

16TH JUDICIAL DISTRICT COURT FOR THE PARISH OF ST. MARY

STATE OF LOUISIANA

DOCKET NO. 130527

DIVISION " "
DIV. "B"

LOUISIANA WETLANDS, LLC and NEW 90, LLC

VERSUS

ENERGEN RESOURCES CORPORATION, CHEVRON USA, INC., SOUTHERN
NATURAL GAS COMPANY, LLC, EP ENERGY E&P COMPANY, LP, and BRAMMER
ENGINEERING, INC.

FILED: DEC 27 2016

JENNIFER R. SPLANE
DEPUTY CLERK

PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Louisiana Wetlands, LLC, in the above entitled action, which file this Petition for Damages against Defendants herein, and in support thereof, respectfully represent the following:

1.

- (a) Plaintiff, Louisiana Wetlands, LLC, is a Louisiana limited liability company with its principal place of business in the Parish of East Baton Rouge, State of Louisiana.
- (b) Plaintiff, New 90, LLC, is a Louisiana limited liability company with its principal place of business in the Parish of East Baton Rouge, State of Louisiana.

2.

Plaintiffs are lessors, assigns, third party beneficiaries, and/or successors in interest to certain oil, gas and mineral leases, servitudes and/or surface leases between plaintiffs and defendants, and are owners of property contaminated and/or damaged by the oil and gas activities conducted or controlled by one or more of the defendants.

3.

Plaintiffs own or have owned the following property located in St. Mary Parish, Louisiana in the Franklin Field:

A tract of land known as the Shady Retreat Plantation, St. Mary Parish, Louisiana, lying partially within Section 2, Township 14 South, Range 9 East.

4.

Made defendants are the following parties:

1. **ENERGEN RESOURCES CORPORATION**, a foreign corporation having a principal place of business in Alabama, and a registered agent, CT Corporation System, located at 3867 Plaza Tower Drive, Baton Rouge, LA 70816. Energen Resources Corporation is named as successor in interest to **Minatome Corporation and Total Minatome Corporation**;
2. **CHEVRON U.S.A., INC.**, a foreign corporation having a principal place of business in California, and a registered agent, The Prentice-Hall Corporation System, Inc., located at 501 Louisiana Avenue, Baton Rouge, LA 70802. Chevron U.S.A., Inc. is named as successor in interest to **Chevron Oil Company and The California Company**;
3. **SOUTHERN NATURAL GAS COMPANY, LLC**, a foreign corporation having a principal place of business in Texas, and a registered agent, CT Corporation System, located at 3867 Plaza Tower Drive, Baton Rouge, LA 70816. Southern Natural Gas Company, LLC is named as successor in interest to **Southern Natural Gas Company**;
4. **EP ENERGY E&P COMPANY, LP**, a foreign corporation having a principal place of business in Texas, and a registered agent, CT Corporation System, located at 3867 Plaza Tower Drive, Baton Rouge, LA 70816. EP Energy E&P Company, LP is named as successor in interest to **Sonat Exploration Company**; and
5. **BRAMMER ENGINEERING, INC.** a domestic corporation, incorporated under the laws of Louisiana, and domiciled in Shreveport, Louisiana. Brammer Engineering, Inc.'s registered agent, Keith J. Evans, is located at 400 Texas Street, Suite 600, Shreveport, LA 71101.

5.

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

6.

Defendants have conducted, directed and participated in various oil and gas exploration and production activities as operators and/or working interest owners and/or joint venturers in the Franklin Field and on Plaintiffs' property. Defendants' activities include the operation or construction of various oil and gas facilities, including but not limited to pits, sumps, pipelines, flowlines, tank batteries, wellheads, and measuring facilities.

7.

According to the records of the Louisiana Department of Natural Resources, Office of Conservation, beginning in 1956 and through 1987, Defendants operated and controlled wells located on Plaintiffs' property. Defendants' wells are listed in **Exhibit A** (attached).

8.

Plaintiffs' property has been damaged by Defendants' oil and gas production, exploration activities and by the spillage and/or disposal of toxic oil field wastes on, in, and adjacent to Plaintiffs' property. This spillage and/or disposal, which has not been removed, occurred without Plaintiffs' consent.

9.

Defendants operated or controlled oil, gas, and disposal wells and/or units on or near Plaintiffs' property.

10.

Defendants have known that the disposal of oilfield wastes in unlined earthen pits inevitably results in seepage, which contaminates both surface and subsurface soils and waters. Plaintiffs have suffered damages resulting from the improper disposal of oilfield wastes in unlined earthen pits that were constructed by Defendants on or near their property during the course of oil and gas exploration and production activities. The oilfield wastes deposited in these pits include (but are not limited to) such substances as naturally occurring radioactive material ("NORM"), produced water, drilling fluids, chlorides, hydrocarbons, and heavy metals. Also, leaks, spills, and

other discharges of these substances from wells, pipelines, tank batteries, gas plants, and other equipment have further polluted Plaintiffs' property.

11.

NORM contains Radium₂₂₆ and Radium₂₂₈ which are very hazardous and toxic substances. NORM concentrates in oilfield equipment as a result of production activities and its presence on the surface can cause serious health related problems. Under Louisiana law, property contaminated with NORM cannot be transferred for unrestricted use.

12.

Produced water contains various hydrocarbon compounds, metals, salt and radioactive substances. Studies of the chemical constituents of south Louisiana produced waters have revealed that all produced water discharges contain excess amounts of salt (up to 193 parts per thousand salt or 19.3%), and also contain volatile hydrocarbon compounds (including benzene, toluene, xylene and ethyl benzene), Polynuclear Aromatic Hydrocarbons (including naphthalene, fluorene and phenanthrene), toxic heavy metals (including chromium, lead, mercury, arsenic, barium and zinc), Radium₂₂₆ and Radium₂₂₈. All of these substances bioaccumulate and are acutely toxic to aquatic organisms at varying concentrations. Some of these substances (such as benzene and Radium₂₂₆) have long been identified as human carcinogens.

13.

Drilling fluids are also highly toxic and hazardous. These fluids contain metals such as chromium, barium, and arsenic, as well as oil and other hydrocarbon fractions. Drilling fluids also contain toxic additives such as bactericides, slimicides, and acids. In fact, drilling fluids have been demonstrated to be acutely toxic to aquatic organisms. Further, a 1982 American Petroleum Institute Study documented the uptake of toxic heavy metals by plants near drilling mud pits.

14.

Other toxic and hazardous substances used by Defendants in their day to day exploration and production activities include mercury, lead based compounds, chromium based algicides, hydrochloric acid, caustic soda, and various corrosion inhibitors.

15.

Defendants knew or should have known that their day to day operations in the Franklin Field would cause the soil, surface waters and groundwater of Plaintiffs' property to be contaminated with the substances described herein. Defendants' failure to timely remove or remediate this toxic pollution in the soils and groundwater of Plaintiffs' property has allowed the pollution to migrate and spread, thereby causing damages, including but not limited to, contaminated soil and groundwater, land loss, and loss of timber.

16.

At no time did Defendants issue any warning to Plaintiffs that their disposal and discharge activities were hazardous to property.

17.

Testing performed on December 16, 2016 revealed environmental damage on Plaintiffs' property. Plaintiffs did not have actual or constructive knowledge of the pollution described herein until less than a year prior to the filing of this suit.

18.

Defendants' conduct constitutes negligence, which gives rise to liability under the provisions of La. C.C. art. 2315. Defendants knew or should have known that their conduct would cause property and other damages to Plaintiffs. Defendants had a duty to protect Plaintiffs and Plaintiffs' property from the effects of the contamination and pollution described herein. Defendants' violation of this duty proximately caused the damages described below.

19.

Defendants are strictly liable to Plaintiffs under La. C.C. art. 667 for the damages caused by their storage, discharge, and disposal of toxic and hazardous oil field waste on or adjacent to Plaintiffs' property. Further, Defendants are strictly liable to Plaintiffs under the provisions of La. C.C. arts. 2317 and 2322. At all times pertinent hereto, Defendants had garde of the facilities and equipment that caused the pollution described herein.

20.

Defendants' conduct of their oil and gas exploration and production activities and the associated discharge, disposal or storage of oil field waste and other wastes on Plaintiffs' property

have created a continuing, ongoing and damaging nuisance to Plaintiffs and Plaintiffs' property. Further, the continued presence of oilfield wastes and other wastes on Plaintiffs' lands constitutes a continuing trespass. The continuous and ongoing migration of oil field waste and the continuing presence of other wastes is causing new and ever increasing damage to Plaintiffs' property, and such damage will continue until such time as these wastes are removed and remediated. Additionally, Defendants have exercised their rights to the properties in suit without reasonable regard to the rights of Plaintiffs in violation of La. R.S. 31:11.

21.

Defendants' conduct as described above constitutes a breach of the oil, gas, and mineral leases, which covered the oil and gas activities described above. Further, each Defendant has breached those standards imposed by the Louisiana Civil Code and the Louisiana Mineral Code governing the conduct of prudent operators.

22.

Defendants have a contractual obligation under the applicable oil, gas, mineral, servitudes, and surface leases, and assignments thereof, to restore Plaintiffs' property to its original condition, and Plaintiffs are also the beneficiaries of express contractual provisions that require additional remediation in excess of the requirements of La. R.S. 30:29. Defendants have failed to satisfy their obligations under the applicable leases and assignments thereof. As a result, Plaintiffs' property has been impacted by Defendants' use of said property under the applicable leases, and such property has not been restored to its original condition. For the breach of these leases and servitudes, and assignments thereof, Defendants are liable to Plaintiffs for foreseeable and consequential damages occasioned by their failure to perform, as well as the cost of these proceedings and reasonable attorneys' fees. Plaintiffs did not learn of the breach of said mineral leases and servitudes, or the negligent or excessive use of the property at issue, until less than one year before filing this suit.

23.

The remediation of contamination on the property subject to the existing mineral leases at issue would not interfere with, or have any effect on, any ongoing mineral operations. Further,

there are no leases at issue in this lawsuit that permit the postponement of remediation of contaminated property until the end of the lease.

24.

Each Defendant has also breached those standards imposed by the Louisiana Civil Code and the Louisiana Mineral Code governing the conduct of prudent operators. The lease provisions of the Louisiana Civil Code and the Louisiana Mineral Code also require Defendants to use Plaintiffs' property as a prudent administrator and to restore Plaintiffs' property to its original condition. Defendants have failed to act as prudent administrators, have failed to restore Plaintiffs' property to its original condition, and have failed to discharge their obligations under the Civil Code and the Mineral Code. To the extent that any Defendant owns a mineral interest or servitude in the subject property as described above, said defendant has an obligation to restore said property to its original condition to the extent reasonably practicable under the provisions of La. R.S. 31:22 (Mineral Code article 22). Plaintiffs have suffered damages and are entitled to all remedies allowed under the Civil Code and Mineral Code.

25.

Defendants negligently and excessively used the property at issue during mineral operations. This negligent and excessive use violates the implied obligations of lessees under the provisions of the Louisiana Mineral Code, including without limitation, La. R.S. 31:122.

26.

Defendants are liable to Plaintiffs under the doctrine of correlative rights, as set forth in Article 11 of the Louisiana Mineral Code. Defendants have exercised their mineral rights under the applicable leases without reasonable regard to the rights of Plaintiffs, and are thus liable for all damages flowing therefrom.

27.

Defendants' actions in knowingly disposing of toxic and hazardous materials onto Plaintiffs' property, in failing to cleanup said pollution and stop its further migration, in allowing the migration of this pollution to offsite properties, and in failing to properly maintain their facilities where these toxic and hazardous materials were transported, handled, stored and disposed of, constitute "wanton or reckless disregard for public safety in the storage, handling or

transportation of hazardous or toxic substances.” Defendants are therefore liable to Plaintiffs for punitive and exemplary damages pursuant to La. C.C. art. 2315.3 for all such activities that occurred during the applicable time period of said statute. At all times pertinent hereto, Defendants had actual physical possession or control of the toxic and hazardous substances described above.

28.

Defendants have been unjustly enriched by their unauthorized use of Plaintiffs’ lands to store and dispose of toxic contamination.

29.

Further, for an undetermined length of time, Defendants have stored toxic pollution and other wastes on or in the groundwater and soils underlying the Plaintiffs’ lands. Defendants have derived substantial economic benefits from this storage in that their use of the subsurface of the Plaintiffs’ lands has allowed them to avoid the substantial costs and expenses associated with the proper disposal of this toxic pollution and other wastes. Thus, Plaintiffs are entitled to the civil fruits derived from Defendants’ trespass pursuant to La. C.C. art. 486, which provides that a possessor in bad faith is liable for the “fruits he has gathered or their value subject to his claim for reimbursement of expenses.”

30.

Plaintiffs are entitled to recover money damages equal to the cost to conduct a comprehensive and expedited environmental assessment of all present and yet unidentified pollution and contamination of its property.

31.

In summary, Plaintiffs have stated causes of action in tort and separate causes of action for breach of contract under the applicable leases and servitudes and assignments thereof, the Mineral Code and Civil Code, and for breach of implied obligations under the Mineral Code and Civil Code, and is entitled to the following damages:

- a. Sufficient funds to conduct a complete scientific analysis of the extent and nature of the contamination on their property associated with Defendants’ operation of waste pits, tank batteries, production and/or injection wells, pipelines, and other oil and gas related facilities and equipment;

- b. The cost to restore the property to its pre-polluted original condition;
- c. Punitive or exemplary damages;
- d. Any civil fruits derived from Defendants' illegal trespass and an award for unjust enrichment damages for Defendants' unauthorized use of Plaintiffs' land to store and dispose of their wastes without consent or compensation to Plaintiffs from time of placement to time of final removal; and
- e. An award of stigma damages for diminution in property value before, during and after restoration.

32.

Plaintiffs affirmatively allege that damages awarded by the court for remediation will be used to clean up the above described contamination. Plaintiffs are entitled to sufficient damages to restore their property as near as possible to its original condition. Plaintiffs have personal reasons for wishing to commit the sums awarded for remediation to clean up the affected property.

33.

Plaintiffs assert only those private causes of action accorded it under the Louisiana Constitution and laws of the State of Louisiana. Plaintiffs have not pled, and will never at any time in the future plead, any claim or cause of action arising under federal law, and assert no such claims herein. To the extent any state law claims are preempted by federal law (either expressly or impliedly), such state law claims are not alleged herein. Plaintiffs herein expressly do not pursue any defendants or claims that have been discharged in bankruptcy, and if a party has filed or intends to file for bankruptcy concerning any of the claims alleged herein, it is the express intention of Plaintiffs not to pursue those claims or party or parties in this action, even if such party has been named as a defendant above.

34.

Plaintiffs affirmatively allege that damages awarded by the court for remediation pursuant to La. R.S. 30:29 will be used to clean up the above described contamination. Plaintiffs are entitled to a judgment ordering damages for, or implementation of, additional remediation in excess of the requirements of La. R.S. 30:29 pursuant to express provisions of contracts to which Plaintiffs are a party or third party beneficiary.

35.

Each Defendant is liable to Plaintiffs *in solido*. Defendants are joint and solidary tortfeasors.

36.

Plaintiffs request trial by jury.

WHEREFORE, Plaintiffs pray that Defendants be cited to appear and answer this petition and that after due proceedings had, that there be judgment entered herein as follows:

1. Awarding Plaintiffs compensatory damages in an amount to be proven at trial, including payment of the costs to restore land loss and restore lands with identified pollution to its original unpolluted state, unjust enrichment damages for the unauthorized disposal of waste on Plaintiffs' property without landowners' consent, civil fruits resulting from Defendants' illegal and bad faith trespass on Plaintiffs' lands, and other property damages;
2. Awarding Plaintiffs punitive damages;
3. Ordering Defendants to pay Plaintiffs sufficient funds so that Plaintiffs may conduct a comprehensive and expedited environmental assessment of Plaintiffs' land to identify all hidden or not yet identified pollution on Plaintiffs' land;
4. Awarding Plaintiffs all costs of this suit and for legal interest therein for any amount awarded from the date of judicial demand until paid; and further awarding Plaintiffs judicial interest on all contract claims from the date of breach;
5. Awarding Plaintiffs stigma damages for diminution in property value before and after restoration;
6. Ordering a mandatory and prohibitory injunction to restore Plaintiffs' property to its pre-contaminated condition and to prevent the migration and spread of toxic and hazardous substances onto Plaintiffs' property;
8. For all costs and attorneys' fees pursuant to La. R.S. 30:29 and any other applicable provision of law;
9. For all just and equitable relief; and
10. For all damages as are reasonable in the premises.

Respectfully submitted,



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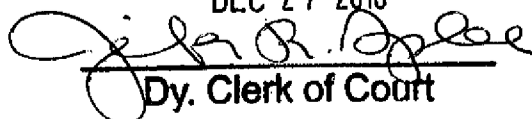
Attorneys for Plaintiffs

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Dy. Clerk of Court

PLEASE SERVE:

ENERGEN RESOURCES CORPORATION

through its registered agent for service
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816.

CHEVRON U.S.A., INC.

through its registered agent for service
The Prentice-Hall Corporation System, Inc.
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SOUTHERN NATURAL GAS COMPANY, LLC

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EP ENERGY E&P COMPANY, LP

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BRAMMER ENGINEERING, INC.

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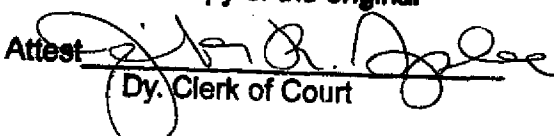
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A true copy of the original

Attest


Dy. Clerk of Court

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Exhibit A

Well Serial Number	Well Name	Well No.	Defendant
62456	FOSTER ET AL	1	Southern Natural Gas Co., LLC
64701	G SU A FOSTER	002-ALT	Southern Natural Gas Co., LLC
66581	11200 SUA;FF BAILEY	2	Chevron USA, Inc.
66818	L SU B; TONY PERRY	2	Southern Natural Gas Co., LLC
66818	L SU B; TONY PERRY	2	EP Energy E&P Co., LP
150756	FRK SU;F F SUTTER	1	Energen Resources Corporation
150756	FRK SU;F F SUTTER	1	Brammer Engineering, Inc.
151396	11200 RA SUA;SUTTER	2	Energen Resources Corporation
151396	11200 RA SUA;SUTTER	2	Brammer Engineering, Inc.
151679	F F SUTTER	4	Energen Resources Corporation
151679	F F SUTTER	4	Brammer Engineering, Inc.
151858	F F SUTTER	001-D	Brammer Engineering, Inc.
156642	F F SUTTER	002D	Brammer Engineering, Inc.
156699	F F SUTTER	004-D	Brammer Engineering, Inc.
211974	LUCIA RC SUA;W K OSCHSMAN ETUX	001-ALT	Brammer Engineering, Inc.
212015	F F SUTTER	5	Brammer Engineering, Inc.
971639	F F SUTTER SWD	2	Energen Resources Corporation
971639	F F SUTTER SWD	2	Brammer Engineering, Inc.

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[Signature]
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