
- b) Judicial interest from the date of the judicial demand;
- c) Injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including, but not limited to, the backfilling and revegetating of each and every canal Defendants dredged, used, and/or for which they bear responsibility, as well as all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, land bridge construction, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration;

- d) The award of costs, expenses and reasonable attorneys' fees in favor of the Authority and the levee districts that it governs and against Defendants to the fullest extent authorized by law; and
- e) Such other and further relief which the Court deems necessary and proper at law and in equity and that may be just and reasonable under the circumstances of this matter.

Finally, the Authority demands that its claims be by adjudicated by jury trial.

Respectfully Submitted,



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**PLEASE WITHHOLD SERVICE**