NO. 17-99

In the
Supreme Court of the United States

BOARD OF COMMISSIONERS OF THE SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY—EAST, ET AL.,
PETITIONERS,

v.

TENNESSEE GAS PIPELINE COMPANY, L.L.C., ET AL.,
RESPONDENTS.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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August 22, 2017 * *additional counsel listed on signature page*

QUESTION PRESENTED

Whether the Fifth Circuit properly applied *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), to the facts of this case when it affirmed the district court's decision to exercise federal-question jurisdiction over petitioner's claims.

RULE 29.6 STATEMENT

Respondent Alta Mesa Services, LP states that no publicly traded company owns more than 10% of its stock (or membership interest).

Respondent Anadarko E&P Onshore LLC is an indirect wholly owned subsidiary of Anadarko Petroleum Corporation which is the only publicly owned company in that chain of ownership. Anadarko Petroleum Corporation has no parent corporation and no other publicly held corporation owns or holds 10% or more of its stock.

Respondent Apache Corporation is a Delaware corporation with its principal place of business in Houston, Texas. Apache's common stock is listed on the NYSE, the Chicago Stock Exchange, and the NASDAQ National Market, and trades under the symbol "APA." Apache has no parent corporation. No other publicly held corporation owns 10% or more of Apache's stock.

Respondent Atlantic Richfield Company is an indirect wholly owned subsidiary of BP p.l.c., which is the only publicly owned company in that chain of ownership.

Respondent BEPCO, L.P. is a limited partnership. There are no publicly held corporations that own 10% or more of BEPCO.

Respondent BOPCO, L.P. is a limited partnership. There are no publicly held corporations that directly own 10% or more of BOPCO, L.P., but BOPCO, L.P. is an indirect subsidiary of respondent

Exxon Mobil Corporation, which is a publicly traded company (NYSE:XOM).

Respondent BP America Production Company is an indirect wholly owned subsidiary of BP p.l.c., which is the only publicly owned company in that chain of ownership.

Respondent BP Oil Pipeline Company is an indirect wholly owned subsidiary of BP p.l.c., which is the only publicly owned company in that chain of ownership.

Respondent BP Pipelines (North America) Inc. is an indirect wholly owned subsidiary of BP p.l.c., which is the only publicly owned company in that chain of ownership.

Respondent Callon Offshore Production, Inc. is a corporation organized under the laws of the State of Mississippi. No publicly held company owns 10% or more of the interests of Callon Offshore Production, Inc.

Respondent Callon Petroleum Company is a corporation organized under the laws of the State of Delaware. No publicly held company owns 10% or more of the interests of Callon Petroleum Company.

Respondent Caskids Operating Company does not have a parent company, and no publicly held corporation owns 10% or more of its stock.

Respondent CenterPoint Energy Resources Corp. is an indirect wholly owned subsidiary of CenterPoint Energy, Inc., a publicly held company. No other publicly traded company owns 10% or more of the stock of CenterPoint Energy Resources Corp.

Respondent Chevron Pipe Line Company is an indirect wholly owned subsidiary of Chevron Corporation, a publicly traded company (NYSE: CVX).

Respondent Chevron U.S.A. Inc. is an indirect wholly owned subsidiary of Chevron Corporation, a publicly traded company (NYSE: CVX).

Respondent Clayton Williams Energy, Inc. has no parent corporation and no publicly owned entity owns 10% or more of its stock.

Respondent Continental Oil Company is a Delaware corporation and a wholly owned direct subsidiary of ConocoPhillips Company, a publicly traded company (NYSE: COP).

Respondent ConocoPhillips Company is a Delaware corporation and a wholly owned subsidiary of ConocoPhillips, a publicly traded company (NYSE: COP).

Respondent Crawford Hughes Operating Company has no parent company, and no publicly held corporation owns 10% or more of its stock.

Respondent Davis Oil Company, a Colorado partnership composed of the following partners: The Marvin and Barbara Davis Revocable Trust as amended and restated; the Patricia Davis Raynes Trust under Trust Agreement dated March 29, 1990 as amended and restated; the Nancy Sue Davis Trust under Restated Trust Agreement dated October 1, 1990 as amended and restated; the John Davis Trust under Trust Agreement dated March 15, 1990 as amended and restated; the Gregg Davis Trust under

Restated Trust Agreement dated June 4, 1996 as amended and restated; and the Dana Leigh Davis Trust under Restated Trust Agreement dated October 9, 1990 as amended and restated.

Respondent EnLink LIG, LLC is a wholly owned subsidiary of EnLink Midstream Operating, LP. EnLink Midstream Operating, LP is a limited partnership between two partners: (1) EnLink Midstream Operating GP, LLC (general partner) and (2) EnLink Midstream Partners, LP (sole limited partner). EnLink Midstream Partners, LP is a limited partnership among a number of partners: Public Unitholders, Acacia Natural Gas Corp I, Inc., Devon Gas Services, L.P., EnLink Midstream, Inc. and EnLink Midstream GP, LLC (its general partner). EnLink Midstream, Inc. is solely owned by EnLink Midstream, LLC. While there is no publicly held corporation that directly owns 10% or more of EnLink LIG, LLC's stock, EnLink Midstream Partners, LP and EnLink Midstream, LLC are publicly held.

Respondent EOG Resources, Inc. states that it does not have a parent corporation that owns 10% or more of its stock, and to the best of its knowledge and belief (based on filings as of the date hereof with the United States Securities and Exchange Commission), there is no publicly traded corporation that owns 10% or more of EOG's stock.

Respondent Estate of William G. Helis states that it has no parent corporation, and no publicly held corporation owns 10% or more of the Estate of William G. Helis.

Respondent Exxon Mobil Corporation is a publicly traded company (NYSE: XOM). No publicly traded company owns 10% or more of Exxon Mobil Corporation's stock.

Respondent Helis Energy, LLC states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Respondent Helis Oil & Gas Company, L.L.C. states that it has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Respondent Hess Corporation has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Respondent J.M. Huber Corporation is a privately held corporation. J.M. Huber does not have a parent corporation. No publicly held corporation owns 10% or more of J.M. Huber's stock.

Respondent Koch Exploration Company, LLC states that it is a privately held entity and is an indirect wholly owned subsidiary of Koch Industries, Inc. No publicly-traded entity owns 10% or more of Koch Exploration's stock.

Respondent Koch Industries, Inc. states that it is a privately held entity, and no publicly-traded entity owns 10% or more of Koch Industries' stock.

Respondent LLOG Exploration & Production Company, LLC now is, and has been since December 31, 2009, a limited liability company whose sole member is LLOG Exploration Company, LLC. LLOG Exploration Company, LLC is a limited liability

company whose sole member is LLOG Holdings, LLC, a limited liability company. Gerald Boelte is LLOG Holdings, LLC's sole member. LLOG Exploration & Production Company, LLC has no parent corporation. No publicly held corporation owns 10% or more of LLOG's stock.

Respondent The Louisiana Land and Exploration Company LLC is a Maryland Limited Liability Company and an indirect wholly owned subsidiary of ConocoPhillips Company. ConocoPhillips Company is a Delaware corporation and a wholly owned subsidiary of ConocoPhillips, a publicly traded company (NYSE: COP).

Respondent Marathon Oil Company is a wholly owned subsidiary of Marathon Oil Corporation, a publicly traded company (NYSE: MRO).

Respondent The Meridian Resource & Exploration LLC states that no publicly traded company owns more than 10% of its stock (or membership interest).

Respondent Mosbacher Energy Company's parent corporation is Mosbacher U.S.A., Inc. No publicly held corporation owns 10% or more of Mosbacher Energy Company's stock.

Respondent Noble Energy, Inc. is a publicly held corporation. Noble Energy, Inc. does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

Respondent O'Meara, L.L.C. is a Louisiana limited liability company. It does not have a parent corporation, and no publicly held corporation owns

more than a 10% membership interest in the company.

Respondent Pickens Company Inc. is a Texas Corporation authorized to do business in the State of Louisiana. They have no subsidiaries or affiliated companies. It is not a publicly held corporation and no publicly traded company owns any of its stock.

Respondent Placid Oil Company is a wholly owned subsidiary of OXY USA Inc. OXY USA Inc. is a wholly owned subsidiary of Occidental Petroleum Corporation (NYSE: OXY), a publicly held corporation. Occidental Petroleum Corporation has no parent, and no publicly held corporation holds a 10% or larger interest in Occidental Petroleum Corporation.

Respondent Rozel Operating Company has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Respondent Shell Oil Company is a wholly owned indirect subsidiary of Royal Dutch Shell plc, a publicly held UK company. No other publicly traded company owns 10% or more of the stock of Royal Dutch Shell plc.

Respondent Sun Oil Company (Delaware) states that it is a dissolved former subsidiary of Sunoco, Inc. Sunoco, Inc. is a wholly owned, indirect subsidiary of Energy Transfer Partners, L.P. ("ETP"). ETP is a publicly traded master limited partnership, currently listed on the New York Stock Exchange.

Respondent Union Oil Company of California is an indirect wholly owned subsidiary of Chevron

Corporation, a publicly traded company (NYSE: CVX).

Respondent Whiting Oil & Gas Corporation is a wholly owned subsidiary of Whiting Petroleum Corporation, a publicly held Delaware corporation.

Respondent Yuma Exploration & Production Co., Inc. states that its parent corporation is Yuma Energy, Inc, a privately held corporation. Yuma Exploration further states that no publicly held corporation owns 10% or more of Yuma Exploration's or Yuma Energy's stock.

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BRIEF IN OPPOSITION

Seeking to wield a trio of federal statutes against the entire oil-and-gas industry, petitioner claims that respondents are responsible for erosion along the nation's coast and should be required to backfill a network of canals that were dredged in navigable waterways with federal approval. The Fifth Circuit sensibly held that this case belongs in federal court, applying the standard for federal-question jurisdiction set forth in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). Petitioner has at most only a fact-bound challenge to the lower courts' *Grable* analysis, despite its efforts to manufacture a circuit split. No further review is warranted.

STATEMENT

1. Oil-and-gas companies have spent a century exploring and producing energy reserves off the nation's coast. They have done so with express authorization from federal regulators who oversee oil-and-gas activities that are vitally important to the economy and security of the United States. To access and produce the coastal energy reserves, individual companies have dredged numerous canals pursuant to federal and state permits. Many of these canals are along the nation's coast in the Gulf of Mexico.

Petitioner is a Louisiana governmental entity that seeks to use an "extensive regulatory framework" of federal law to upend settled expectations and strike a different balance between the development of oil-and-gas resources and the

protection of coastal lands. App. 24, ¶ 8. According to the complaint it filed in the Civil District Court for the Parish of Orleans, "the oil and gas industry . . . has created an extensive network of oil and gas access and pipeline canals," which have destroyed "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." App. 4–5. By causing "[l]and loss in the [b]uffer [z]one," its theory goes, the oil-and-gas industry has made it "increasingly difficult [for petitioner] to build levees high and strong enough to protect the communities inside those levees." *Id.* at 12, ¶ 5.4; 13, ¶ 5.10; *see also* Pet. App. 4a–5a. Respondents are dozens of oil-and-gas companies that were named as defendants in petitioner's industry-wide lawsuit. Pet. App. 4a.

Hoping to keep its case in state court through artful pleading, petitioner asserted state-law claims of negligence, strict liability, natural servitude of drain, public nuisance, private nuisance, and breach of contract. App. 16–36. Yet petitioner also invoked three *federal* statutes in its complaint in an effort to establish that respondents owed it some duty of care: the Rivers and Harbors Act of 1899, the Clean Water Act of 1972, and the Coastal Zone Management Act of 1972. *Id.* at 24–26; Pet. App. 6a. Petitioner alleged that the Clean Water Act requires respondents to "[r]estore dredged or otherwise modified areas to their natural state upon completion of their use or their abandonment." App. 25, ¶ 9.2.2. It alleged that the Coastal Zone Management Act imposes "a litany of duties and obligations expressly designed to minimize" the adverse effects associated with oil-and-

gas activities. *Id.* at 26, ¶ 9.4. And it alleged that the Rivers and Harbors Act grants the U.S. Army Corps of Engineers "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." *Id.* at 24, ¶ 9.1.

Petitioner relied on federal law in this way because, as both the district court and the court of appeals recognized, there is no generalized duty under Louisiana law requiring oil-and-gas companies to protect against "the results of coastal erosion allegedly caused by [pipeline] operators that were physically and proximately remote from plaintiffs or their property." Pet. App. 187a (quoting *Barasich v. Columbia Gulf Transmission Co.*, 467 F. Supp. 2d 676, 693 (E.D. La. 2006) (discussing *Terrebonne Parish Sch. Bd. v. Castex Energy, Inc.*, 893 So. 2d 789 (La. 2005))); Pet. App. 10a–11a. Petitioner thus invoked the "longstanding and extensive regulatory framework" established by the three federal statutes as the basis for the duty it sought to impose on respondents. It alleged that "[t]his regulatory framework establishes a standard of care under Louisiana law that [respondents] owed and knowingly undertook when they engaged in" federally authorized oil-and gas-activities. App. 24–26, ¶¶ 9–10; *see also id.* ¶ 8 (alleging that respondents' activities are "governed" by this framework).

In addition to the federal statutes, petitioner sought to enforce various permits that federal agencies have issued to respondents over the years.

App. 17–18 (identifying federal permits "upon which a Defendant's liability is based"); Pet. App. 190a n.394 (describing a "permit issued to Chevron Oil Company . . . by the Department of the Army"). According to the complaint, respondents breached some contractual "obligations and duties contained in the permit[s]" by engaging in oil-and-gas activities that "impair[ed] the [b]uffer [z]one." App. 34–35, ¶ 39. These federally issued permits allegedly "manifest an intent to confer a direct and certain benefit" on petitioner, thus giving it "third-party beneficiary status." *Id.* at 35, ¶ 40.

For each of its claims, petitioner sought an injunction commanding "abatement and restoration of the coastal land loss at issue, including, but not limited to, the backfilling and revegetating each and every canal [respondents] dredged." App. 18–19, ¶ 7.2; *id.* at 36; *see also* Pet. App. 6a. In addition to this request for sweeping injunctive relief, petitioner demanded damages, interest, and attorneys' fees. App. 36; Pet. App. 6a.

2. Respondents removed this case to the U.S. District Court for the Eastern District of Louisiana pursuant to 28 U.S.C. § 1441. Pet. App. 7a, 105a. Among other jurisdictional provisions, they invoked federal-question jurisdiction under 28 U.S.C. § 1331, and maritime jurisdiction under 28 U.S.C. § 1333. Pet. App. 105a.

The district court denied petitioner's motion to remand the case to state court. Pet. App. 208a. Applying *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005), the district court held that federal-question

jurisdiction exists because petitioner's negligence, nuisance, and breach-of-contract claims implicate significant federal issues concerning the federal statutes and federal permits on which its complaint relies. Pet. App. 184a–208a. As the district court explained, "[t]he disputed issues implicate coastal land management, national energy policy, and national economic policy—all vital federal interests." Pet. App. 203a. Petitioner was mounting "a collateral attack on an entire [federal] regulatory scheme" in a case meant to "affect[ ] an entire industry." Pet. App. 204a. The district court went on to hold that maritime jurisdiction is lacking. Pet. App. 118a–123a.

Respondents then moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court granted the motion and dismissed petitioner's claims with prejudice. Pet. App. 97a. Construing the Rivers and Harbors Act, the Clean Water Act, and the Coastal Zone Management Act, the district court rejected petitioner's negligence claim because "the duties imposed upon [respondents] pursuant to those [federal] statutes do not extend to the protection of [petitioner]." Pet. App. 65a. As for the breach-of-contract claim, the district court held that "federal common law controls the interpretation of the permits at issue," and that petitioner was not "an intended third party beneficiary under the terms of the permits." Pet. App. 92a, 95a.

3. The Fifth Circuit affirmed in an opinion written by Judge Owen and joined by Chief Judge Stewart and Judge Costa. Without reaching the question of maritime jurisdiction, the court of appeals

agreed that petitioner's claims fall within federal-question jurisdiction. Pet. App. 17a. The Fifth Circuit properly stated *Grable*'s familiar standard, Pet. App. 8a, and then addressed each of its four elements in turn, Pet. App. 9a–17a.

Regarding *Grable*'s first element, petitioner argued that its claims did not necessarily raise federal issues because although the complaint expressly relied on three federal statutes, it also gestured at unspecified state-law regulations. Pet. App. 9a; *see also* App. 25–26, ¶ 9.3. The problem with that argument, as the Fifth Circuit recognized, was that petitioner's "complaint draws on federal law as the exclusive basis for holding [respondents] liable for some of their actions, including for the 'unauthorized alteration' of federal levee systems and for dredging and modifying lands away from their 'natural state.' " Pet. App. 10a (distinguishing *MSOF Corp. v. Exxon Corp.*, 295 F.3d 485, 490 (5th Cir. 2002)). The Fifth Circuit went on to hold, as to *Grable*'s second and third elements, that issues involving the three federal statutes were actually disputed by the parties, Pet. App. 12a, and that these issues had substantial "implications for the federal regulatory scheme," Pet. App. 14a. As for *Grable*'s fourth element, the Fifth Circuit saw no "threatening structural consequences" in deciding whether any state-law duties are imposed by the federal statutes. Pet. App. 16a–17a (quoting *Grable*, 545 U.S. at 319).

Because the Fifth Circuit concluded that petitioner's "negligence and nuisance claims necessarily raise federal issues sufficient to justify federal jurisdiction, [it] d[id] not reach the question

whether the third-party breach of contract claim also does." Pet. App. 17a. Nor did it "reach the question whether maritime jurisdiction provides an independent basis for federal jurisdiction in this case." *Id*.

On the merits, the Fifth Circuit affirmed the dismissal of petitioner's claims. Pet. App. 17a–30a. Interpreting the relevant federal statutes, the Fifth Circuit concluded that no duty is owed to local governments under the Rivers and Harbors Act, the Clean Water Act, or the Coastal Zone Management Act. Pet. App. 21a–23a.

Petitioner sought rehearing en banc, arguing that the panel's jurisdictional analysis was flawed and that its interpretation of the federal Rivers and Harbors Act raised "a question of exceptional importance." C.A. Pet. Reh'g En Banc viii. The Fifth Circuit denied the petition, with no judge calling for a vote or a response from respondents. Pet. App. 212a.

REASONS FOR DENYING THE PETITION

The petition should be denied because the first question presented calls only for a fact-bound application of settled law, and the second question presented is not fairly presented. Petitioner's attempt to conjure a certworthy issue depends on a strained recasting of its claims that ignores the allegations in its complaint. Petitioner has not identified any principle of federal law that needs to be clarified or resolved; it merely dislikes the way the Fifth Circuit applied settled law to the particular facts and circumstances of this case.

I. The First Question Presented Calls For The Fact-Bound Application Of Settled Law.

The Fifth Circuit dutifully applied the standard that was announced in *Grable* and confirmed in later opinions: "[F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258 (2013) (citing *Grable*, 545 U.S. at 314); *see also* Pet. App. 7a–17a (citing *Grable* and *Gunn*). With its first question presented, petitioner merely quibbles with the application of *Grable* to the particular facts of this case. The Court should decline this invitation to review the supposed "misapplication of a properly stated rule of law." SUP. CT. R. 10.

Petitioner's first question presented asks "[w]hether the 'substantial[ity]' and 'federal-state balance' requirements of *Grable* are satisfied whenever a federal law standard is referenced to inform the standard of care in a state-law cause of action, so long as the parties dispute whether federal law embodies the asserted standard." Pet. i. But that question already has a definitive answer: *No.* In *Gunn*, the Court held that "it is not enough that the federal issue be significant to the particular parties in the immediate suit; that will *always* be true when the state claim necessarily raises a disputed federal issue, as *Grable* separately requires." 568 U.S. at 260 (alteration and internal quotation marks omitted). In other words, satisfying *Grable*'s first and second elements does not

automatically satisfy its third element—that would defeat the purpose of stating the standard in the conjunctive. The answer to petitioner's question follows *a fortiori*: Satisfying *Grable*'s second element does not automatically satisfy its third and fourth elements.

The first question presented thus gives no occasion to refine *Grable*'s intentionally malleable standard, through which "the Court sought to reserve discretion to tailor jurisdiction to the practical needs of the particular situation." RICHARD H. FALLON, JR. ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 832 (7th ed. 2015). Petitioner does not seek to alter or improve that standard. Instead, it would have the Court retrace the same lines that have always separated the four elements of *Grable*. The first question presented hardly "involv[es] principles the settlement of which is of importance to the public, as distinguished from that of the parties." *Layne & Bowler Corp. v. W. Well Works, Inc.*, 261 U.S. 387, 393 (1923) (Taft, C.J.).

Of course, the opinion below did not answer the first question presented in the affirmative. Upon finding that *Grable*'s second element was satisfied, the Fifth Circuit did not stop its jurisdictional analysis. Pet. App. 12a (holding that the parties "actually disputed" the meanings of the Rivers and Harbors Act and the Clean Water Act). The opinion below went on to find that *Grable*'s third and fourth elements were each satisfied. Pet. App. 12a–14a (recognizing substantiality); *id.* at 15a–17a (noting "the absence of threatening structural consequences"). Petitioner is welcome to disagree

over whether each of *Grable*'s four elements was satisfied in this case, *see* Pet. 12–20, but it cannot deny that the Fifth Circuit analyzed each of the four elements independently.

In any event, the Fifth Circuit was right in its analysis of *Grable*'s third and fourth factors. Petitioner wants to use three federal statutes to force the oil-and-gas industry into backfilling an extensive network of federally permitted canals. Given the significant impact such an injunction would have on "vital federal interests" in "coastal land management, national energy policy, and national economic policy," Pet. App. 203a, there is no good reason to doubt "the importance of the issue to the federal system as a whole," *Gunn*, 568 U.S. at 260. Moreover, recognizing federal-question jurisdiction in this case poses no threat of an "enormous shift of traditionally state cases into federal courts." *Grable*, 545 U.S. at 319. Petitioner has not identified any other suits that will be swept into federal court as a result of the Fifth Circuit's ruling. Nor could it: This lawsuit is singular on many dimensions, including who it sues (an entire industry), the important federal issues it raises (land loss along the nation's coast), the laws it seeks to enforce (a framework of federal statutes and permits), and the relief it seeks (the backfilling of canals in navigable waters that were dredged to produce essential oil-and-gas resources with the permission of federal regulators). Indeed, the federal statutes upon which petitioner's claims depend have long been the province of federal regulators, and regulation of the nation's waters has long been the province of federal law. *See, e.g.*, *Int'l Paper Co. v. Ouellette*, 479 U.S. 481, 487–88, 492 (1987); *cf. Am.*

Elec. Power Co. v. Connecticut, 564 U.S. 410, 428–29 (2011).

II. The Second Question Presented Is Not Fairly Presented In This Case.

Petitioner's second question presented asks "[w]hether a federal court applying *Grable* to a case removed from state court must accept a colorable, purely state-law claim as sufficient to establish that the case does not 'necessarily raise' a federal issue, even if the court believes the state court would ultimately reject the purely state-law basis for the claim on its merits." Pet. i. According to petitioner, the decision below created a one-to-one circuit split over this question with *Manning v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 772 F.3d 158, 163–64 (3d Cir. 2014). The Third Circuit would have rejected federal-question jurisdiction in this case, the argument goes, because there is a purely state-law theory that will give petitioner all the relief to which it claims to be entitled. *See* Pet. 20–22.

But the Fifth Circuit is well aware that a federal-law issue is not necessarily raised, for purposes of *Grable*'s first element, if the claim could be won on an entirely independent state-law theory. *See MSOF Corp. v. Exxon Corp.*, 295 F.3d 485, 490 (5th Cir. 2002) (rejecting federal-question jurisdiction because the complaint's "only reference to federal law is an allegation that the PPI facility was maintained in violation of federal regulations *as well as* in violation of state and local regulations"). It did not dispute that legal principle, but merely rejected the notion that petitioner's claims could succeed solely on the

basis of state law. *See* Pet. App. 9a–10a (distinguishing *MSOF*).

In asserting a circuit split, petitioner ignores its own allegations. Consider petitioner's claim that respondents' federally permitted "dredging and maintenance activities" have caused land loss. Pet. App. 5a. Or its allegation that the harms it has suffered involve the costs associated with the "risk reduction system" designed and constructed by the U.S. Army Corps of Engineers as part of the "substantial risk mitigation and fortification effort" undertaken by the "federal government" to "protect the communities of southern Louisiana." App 19–21, ¶ 7.3. Or its allegation that respondents' oil-and-gas activities are "governed by a longstanding and extensive regulatory framework under both federal and state law," and that the "relevant components" of that regulatory framework include the Rivers and Harbors Act, the Clean Water Act, and the Coastal Zone Management Act. *Id.* at 24–26, ¶¶ 8–10; *see also id.* at 27, ¶ 13 (alleging that the "standard of care" for petitioner's negligence claim is prescribed by the "regulatory framework outlined above" and the obligations included in federal permits). Petitioner's own allegations establish that federal law is an essential part of its claims, as it chose to plead them.

If there were any doubt on this score, consider petitioner's request for an injunction compelling respondents to backfill the canals they dredged in the navigable waters of the United States. *Cf. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000) (recognizing that "a plaintiff must demonstrate standing separately for each form

of relief sought"); FED. R. CIV. P. 8(a)(3) (noting that a "pleading that states a claim for relief must contain . . . a demand for the relief sought"). The Rivers and Harbors Act would make any such backfilling illegal, absent permission from the U.S. Army Corps of Engineers. *See* 33 U.S.C. § 403; 33 C.F.R. § 322.3(a); *Bayou Des Familles Dev. Corp. v. U.S. Corps of Eng'rs*, 541 F. Supp. 1025, 1033–34 (E.D. La. 1982); *see also* App. 24, ¶ 9.1 (alleging that the statute "grants" the Corps "exclusive authority"). As the Fifth Circuit acknowledged, therefore, "the relief sought by [petitioner] would require federal approval to be implemented." Pet. App. 15a–16a. That would explain the complaint's invocation of the Rivers and Harbors Act and other federal statutes—even petitioner understood that state law alone cannot support a colorable claim for a backfilling injunction. *See* App. 24–26; Pet. App. 6a.

To take one other example, petitioner asserted a breach-of-contract claim as a third-party beneficiary of the permits that federal regulators have issued to respondents. App. 34–36; *see also id.* at 35, ¶ 42 (alleging that, as a result of this breach, petitioner is entitled to injunctive relief). Assuming that these permits amount to contracts with the United States, their meaning is governed by federal law. *See Boyle v. United Techs. Corp.*, 487 U.S. 500, 504 (1988) ("We have held that obligations to and rights of the United States under its contracts are governed exclusively by federal law."). A purely state-law theory could never support such a breach-of-contract claim, which is why courts have accepted federal-question jurisdiction in similar cases. *See, e.g.*, *Price v. Pierce*, 823 F.2d 1114, 1119–20 (7th Cir. 1987) (Posner, J.);

One & Ken Valley Hous. Grp. v. Me. State Hous. Auth., 716 F.3d 218, 224–25 (1st Cir. 2013). The Fifth Circuit did not reach the jurisdictional consequences of the breach-of-contract claim, *see* Pet. App. 17a, and petitioner now tries to bury it in a footnote, *see* Pet. 4 n.2 (noting dismissal of the claim was not appealed). But if petitioner's breach-of-contract claim was within federal-question jurisdiction at the time respondents removed, then the remainder of their case was properly removed to federal court. *See, e.g.*, *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164–66 (1997). "[O]nce a court has original jurisdiction over some claims in the action, it may exercise supplemental jurisdiction over additional claims that are part of the same case or controversy." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005).

Based on petitioner's own allegations, there is no basis for the Court to consider the second question presented. Petitioner does not have "a colorable, purely state-law" theory to sustain each of its claims, Pet. *i,* and the Court should not bother addressing how *Grable*'s standard would apply in that counterfactual scenario. Resolving the second question presented will not change the outcome of this case, so it is not the subject of "meaningful litigation." *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959).

III. The Decision Below Does Not Create Or Deepen Any Circuit Splits.

Petitioner asserts that, "[h]ad this case arisen in any of at least four other courts of appeals, it would have been remanded to state court." Pet. 12. In

grasping for certworthiness, petitioner stretches the cases too far. The Fifth Circuit's decision in this case does not conflict with the cited decisions from the Third, First, Eighth, and Federal Circuits. It merely illustrates that applying the correct legal standard results in different jurisdictional outcomes in different circumstances involving different facts.

As explained above, this case would not come out differently under *Manning v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 772 F.3d 158 (3d Cir. 2014). *See* Pet. 20–22. According to petitioner, "[t]he Third Circuit . . . held that at least so long as the complaint's allegations were colorable, 'it is for the state court to make the determination as to the applicability of its state law.' " Pet. 22 (quoting *Manning*, 772 F.3d at 163–64). But the plaintiffs in *Manning* were pursuing ten state-law claims for money damages and, as the Third Circuit read the complaint, none of their claims depended on federal law. 772 F.3d at 160, 164. Here, in contrast, petitioner's claims expressly invoke and depend on federal law, and it seeks a backfilling injunction that is illegal under the Rivers and Harbors Act absent approval by the U.S. Army Corps of Engineers. Unless the Third Circuit would deem the latter claim colorable on purely state-law grounds—and there is no reason to believe it would—the ruling in *Manning* has no bearing on this case. Perhaps that is why petitioner did not bother bringing *Manning* to the Fifth Circuit's attention.

Nor does the Fifth Circuit's decision conflict with *Municipality of Mayagüez v. Corporación Para el Desarrollo del Oeste, Inc.*, 726 F.3d 8 (1st Cir. 2013).

See Pet. 23–24. In that case, the First Circuit found *Grable*'s third element unsatisfied because there was no substantial federal interest in deciding whether a particular entity had in fact violated regulations from the Department of Housing and Urban Development. *See Mayagüez*, 726 F.3d at 14–15. Here, by contrast, petitioner has launched "a collateral attack on an entire [federal] regulatory scheme," in a case that is calculated to "affect[ ] an entire industry" and that "implicate[s] coastal land management, national energy policy, and national economic policy—all vital federal interests." Pet. App. 203a–204a; *see also id.* at 12a–14a. Nothing in *Mayagüez* suggests that the First Circuit would find those federal interests insubstantial and remand them to state court. To the contrary, as the other First Circuit case cited by petitioner shows, the First Circuit is willing to find federal jurisdiction in appropriate circumstances. *See One & Ken Valley*, 716 F.3d at 225 (noting that whether federal jurisdiction exists "in a particular case is necessarily fact-bound").

Petitioner suggests that the "federal waters are only ankle-deep" in this case, and that the Fifth Circuit's decision on the merits was "based almost entirely on the court's interpretation of Louisiana—*not* federal—law." Pet. 2, 24. But petitioner sang a different tune in the Fifth Circuit:

> The Panel's determination on the merits of the claims likewise triggers a question of exceptional importance. The Panel's holding that the Rivers and Harbors Act of 1899 did not delineate a duty to avoid impairing the usefulness of levees, the beneficiary of which

> could be a flood control authority, neglects the plain language of the statute and contravenes settled law in this Circuit.

C.A. Pet. Reh'g En Banc viii. Having posed such an exceptionally important question of federal law—namely, whether local governments can engage in redundant enforcement of the federally administered Rivers and Harbors Act—petitioner is in no position to grouse about how it ended up in federal court.

Weaker still is the supposed conflict with *Great Lakes Gas Transmission LP v. Essar Steel Minnesota LLC*, 843 F.3d 325 (8th Cir. 2016). *See* Pet. 25. In holding that *Grable*'s third element was not satisfied, the Eighth Circuit was persuaded by the Federal Energy Regulatory Commission's decision that there was no substantial federal interest in construing a federally filed tariff according to state law. *See Great Lakes*, 843 F.3d at 332–33. The Commission had concluded that there was no need for uniformity in interpreting the contract, and that no issue was important to its regulatory responsibilities. *Id.* The federal regulators overseeing the oil-and-gas industry have done no such thing in this case. To the contrary, allowing this lawsuit to proceed would inevitably interfere with the exclusive federal role in regulating the nation's navigable waterways and the waters of the United States.

Last, and least, is the supposed conflict with *NeuroRepair, Inc. v. Nath Law Group*, 781 F.3d 1340 (Fed. Cir. 2015). *See* Pet. 25–26. Hewing to this Court's analogous decision in *Gunn v. Minton*, 568 U.S. 251 (2013), the Federal Circuit held that 28 U.S.C. § 1338 did not confer jurisdiction over a

legal-malpractice claim in the patent-prosecution context. *See NeuroRepair*, 781 F.3d at 1348–49 (finding that "[d]efendants have not effectively distinguished *Gunn*"). That the Federal Circuit obeyed a binding, on-point decision reveals precious little about how it might decide this case.

Finally, even if there were some tension between the cases, the Third, First, Eighth, and Federal Circuits could reach the same jurisdictional outcome as the Fifth Circuit by taking one of the alternative paths left unexplored in the opinion below:

> Because we conclude that [petitioner's] negligence and nuisance claims necessarily raise federal issues sufficient to justify federal jurisdiction, we do not reach the question whether the third-party breach of contract claims also does so. We also do not reach the question whether maritime jurisdiction provides an independent basis for federal jurisdiction in this case.

Pet. App. 17a. To grant certiorari would be to invite further argument along these lines.

* * *

No amount of gloss by petitioner can obscure that its claims depend on federal law. Petitioner's complaint rests on a theory that federally permitted oil-and-gas activities, essential to developing the nation's resources on the outer-continental shelf, violated a duty of care allegedly created by three federal statutes and accompanying federal permits. Petitioner seeks to enforce those federal statutes and permits to hold an entire industry responsible for the

problem of land loss off the nation's coast. And it seeks an injunction—including the backfilling of canals on navigable waters—that could not be granted without the involvement of federal agencies, including the U.S. Army Corps of Engineers. It is hardly surprising that, applying *Grable*'s four-factored test, the Fifth Circuit concluded that this case properly belongs in federal court. Petitioner may quarrel with that fact-bound, case-specific ruling, but it offers no good reason for this Court to intervene.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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August 22, 2017

APPENDIX

TABLE OF APPENDICES

Appendix A

Plaintiff's Petition for Damages and Injunctive Relief, No. 13-6911 (Dist. Court for the Parish of Orleans, State of Louisiana July 24, 2013) App-1

Appendix A
Filed July 24, 2013

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS STATE OF LOUISIANA

NO. 13-6911 DIVISION "J-5"

BOARD OF COMMISSIONERS OF THE SOUTH-EAST 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.

FILED: _____ _____
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 clone, 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 of-

fice at 203 Plauche Court, Harahan, Louisiana 70123.

1.3. The Authority's capacity to sue in the foregoing regard 1s pursuant to La. R.S. §38:309(B), as well as §§38:291 and 38:330.1 - 38:330.13.[1]

2. Defendants

2.1 The approximately 100 oil and gas production and pipeline companies identified on the at-

---

[1] 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 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. 1'1 Ex. Sess. Act 1, which amended La. R.S. §§ 38:330.l-38:330.13. As specifically provided by La. R.S. § 38:330.l(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)(l)(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[.]"

tached **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:

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, 1st 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 con-

cerns."[2] 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."[3]

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.

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;

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[2] La. R.S. § 38:330.l(F)(2)(a).
[3] La. Rev. Stat. § 38:330.2(0).

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 jurisdic-

tion 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 clumps;

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-on: 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 Butler 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 per-

mitted 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[.][4]

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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[4] 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 111 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 restora-

tion. 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 tum 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 clone. 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. ln 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' activ-

ities 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. Ln 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;

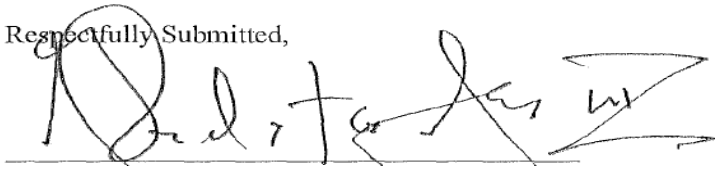
d) The award of costs, expenses and reasonable attorneys' fees in favor of the Authority and the levee districts that it governs and against De-

fendants 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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