

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

STATE OF LOUISIANA

DOCKET NO. 130527

DIV. "B"

LOUISIANA WETLANDS, LLC, ET AL.

VERSUS

ENERGEN RESOURCES CORPORATION, ET AL.

CASE MANAGEMENT ORDER

The Court hereby enters the following schedule of deadlines in this case:

1. GENERAL PROVISIONS

- A. The effective date of this Order shall be the date upon which it is signed by the Court.
- B. Nothing contained herein shall prohibit any party from obtaining relief from, or modification of, specific provisions of this order for good cause shown, after notice and a contradictory hearing. Defendants specifically reserve the right to apply to the Court for a stay or continuance of the trial date in the event that a limited admission is made pursuant to the provisions of La. Code Civ. Proc. art. 1563 and Louisiana Revised Statutes § 30:29. Plaintiffs reserve the right to oppose an application for a stay or continuance of the trial date in the event that a limited admission is made.
- C. Nothing contained herein shall prevent all Parties, by written agreement, from modifying the specific provisions of this Case Management Order, subject to approval of the Court.
- D. The deadlines set forth herein shall not prejudice any party's right to seek appellate review, whether through writ practice or otherwise, of any pretrial ruling or action of the Court.

2. COORDINATION OF CASE FOR DISCOVERY AND NOTICE

Service of any order, pleading, motion or other document shall be made in accordance with articles 1311-1314 of the Code of Civil Procedure. Contact information for enrolled counsel for delivery of pleadings, correspondence, and notice is:

A. Plaintiffs, Louisiana Wetlands, LLC, New 90, LLC, and James J. Bailey, III, individually, and in his capacity as the representative of the Succession of Willie Palfrey Foster and the Succession of Fairfax Foster Bailey.

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D. Defendant, Brammer Engineering, Inc.

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E. Defendant, BP America Production Company

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F. Defendant, Chevron U.S.A., Inc.

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3. SUPPLEMENTAL PLEADINGS ADDING PARTIES OR CLAIMS

All supplemental or amending pleadings adding new Parties or claims shall be filed no later than **May 15, 2020**.

4. GENERAL PRE-TRIAL AND DISCOVERY PROVISIONS AND DEADLINES

A. Fact Witnesses/Exhibit Lists:

- 1) On or before **May 15, 2020**, Plaintiffs shall serve on Defendants a preliminary list of fact witnesses that Plaintiffs will or may call to testify at trial, and a preliminary list of exhibits Plaintiffs will or may use or introduce as evidence at a trial on the merits. The absence of any witness or exhibit from this preliminary list shall not preclude the use of such additional witnesses or exhibits.
- 2) On or before **June 5, 2020**, each Defendant shall serve on Plaintiffs and all co-defendants a preliminary list of fact witnesses that each Defendant will or may call to testify at trial, and a preliminary list of exhibits each Defendant will or may use or introduce as evidence at a trial on the merits. The absence of any witness or exhibit from this preliminary list shall not preclude the use of such additional witnesses or exhibits.
- 3) Final witness and exhibit lists, including a bates-labeled designation of each exhibit, shall be served by each party no later than **December 4, 2020**. Exhibits shall be identified with reasonable particularity and without inclusion of superfluous matter. If a witness has never been listed in a party's preliminary witness list, but is included on a party's final witness list, any opposing party shall have the right to take the deposition of such witness prior to trial and to amend its final witness and exhibit list to add witnesses and/or exhibits deemed

necessary to counter or otherwise address the testimony of the witness listed in a party's final witness list for the first time. After final witness lists are exchanged, no unidentified fact witnesses may be added except by consent of all Parties or leave of Court. This requirement does not apply to witnesses necessary solely to establish authenticity or other procedural grounds for admission of documents.

B. The Parties anticipate that this matter will involve the search for and production of voluminous documents. While the Parties will make every effort to ensure that no privileged, confidential or otherwise protected materials will be produced, the following procedures shall apply to any inadvertently produced materials:

- 1) If discovered by the receiving party, the receiving party shall notify the producing party of the inadvertent production and shall immediately destroy all physical and electronic copies and further take efforts to prevent any further dissemination of same.
- 2) If discovered by the producing party, the producing party shall notify the receiving party of the inadvertent production, at which time receiving party shall be required to destroy all physical and electronic copies and further take efforts to prevent any further dissemination of same.
- 3) Receiving party, once aware of any inadvertent disclosure, shall be precluded from relying upon or using the inadvertently produced document absent an order from the Court as to the applicability of the privilege asserted.
- 4) Either receiving party or producing party is entitled to invoke the authority of the Court to enforce the obligations hereunder or seek a ruling as to the privilege asserted.

C. Expert reports and disclosures required under this Case Management Order shall be signed by the expert and must comply with all provisions of Article 1425 of the Louisiana Code of Civil Procedure. Expert draft reports and communications between counsel and experts shall not be discoverable.

D. Any fees charged by experts for responding to discovery, including, without limitation, time and expenses incurred in the preparation for and participation in depositions, shall be paid by the party who retained the expert. This provision is not, however, intended to preclude any party from seeking reimbursement for costs and fees pursuant to Act 312.

E. Sampling Deadlines and Expert Disclosures

The Parties acknowledge that this case involves claims related to both wetland areas and coastal zones, such that permits must be secured in advance of site access and testing.

1) On or before **March 9, 2020**, Plaintiffs' environmental sampling or testing on the Property shall be completed. No additional sampling or environmental testing by or on behalf of the Plaintiffs shall occur beyond the established testing deadline without prior agreement of the Parties and/or amendment of this CMO

2) On or before **March 31, 2020**, Plaintiffs shall complete and exchange all expert reports addressing and delineating the extent and nature of any claimed contamination on the Property, including any toxicological, ecological, ecotoxicological or other assessment of the conditions existing on the Property as well as the proposed remediation of said contamination, and any other Plaintiff expert reports. Any delay in the issuance of Plaintiffs' expert reports shall constitute good cause for purposes of extending the deadlines set forth herein (except for the trial setting of this matter), all parties reserving their objections as to the duration of any such extension(s).

3) On or before **March 19, 2020**, Defendants shall apply for the necessary permits to conduct sampling in the areas of their choosing.

4) On or before **September 18, 2020**, Defendants' environmental sampling or testing on the Property shall be completed. If there is any delay in permitting such that Defendants do not receive their permits to sample or test in the areas that require permits before **June 19, 2020**, this delay shall constitute good cause for purposes of extending the deadlines set forth herein (except for the trial setting of this matter), all parties reserving their objections as to the duration of any such extension(s).

5) On or before **October 23, 2020**, Defendants shall complete and exchange all expert reports addressing and delineating the extent and nature of any claimed contamination on the Property, including any toxicological, ecological, ecotoxicological or other assessment of the conditions existing on the Property as well as the proposed remediation of said contamination, and any other Defendant expert reports.

6) There shall be no additional environmental sampling after the submission of Defendants' final expert reports.

7) Any limited admission under Louisiana Revised Statute § 30:29 and Louisiana Code of Civil Procedure article 1563 shall be filed no later than **December 3, 2020**, absent good cause shown, in accordance with the provisions of Louisiana Code of Civil Procedure article 1563.

F. Expert Depositions

1) Plaintiffs shall make available for depositions all Plaintiff experts between **October 26, 2020 and November 13, 2020**, after the expert's report is issued. The Parties explicitly acknowledge that should Plaintiffs fail to make their experts available for depositions during this timeframe, further modification of this Case Management Order may be necessary.

2) Defendants shall make available for depositions all Defendant experts between **November 16, 2020 and December 4, 2020**, after the expert's report is issued. The Parties explicitly acknowledge that should Defendants fail to make their experts available for depositions during this timeframe, further modification of this Case Management Order may be necessary.

G. Discovery Completion Deadline

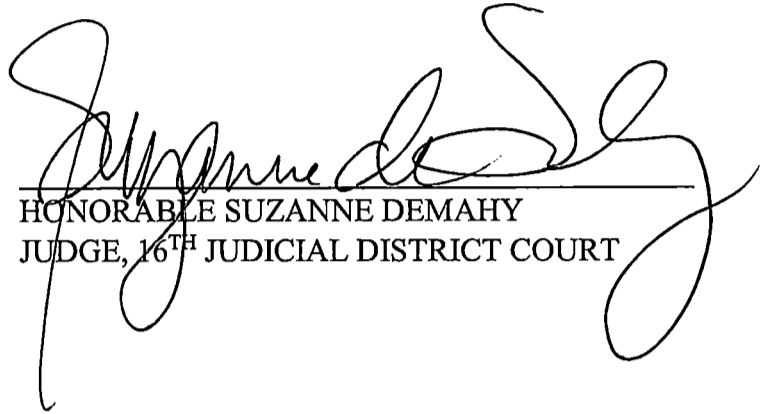
All fact and expert discovery shall be completed by **December 4, 2020**. This deadline does not apply to any discovery regarding testifying expert witnesses in this case.

5. PRE-TRIAL MOTIONS AND TRIAL

A. As required by Louisiana Code of Civil Procedure article 966(B)(1), motions for summary judgment shall be filed and served no later than **sixty-five (65) days before commencement of trial, or November 15, 2020**.

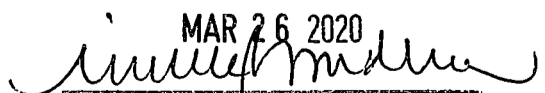
- B. As required by Louisiana Code of Civil Procedure article 966(C)(1)(a), hearings on motions for summary judgment shall be set for no later than **thirty (30) days before commencement of trial, or December 20, 2020.**
- C. In accordance with Louisiana Code of Civil Procedure article 1425(F)(1), all *Daubert* motions shall be filed and served no later than **sixty (60) days before commencement of trial, or November 20, 2020.**
- D. In accordance with Louisiana Code of Civil Procedure article 1425(F)(2), the hearing on all *Daubert* motions shall be set for no later than **thirty (30) days before commencement of trial, or December 20, 2020.**
- E. The deadline to file all other pre-trial motions, including motions *in limine* shall be **sixty (60) days before commencement of trial, or November 20, 2020.**
- F. Any deposition designations shall be submitted **two weeks before commencement of trial, or January 5, 2021.**
- G. Any objections to or counter-designations to any deposition designations shall be submitted **eleven days before commencement of trial, or January 8, 2021.**
- H. Proposed jury instructions and proposed interrogatories shall be filed in accordance with the Rules of this Court.
- I. Any objections and/or comments to proposed jury instructions and proposed interrogatories shall be filed in accordance with the Rules of this Court.
- J. A Final Pre-Trial Conference shall be held on **November 2, 2020 at 9:00 A.M.**
- K. Additional pre-trial deadlines and submissions shall be presented in accordance with the Rules of this Court.
- L. A jury trial in this matter shall commence on **Tuesday, January 19, 2021 at 9:00 A.M.** The Jury Bond in the amount of \$ 8,000.00 shall be posted in accordance with the Code of Civil Procedure, on or before **Friday, November 20, 2020.**

THUS DONE AND SIGNED on this 24th day of March, 2020 at
St. Martinville
Franklin, Louisiana.



HONORABLE SUZANNE DEMAHY
JUDGE, 16TH JUDICIAL DISTRICT COURT

RECEIVED AND FILED

MAR 26 2020

Dy. Clerk of Court