

25th JUDICIAL DISTRICT COURT FOR THE PARISH OF PLAQUEMINES

STATE OF LOUISIANA

DOCKET NO. 61-798

DIVISION B

CHARLES W. FASTERLING, JOHN B. FASTERLING, III, JOAN F. MEYERS,
KENNETH C. MCGEE, JR., JOHN F. MCGEE, AND SARAH M. BUMPAS

VERSUS

HILCORP ENERGY COMPANY, CHEVRON U.S.A. INC., CHEVRON U.S.A.
HOLDINGS INC., ANADARKO E&P ONSHORE, LLC, TENNESSEE GAS PIPELINE
COMPANY, L.L.C, BP AMERICA PRODUCTION COMPANY, CONOCOPHILLIPS
COMPANY, THE LOUISIANA LAND AND EXPLORATION COMPANY
MOSAIC GLOBAL HOLDINGS INC.

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DEPUTY CLERK

BY CLERK

FIRST SUPPLEMENTAL AND AMENDING PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Charles W. Fasterling, John B. Fasterling, III, Joan F. Meyers, Kenneth C. McGee, Jr., John F. McGee, and Sarah M. Bumpas, in the above entitled action, who file this First Supplemental and Amending Petition for Damage against Defendants herein, and in support thereof, respectfully represent the following:

1.

Plaintiff, Charles W. Fasterling, is a person of the full age of majority and is a citizen and resident of Colorado Springs, in El Paso County, Colorado.

2.

Plaintiff, John B. Fasterling, III, is a person of the full age of majority and is a citizen and resident of Longview, in Gregg County, Texas.

3.

Plaintiff, Joan F. Meyers, is a person of the full age of majority and is a citizen and resident of Mandeville, in St. Tammany Parish, Louisiana.

4.

Plaintiff, Kenneth C. McGee, Jr., is a person of the full age of majority and is a citizen and resident of Rockport, in Aransas County, Texas.

5.

Plaintiff, John F. McGee, is a person of the full age of majority and is a citizen and resident of Fairhope, in Baldwin County, Alabama.

6.

Plaintiff, Sarah M. Bumpas, is a person of the full age of majority and is a citizen and resident of Metairie, in Jefferson Parish, Louisiana.

7.

Plaintiffs own the following property located in the Bastian Bay Oil and Gas Field in Plaquemines Parish, Louisiana:

TRACT 1

The North half of Southwest quarter and North half of South half of Southwest quarter of Section 35, Township 20 South, Range 28 East, West of the Mississippi River, containing 100 acres, more or less.

Being a portion of the property acquired from Mrs. Sarah A. Butler, widow of John Bernard Fasterling, by act before Joseph McCloskey Jr., Notary Public for the Parish of Orleans, State of Louisiana, dated December 27, 1955, registered in COB 187, Folio 381, of the Conveyance Records of the Parish of Plaquemines, Louisiana.

Less and except an undivided one-quarter interest in and to any and all of the minerals and mineral rights of every kind and character in, on and under said property, conveyed to Joseph McCloskey and Moise W. Donnory in the proportions of an individual one-half interest therein to each, by instrument dated November 7, 1959, registered in COB 220, Folio 51, of the records of the Parish of Plaquemines, Louisiana.

TRACT 2

The South half of the South half of Section 37; the East half of Section 43; and the South half and the Northeast quarter of Section 47, Township 20 South, Range 29 East in the Southeastern, West of River Land District, Parish of Plaquemines, containing 959.20 acres according to the official plat of survey of said lands in the State Land office.

Acquired by act of recognition of ownership and compromise between Sarah A. Butler, widow of John Bernard Fasterling, Jr., executed before Lloyd A. Ray, Notary Public for the Parish of Orleans, State of Louisiana, dated December 20, 1937, registered in Conveyance office Book 86, Folio 348 of the records in Plaquemines Parish, La.

Less and except an undivided one-quarter interest in and to any and all of the minerals and mineral rights of every kind and character in, on and under the water bodies located within said governmental subdivisions, conveyed to Joseph McCloskey and Moise W. Donnery in the proportions of an undivided one-half interest therein, to each by agreement made and entered into as of the 20th day of January, 1959.

And also less and except the 30% right, title and interest of the State of Louisiana in and to those water bottoms delineated on plat annexed to and made part of an agreement made prior to the death of John Bernard Fasterling, Jr. and entered into by and between the State mineral Board, Sarah Edith Fasterling, wife of Kenneth C. McGee, and the said Kenneth C. McGee, the Estate of John B. Fasterling, Jr., Gertrude Jackman Fasterling, John Bernard Fasterling, III, Charles William Fasterling and Joan Bonnabel Fasterling, Joseph McCloskey and Moise W. Donnery, individually, and on behalf of the law firm of McCloskey and Dennery, Gulf Oil Corporation and Phillips Petroleum Corporation, as of the first day of November, 1963, recorded in Conveyance Book 273, Folio 127 of the records of Plaquemines Parish, La.

TRACT 3

The North half of the South West quarter, South half of the Southeast quarter and Southwest quarter of Northeast quarter of Section 6; and the North half of the Northeast quarter of Section 7; the East half of the Southeast quarter and the West half of Section 8; the North half of the South half of Section 9; and the Southwest quarter of Section 10 in Township 21 South, Range 29 East, in the Southeastern West of the River Land District, Parish of Plaquemines, State of Louisiana, containing 1,026.458 acres.

Acquired by act of recognition of ownership and compromise between Sarah A. Butler, widow of John Bernard Fasterling, Jr., executed before Lloyd A. Ray, Notary Public for the Parish of Orleans, State of Louisiana, dated December 20, 1937, registered in Conveyance office Book 86, Folio 348 of the records in Plaquemines Parish, La.

Acquired from the succession of John Bernard Fasterling, Jr., by a judgment of possession rendered by Civil District Court for the Parish of Orleans, State of Louisiana in proceedings # 417-490 on the docket of said Court Dated December 30, 1965, registered in COB 306 Folio 243.

Less and except an undivided one-quarter interest in and to any and all of the minerals and mineral rights of every kind and character in on and under the water bodies located within said governmental subdivisions, conveyed to Joseph McCloskey and Moise W. Donnery in the proportions of an undivided one-half interest therein to each by agreement made and entered into as of the 20th day of January, 1959, confirmed with respect to certain specific water bodies by instrument dated the 15th day of February, 1962, recorded in COB 247, Folio 714 of the records of Plaquemines Parish, Louisiana.

TRACT 4

The North half of the Southeast quarter and the Northwest quarter of the Southeast quarter of Section 10; the Southwest quarter of the Southeast quarter of Section 13; the East half of the Southwest quarter of section 14; the North half of the Northeast quarter, the West half of the Southeast quarter and the East half of the West half of Section 15; the South half of the Southeast quarter, the East half of the Northeast quarter and the Northeast quarter of the Southeast quarter of Section 17; the South half of the southeast quarter of Section 18; the East half of

the East half of Section 19; the South half of the Northwest quarter, the Northeast quarter of the Northwest quarter, the Northwest quarter of the Northeast quarter and the Northwest quarter of the Northeast quarter of Section 20; the East half of the West half of Section 22; the East half of the Northwest quarter, the North half of the Southeast quarter and the Southeast quarter of the Southeast quarter of Section 23; the Northwest quarter, the South half of the Southwest quarter, the West half of the Southeast quarter, the Northeast quarter of the Southeast quarter and the Northwest quarter of the Northeast quarter of Section 25; the Northeast quarter of Section 26; the East half of the Northwest quarter, the West half of the Southeast quarter, the Southeast quarter of the Southeast quarter and the Southwest quarter of the Northeast quarter of Section 27; and the North half of the Northwest quarter of Section 35 in Township 21 South, Range 29 East, in the Southeastern West of the River Land District, Plaquemines Parish, Louisiana.

Acquired by act of recognition of ownership and compromise between Sarah A. Butler, widow of John Bernard Fasterling, Sarah Edith Fasterling, and Join Bernard Fosterling, Jr., mentioned before Lloyd A. Nay, Notary Public for the Parish of Orleans, State of Louisiana, dated December 20, 1937 recorded in Conveyance Book 306, Folio 343 of the records in Plaquemines Parish, Louisiana.

Less and except an undivided one-quarter interest in and to any and all of the minerals and mineral rights of every kind and character in, on and under the water bodies located within said governmental subdivision, conveyed to Joseph McCloskey and Moise W. Donnery in the proportions of an undivided one-half interest therein to each and by agreement made and entered into as of the 20th day of January, 1959.

TRACT 5

A certain tract of land sometimes known as the lower El Dorado Plantation, together with all buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated on the right descending bank of the Mississippi River, at a distance of about seventy-two (72) miles below the City of New Orleans, having and measuring three and three-quarters ($3 \frac{3}{4}$) arpents front on said river by forty (40) arpents in depth, bounded above by lands belonging to the Estate of Matthew Ban and below by lands belonging to the Estate of L.G. Evasovich containing one hundred and fifty (150) acres of land, more or less, less and except therefrom:

- a.) That portion thereof previously sold to Buras Citrus Growers Cooperative Association, Inc., being and measuring approximately one (1) acres.
- b.) That portion thereof previously sold to Riverlane Development Co. Inc. as per act before Charles A. Arceneaux, Notary Public for the Parish of Orleans, State of Louisiana, dated November 17, 1966, recorded in COB 306, folio 185 of the records of the Clerk of Court and Ex-Officio Register of Conveyances for the Parish of Plaquemines, State of Louisiana, it being the intent and purpose of this instrument to convey all of the batture and other property, if any, situated on the Mississippi River side of the property hereinabove referred to as having been sold to Riverlane Development Co, Inc. and all of the remainder of said property not heretofore conveyed to Riverlane Development Co., Inc.

TRACT 6

A certain tract of land sometimes known as Upper El Dorado Plantation, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging or in anywise appertaining, situated on the right descending bank of the Mississippi River, at a distance of about seventy-two (72) miles below the City of New Orleans, having and measuring 234 feet front on said River by forty (40) arpents in depth, bounded above by lands belonging to the estate of Matthew Ban, containing forth (40) acres of land more or less, less and except therefrom:

a.) That portion thereof previously sold to Billy Joe Steelman by act before Charles A. Arceneaux, Notary Public for the Parish of Orleans, State of Louisiana, dated the 7th day of June, 1967, and registered in COB 313, folio 64, of the Records of the Clerk of Court and Ex-Officio Register of Conveyances for the Parish of Plaquemines, State of Louisiana.

b.) That portion thereof in the rear of the portion hereinabove referred to as having been sold to Billy Joe Steelman extending in depth from the left descending side of Louisiana State Highway #23 right of way to the bank of the presently existing drainage canal bisection said property.

These tracts are hereinafter referenced as "Plaintiffs' Property".

8.

Made defendants are the following parties:

- a. **HILCORP ENERGY COMPANY** is a foreign corporation having a principal place of business in Texas;
- b. **CHEVRON U.S.A. INC.** is a foreign corporation having a principal place of business in California. Chevron U.S.A Inc. is named in its own capacity and as successor in interest to **The California Company and Gulf Oil Corporation**;
- c. **CHEVRON U.S.A. HOLDINGS INC.** is a foreign corporation having a principal place of business in California. Chevron U.S.A. Holdings Inc. is named as successor in interest to **Getty Oil Company and Texaco Inc.**;
- d. **ANADARKO E&P ONSHORE, LLC** is a foreign company having a principal place of business in Texas. Anadarko E&P Onshore, LLC is named as successor in interest to **Union Pacific Resources Company and RME Petroleum Company**;
- e. **TENNESSEE GAS PIPELINE COMPANY, L.L.C.** is a foreign company having a principal place of business in Texas. Tennessee Gas Pipeline Company L.L.C. is named as successor in interest to **Tenneco Inc. and Tennessee Gas Pipeline Company**;

- f. **BP AMERICA PRODUCTION COMPANY** is a foreign corporation having a principal place of business in Texas. BP America Production Company is named as successor in interest to **Amoco Production Company** and **Pan American Petroleum Corporation**;
- g. **CONOCOPHILLIPS COMPANY** is a foreign corporation having a principal place of business in Texas. ConocoPhillips Company is named in its own capacity and as successor in interest to **Philips Oil Company**, and **Phillips Petroleum Company**;
- h. **THE LOUISIANA LAND AND EXPLORATION COMPANY L.L.C.** is a foreign company having a principal place of business in Texas. The Louisiana Land and Exploration Company LLC is named as successor in interest to **The Louisiana Land and Exploration Company**; and
- i. **MOSAIC GLOBAL HOLDINGS INC.** is a foreign company having a principal place of business in Minnesota. Mosaic Global Holdings Inc. is named as successor in interest to **FMP Operating Company Limited Partnership**, **Freeport-McMoran Inc.**, **Freeport-McMoran Oil & Gas Company**, **McMoran Exploration Company**, and **McMoran Production Company**.

VENUE

9.

Venue is proper in this court pursuant to Louisiana Code of Civil Procedure article 74, because the wrongful conduct occurred, and the damages were sustained, in Plaquemines Parish.

10.

**PLAQUEMINES PARISH'S FINDINGS IN THE PREVIOUSLY FILED LAWSUIT *THE PARISH OF PLAQUEMINES V. HILCORP ENERGY COMPANY, ET AL.*,
DOCKET 60-999, DIVISION A (25TH JDC) (FILED NOV. 8, 2013)**

The Parish of Plaquemines has found the following violations by the Defendants herein as alleged by the Parish in the lawsuit *The Parish of Plaquemines v. Hilcorp Energy Company, et al.*, Docket 60-999, Division A (25th JDC) (Filed Nov. 8, 2013). Plaintiffs' Property is located within the "Operational Area" defined in the above referenced Parish lawsuit and as depicted in the Parish lawsuit (their Exhibit B) attached hereto as **Exhibit A**. The subparts below, "a"

through “v”, include the findings of the Parish, as alleged in the Parish’s Petition for Damages to the Plaquemines Parish Coastal Zone (“Parish Petition”) as follows:

a.

In general, the Plaintiffs allege below that certain of Defendants’ oil and gas exploration, production and transportation operations associated with the development of the Bastian Bay, Buras, Empire, and Fort Jackson Oil & Gas Fields in Plaquemines Parish were conducted in violation of the CZM Laws and that these activities caused substantial damage to land and waterbodies located in the “Coastal Zone” (hereinafter so called), as defined by the CZM Act of 1978, within Plaquemines Parish.

...

In the detailed allegations that follow, the term “Operational Area” (hereinafter so called) is used to describe the geographic extent of the area within which the complained-of operations and activities occurred. [Parish Petition ¶3].

b.

The CZM Act of 1978 states that it is the public policy of the state “[t]o protect, develop, and where feasible, restore or enhance the resources of the state’s coastal zone.” La. R.S. 49:214.22(1). [Parish Petition ¶4].

c.

Louisiana’s Coastal Zone is specifically defined in La. R.S. 49:214.24(5)...The Coastal Zone includes “the coastal waters and adjacent shorelands within the boundaries of the coastal zone....” The term “coastal waters” includes “bays, lakes, inlets, estuaries, rivers, bayous, and other bodies of water within the boundaries of the coastal zone which have measurable seawater content (under normal weather conditions over a period of years).” La. R.S. 49:214.23(4). [Parish Petition ¶5].

d.

The Operational Area is located in Plaquemines Parish and within the Coastal Zone, and therefore certain activities within the Operational Area are governed by the CZM Laws. [Parish Petition ¶6].

e.

The CZM Laws regulate certain “uses” within the Coastal Zone. La. R.S. 49:214.30 states that “[n]o person shall commence a use of state or local concern without first applying for and receiving a coastal use permit.” ... The term “use” is defined at La. R.S. 49:214.23(13) as “any use or activity within the coastal zone which has a direct and significant impact on coastal waters.” [Parish Petition ¶7].

f.

Defendants have engaged in uses of state and local concern in Plaquemines Parish within the Operational Area in violation of La. R.S. 49:214.21, *et seq.* [Parish Petition ¶14].

g.

The state coastal management regulations contemplated by La. R.S. 49:214.21, *et seq.*, are codified at LAC 43:I.700, *et seq.* These state regulations provide that coastal use permits required by La. R.S. 214.30 are *in addition to* “any other permit or approval required or established pursuant to any other constitutional provision or statute.” LAC 43:I.700. These state regulations further provide that “[m]ineral and production sites shall be cleared, revegetated, detoxified, and otherwise restored as near as practicable to their original condition upon termination of operations to the maximum extent practicable.” LAC 43:I.719.M. As discussed below, Defendants have failed to clear, revegetate, detoxify, and restore the mineral and production sites and other areas affected by their operations and activities within the Operational Area to their original condition, as required by LAC 43:I.719.M. Defendants are liable to Plaintiffs under the CZM Laws for all damages associated with their failure to adhere to LAC 43:I.719.M. [Parish Petition ¶16].

h.

The coastal zone regulations further require that “[d]rilling and production sites shall be prepared, constructed, and operated using the best practical techniques to prevent the release of pollutants or toxic substances into the environment.” LAC 43:I.719.F. These regulations also require that:

- “[t]he location and operation of waste storage, treatment, and disposal facilities shall be avoided in wetlands to the maximum extent practicable, and best practical techniques shall be used to minimize adverse impacts which may result from such use.” LAC 43:I.715.A
- “[w]aste facilities located in wetlands shall be designed and built to withstand all expectable adverse conditions without releasing pollutants.” LAC 43:I.715.C.
- “[w]aste facilities shall be designed and constructed using best practical techniques to prevent leaching, control leachate production, and prevent the movement of leachate away from the facility.” LAC 43:I.715.D
- “[a]ll waste disposal sites shall be marked and, to the maximum extent practicable, all components of waste shall be identified.” LAC 43:I.715.F
- “[w]aste facilities in wetlands with identifiable pollution problems that are not feasible and practical to correct shall be closed and either removed or sealed, and shall be properly revegetated using the best practical techniques.” LAC 43:I.715.G
- “[w]aste shall be disposed of only at approved disposal sites.” LAC 43:I.715.H
- “[r]adioactive wastes shall not be temporarily or permanently disposed of in the coastal zone.” LAC 43:I.715.I.

As alleged below, the operations and activities of Defendants within the Operational Area have resulted in the release of contaminants, pollutants, waste, leachate, and toxic substances into the environment and away from the operated facilities, all in violation of LAC 43:I.715.A through I and LAC 43:I.719.F. Furthermore, the drilling and production sites and waste facilities of Defendants within the Operational Area were not built to withstand all expectable adverse conditions without releasing pollutants, were not prepared using best practical techniques to prevent the release of pollutants or toxic substances, and were not designed and constructed to prevent leaching, control leachate production, or prevent the movement of leachate away from the facility. Defendants are liable

for all damages resulting from their violation of the CZM Laws. [Parish Petition ¶17].

i.

Finally, the state coastal zone regulations prohibit the temporary or permanent disposal of radioactive wastes in the coastal zone. LAC 43:I.715.I. The operations and activities of Defendants within the Operational Area have resulted in the disposal of radioactive materials, including radium 226, radium 228, and naturally occurring radioactive materials (NORM), for which Defendants are liable. [Parish Petition ¶18].

j.

Defendants drilled and/or operated numerous oil and gas wells within the Operational Area. ... The operations and activities of Defendants alleged in this petition to be in violation of the CZM Laws were conducted (or are being conducted) to enable or support the drilling and operation of the oil and gas wells listed[.] [Parish Petition ¶19].

k.

The oil and gas operations and activities of Defendants in the Operational Area included the construction and use of unlined earthen waste pits, which are simply holes, ponds, or excavations dug into the ground or marsh. Many of these waste pits have never been closed or have not been closed in conformance with the state and local CZM Laws and other applicable state environmental laws and regulations, including Statewide Order 29-B and the Louisiana Risk Evaluation/Corrective Action Program (RECAP). [Parish Petition ¶20].

l.

The use of waste pits in the Operational Area has a direct and significant impact on state coastal waters located within Plaquemines Parish, and thus each such pit required a coastal use permit after the enactment of the CZM Act of 1978. To the extent that, contrary to Plaintiffs' allegations, the use of any such waste pit was legally commenced prior to the enactment of the CZM Act of 1978, the continued existence of such waste pit following cessation of the operations supported by it constituted a new use for which a coastal use permit was required. In addition, the closure of any individual waste pits in the Operational Area would have involved substantial movement of materials and substantial alteration of the native terrain, and likewise required a state and/or local coastal use permit. On information and belief, Defendants never obtained the required state and/or local coastal use permits for the closure and/or post-CZM operations of their waste pits in the Operational Area. Additionally, these waste pits and areas adjacent thereto have never been cleared, revegetated, detoxified, and/or otherwise restored to their original condition as required by LAC 43:I.719.M. Furthermore, Defendants have failed to design and construct their waste pits located in the Operational Area using best practical techniques to prevent leaching and to prevent the movement of leachate away from their waste facilities, as required by LAC 43:I.715.D. [Parish Petition ¶21].

m.

The Defendants use of waste pits in the Operational Area, and their failures to properly close those waste pits, to clear, revegetate, detoxify, and return the property affected thereby to its original condition, and to properly design those

waste pits have caused ever increasing damage to the Plaquemines Parish Coastal Zone, for which Defendants are liable under the CZM Laws. [Parish Petition ¶22].

n.

Defendants have also discharged or disposed of oil field wastes from their waste pits and/or from their other oil and gas operations directly into the Operational Area. Each incident involving the discharge of oil field waste, including, without limitation, oil field brines, has a direct and significant impact on state coastal waters located in Plaquemines Parish and constitutes a use for which a state and/or local coastal use permit was required after the enactment of CZM Act of 1978 (Acts 1978, No. 361). On information and belief, Defendants never obtained the required state and/or coastal use permits for the discharge of oil field wastes into the Operational Area. Additionally, the areas of the Plaquemines Parish Coastal Zone that have received such discharges have never been cleared, revegetated, detoxified, and otherwise restored to their original condition as required by LAC 43:I.719.M. Furthermore, Defendants failed to prevent the release of pollutants or toxic substances into the environment in accordance with LAC 43:I.719.F, and failed to design and construct their waste pits in a manner to prevent leaching and the resulting discharge wastes, as required by LAC 43:I.715.D. Finally, Defendants knew or should have known that their oilfield wastes contain unacceptable and inherently dangerous levels of radioactive materials, including Radium 226 and 228, and thus the discharge of such materials into the Operational Area after 1978 was a flagrant violation of the CZM Laws, particularly LAC 43:I.715.I. As a result of these failures, Defendants are liable under the CZM Laws for damages and the other relief sought herein. [Parish Petition ¶23].

o.

In addition to the use of unpermitted waste pits, the failure to close waste pits properly, and the unpermitted discharge of oil field waste, including, without limitation, oilfield brines, in the Operational Area, Defendants' oil and gas activities have caused the Plaquemines Parish Coastal Zone, and in particular the canals, bayous, sediments, marshes, soils, and groundwaters in the Operational Area, to become contaminated or polluted in excess of applicable state standards, which has a direct and significant impact on state coastal waters. Each of these uses constitutes a use for which a coastal use permit was required beginning with the enactment of the CZM Act of 1978. The state coastal zone regulations, at LAC 43:I.700, *et seq.*, define "contaminant" as "an element causing pollution of the environment that would have detrimental effects on air or water quality or on native floral or faunal species." The contamination deposited in the Operational Area as a result of Defendants' activities has had a detrimental effect on the quality of the receiving state waters, on plant and animal life, and on humans who are exposed to such contamination. In addition, Defendants have utilized the Operational Area for the storage of their pollution or contamination, which likewise is a use for which a state and/or local coastal use permit has been required since 1978. On information and belief, Defendants never obtained the required state and/or local coastal use permits for the deposition or storage of contamination or pollution in the Operational Area. The areas of the Plaquemines Parish Coastal Zone that have been affected by such pollution or contamination have never been cleared, revegetated, detoxified, and otherwise restored to their original condition as required by LAC 43:I.719.M. Furthermore, Defendants have failed to prevent the release of pollutants or toxic substances into the environment in accordance with LAC 43:I.719.F. Defendants have also allowed the accumulation of radioactive materials in the soils and groundwaters of the Operational Area, in violation of LAC 43:I.715.1. Defendants are thus liable for

their acts of contamination in violation of the CZM Laws, including La. R.S. 49:214.36. [Parish Petition ¶24].

p.

Since 1978 and before, Defendants' oil and gas activities have resulted in the dredging of numerous canals in, through, and across the Operational Area. The dredging of canals in the Operational Area has a direct and significant impact on the state coastal waters within Plaquemines Parish. On information and belief, Defendants in some instances exceeded the limits of the coastal use permits issued in connection with the dredging of such canals, and in other instances failed to obtain the coastal use permits required for the dredging of such canals. Furthermore, Defendants failed to design, construct and maintain said canals using the best practical techniques to prevent bank slumping, erosion and saltwater intrusion and to minimize the potential for inland movement of storm-generated surges in accordance with LAC 43:I.705.J. As a consequence thereof, Defendants' dredging activities have resulted in the degradation of the Operational Area, including the erosion of marshes and the degradation of terrestrial and aquatic life therein. Additionally, the destruction of the Plaquemines Parish Coastal Zone has increased the risk of damage from storm-generated surges and other flooding damage, and has enabled and/or accelerated saltwater intrusion. Furthermore, Defendants failed to revegetate, refill, clean, detoxify, and otherwise restore these canals to their original condition as required by LAC 43:I.705.N, 711.F and 719.M. [Parish Petition ¶25].

q.

The above activities of Defendants lie in stark contrast to, and in violation of, the policies enumerated at LAC 43:I.701(G), which states as follows:

"It is the policy of the coastal resources program to avoid the following adverse impacts . . . :

- (4) alterations in the natural concentration of oxygen in coastal waters;
- (5) destruction or adverse alterations of streams, wetland, tidal passes, inshore waters and waterbottoms, beaches, dunes, barrier islands, and other natural biologically valuable areas or protective coastal features;

- (8) detrimental changes in existing salinity regimes;
- (9) detrimental changes in littoral and sediment transport processes;

- (13) discharges of pathogens or toxic substances into coastal waters;

- (16) adverse alteration or destruction of unique or valuable habitats, critical habitat for endangered species, important wildlife or fishery breeding or nursery areas, designated wildlife management or sanctuary areas, or forestlands;

- (18) adverse disruptions of coastal wildlife and fishery migratory patterns;
- (19) land loss, erosion, and subsidence;
- (20) increases in the potential for flood, hurricane and other storm damage, or increase in the likelihood that damage will occur from such hazards;
- (21) reduction in the long term biological productivity of the coastal ecosystem. [Parish Petition ¶26].

r.

On information and belief, at least some of the activities of Defendants described above may have been permitted and/or authorized by the Louisiana Department of Natural Resources, Office of Conservation (hereinafter, the "**LDNR-OC**"). Paragraph B of La. R.S. 49:214.31 states that "[p]ermits issued pursuant to existing statutory authority of the office of conservation in the Department of Natural Resources for the location, drilling, exploration and production of oil, gas, sulfur or other minerals shall be issued in lieu of coastal use permits, provided that the office of conservation shall coordinate such permitting actions pursuant to R.S. 49:214.31(B) and (D) and **shall ensure that all activities so permitted are consistent with the guidelines, the state program and any affected local program.**" (Emphasis added). The *Memorandum of Understanding Between the Coastal Management Section of the Department of Natural Resources and the Office of Conservation of the Department of Natural Resources*, dated July 8, 1980, reinforces section La. R.S. 49:214.31, wherein it states that the LDNR-OC "will issue in-lieu permits only if the proposed activity is consistent with the Coastal Use Guidelines, the Louisiana Coastal Resources Program and affected approved local programs." [Parish Petition ¶27].

s.

To the extent that Defendants operated or conducted activities in the Operational Area under "in lieu" permits authorized or granted by the LDNR-OC or another state agency, Defendants were obligated to comply fully with the CZM Laws in the conduct of such operations or activities. [Parish Petition ¶28].

t.

Furthermore, Plaintiffs allege that most, if not all, of Defendants' operations or activities complained of herein were not "lawfully commenced or established" prior to the implementation of the coastal zone management program. See LAC 43:723(B)(8). The complained-of operations and activities were prohibited prior to 1978 by various provisions of Louisiana Statewide Orders 29, 29-A, and 29-B, various field wide orders, as well as various orders of the Louisiana Stream Control Commission. [Parish Petition ¶29].

u.

Defendants are required to comply not only with all applicable state environmental laws and state regulations, but also with any additional requirements imposed by the State of Louisiana or Plaquemines Parish through the coastal zone management program. Defendants have failed to comply with numerous provisions of the state coastal zone management program, as previously alleged, and thus they are liable under the CZM Laws for any damages resulting from these violations. [Parish Petition ¶30].

v.

The Defendants are liable for the foregoing violations of the state and local CZM Laws, including without limitation, the failure to clear, revegetate, detoxify, and restore to their original condition those portions of the Plaquemines Parish Coastal Zone affected by Defendants' activities within the Operational Area. [Parish Petition ¶31].

PLAINTIFFS' ALLEGATIONS

11.

Based upon the foregoing findings by the Parish of Plaquemines, particularly Defendants' activities in and around the Bastian Bay Field, the Plaintiffs herein allege, upon information and belief, that Defendants' acts and/or omissions on and around Plaintiffs' Property drastically altered the hydrology of the area thereby causing saltwater intrusion, vegetation die-off, sedimentation inhibition, erosion, and submergence — leading to land loss, increased risk of land loss and storm surge, and other damages to Plaintiffs' Property. This land loss is caused when the activities described above present or introduce the substance of saltwater and other substances not native to the coastal land ecosystem into the soil strata of the coastal lands. For the purposes of the Plaintiffs herein, the "Operational Area" comprises the area in and around Bastian Bay Oil & Gas Field. A list of Defendants' relevant wells is attached as **Exhibit B**. A list of Defendants' relevant Coastal Use Permits is attached as **Exhibit C**. Defendants operated the wells listed in Exhibit B and operated expansive oil and gas facilities pursuant to Coastal Use Permits listed in Exhibit C. The operation of these wells and oilfield facilities caused damage and land loss that was not permitted by law or permit. Further, to the extent some of Defendants acts and omissions were allowed by permit, this does not absolve the Defendants of liability to the Plaintiffs. The Defendants' well operations (and related operations, such as dredging, waste disposal, and transportation of product and waste) and Coastal Use Permit activities (and activities beyond the scope of those permits) could have been conducted in a way that did not destroy the Plaintiffs' Property because there were reasonably prudent alternatives that would have prevented the damage done to Plaintiffs' Property.

12.

Defendants' acts and omissions include the acts and omissions as listed above in the Parish Petition, and also include: (1) failure to follow the standard of care under the regulatory structure, (2) failure to follow express and implied obligations under the permits, (3) failure to use reasonably prudent operational techniques, (4) failure to prevent unreasonable alterations to the surrounding land and marsh, (5) failure to use reasonably prudent waste disposal techniques, and (6) failure to use reasonably feasible alternative methods. For example, Defendants failed to

backfill the canals upon the drilling of the wells, failed to use injection wells, failed to use overmarsh vehicles, failed to use proper spoil bank mitigation and maintenance, and failed to manage canals prudently.

13.

Plaintiffs did not have actual or constructive knowledge of the damages caused by Defendants herein until less than one year before the filing of the instant lawsuit.

COUNT 1: NEGLIGENCE

14.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

15.

Defendants knew or should have known that their conduct would alter the hydrology of the area thereby causing saltwater intrusion, vegetation die-off, sedimentation inhibition, erosion, and submergence. Defendants had a duty to protect the Plaintiffs and Plaintiffs' Property from these effects. Defendants' violation of this duty proximately caused the damages described herein: land loss, increased risk of land loss and storm surge, lost current and future economic value of activities that depended on such lost land, and other damages to Plaintiffs' Property.

16.

Each of the Defendants' past and continuing acts and omissions as outlined above have caused, and will continue to cause, extensive weakening of coastal lands, loss of lands, and increased storm surge risk within and around the Operational Area, in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express and implied obligations and duties contained in the permit(s) identified in the Exhibits hereto, along with standards imposed by Louisiana laws and regulations, all governing Defendants' respective activities at issue in this action.

17.

Thus, in accordance with Louisiana Civil Code article 2315 and other laws, each of the Defendants is bound to redress the damages to Plaintiffs' Property as caused by Defendants' respective acts and/or omissions. The Plaintiffs are entitled to injunctive relief in the form of

abatement and restoration of the coastal land loss at issue, including undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration.

18.

In addition, Plaintiffs are entitled to recover damages, as determined to be appropriate, including, but not limited to, the value of lost land that cannot be restored and the current and future economic value of activities that depended on such lost land, to the extent such land loss was occasioned by Defendants' acts and/or omissions.

COUNT 2: STRICT LIABILITY

19.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

20.

Defendants are strictly liable for their operations that occurred prior to April 16, 1996. Defendants have, or have had, ownership, care, custody, and garde of the canals, and other oil and gas facilities in the Operational Area and/or sufficient control over those canals and oil and gas facilities to constitute custody and garde.

21.

Those canals and oil and gas facilities have introduced corrosive salt water to the interior coastal lands with increasing volume and velocity, and have caused, and will continue to cause, the extensive weakening and loss of coastal lands and increased storm surge risk in the Operational Area, including the Plaintiffs' Property.

22.

Defendants had the right of supervision, direction, and control, as well as the right to benefit from control of the oil and gas facilities. Defendants had, and have, a legal relationship to the property, comprising rights and duties.

23.

Ruin, vices and defects in the canals and oil and gas field operations (including wells, flowlines, equipment, tanks, pits, and waste facilities) occasioned and caused damage to Plaintiffs' Property.

24.

Civil Code article 667 establishes strict liability for certain damage. Specifically, prior to the 1996 amendment, "Although a proprietor may do with his estate whatever he pleases, still he can not make any work on it, which may deprive his neighbor of the liberty of enjoying his own, or which may be the cause of any damage to him." Defendants are liable to Plaintiffs because Defendants' acts and omissions constitute "work" under article 667, and this work has deprived the Plaintiffs of the liberty of enjoying Plaintiffs' Property, and such work has caused damage to Plaintiffs' Property.

25.

Civil Code article 2322 establishes strict liability for certain damage. Specifically, prior to the 1996 amendment, "The owner of a building is answerable for the damage occasioned by its ruin, when this is caused by neglect to repair it, or when it is the result of a vice in its original construction." Defendants are liable to Plaintiffs under this law. Defendants' network and physical elements of oil and gas exploration, production and transportation facilities, equipment, wells, pits, waste facilities, and other related structures and canals and spoil banks constituted their "buildings." The Defendants' neglect to repair these buildings, and vices and defects in their original construction, caused ruin in the form of altered the hydrology of the area, causing saltwater intrusion, vegetation die-off, sedimentation inhibition, erosion, and submergence. This deprived the Plaintiffs of enjoyment of their land and caused damages described herein: land loss, increased risk of land loss and storm surge, lost current and future economic value of activities that depended on such lost land, and other damages to Plaintiffs' Property.

26.

Thus, in accordance with pre-1996 Louisiana Civil Code articles 667, 2317, and 2322, and other laws, Defendants are strictly liable and bound to redress the damages to Plaintiffs and Plaintiffs' Property as caused by Defendants' network and physical elements of oil and gas

exploration, production and transportation facilities, equipment, wells, pits, waste facilities, and other related structures and canals and spoil banks. Plaintiffs are entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration.

27.

In addition, the Plaintiffs are entitled to recover damages, as determined to be appropriate, including, but not limited to, the value of lost land that cannot be restored and the current and future economic value of activities that depended on such lost land, to the extent such land loss was occasioned by Defendants' acts and/or omissions.

COUNT 3: PUBLIC NUISANCE

28.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

29.

Defendants' continuing acts and/or omissions as outlined above have caused, and will continue to cause, the extensive weakening and loss of coastal lands and increased storm surge risk in the Operational Area, constituting an unreasonable interference with the health, safety, property, 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.

30.

Defendants failed to use reasonably prudent operational techniques, failed to prevent unreasonable alterations to the surrounding land and marsh, failed to use reasonably prudent waste disposal techniques, and failed to use reasonably feasible alternative methods to fulfill their purpose without damaging neighboring lands. Defendants' acts and omissions created a hazardous condition affecting the Plaintiffs. Defendants could reasonably foresee that damage would ensue on neighboring properties as a result of their acts and omissions and their decisions not to mitigate the effects of their operations. The harm, inconvenience, and damage materially

interfere with the Plaintiffs' rights to enjoy their property. The damage caused by Defendants is an unreasonable intrusion into the lives of the neighboring Plaintiffs.

31.

That unreasonable interference has been and continues to be a proximate cause of particularized damage to Plaintiffs' Property in the form of the value of land directly lost and the value of economic and life activities attendant to that lost land. This damage is different in kind than that sustained by the public at large.

32.

That unreasonable interference is in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express and implied obligations and duties contained in the permit(s) identified in the Exhibits hereto, along with standards imposed by Louisiana laws and regulations, all governing Defendants' activities at issue in this action.

33.

That unreasonable interference is continuing to produce adverse effects.

34.

That unreasonable interference is known or knowable by Defendants.

35.

Thus, Defendants are bound to abate the nuisance and/or redress the damages to Plaintiffs' Property. The Plaintiffs are entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration.

36.

In addition, Plaintiffs are entitled to recover damages, as determined to be appropriate, including, but not limited to, the value of lost land that cannot be restored and the current and future economic value of activities that depended on such lost land, to the extent such land loss was occasioned by Defendants' acts and/or omissions.

COUNT 4: PRIVATE NUISANCE

37.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

38.

Defendants' continuing acts and/or omissions as outlined above have caused, and will continue to cause, extensive weakening of coastal lands, loss of lands, and increased storm surge risk in the Operational Area, all in violation of the standard of care as prescribed in the regulatory framework outlined above and, more particularly, the express and implied obligations and duties contained in the permit(s) identified in the Exhibits hereto, along with standards imposed by Louisiana laws and regulations, all governing Defendants' activities at issue in this action.

39.

Those acts and omissions constitute a violation of the limitations on use of property outlined in Louisiana Civil Code article 667, *et seq.*

40.

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.

41.

Thus, Defendants are bound to abate the nuisance and/or redress the damages to Plaintiffs' Property. The Plaintiffs are entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including undertaking all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration.

42.

In addition, Plaintiffs are entitled to recover damages, as determined to be appropriate, including, but not limited to, the value of lost land that cannot be restored and the current and future economic value of activities that depended on such lost land, to the extent such land loss was occasioned by Defendants' acts and/or omissions.

COUNT 5: BREACH OF CONTRACT – THIRD PARTY BENEFICIARY

43.

Plaintiffs incorporate by reference all previous allegations in the preceding paragraphs as if fully set forth herein.

44.

The express and implied obligations and duties contained in the coastal use permits ("CUPs") identified in the Exhibits hereto and governing Defendants' activities at issue in this action all require that Defendants not impair the Operational Area, including the Plaintiffs' Property, and that Defendants take affirmative protective actions and prohibit other actions with detrimental effects on the Operational Area.

45.

Provisions established by law and permit, and the regulatory framework pursuant to which those CUPs and/or other related documents are subject all manifest an intent to confer a direct and certain benefit to property owners in the Operational Area, including Plaintiffs. Accordingly, those provisions afford Plaintiffs third-party beneficiary status.

46.

Defendants' acts and/or omissions outlined above constitute a direct violation of the express and implied obligations and duties contained in the CUPs in the Exhibits hereto and governing Defendants' activities at issue in this action.

47.

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 Plaintiffs. The Plaintiffs are entitled to injunctive relief in the form of abatement and restoration of the coastal land loss at issue, including undertaking all manner of abatement and restoration

activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration.

48.

In addition, the Plaintiffs are entitled to recover damages, as determined to be appropriate, including, but not limited to, the value of lost land that cannot be restored and the current and future economic value of activities that depended on such lost land, to the extent such land loss was occasioned by Defendants' acts and/or omissions.

CUMULATIVE IMPACTS AND REMEDY

49.

The Defendants' operations have caused cumulative and collective impacts to the Plaintiffs' Property. These cumulative and collective impacts resulted in common injury to Plaintiffs' Property, including the altered hydrology, saltwater intrusion, loss of vegetation and resulting land loss. As previously stated, Plaintiffs' Property lies within the Operational Area defined by the Parish lawsuit. The Defendants' network of oil and gas exploration production and transportation facilities, equipment, wells, and other related structures, and canals and spoil banks helped introduce and continue to introduce corrosive saltwater and other substances to this particular geographic area. Thus, there is a community of interest among the Defendants. The Defendants' damages to the Plaintiffs' Property are commingled and indistinguishable from one another. The required remedies for the damages are the result of all of the Defendants' actions and omissions. The combined effects of these operations have caused cumulative impacts to the Operational Area and Plaintiffs' Property.

50.

The only feasible and practical outcome here is restoration to the area as a whole. Defendants' damages to Plaintiffs' Property involve the same factual and legal issues in terms of the historical oil and gas operations in the area and their cumulative detriments.

51.

All of the Defendants named herein are jointly and solidarily liable for the damage to the Plaintiffs' Property.

52.

Plaintiffs are not pleading any claims that arise under federal law. Plaintiffs are not pursuing any claims that have been discharged in bankruptcy.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs 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 Plaintiffs, 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 all manner of abatement and restoration activities determined to be appropriate, including, but not limited to, wetlands creation, reef creation, hydrologic restoration, shoreline protection, structural protection, bank stabilization, and ridge restoration;
- d) The award of costs, expenses and reasonable attorneys' fees 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.

Respectfully submitted,



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