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**State of Louisiana**  
**DEPARTMENT OF NATURAL RESOURCES**  
**OFFICE OF CONSERVATION**

March 16, 2023

**Via Fax File and U.S. Mail**

Amy M. Patin  
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Parish of Iberville  
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Re: *August Levert, Jr. Family, LLC, et al. v. BP America Production Company*  
18<sup>th</sup> Judicial District Court, Division A, Iberville Parish, Louisiana  
Docket No. 78953

***The Louisiana Department of Natural Resources, Office of Conservation's Most Feasible Plan and  
Written Reasons in Support and Affidavit***

Dear Ms. Patin:

The Louisiana Department of Natural Resources, Office of Conservation (OC), is submitting herewith the Most Feasible Plan and Written Reasons in Support in accordance with La. R.S. 30:29 (C)(3)(b). An affidavit from OC in accordance with La. R.S. 30:29 (C)(3)(b) attesting to the fact that there has been no ex parte contact, either directly or indirectly, by the agency with any party to the litigation during the process, is also attached. With the hard copy of this document, I have enclosed an additional copy to be time stamped and returned to my office in the self addressed stamped envelope. If there is a fee for filing this document, please send an invoice at 225-342-2584 to my attention.

If you have any questions, please call F. Jonathan Rice at (225) 342-9660.

Yours very truly,

*/s/ F. Jonathan Rice*  
F. Jonathan Rice, Attorney  
Office of Conservation

Richard P. Ieyoub  
Commissioner of Conservation

RPI:FJR:fjr  
Lead Counsel of Record  
Judge J. Kevin Kimball

STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW

LOUISIANA DEPARTMENT OF  
NATURAL RESOURCES,  
OFFICE OF CONSERVATION

DOCKET NO. 2022-8332-DNR-OOC

IN RE:

AUGUST LEVERT, JR. FAMILY, LLC;  
RONALD R. LEVERT; PAUL M.  
LEVERT; MARK W. LEVERT, JR.;  
JOHN E. SANFORD; JAMES L.  
SANFORD; AND CAMPO E.  
MATENS

AGENCY NO. 018-028-002

VERSUS

BP AMERICA PRODUCTION COMPANY

DOCKET NO. 78953, DIV. "A"  
18<sup>TH</sup> JUDICIAL DISTRICT COURT,  
PARISH OF IBERVILLE  
STATE OF LOUISIANA

(JUDGE J. KEVIN KIMBALL)

**LOUISIANA DEPARTMENT OF NATURAL RESOURCES,  
OFFICE OF CONSERVATION'S MOST FEASIBLE PLAN AND WRITTEN  
REASONS IN SUPPORT AS REQUIRED BY LA. R.S. 30:29**

Louisiana Department of Natural Resources, Office of Conservation ("LDNR") approves the Most Feasible Plan in the Hydro-Environmental Technology, Inc. ("HET") Site Investigation and Proposed Remediation Plan submitted on behalf of BP America Production Company (11/3/22)<sup>1</sup> as the LDNR's Most Feasible Plan with the modifications required by the panel set

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<sup>1</sup> The "Site Investigation Report and Proposed Remediation Plan", submitted by HET on 11/3/22, is in evidence as **BP Hearing Exhibit 1**, Bates Nos. August\_Levert\_BP Plan\_000001-000064 & lettered Appendices A-S beginning at Bates No. August\_Levert\_BP Plan\_000065 and running through Bates No. August\_Levert\_BP Plan\_010045.

forth in Section II below. It is a “feasible plan” within the meaning of La. R.S. 30:29 (I)(4) and LAC 43:XIX.603, and is preliminarily deemed to be the “most feasible plan” within the meaning of La. R.S. 30:29 (C)(2)(a), (3)(a) & (3)(b) and LAC 43:XIX.627. A Preliminary MFP & Written Reasons was sent to the other appropriate agencies set forth in La. R.S. 30:29(C)(3)(b)(i) for comments prior to being finalized and filed with the Court in accordance with La. R.S. 30:29(C)(2)(a) and/or (3)(b)(ii) as noted below at pages 12-13. The other agencies have no comments as noted below at page 13. Written reasons are incorporated herein in compliance with La. R.S. 30:29 (C)(2) & (3) and LAC 43:XIX.627.A.

## **I. PARTIES - CHRONOLOGY**

August J. Levert, Jr., Family, LLC, a Louisiana corporation, having a registered office in Port Allen, Louisiana, Ronald R. Levert, Paul M. Levert, Mark W. Levert, Jr., John E. Sanford, James L. Sanford, and Campo E. Matens, (“Plaintiffs”) own and/or have owned property located in Iberville Parish in the Grand River Oil and Gas Field, formerly known as Sullivans Lake Oil and Gas field (“Property”). The legal description of the Property is as follows:

That certain tract of land situated in the Parish of Iberville, State of Louisiana, and being the North Half (S/2) of Fractional Section 15, Township, Ten South (T10S), Range 11 East (T11E), containing 57.155 acres; and listed as part of Parcel Number 0800988025 in the Tax Roll Record in the Assessor’s Office in Iberville Parish, Louisiana.

The Property is comprised of approximately 57 acres and is located approximately nine (9) miles southwest of Plaquemine, Louisiana, in a low-lying portion of the Atchafalaya Basin, accessible only by boat. Major surface water features are in the vicinity of the Property, including

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Section 7.0 entitled “Most Feasible Plan” is at Bates Nos. August Levert\_BP Plan\_000058-62 (Note: This Site and Investigation Report & Proposed Remediation Plan will hereinafter be referred to throughout this document in shortened form as the “HET Plan”, and the prefix to bates numbers will be shortened to “BP Plan” to be followed by the six numerals associated with the bates number.

Willow Lake to the north and west, Sullivan Lake to the west, and the Upper Grand River to the east of the Property.<sup>2</sup> Midwest Oil Corporation and Amoco Production Company, predecessors to BP, operated wells between 1967 and 1985 – the Schwing-Levert #001 (LDNR Serial No. 121453), the Schwing-Levert #001-D (LDNR Serial No. 121454), and the Schwing-Levert #002 (LDNR Serial No. 123040). The Schwing-Levert Well Sites and the Tank Battery were plugged, abandoned, and decommissioned by 1997. The Tank Battery was decommissioned through the LDNR Orphan Fund program.<sup>3</sup>

On May 28, 2019, the Plaintiffs filed suit against BP America Production Company (“BP”) alleging environmental damage on the Property and sought restoration costs as a result of the oil and gas operations by BP’s predecessors.<sup>4</sup>

On October 26, 2022, BP made a limited admission of responsibility for environmental damage and accepted responsibility for that damage in areas which it described as Limited Admission Areas 1, 2, and 3, depicted on an attached map (Exhibit A), pursuant to Louisiana

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<sup>2</sup> See generally Original Petition for Damages, *August J. Levert, Jr. Family, LLC; Ronald R. Levert; Paul M. Levert; Mark W. Levert, Jr.; John E. Sanford; James L. Sanford; and Campo E. Matens v. BP American Production Company*, Docket No. 78953, Div. “A”, 18<sup>th</sup> Judicial District Court, Parish of Iberville, State of Louisiana, filed 5/28/2019, Bates Nos. BP Plan 010062-83, ¶¶ 1-11; and HET Plan, Executive Summary, pp. i-ii, Bates Nos., BP Plan 000003-4 and § 1.1: Site Description, pp. 2-3, Bates Nos. 000015-16, and Figs. 1-5, HET Plan Appendix B, Bates Nos. BP Plan 000150-54. See also § 1.5: Review of Previous Investigations, p. 9, Bates Nos. 000022 (stating that “the LAAs are a portion of the larger Property comprising approximately fifty-seven (57) total acres” and referencing the assessment of the Property by plaintiffs’ expert ICON). See also ICON Expert Report, HET Plan Appendix J, Bates Nos. BP Plan 002069, and Fig. 1, HET Plan, Bates No. 002081.

<sup>3</sup> HET Plan § 1.4: Exploration History with Text Table 1, pp. 8-9, Bates Nos. 000021-22.

<sup>4</sup> See Original Petition for Damages, n. 2 *supra*. In paragraph 15, Plaintiffs reference numerous leases and agreements, dating from 1966 to 1969. In paragraph 40, Plaintiffs request remediation and restoration of the land to original condition. Without attempting to summarize the legal theories set forth in the Petition, paragraph 73 does specifically allege that the provisions of Louisiana Revised Statute 30:29 [commonly referred to as “Act 312”], apply to this action. Full remediation of environmental damage caused by contamination resulting from activities associated with exploration and production at oilfield sites is afforded by an Act 312 feasible plan. See *State v. Louisiana Land & Exploration Co.*, 2020-00685 (La. 6/1/22), 339 So.3d 1163, 1166-70. An Act 312 feasible plan does not affect a landowner’s *express contractual* right to have property restored to its original condition. *Id.*, at 1169. See La. R.S. 30:29, subsection (H), sentence 2 (2006 version of statute), provided, and subsection M (1)(b) of current statute.

Code of Civil Procedure Article 1563.<sup>5</sup> On the same day, the court signed an order requiring BP to develop and submit a plan for evaluation or remediation of the environmental damage, if any, in Limited Admission Areas 1, 2, and 3 to applicable regulatory standards within thirty (30) days to the Louisiana Department of Natural Resources, Office of Conservation (hereinafter “**LDNR**”).<sup>6</sup>

On November 3, 2022, a Limited Admission Plan was submitted by HET on behalf of BP.<sup>7</sup> The Limited Admission Areas 1, 2, and 3 (“**LAAs**”) are identified in Figure 6 of the Plan.<sup>8</sup> Although Plaintiffs could have submitted a plan of their own under the court’s order, they did not do so.<sup>9</sup>

On January 9 and 10, 2023, the public hearing was held by Zoom.<sup>10</sup> Four LDNR employees with relevant technical backgrounds sat as a panel,<sup>11</sup> and heard testimony from three expert witnesses (Brent Pooler, Matthew Greene, and Helen Connelly) who testified on behalf of BP.<sup>12</sup>

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<sup>5</sup> See BP America Production Company’s Limited Admission of Environmental Damage Pursuant to La. R.S. 30:29, dated 10/26/22 (the “Limited Admission”), **BP Hearing Exhibit 2**, Bates Nos. BP Plan 010114-20. The Limited Admission was made pursuant to La. C. Civ. Proc. Art. 1563 (A)(1), which in pertinent part, provides—

If any party admits liability for environmental damage pursuant to R.S. 30:29, **that party may elect to limit this admission of liability for environmental damage to responsibility for implementing the most feasible plan to evaluate, and if necessary, remediate all or a portion of the contamination that is the subject of the litigation to applicable regulatory standards,** hereinafter referred to as a “limited admission”.

<sup>6</sup> See Order, signed by Judge Kimball, signed 10/26/22 and filed 10/27/22, in the 18<sup>th</sup> JDC, Parish of Iberville, **BP Hearing Exhibit 4**, Bates Nos. BP Plan 010125-27.

<sup>7</sup> See HET Plan, **BP Hearing Exhibit 1**, n. 1 *supra*.

<sup>8</sup> HET Plan, Executive Summary, p. ii, Bates No., BP Plan 000004 and Fig. 6, HET Plan Appendix B, Bates No. BP Plan 000155.

<sup>9</sup> Plaintiffs retained an expert ICON Environmental Services, Inc. which submitted an expert report to plaintiffs’ counsel in connection with the litigation, but the report was not submitted by plaintiffs as an alternative plan or comment to the HET Plan in connection with the Limited Admission. HET however, submitted the ICON expert report as Appendix J to the HET Plan and it was admitted into evidence. See n. 13 *infra*.

<sup>10</sup> The Hearing Transcript is uploaded at the LDNR, Office of Conservation website.

<sup>11</sup> See **Exhibit 1 to MFP & Reasons (Panelists and Their Backgrounds)** attached hereto.

<sup>12</sup> See **Exhibit 2 to MFP & Reasons (Expert Witnesses who Testified)** attached hereto.

The HET Plan (BP Exhibit 1) and thirty (30) non-plan BP exhibits (BP Exhibits 2 to 31) were offered into evidence and admitted into the record.<sup>13</sup> Plaintiffs offered one exhibit, a deposition of Bernard Kueper, a BP expert who was ill and did not testify at the hearing, and this was admitted into evidence by agreement. (Plaintiffs' Exhibit 3, with five attachments).

## **II. LDNR PRELIMINARY MOST FEASIBLE PLAN**

The HET Plan addresses the three (3) areas for which a limited admission has been made by BP: LAA 1, which is associated with a former tank battery storage facility; LAA 2, which is associated with a former pit location for oil/gas wells LDNR Serial Nos. 121454 and 120453; and LAA 3, which is associated with two former pit locations—referred to as the western pit and the eastern pit—for oil/gas well LDNR Serial No. 123040.<sup>14</sup> The panel finds the proposed remediation plan for soil and groundwater detailed in the HET Plan, to be acceptable with an additional sampling requirement and regulatory clarifications provided herein.

### **A. Feasible Plan Soil Remediation Plan and Reasons by Limited Admission Area**

#### **LAA 1—**

There are no soil remediation activities necessary at LAA 1 as all soil sample results were found compliant with all applicable LAC 43:XIX.Subpart 1.Chapter 3 (29-B Chapter 3) parameter limitations without exception, and all applicable RECAP standards.<sup>15</sup>

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<sup>13</sup> Hearing Transcript, 1/9/23, p. 15 (exhibits admitted except HET Plan, Appendix J) and pp. 129-132 (Appendix J admitted).

<sup>14</sup> The LAAs are described in HET Plan, § 1.2: Litigation Status and Limited Admission Areas and Table of LAAs, pp. 3-4, Bates No. BP Plan 000016-17, and Appendix B, Figs. 6 -8, Bates Nos. BP Plan 000155-57. *See also* HET Plan, § 1.5: Review of Previous Investigations, pp. 9-10, and § 1.6: BP Investigations, pp. 10-11, Bates Nos. Bates No. BP Plan 000022-24, and associated figures with each in Appendix B, Figs. 9-10.

<sup>15</sup> See HET Plan, § 5.2.1, p. 34, Bates No. BP Plan 000047, and HET Plan, Appendix C, Table 1, Bates No. BP Plan 000173.

One soil sample in LAA 1 from ICON soil boring LT-1 collected from 12-14' below land surface ("BLS") in the shallow water bearing zone of 11-16' BLS exceeded the 29-B Chapter 3 soil EC Elevated Freshwater Wetland limitation of <8 mmhos/cm. ICON EC results were 17.2 mmhos/cm and HET EC results were 19.0 mmhos/cm.<sup>16</sup> Since this sample was collected within the shallow water bearing zone which meets the definition of a groundwater aquifer in 29-B Chapter 3, and LAA 1 is classified as a 29-B Chapter 3 Submerged Wetland, the soil EC parameter limitation of <8 mmhos/cm is not applicable.<sup>17</sup> The groundwater conditions underlying LAA 1 are addressed in the HET Plan and further detailed in the groundwater remediation subsection B (beginning at page 10).<sup>18</sup>

#### **LAA 2—**

A historical pit was evaluated and included in the HET Plan in LAA 2. The pit includes soil sample locations that exceed applicable 29-B Chapter 3 parameter limitations within 2' BLS.<sup>19</sup>

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<sup>16</sup> Soil Analytical Summary – 29-B Analyses (Limited Admission Area 1), Table 1 - LT-1 (12-14'), Sample Date 09/25/19: ICON – EC, 17.2 mmhos/cm, and HET – EC, 19.0 mmhos/cm. *See* HET Plan, Appendix C, Bates No. BP Plan 000173.

<sup>17</sup> Brent Pooler testified that the property is submerged. *See* Pooler Testimony, Hearing Transcript, 1/9/23, pp. 47-49, 58. *See* HET Plan, § 5.1: Regulatory Framework Under Statewide Order 29-B, p. 31. Bates No. BP Plan 000044, which provides: "Surface concentrations of EC, SAR, and/or ESP were evaluated at all depths with a focus within the root zone .... Subsurface concentrations of EC were evaluated in accordance with LAC 43:XIX.313D to demonstrate that chloride parameters assessed at the site do not affect the overall conditions of the properties and are protective of subsurface water bearing zones as discussed further below...[the] salt related constituents of EC, SAR, and/ESP in submerged wetland areas are not subject to criteria under LAC 43:XIX.313...." Thus, despite salt parameters not being applicable, BP did put on evidence as to the root zone. The evidence indicates that the maximum effective root zone was 24 inches. *See* HET Plan, § 4.0: Root Zone Investigation, pp.22-28, by Matthew Greene, and Text Table 2, Effective Root Zone (ERZ) of Selective Species at p. 28, Bates Nos. Bates Nos. BP Plan 000035-41. Matthew Greene testified that 80% of the roots on the western portion of the property are no deeper than 14 inches and 80% of the roots on the eastern portion of the property are no deeper than 24 inches, and most of the roots found during his investigation were above 14 inches. *See* Greene Testimony, Hearing Transcript, 1/9/23, pp. 240-41. For the root zone investigation and photos, *see* HET Plan, Appendix M, Root Zone Documentation, Bates Nos. BP Plan 009461-81.

<sup>18</sup> *See* HET Plan, § 5.2.1: Review of Soil Data in Limited Admission Area 1 (Former Tank Battery), p. 34, Bates No. BP Plan 000047. *See also* HET Plan, § 5.3: Groundwater Investigation Results, pp. 40-41, Bates Nos. BP Plan 000053-54.

<sup>19</sup> *See* Pooler Testimony, Hearing Transcript, 1/9/23, pp. 56-60 and 63. Elevated SAR of 14.8 in the 2-4' interval, HET Sample Date 8/29/19, but exceedance not later confirmed by HET in HA-1R soil boring on 6/23/22. Elevated oil & grease in the 0-2' interval. – HA-1 (0-2'), Sample Date 08/29/19: ICON – 9.36%, and HET –, 8.40%; and SB-17 and SB-20, Sample Date 6/23/22, also above the 29-B maximum of 1% with a high value of 11.2% reported by ICON in

The HET Plan states, “this plan will remove all constituent concentrations that exceed the Statewide Order 29-B, Chapter 3, pit closure standards.”<sup>20</sup> The HET plan includes excavation and offsite disposal of all soil from the pit area from 0-2’ BLS.<sup>21</sup> The HET Plan includes cost estimates for clean fill material to be used as backfill following pit soil excavation.<sup>22</sup> However, the HET Plan was not clear whether any fill material brought to the site for use as pit fill material was going to be sampled and tested to confirm compliance with applicable 29-B Chapter 3 soil parameter limitations. During the public hearing, the panel requested clarification and Brent Pooler confirmed that if outside source fill material is needed for pit closure, the fill material will be sampled and tested for applicable 29-B Chapter 3 parameter limitation compliance.<sup>23</sup>

The HET Plan documents that all constituents not included in the applicable suite of 29-B Chapter 3 soil parameters with exceedances above applicable RECAP screening standards are compliant with their respective RECAP MO-1 non-industrial standards and pose no risk to the public or the environment for the reported intended future use of the property.<sup>24</sup>

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SB-17. *See* Soil Analytical Summary – 29-B Analyses (Limited Admission Area 2), Table 2, HET Plan, Appendix C, Bates No. BP Plan 000174. *See also* HET Plan, § 5.2.2: Review of Soil Data in Limited Admission Area 2 (LDNR Serial Nos. 120453 and 121454), p. 35, Bates No. BP Plan 000048.

<sup>20</sup> *See* Pooler Testimony, Hearing Transcript, 1/9/23, pp. 60, 79. HET Plan, § 8.0: Final Recommendation, Timeframe, and Estimated Costs, p. 48, Bates No. BP Plan 000061.

<sup>21</sup> *See* HET Plan, § 7.4: Soil Remedy Selection, p. 47 and Appendix B, Fig. 21.

<sup>22</sup> HET Plan, Appendix P, Bates No. BP Plan 00937.

<sup>23</sup> *See* Pooler Testimony, Hearing Transcript, 1/9/23, pp. 201-02.

<sup>24</sup> *See* HET Plan, § 5.2.2: Review of Soil Data in Limited Admission Area 2 (LDNR Serial Nos. 120453 and 121454), p. 35, Bates No. BP Plan 000048. *See also* §1.0 Introduction, p. 2, Bates No. BP Plan 000015 (“Upon completion of the proposed work, remnant constituent concentrations, if any, will not pose limitations or encumbrances on the reasonably intended future use of the property”). *See also* results for LAA 2 in HET Plan, Appendix C, Tables 2 and 3, Bates Nos. BP Plan 00174-75. *See also* Pooler Testimony, Hearing Transcript, 1/9/23, pp. 122-23 (“A. The consideration of the plan that was prepared by BP on this site does consider a nonindustrial human health scenario for soil and groundwater.... Q. So recreation use, hunting, fishing, and camp that kind of thing? A. That’s correct. Q. Those are what you understand in terms of the statute to be the reasonably anticipated uses of the property? A. That’s correct. And the nonindustrial scenario that we calculate consider much more prolonged use that what a recreation site would be. But again, this site would be used for those types of purposes: Hunting, fishing, et cetera.”).



**LAA 3—**

Two (2) historical pits designated as the eastern and western pits were evaluated and included in the HET Plan in LAA 3.<sup>25</sup> The pits include soil sample locations that exceed applicable 29-B Chapter 3 parameter limitations within 4' BLS.<sup>26</sup> These pits will be excavated to remove all soil with applicable 29-B Chapter 3 parameter limitation exceedances down to 4' BLS.<sup>27</sup> Any outside fill material will be sampled and tested to confirm applicable 29-B Chapter 3 soil parameter limitation compliance.<sup>28</sup>

The eastern pit includes soil sample results exceeding soil 29-B Chapter 3 true total barium for sample location SB-05 at 2-4' BLS located on a pit levee, and sample location SB-08 at 0-2' BLS located just outside a pit levee.<sup>29</sup> The HET Plan includes removal of all soil with exceedances of 29-B Chapter 3 soil parameter limitations at LAA 3, however it is not clear if soil excavation includes removal of soil at sample locations SB-05 and SB-08 down to 4' BLS. To address the uncertainty, and to be consistent with the stated intention of soil 29-B Chapter 3 compliance

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<sup>25</sup> See HET Plan, § 5.2.3.1: Western Former Pit in Limited Admission Area 3, pp. 36-38, Bates Nos. BP Plan 000049-51 and HET Plan, § 5.2.3.2: Eastern Former Pit in Limited Admission Area 3, pp. 38-39, Bates Nos. BP Plan 000051-52.

<sup>26</sup> *Id.*, p. 37, Bates No. BP Plan 000050 (Western Pit: "Elevated concentrations of oil and grease were reported above the Statewide Order 29-B standard of one (1) percent in samples collected from HET soil borings SB-10 and SB-11 at the two (2) to four (4) foot sample interval. Additionally, all soil samples reported concentrations for metals below the Statewide Order 29-B regulations, with the exception of two (2) exceedances each of arsenic, lead, cadmium, and zinc, as well as six (6) exceedances of True Total Barium."), and p. 38, Bates No. BP Plan 000051 (Eastern Pit: "All soil samples reported concentrations for metals and hydrocarbons below the Statewide Order 29-B regulations, except for one (1) exceedance of arsenic, one (1) exceedance of chromium, and eight (8) exceedances of True Total Barium."). See Soil Analytical Summary – 29-B Analyses (Limited Admission Area 3), Table 4, HET Plan, Appendix C, Bates Nos. BP Plan 000176-78 (Eastern and Western pits).

<sup>27</sup> See HET Plan, § 7.4: Soil Remedy Selection, p. 47, Bates No. BP Plan 000060, and Appendix B, Fig. 21, Bates No. BP Plan 000170. See also HET Plan, § 8.0: Final Recommendation, Timeframe, and Estimated Costs, p. 48, Bates No. BP Plan 000061. See also Pooler Testimony, Hearing Transcript, 1/9/23, pp. 60-67.

<sup>28</sup> See n. 27 *supra*.

<sup>29</sup> See HET Plan, § 5.2.3.2: Eastern Former Pit in Limited Admission Area 3, p. 38, Bates No. BP Plan 000051.

without exception, LDNR is requiring sample locations SB-05 and SB-08 to be included in the soil excavation remediation operations at the eastern pit.

Unlike the eastern pit, in addition to 29-B Chapter 3 soil exceedances for arsenic and true total barium, and the RECAP total barium screening standard, the western pit also includes soil sample locations with 29-B Chapter 3 soil exceedances for cadmium, lead and zinc. Further, it appears that sample location SB-11 was selected by HET for soil vertical delineation of the western pit soil 29-B Chapter 3 exceedances. However, sample location SB-12 terminated at the 2-4' vertical depth BLS with significantly higher reported concentrations of arsenic and lead exceeding the soil 29-B Chapter 3 parameter limitations. The SB-12 2-4' soil sample interval also included zinc results exceeding the soil 29-B Chapter 3 parameter limitation.<sup>30</sup>

The HET Plan does not include collection of 29-B Chapter 3 confirmatory soil sampling and testing following excavation of the western pit. To address vertical delineation and analytical result findings in the paragraph above, LDNR requires a minimum of four (4) representative discreet soil confirmatory samples be collected and tested for soil 29-B Chapter 3 oil and grease, arsenic, true total barium, cadmium, lead, and zinc parameters following soil excavation at the western pit. At least one (1) of these four (4) samples locations must be at the SB-12 soil sample location.

The HET Plan documents that all constituents not included in the applicable suite of 29-B Chapter 3 soil parameters with exceedances above applicable RECAP screening standards are compliant with their respective RECAP MO-1 non-industrial standards and pose no risk to the public or the environment for the reported intended future use of the property.

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<sup>30</sup> See eastern pit exceedances in Soil Analytical Summary – 29-B Analyses (Limited Admission Area 3), Table 4, HET Plan, Appendix C, Bates Nos. BP Plan 000177 (Eastern pit).

## Site Surface Restoration

In addition to implementation of the HET Plan, BP will conduct site restoration activities to remove surface debris located on the property.<sup>31</sup>

### B. Feasible Plan Groundwater Remediation and Reasons

LDNR accepts the HET Plan addressing impacts to the shallow water bearing zone underlying the three (3) LAAs. The following findings are provided for clarification purposes as pertains to information presented prior to and during the hearing on groundwater matters.

The HET Plan includes groundwater remediation using RECAP monitored natural attenuation (MNA)<sup>32</sup> to address constituents detected in the shallow water bearing zone underlying the LAAs resulting from reported past oil and gas exploration and production activities.<sup>33</sup>

The information presented in the HET Plan demonstrates that the shallow water bearing zone underlying the LAAs is a groundwater aquifer as defined in LAC 43:XIX.301. Groundwater sample results reported in the HET Plan indicate that groundwater has been impacted by constituents from oil and gas exploration and productions operations. However, the HET Plan and testimony from HET experts indicate the presence of 29-B constituents such as chloride and/or 29-B metals are not present in such quantities as to render the groundwater aquifer unusable for its

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<sup>31</sup> See also Pooler Testimony, Hearing Transcript, 1/9/23, p. 62.

<sup>32</sup> See RECAP, LAC 33:I.Chapter 13, §2.16 (“Monitored Natural Attenuation”).

<sup>33</sup> See Pooler Testimony, Hearing Transcript, 1/9/23, pp. 149-161 (“In consideration of the RECAP standards, MNA is the appropriate remedy.” *Id.*, at 161.). See HET Plan, § 7.5: Groundwater Remedy Selection, p. 47, Bates No. BP Plan 000060; and § 8.0: Final Recommendation, Timeframe, and Estimated Costs, p. 48, Bates No. BP Plan 000061. See also Dr. Bernard Kueper Deposition Testimony, Plaintiffs Hearing Exhibit 3, pp. 16-17 (“My main opinion, as you know, in this appendix is suitability of monitored natural attenuation for this site... the use of MNA is not dependent on groundwater flow direction.”) and also pp. 36-58. See also HET Plan, Appendix L, Additional Expert Analysis (Kueper), Bates Nos. BP Plan 009454-60 (“Monitored natural attenuation (MNA) is proposed as an appropriate groundwater remediation strategy for the Site”. *Id.*, at BP Plan 009458). The Kueper Expert Analysis was also introduced by Plaintiffs as Plaintiffs Hearing Exhibit 3-2.

intended purposes. As such, the information presented to the agency indicates that the groundwater conditions underlying the LAAs do not meet the definition of contamination in LAC 43:XIX.301. Therefore, no groundwater regulatory compliance issue exists to be addressed any further pursuant to LAC 43:XIX.Subpart 1.Chapter 3 for 29-B constituents.<sup>34</sup>

However, since there are reported results for constituents exceeding respective RECAP Screening Option standards for Total Petroleum Hydrocarbons (TPH) – Diesel Range, TPH – Oil Range, arsenic, barium, chromium, lead, and selenium, RECAP applies to the groundwater conditions underlying the LAAs and includes the applicable standards to address the COCs listed above. The HET Plan demonstrates the groundwater underlying the LAAs is classified as RECAP GW3A.<sup>35</sup> All constituents evaluated meet their respective applicable RECAP screening option or MO-1 limiting screening standard concentrations complying with RECAP criteria for a no further action at this time (NFA-ATT) determination. However, the HET Plan further includes MNA following excavation/backfilling of all pit area soil with applicable 29-B Chapter 3 parameter limitation exceedances.<sup>36</sup>

### **C. HET Plan is a 29-B Plan Without Exceptions**

The HET Plan is a remediation plan that complies with all provisions of Statewide Order 29-B, exclusive of any exceptions pursuant to LAC 43:XIX.319 (Section 319). As such, the requirements of LAC 43:XIX.611.F for the submission of both a plan exclusive of Section 319

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<sup>34</sup> See generally HET Plan, § 5.3: Groundwater Investigation Results, pp. 40-43, Bates Nos. BP Plan 000053-56.

<sup>35</sup> See HET Plan, § 7.5: Groundwater Remedy Selection, p. 47, Bates No. BP Plan 000060 (“[T]he shallow water bearing zones have been determined by consultants for both the Plaintiffs and BP as non-drinking (i.e., GW<sub>3</sub>)”). See exceedances in Tables in HET Plan, Appendix C, Table 7 (Bates No. BP Plan 000184), Table 9 (Bates No. BP Plan 000186), Table 11 (Bates No. BP Plan 000188), and Table 13 (Bates No. BP Plan 000190).

<sup>36</sup> See HET Plan, § 5.3: Groundwater Investigation Results, pp. 41-43, Bates Nos. BP Plan 000054-56.

and a separate plan with exceptions pursuant to Section 319 addressing LAC 43:XIX.611.F.2.a. – c., are not applicable.

**D. Cost Estimate to Implement Most Feasible Plan**

The cost to implement the Most Feasible Plan for oilfield restoration activities in the three historical pits in LAAs 2 and 3—which is a soil remediation without any exception to Statewide Order 29-B—is accepted as proposed by HET on behalf of BP in Appendix P to the Plan. The total cost for this portion of the plan is ..... \$911,059.80.<sup>37</sup>

The cost to implement the Most Feasible Plan for the groundwater portion of the plan is accepted as proposed by HET on behalf of BP in Appendix P to the Plan. The total cost for this portion of the plan is..... \$210,980.00.<sup>38</sup>

The cost to for HET safety management, project management, and reporting is accepted as proposed by HET on behalf of BP in Appendix P to the Plan. The total cost for this portion of the plan is ..... \$49,360.00.<sup>39</sup>

The cost for additional samples in LAA 3, Western Pit, four (4) samples at \$150.00 each for analytical.....\$600.00.<sup>40</sup>

TOTAL COST .....\$1,171,999.80.

**III. COMMENTS FROM OTHER AGENCIES**

As provided by law and regulation, the Office of Conservation provided to the Louisiana Department of Agriculture and Forestry (LDAF), Louisiana Department of Environmental Quality

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<sup>37</sup> HET Plan, Appendix P, Bates Nos. BP Plan 009936-37.

<sup>38</sup> HET Plan, Appendix P, Bates Nos. BP Plan 009938.

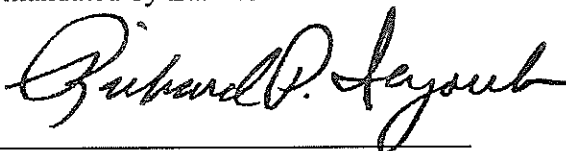
<sup>39</sup> HET Plan, Appendix P, Bates Nos. BP Plan 009939.

<sup>40</sup> Hero Lands OC MFP -- Table 1.

(LDEQ) and Louisiana Department of Natural Resources (LDNR), a Preliminary MFP & Written Reasons together with access to the BP (HET) feasible plan, the hearing transcript, and other related documents. Both LDAF and LDNR have responded, and they have no comments. LDEQ did not provide any response.

#### IV. CONCLUSION

In consideration of, and based on, all the evidence, this LDNR Most Feasible Plan, supported by these written reasons, is being submitted for consultation with the Louisiana Department of Environmental Quality, the Louisiana Department of Natural Resources, and the Louisiana Department of Agriculture and Forestry, is considered the most reasonable plan which addresses the admitted environmental damage to soil and groundwater, in conformity with the Louisiana Constitution, Article IX, Section 1 to protect the environment, public health, safety and welfare, and is in compliance with the specific relevant and applicable standards and regulations as mandated by La. R.S. 30:29.



Richard P. Ieyoub, Sr., Commissioner of Conservation

Date 3-16-2023

**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW**

**LOUISIANA DEPARTMENT OF  
NATURAL RESOURCES,  
OFFICE OF CONSERVATION**

**DOCKET NO. 2022-8332-DNR-OOC**

**IN RE:**

**AUGUST LEVERT, JR. FAMILY, LLC;      AGENCY NO. 018-028-002  
RONALD R. LEVERT; PAUL M.  
LEVERT; MARK W. LEVERT, JR.;  
JOHN E. SANFORD; JAMES L.  
SANDFORD; AND CAMPO E.  
MATENS**

**VERSUS**

**BP AMERICA PRODUCTION COMPANY**

**DOCKET NO. 78953, DIV. "A"  
18<sup>TH</sup> JUDICIAL DISTRICT COURT,  
PARISH OF IBERVILLE  
STATE OF LOUISIANA**

**(JUDGE J. KEVIN KIMBALL)**

**EXHIBIT 1 TO MFP & REASONS  
(PANELISTS AND THEIR BACKGROUNDS)**

The four panelists who served for the public hearing in the captioned case on Monday, January 9, and Tuesday, January 10, 2023, were:

1. **Ms. Jamie C.T. Love**. Ms. Love has a B.S. in geology from University of Missouri-Kansas City (UMKC) in 2005, and an M.S. in Geosciences from Mississippi State University in 2008. She is a licensed geoscientist in the State of Louisiana, license number 258. Her training at UMKC focused in environmental methods, natural hazards, and paleo-seismic studies. Her research at Mississippi State concentrated on suspended sediment transport. She worked as a hazardous materials cleanup manager from 2004 to 2006. In 2008 she joined LDEQ as a Geologist focusing on RCRA remediation. While at LDEQ she participated in Hurricane Incident Command and the BP Oil Spill. She joined LDNR in 2015 as a Geologist Supervisor. This position oversees the management of the Groundwater Resources and Water Well Programs. Other duties of her position include the review of legacy cases for 29-B and RECAP compliance. In 2019 the position title was

changed to a Petroleum Scientist Manager. She previously served on the LDNR panels for Public Hearings held pursuant to Act 312 in *Moore* (2015), *Sterling Sugars* (2015), *Vermilion Parish School Board* (2016), *Sweet Lake* (2016), *Hero Lands* (2020), *SNG* (2021), *LA Wetlands* (2021), *Jeanerette Lumber* (2021), and *Neumin* (2022) cases.

2. **Mr. Christopher M. Delmar**. Mr. Delmar has a Bachelor of Science in geology from Louisiana Tech University in 2002, and attended LSU for two years in the Masters program for geology with specialization in hydrogeology. He completed all work for his Masters except for completing his thesis. He joined LDEQ in 2005 as an Environmental Program Analyst, and then moved to an Environmental Scientist in the chemical accident prevention program. In 2008, he joined LDNR as a geologist working in the legacy group and groundwater resources group. He is currently a Petroleum Scientist Supervisor with the E&P Waste Section and has a professional geoscientist certification. His main focus is on hydrogeology and groundwater modeling. He served on the LDNR panels in the *Savoie* (2012), *Avahoula Resources* (2013), *Agri-South, LLC* (2013), *Sweetlake Oleum* (2016), *Hero Lands* (2020), *LA Wetlands* (2021), and *Jeanerette Lumber* (2021) cases.
3. **Mr. Stephen Olivier**. Mr. Olivier has a B.S. in Renewable Natural Resources from Louisiana State University in 2006. He worked as an Environmental Scientist at C.H. Fenstermaker and Associates from June 2006 to September 2007. There he performed wetland delineations, endangered species surveys, and phase I surveys. He joined LDNR in 2007 as an Environmental Impact Specialist working in the Exploration and Production (E & P) Waste Section of the Environmental Division. His duties included management of E&P Waste commercial facilities and transfer stations where he performed permit compliance review site inspections, enforcement matters, permit applications, commercial class II monthly injection well pressure reports, and closure plan and cost estimates. In 2017 he began supervising personnel in both the Legacy and E&P waste sections. In addition, his responsibilities include continued duties in the E&P waste section as well as above ground issues in the Legacy section, mainly evaluation of data pertaining to soils, vegetation, and groundwater, particularly with regard to standards under RECAP. He served on the LDNR panel in the *Hero Lands* (2020), *SNG* (2021), *LA Wetlands* (2021), *Jeanerette Lumber* (2021), and *Neumin* (2022) cases.
4. **Ms. Kristin Benoit**. Ms. Benoit hold both her Bachelor of Science (2015) and Master of Science (2018) degrees in Geology, with a concentration in Petroleum Geology, from the University of Louisiana at Lafayette. In 2019, she joined LDNR as a Petroleum Scientist. Ms. Benoit is responsible for the evaluation of surface water applications, water well prior notifications, WH-1 forms, driller renewals, the processing of water well registrations, and review of Legacy Site remediation plans.



**STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW**

**LOUISIANA DEPARTMENT OF  
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**(JUDGE J. KEVIN KIMBALL)**

**EXHIBIT 2 TO MFP & REASONS  
(EXPERT WITNESS TESTIMONY)**

Three expert witnesses testified on January 9, 2023, on behalf of BP during the public hearing held in the captioned case. In addition, one expert witness deposition with exhibits was admitted into evidence:

1. **Brent T. Pooler, P.G.** – Mr. Pooler testified on behalf of BP. He has a Bachelor of Science in Geology from Louisiana State University in 1996 and has been employed as a Hydrogeologist with Hydro-Environmental Technology, Inc. from 1996 to the present. Pooler Testimony, DNR Hearing Transcript, 1/9/2023, pp. 32-34. His resume is in evidence at BP LDNR Exhibit No. 1, Appx. A, Bates Nos. BP Plan 000070-72. He was tendered by BP and agreed by parties as qualified to testify as an expert as to RECAP, risk assessment, site evaluation and assessment, hydrogeology, geology, and environmental regulatory standards. DNR Hearing Transcript, 1/9/2023, p. 18.

2. **Bernard H. Kueper, Ph.D.** – Dr. Kueper was listed as testifying on behalf of BP and tendered by BP and agreed by parties to be qualified as an expert in hydrogeology, fate and transport, and groundwater remedy selection. DNR Hearing Transcript, 1/9/2023, p. 19. Dr. Keuper did not appear as he fell ill, *Id.*, pp. 16-17, and is on medical leave. DNR Hearing Transcript, 1/10/2023, p. 302. Dr. Keuper’s deposition transcript and exhibits was offered by Plaintiffs’ counsel and admitted as Plaintiffs’ Exhibit 3, 3-1, 3-2, 3-3, 3-4, and 35, by agreement. *Id.* Dr. Kueper’s resume is in evidence at BP LDNR Exhibit No. 1, Appx. A, Bates Nos. BP Pan 000090-138.
3. **Matthew L. Greene** – Mr. Greene testified on behalf of BP. He has a Bachelor of Science in Environmental Science from the University of Louisiana at Lafayette in 2015 and has been employed as a Soil and Environmental Scientist with Hydro-Environmental Technology, Inc. from 2015 to the present. Greene Testimony, DNR Hearing Transcript, 1/9/2023, pp. 205-06. His resume is in evidence as BP LDNR Exhibit No.1, Appx. A, Bates Nos. BP Plan 000073. He was tendered by BP and agreed by parties to be qualified to testify as an expert in the areas of soil science and root zone analysis. DNR Hearing Transcript, 1/19/2023, p. 19.
4. **Helen R. Connelly, Ph.D.** – Dr. Connelly testified on behalf of BP. She has a Bachelor of Science in Geology from Louisiana State University in 1985 and a Ph.D. in toxicology from Louisiana State University School of Veterinary Medicine. Connelly Testimony, DNR Hearing Transcript, 1/9/2023, p. 249. Her resume is in evidence at BP LDNR Exhibit No. 1, Appx. A, Bates Nos. BP Plan 000081-89. She was tendered by BP and agreed by parties to be qualified to testify as an expert in ecotoxicology, ecological risk assessment, and wetland sciences. DNR Hearing Transcript, 1/19/2023, p. 19.