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CLERK OF COURT

23RD JUDICIAL DISTRICT COURT  
PARISH OF ST. JAMES  
STATE OF LOUISIANA

BY: *[Signature]*

Pastor Harry Joseph, Sr., Genevieve Butler,  
H.E.L.P., the Gulf Restoration Network, the  
Atchafalaya Basinkeeper, and Bold  
Louisiana

Number 38,163

Section E

Petitioners,

v.

Secretary, Louisiana Department of Natural  
Resources,

Defendant.

MAY 24 2018

*[Signature]*  
*[Signature]*

**PETITIONERS' EX PARTE MOTION FOR STAY AND INCORPORATED  
MEMORANDUM IN SUPPORT**

NOW INTO COURT, through undersigned counsel, come the Petitioners, Pastor Harry Joseph, Sr., Genevieve Butler, H.E.L.P., the Gulf Restoration Network, the Atchafalaya Basinkeeper, and Bold Louisiana, who respectfully move ex parte for a stay of the Coastal Use Permit issued by the Louisiana Department of Natural Resources (LDNR) to Bayou Bridge Pipeline, LLC (BBP). The Petitioners request that this stay remain in effect until finality of judgment when all appeals on the merits of the challenge to this permit have been exhausted. Petitioners request a stay for the following reasons:

1. On April 30, 2018, this Court ruled that the LDNR failed to apply mandatory Coastal Use Guidelines ("Guidelines") when it granted BBP's Coastal Use Permit ("Permit"). Therefore, the Permit is illegal.
2. Among the Guidelines this Court deemed LDNR to have violated was Guideline 719(K) contained at La. Admin. Code (LAC) tit. 43, pt. I, §719(K). Pursuant to this finding, the Court ordered LDNR "to require Bayou Bridge Pipeline, LLC to develop effective environmental protection and emergency or contingency plans relative to evacuation in the event of a spill or other disaster, in accordance with Guideline 719(K), PRIOR to the continued issuance of said permit." Reasons for Judgment at 4.

3. On May 15, 2018, this Court entered judgment in favor of the Petitioners and in accordance with the Court's April 30, 2018, Ruling.

4. Since this Court's April 30, 2018, interlocutory ruling, including after entry of the May 15, 2018, judgment and continuing through the present date, BBP has continued to construct its pipeline in the Coastal Zone, including in the town of St. James.

5. To date, neither LDNR nor BBP has developed an emergency environmental protection and emergency or contingency plans relative to evacuation.

6. This Court has authority to enter a stay – on an *ex parte* basis – pursuant to the Louisiana Administrative Procedure Act (APA) at La. R.S. § 49:964(C), which provides:

The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, *or the reviewing court may order*, a stay *ex parte* upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

*Id.* (emphasis added). *See also* Louisiana District Court Rule 9.8(d).

7. The Louisiana First Circuit Court of Appeal has approvingly noted the rule that, in granting stays pending final resolution, “*much discretion* is vested” in the reviewing court. *Div. of Admin. v. Dep’t of Civil Serv.*, 345 So.2d 67, 69 (La. App. 1 Cir. 1976) (emphasis added). The court explained that, when assessing the appropriateness of a particular stay order, courts should consider four questions: “(1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? . . . (2) Has the petitioner shown that without such relief, it will be irreparably injured? . . . (3) Would the issuance of a stay substantially harm other parties interested in the proceedings? . . . (4) Where lies the public interest? *Id.* at 68-69. Here, the answers to these questions strongly support a stay.

8. Petitioners have not only demonstrated that they are likely to prevail on the merits of their appeal, but they *have* prevailed on the merits of their appeal. This Court has already ruled that the LDNR illegally issued the Permit in violation of the Coastal Use Guidelines. Thus, this factor weighs strongly in favor of a stay.

9. Petitioners will suffer irreparable harm if this Court does not grant a stay of LDNR's decision to issue the Permit during the pendency of any appeal, suspensive or

devolutive. “Irreparable injury” is “that which cannot be adequately compensated in damages, or for which damages cannot be compensable in money.” *Lassalle v. Daniels*, 96-0176, p. 8 (La. App. 1 Cir. 5/10/1996); 673 So.2d 704, 709 (citing *Greenberg v. De Salvo*, 229 So. 2d 83, 86 (La. 1969)). The U.S. Supreme Court has noted that, “[e]nvironmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.* irreparable.” *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987). The Court held, “[i]f such [irreparable] injury is sufficiently likely, . . . the balance of harms will usually favor the issuance of an injunction to protect the environment.” *Id.*

10. Because LDNR has not provided sufficient analyses of the Permit’s environmental impacts, including on the people of St. James, the extent of the environmental harm cannot be quantified. Nevertheless, by their nature, such environmental harms cannot be remedied by monetary damages, and are therefore irreparable injuries.

11. Further, Petitioners will suffer specific irreparable harm if the Court does not grant the stay. BBP and LDNR have demonstrated that, absent a stay, BBP will continue to construct its pipeline under an illegal permit, and LDNR will continue to decline to act to stop BBP’s construction under its illegal permit. *See* Exhibits A and B (Petitioners’ letters to BBP and LDNR seeking action to stop continued construction of the pipeline). Since the issuance of the Court’s ruling, BBP is constructing the pipeline in areas that may interfere with the development of an evacuation route. Further, construction of the pipeline in the Coastal Zone will likely be completed before appeals run their course. Because the construction of the pipeline is a surface alteration under Guideline 711(A), LAC 43:I.711(A), and, as this Court found, LDNR has not conducted the required analysis for surface alterations, the Petitioners are irreparably harmed by the absent analysis of such critical issues as 1) whether public safety will be endangered by the construction and operation of the pipeline, 2) whether the foundation conditions are sufficient to support the use of a pipeline, and 3) whether protections from flood and storm hazards can be reasonably well achieved. *Id.* at para. (A)(2). Continued construction of the pipeline without such critical analyses, which may never be done if construction is completed before the appeals are decided, irreparably harms the Petitioners.

12. Further, irreparable harm if the Court does not grant a stay will result not only from construction of the pipeline, but operation of the pipeline as well. Given the amount of time an appeal generally takes to reach decision, BBP is likely to complete construction and begin transporting oil – including potentially bitumen – through the pipeline, presenting all the risks of spills and accidents that this Court’s ruling orders LDNR to address. BBP is currently demonstrating how fast it can move when it wants to circumvent protection for the community.

13. A stay will not substantially harm the LDNR. Indeed, as public trustee and agency in charge of applying the Guidelines, LDNR’s interests should lie with ensuring protection of the community and the irreplaceable resources of the Coastal Zone. While BBP will no doubt argue it will be harmed by a stay, any harm it suffers is economic and not irreparable.

14. Finally, the public interest weighs heavily in favor of a stay. Once again, this Court has already determined that LDNR illegally failed to address issues critical to public safety. A stay will force LDNR to address these critical issues “PRIOR to the continued issuance of the permit,” as this Court ordered.

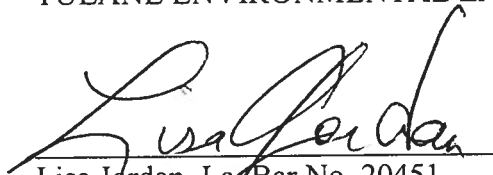
15. In addition, the public has an interest in seeing that LDNR adheres to the laws of the state. “There is a strong public interest in requiring a government agency to follow its own rules and regulations.” *Department of Public Safety & Corrections v. Savoie*, 569 So.2d 139, 143 n.2 (La. App. 1 Cir. 1990) (noting, very similarly to this Court’s ruling, that the court “is troubled over the failure of the Department to follow its own internal rules.”). Allowing LDNR to continue to ignore its own guidelines – intended to serve as “criteria” for the granting of Coastal Use Permit – while the Permit remains active would directly contravene this “strong public interest.” *Id.*; see also La. R.S. § 49:214.27(B)(2).

16. LDNR’s disregard of this Court’s order to order BBP to develop an effective emergency and evacuation plan prior to continued issuance of the Permit can only be remedied by a stay of the effectiveness of the Permit. This Court still has jurisdiction to impose a stay, as evidenced by its jurisdiction to grant an appeal.

**WHEREFORE**, Petitioners move this Court to stay the effectiveness of the Coastal Use Permit pending resolution of the appeal or appeals of this matter.

Respectfully submitted on May 24, 2018,

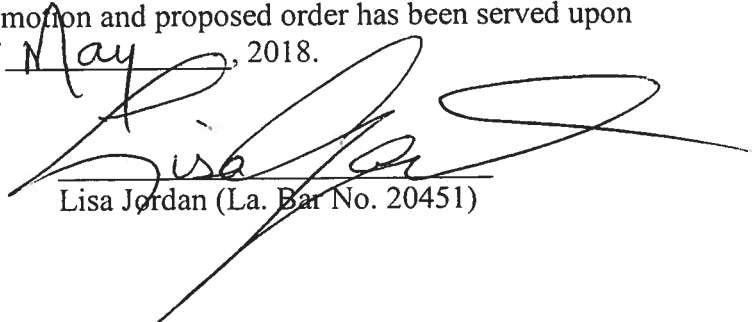
TULANE ENVIRONMENTAL LAW CLINIC



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*As Counsel for the Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above motion and proposed order has been served upon opposing counsel via email this 24th day of May, 2018.



Lisa Jordan (La. Bar No. 20451)

Tulane Environmental Law Clinic

May 18, 2018

**By email to:** [jpercy@joneswalker.com](mailto:jpercy@joneswalker.com) and certified mail # 7017 2400 0001 0528 2621

James Percy  
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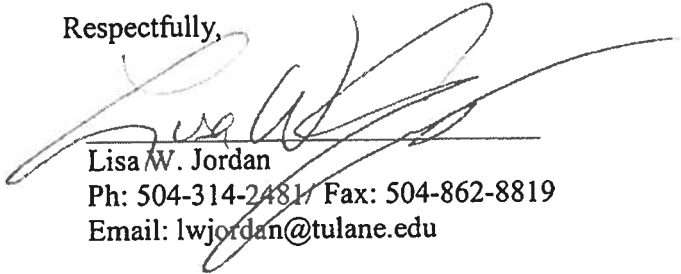
Re: Demand Letter for Bayou Bridge Pipeline to Stop Construction;  
*Joseph v. DNR*, 23rd Judicial District Court, Case No. 38, 163 E

Dear Mr. Percy,

As you know, the Court which reviewed the validity of your client – Bayou Bridge Pipeline, LLC’s – permit found in favor of Plaintiffs on May 10, 2018. The Court signed a judgment formalizing that ruling on May 15, 2018. As you are also aware, the Court ordered that an effective emergency response and evacuation plan be provided to DNR by Bayou Bridge, “PRIOR to the continued issuance of said permit.” Yet our clients report that on May 15 and continuing through today, Bayou Bridge continues to construct in the Coastal Zone, in the town of St. James, including in areas that may interfere with development of an evacuation route.

The Plaintiffs demand that Bayou Bridge cease construction of its pipeline in the coastal zone until such time as it has complied with the Court’s order and DNR has issued a legal permit. If your client has not continued to construct in the Coastal Zone, please correct our understanding. I look forward to hearing from you.

Respectfully,



Lisa W. Jordan  
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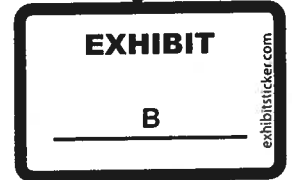
cc (by email): Ryan Seidemann, Esq.  
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May 18, 2018



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By email to: [blake.canfield@la.gov](mailto:blake.canfield@la.gov) and certified mail # 7017 2400 0001 0528 2638  
Blake Canfield, Esquire  
Louisiana Department of Natural Resources  
617 N. Third Street  
Baton Rouge, LA 70804

Re: Request for Immediate Action on Bayou Bridge Pipeline's Continued Construction;  
*Joseph v. DNR*, 23rd Judicial District Court, Case No. 38, 163 E

Dear Mr. Canfield,

As you may know, on judicial review of the permit issued by the Louisiana Department of Natural Resources, Office of Coastal Management (DNR), to Bayou Bridge Pipeline, LLC, the 23rd Judicial District Court found in favor of our clients, the Plaintiffs, on May 10, 2018. The Court signed a judgment formalizing that ruling on May 15, 2018. Both are attached. The Court ordered that the DNR require Bayou Bridge to develop an effective emergency response and evacuation plan for the residents of St. James "PRIOR to the continued issuance of said permit." In doing so, the Court ordered the agency to address the dangerous situation our clients in that community face every day.

Yet our clients report that on May 15 and continuing through today, Bayou Bridge continues to construct in the Coastal Zone and in the town of St. James, including in areas that may interfere with development of an evacuation route. We are aware that the DNR has received similar complaints about Bayou Bridge Pipeline's ongoing construction from the public, which included photographic evidence of such construction.

We are concerned that the DNR is in contempt of court in failing to order Bayou Bridge to cease and desist construction activities until it, and DNR, have complied with the Court order and unless and until DNR issues a legal permit. This requires immediate action. Please respond as to how and when the agency intends to proceed. I look forward to hearing from you.

Respectfully,

Lisa W. Jordan  
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Number 38,163

Section E

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**ORDER**

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Considering the foregoing Ex Parte Motion for Stay:

**IT IS HEREBY ORDERED**, that the LDNR's final decision to grant a coastal use permit to Bayou Bridge Pipeline, LLC, is stayed until all appeals of the merits of this Court's judgment have been finally resolved.

Gonzales, Louisiana this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Honorable Alvin Turner, Jr.  
Division E