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April 13, 2006

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BY HAND DELIVERY

Office of the Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

Re: Lake Charles Harbor and Terminal District v. West Cameron Port, Harbor and
Terminal District; FMC Docket 06-02

Dear Secretary VanBrakle:

Enclosed for filing in the referenced docket, please find an original and 15 copies of the Motion for Leave to File Reply to West Cameron Supplemental Brief, with the Reply attached thereto. Please stamp and return the extra copies in the envelope attached hereto for return to us by our messenger.

Thank you for your attention to this matter. Please let me know if you have any questions.

Very truly yours,

Thompson Coburn LLP



Ryan K. Manger

Enclosures

cc: Randall K. Theunissen, Esquire (by email)
Hon. Kenneth A. Krantz (by email)

CC: OS/OGC
Pub
ALJ(z)

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

THE LAKE CHARLES HARBOR AND TERMINAL DISTRICT,)	
)	
<i>Complainant,</i>)	
v.)	FMC Docket No. 06-02
)	
WEST CAMERON PORT, HARBOR AND TERMINAL DISTRICT,)	
)	
<i>Respondent.</i>)	

**MOTION FOR LEAVE TO FILE
REPLY TO WEST CAMERON SUPPLEMENTAL BRIEF**

Lake Charles Harbor and Terminal District respectfully requests leave to file a Reply to respondent's supplemental brief filed on April 10, 2006. As discussed more fully in the Reply, which is attached hereto as Exhibit A, Lake Charles seeks to clarify certain statements—which appear to be misleading—made in the West Cameron supplemental brief with respect to actions taken by Lake Charles before the Complaint was filed with the Commission.

Respectfully submitted,



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*Attorneys for Complainant Lake Charles Harbor
and Terminal District*

Dated: April 13, 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Leave to File Reply has been served upon all parties of record by email this 13th day of April, 2006.


Ryan K. Manger

BEFORE THE
FEDERAL MARITIME COMMISSION
WASHINGTON, D.C.

<hr/>)	
THE LAKE CHARLES HARBOR AND)	
TERMINAL DISTRICT,)	
	<i>Complainant,</i>)	
v.)	FMC Docket No. 06-02
)	
WEST CAMERON PORT, HARBOR AND)	
TERMINAL DISTRICT,)	
	<i>Respondent.</i>)	
<hr/>)	

REPLY OF LAKE CHARLES TO WEST CAMERON SUPPLEMENTAL BRIEF

Lake Charles Harbor and Terminal District submits this short reply to the Supplemental Brief of West Cameron Port Harbor and Terminal District to respond to certain statements made therein. West Cameron attempts to mislead the presiding Judge to believe Lake Charles took no action before filing its Complaint with the Commission.¹ This is part of its overall strategy to portray Lake Charles as a wealthy strong-armed Goliath to West Cameron’s David—a characterization to which Lake Charles strongly objects—that will not be dignified with a response.

West Cameron disingenuously asks the question: “If the actions complained of by LC Port were so egregious, why was there no objection, notice, demand, or action of any kind taken

¹ Additionally, West Cameron wrongly assumes in its supplemental brief that Lake Charles has taken inconsistent positions that LNG tankers qualify as common carriers. *See* West Cameron Supplemental Brief at 10-12. Lake Charles did not take the position that LNG tankers are not common carriers when it filed its lease with Cameron LNG. Moreover, as our Supplemental Brief advises, the informal opinion letter on which West Cameron relies was an opinion offered by Commission staff members without the benefit of a fact-finding investigation. *See* Lake Charles Supplemental Brief at 5-6.

by LC Port or any others alleged to have been aggrieved before the filing of the Complaint?” West Cameron Supplemental Brief at 1, 15-16. As West Cameron is well aware, representatives of Lake Charles had several conversations with West Cameron months before filing its Complaint to express its concerns about the unlawful fees assessed by West Cameron. Lake Charles further expressed these concerns in an August 1, 2005 letter sent to the Louisiana Attorney General’s Office (“AG Letter”) and copied to counsel for West Cameron:

Prohibited Charges and Violations of the Shipping Act of 1984

...

In meetings with the WCP representatives since this dispute started, the WCP has suggested that it must be paid something by the District in order for the District to lease its property to Cameron LNG and for the Cameron LNG project to move forward.

...

Likewise, the Shipping Act of 1984, as amended, (46 App USC 1701, et seq.) similarly prohibits such unreasonable burdens by a port on maritime commerce.

In a series of decisions involving the Plaquemines Port Harbor and Terminal District, the Federal Maritime Commission and resulting appellate court decisions established a now well-understood principle that entities, such as the WCP, cannot impose fees on vessels simply traveling through the port authority unless the port authority is providing services or facilities whose cost are reasonably related to the benefits provided and are fairly distributed among those who benefit from the services. [see *New Orleans S.S. Ass’n vs. Plaquemines Port Harbor & Terminal District*, 874 F.2d 1018 (5th Cir., 1989); *Plaquemines Port Harbor & Terminal District vs. Federal Maritime Commission*, 838 F.2d 536 (D.C. Cir., 1988). Also see *Volkswagenwick Ag. vs. Federal Maritime Commission*, 390 US 261 (1968)].

In this case, the WCP is attempting to impose a charge simply for the privilege of entering or doing business in their port. No services or port facilities are being provided by the WCP.

See AG Letter at 19-20, a copy of which is attached hereto as Exhibit A. West Cameron was familiar with this letter when it filed its motion to dismiss and attached its own letter sent to the Attorney General in response. See Motion to Dismiss at Ex. 10, attached hereto as Exhibit B.

The timeline offered by West Cameron in its supplemental brief, attached hereto as Exhibit C, is an inaccurate representation that ignores all events preceding the meritless filing of its state action. The selective amnesia displayed by West Cameron seeks to mislead the presiding Judge to believe Lake Charles sat on the side-lines until filing the Complaint, which is untrue.

For these reasons, and the reasons set forth in its filings opposing the motion to dismiss, Lake Charles respectfully requests the presiding Judge to set this matter for oral argument or to deny the motion to dismiss outright.

Respectfully submitted,



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Dated: April 13, 2006

August 1, 2005

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Michael K. Dees
General Counsel

RE: Lake Charles Harbor & Terminal District -
West Cameron Port Harbor & Terminal District -
Dispute

Dear Terry:

This letter is in response to your recent telephone call to me in which you invited me to provide you with the position of the Lake Charles Harbor & Terminal District ("District") regarding the pending dispute initiated in recent months by the West Cameron Port Harbor & Terminal District (the "WCP").

The District, under its broadly worded powers and authorities found at La. R.S. 34:201, et seq., has for many years managed, maintained, and operated extensive port facilities and the Calcasieu River Ship Channel ("Channel") in both Calcasieu and Cameron Parishes; acquired in both parishes, voluntarily and by way of expropriation, numerous pieces of property either in full ownership or by way of easements or rights of way; and acted in accordance with the prior designations of the governor and the attorney general as the "Local Sponsor" for the entire Channel. The Channel extends through both Calcasieu and Cameron Parishes and also extends thirty (30) miles out into the Gulf of Mexico. Despite these long-standing and ongoing activities of the District in Calcasieu and Cameron Parishes, the WCP recently and, for the first time since it was created in 1968 (see La. R.S. 34:2251, et seq.), now contends that the District may not acquire property or conduct the business of the District in Cameron Parish because, in the view of the WCP, the District is prohibited from conducting its business outside the geographic boundaries established in the enabling legislation for the District. Further, the WCP contends it has the exclusive authority to conduct port business within Cameron Parish and the area designated in the legislation creating the WCP as the territorial limits of the WCP.





The current dispute threatens the ongoing continued development of a \$1.2 billion liquefied natural gas ("LNG") facility to be built and operated on property in Cameron Parish that is owned by the District and leased by the District to Cameron LNG, LLC, a wholly owned limited liability company of Sempra Energy. Over the past three (3) years, Cameron LNG, with the support of the Cameron Parish Police Jury, has secured all required permits for the development as well as final approval of the Federal Energy Regulatory Commission. Only recently has the Cameron Parish Police Jury indicated that the Cameron LNG project was in dispute due to the issues raised by the WCP. Commencement for construction of the LNG development is expected to be announced soon. The LNG development will generate thousands of construction jobs over several years and, once completed, the project will permanently employ an estimated sixty (60) people. Additionally, this LNG facility is extremely critical to the energy needs of the nation.¹

Port and Channel History

The District, commonly called the "Port of Lake Charles", was legislatively created in 1924 (Act 67 of 1924) in response to the desire of local farmers and business leaders who saw the need for a port to provide an export vehicle for agricultural and timber products found in abundance in Southwest Louisiana. This initial legislation provided for a geographic area within which property taxes could be levied by vote of the residents of the defined area for construction of docks, wharves, transit sheds, and other port improvements as well as navigational and channel improvements. A small ad valorem tax millage was authorized and levied on property within this identified geographic area for operational expenses of the District. This geographic area was limited to a portion of Calcasieu Parish; however, the initial port improvements and facilities which were authorized and constructed were serviced by a natural navigable river reaching some thirty (30) miles to the south through Cameron Parish and another thirty (30) miles out into the Gulf of Mexico.

¹ *AES Ocean Express LLC v. Florida Gas Transmission Co.*, 108 FERC ¶61,221, at P 3 (2004) ("[b]ecause of the growing importance of LNG . . . the Commission determined that the need for timely and comparable treatment of the issues was necessary"); *Sound Energy Solutions*, 107 FERC ¶61,263, at P 2 (2004) ("[t]his order serves the public interest by providing uniform federal oversight of siting, construction, operation, and safety of facilities to be used to import foreign LNG to meet the nation's critical energy needs"); *Cove Point LNG Limited Partnership*, 97 FERC ¶61,043, at p. 61,209 (2001) ("[t]he growing importance of LNG is evidenced by a 33 percent rise in LNG import activity from the first nine months of 1999 to the first nine months of 2000. . .")

Beginning in the 1930's, Congress authorized the Corps of Engineers ("Corps") to undertake various deepening and widening improvements to the natural river and provided for the construction and maintenance of the Channel.²

These congressional authorizations required responsible local governmental agencies to provide rights of way for construction of the Channel and for dredge material disposal and also written assurances to the Secretary of the Army that the federal government would be held harmless from damage claims due to the construction and maintenance of the Channel.

Prior to 1960, these local assurances and obligations were supplied by a combination of the Calcasieu Parish Police Jury, Cameron Parish Police Jury, and the District.

In 1960, however, the legislature adopted Act No. 66 which designated the State of Louisiana as the responsible agency to "hold and save harmless the United States free from damages" relating to the construction and maintenance of the Channel. Subsequent to Act No. 66, the governor and attorney general, under the provisions of La. R.S. 33:1324, in two (2) separate formal designations³, designated the District "to furnish assurances of local cooperation" to the federal government for improvement of the Channel and secure all necessary rights of way or otherwise cooperate fully with the United States in the "construction, operation, and maintenance" of the Channel.

² The initial Channel improvements were authorized by Public Law No. 392, 75th Congress, 1st Session of 26 of August 1937. Subsequent improvements were reauthorized and modified in House Document No. 465, 77th Congress, 1st Session, and in Senate Document No. 190, 79th Congress, 2nd Session, approved respectively by Acts dated March 2, 1945 and July 24, 1946. Further improvements were authorized under the Rivers and Harbors Act of July 14, 1960, House Document No. 436, 86th Congress, 2nd Session; Rivers and Harbors Act of October 23, 1962, House Document No. 582, 87th Congress, 2nd Session. Further improvements were authorized in the 1970's under Section 201 of the Flood Control Act of 1965 (Public Law 89-298) and under Section 107 of the Rivers and Harbor Act of 1960, as amended by Section 310 and Section 112 of the Rivers and Harbors Acts of 1965 and 1979, respectively.

³ The first designation executed by the governor and attorney general is dated January 18, 1961. It included a whereas provision stating that the Cameron Parish Police Jury agreed with the designation being granted to the District. Subsequent to this designation, the Cameron Parish Police Jury adopted a resolution objecting to the 1961 designation by the governor and attorney general. On March 1, 1962, the governor and attorney general reissued the designation and deleted the whereas provision indicating the agreement of Cameron Parish. By doing so, the governor and attorney general indicated that the objections of local governmental interest in Cameron Parish should bear no weight regarding the District's activities in Cameron Parish.





Over the past seventy-five (75) years or more, the District acquired, on behalf of the United States and the Corps, hundreds of rights of way, easements, and other property interests in both Cameron and Calcasieu Parishes.

As the Channel was improved and expanded, the District's facilities and operations likewise improved and expanded.

In the early years, the District's facilities and improvements were accomplished through tax payer approved general obligation bonds; however, the District today generates over \$22 million in revenues annually – 92% of which are self-generated from fees and rentals collected through the operations of the facilities and properties of the District.

In addition to servicing the agricultural and timber industry, these port facilities and the Channel attracted an extensive petrochemical complex. Today, the District is ranked the 11th largest port in the United States with over 55 million tons of cargo flowing through the District via the Channel each year.

The District has extensive property holdings along the entire Channel in both Cameron and Calcasieu Parishes. It has full ownership of approximately 4,400 acres of property and possesses hundreds of additional easements and rights of way granting it the right to utilize vast pieces of property for various port and channel purposes. The District has 110 employees and operates numerous marine facilities currently valued at over \$260 million.⁴

According to a 1999 Economic Impact Study performed by Dr. Douglas McNeil, PHD, and Dr. Daryl Burckel, DAA, CPA, of McNeese State University, the District has the following economic impact to Southwest Louisiana:

The combined spending, earnings, employment, and tax impacts in Southwest Louisiana from cargo shipped through port-owned and privately-owned marine facilities along the Channel generated for Southwest Louisiana:

⁴ By comparison, the WCP has no current revenues, facilities, operations, or employees. The WCP has leased several hundred acres of property obtained from the federal government. The lease has yet to generate any payments to the WCP or any active use of the property.



- ◆ over \$9 billion in direct spending for vessel services, cargo handling, inland transportation, and production of goods for export or import,
- ◆ over \$328 million in direct income, and
- ◆ nearly 6,700 primary jobs.

When the generally accepted economic multiplier effect is taken into account, these impacts rise to:

- ◆ over \$18 billion in total spending (direct, indirect, and induced),
- ◆ over \$633 million in total income (direct and indirect),
- ◆ over 13,250 total jobs (direct and indirect),
- ◆ nearly \$68 million in state tax revenues, and
- ◆ nearly \$63 million in local tax revenues

This means that nearly 29% of all wages paid and about one out of every six jobs in Southwest Louisiana has some connection with the port industry, the firms that provide inland transportation to and from the port, or with the firms that are dependent upon the port for shipment of their raw materials or products.

According to the McNeese study, the economic impact of those who use and provide port services of the District extends beyond Cameron and Calcasieu Parishes for a number of reasons: (1) some port-related services for cargoes transiting through the Port of Lake Charles are handled by firms located elsewhere in the state; (2) a portion of the expenditures for inland transportation services are made outside of the local region; and (3) some of the firms which are dependent upon port facilities and the Channel are located in other parts of the state.

Cargo shipped through public and private port facilities located along the Channel generated statewide:

August 1, 2005

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- ◆ nearly \$9.5 billion in direct spending for vessel services, cargo handling, inland transportation, and production of goods for export or import,
- ◆ nearly \$367 million in direct income, and
- ◆ nearly 8,200 primary jobs.



When the generally accepted multiplier effect is taken into account, these statewide impacts rise to:

- ◆ nearly \$22 billion in total spending (direct, indirect, and induced),
- ◆ over \$840 million in total income (direct and indirect),
- ◆ nearly 18,750 total jobs (direct and indirect),
- ◆ over \$87 million in state tax revenues, and
- ◆ nearly \$81 million in local tax revenues.

This means that nearly 2% of all wages paid in the State of Louisiana and about one out of every 100 jobs in the state has some connection with the port industry in Southwest Louisiana, the firms that provide inland transportation to or from these port facilities, or with the firms that are dependent on the port for shipment of their raw materials or products to and from the District.⁵

Ports Are Unique Public Entities

Although public in nature, ports, in general, operate differently from a city, police jury, water district, fire district, or other purely governmental or public entity providing normal and usual governmental services. Because of competitive economic forces resulting from other public port operations within and outside the state, ports operate more in the nature of a competitive business entity.

⁵ These economic impact numbers relate to 1998-1999 data. The region's economy has grown substantially since this period and the District's economic impact to the region and the state is likewise greater.



On a daily basis, the District, as well as other active deep-water ports of the state, is conducting business literally around the world. The District has a marketing staff that regularly visits customers and otherwise seeks to attract port business opportunities throughout the United States, Mexico, Canada, and the Far East. A trip to Cuba was recently concluded in which an agreement was reached for the shipment of peas through District facilities. Active deep-water ports, like the District, are daily concluding agreements, holding meetings, seeking business, leasing conference and hotel rooms, booking advertisements – all very much beyond the defined geographic boundaries which make up a particular port's taxing area. Many ports actually establish permanent offices in major areas of commerce around the world such as Hong Kong, New York, Tokyo, and Panama.

The State of Louisiana has created and possesses one of the largest systems of ports and associated navigable waterways in the United States – all of which undertake similar port business activities well beyond their geographic boundaries.

The Board of Commissioners of the Port of New Orleans was the first port in Louisiana created by the legislature in 1896 and since 1896, a number of ports have been created and are now by virtue of the 1974 Constitution "political subdivisions" of the state.

The specific powers delegated by the legislature to the various individual ports are enumerated in Chapter 1, Parts I through VIII, and Chapters 7 through 43, of Title 34 of the Louisiana Revised Statutes.

The enumerated powers of the individual ports are similar but not identical and, generally, the legislature has empowered and charged the individual ports with the authority and directive to, on behalf of the state, "regulate the commerce and traffic of the port and harbor... (District)...in such manner as may, in its judgment, be best for the maintenance and development thereof." (see La. R.S. 34:21A; La. R.S. 34:203A(1); La. R.S. 34:243; La. R.S. 34:293; La. R.S. 34:323; La. R.S. 34:333.3 and numerous others in Chapter 1 and Chapters 7 through 43 of Title 34 of the Louisiana Revised Statutes). Furthermore, ports are authorized, without restriction or limitation, to construct, operate, and maintain docks and wharves on the banks and beds of the navigable waterways of the state and otherwise conduct their business as the port's governing authority deems best.

The importance of ports in Louisiana and their functions as creatures of the state is recognized in the 1974 Constitution which provides at Article 6, Section 43, as follows:

"Section 43. All deep-water port commissions and all deep-water port, harbor, and terminal districts as organized and constituted on January 1, 1974, including their powers and functions, structure and organization, and territorial jurisdiction, are ratified and confirmed and shall continue to exist, except that

- (1) The legislature by law may grant additional powers and functions to any such commission or district and may create new port commissions or port, harbor, and terminal districts.*
- (2) Only by law enacted by the favorable vote of two-thirds of the elected members of each house, may the legislature consolidate or abolish any such commission or district or diminish, reduce, or withdraw from any such commission or district any of its powers and functions and affect the structure and organization, distribution, and redistribution of the powers and functions of any such commission or district, including additions to or reductions of its territorial jurisdiction.*
- (3) The legislature shall enact laws with respect to the membership of the commissions provided in this Section. Once the law with respect to membership is enacted, it may be changed only by law enacted by the favorable vote of two-thirds of the elected members of each house."*

The District is a particularly unique port because all of its operations and its ability to function as a port are dependent upon a man-made channel, needing constant dredging and maintenance, which runs not only within the geographical limits of the District but also through Cameron Parish and well out into the Gulf of Mexico beyond the jurisdiction of the State of Louisiana. The operation by the District of the entire Channel with over 1,000 ships coming in and out on a yearly basis is extremely challenging. A \$3.7 million state of the art high tech traffic management and security system was recently installed by the District and is operated by the District over the whole Channel so as to maximize the efficient operation of the Channel. Since 2001, the federal government has imposed on the District extensive new security mandates relating to the entire Channel.⁶

⁶ See extensive security requirements mandated by the Maritime Transportation Security Act of 2002; 33 CFR Parts 101-106; Ports and Waterway Safety Act (33 USC 1221, et seq.); Navigation and Vessel Inspection Circulars ("NVIC") – Recommended Security Guidelines for Facilities, dated January 2003





Due to requirements of the Corps, the District is currently facing the need to greatly expand existing dredge material placement areas for the Channel in both Cameron and Calcasieu Parishes. Additional new property will be required for dredge material placement for which the District, as a Local Sponsor of the Channel under Act 66 of 1960 and the designation from the governor, must acquire and pay the full cost of acquisition. For both existing and newly acquired properties, the District, as Local Sponsor of the Channel, is mandated to pay 35% of all required environmental studies, mitigation costs, and diking costs.⁷ This cost is estimated to be between \$10 and \$20 million which the District as Local Sponsor must provide over the next several years.

Under Act 66 of 1960, the State of Louisiana assumes the burden of these costs if the District cannot pay them.

Powers of the District

Recognizing this unique business and operational nature of the District, the legislature, in creating the District, broadly provided at La. R.S. 34:203(b) that the District:

"...has all the rights, privileges and immunities granted to corporations in Louisiana..."

The WCP's enabling legislation does not have such a broad grant of authority. (see La. R.S. 34:2553)

Absent specific unique circumstances, a Louisiana corporation is generally not limited by law to operations within a limited geographic area of the state and is authorized to conduct business and exercise its powers anywhere in the state. Absent a specific expressed statutory restriction or charter provision, a corporation can also acquire or alienate property anywhere in the state. [see La. R.S. 12:41(4) and (8)]

Additional powers of the District are generally set forth in La. R.S. 34:203 and La. R.S. 34:215. Each of those statutes itemizes a number of functions and powers of the District.

The following is a listing of some of the stated powers and functions:

⁷ See Water Resource Development Act of 1986 and 1996 (33 USC §2201, et seq. and 33 USC §2330, et seq.)



"§ 203. Powers of board; title to structures and facilities

A. (1)(a) The board may regulate the commerce and traffic of the harbor and terminal district in such a manner as may in its judgment be best for the public interest;

(b) It has all the rights, privilege, and immunities granted to corporations in Louisiana; and

(c) It may own and administer, contract for, construct, operate, and maintain docks, landings, wharves, sheds, elevators, locks, slips, canals, laterals, basins, warehouses, belt and connecting railroads, works of public improvements, and all other property, structures, equipment, and facilities necessary or useful for port, harbor, and terminal purposes, including but not limited to, buildings and equipment for the accommodation of passengers and the handling, storage, transportation, and delivery of freight, express, and mail; and

(d) It may dredge and maintain shipways, channels, canals, slips, basins, and turning basins.

(2) (a) Pursuant to Public Law 99-662, The Water Resources Act of 1986, or regulation, or if because of contractual obligations of the district with the United States of America or any agency thereof the district is required to pay or assist in paying dredging expenses or expenses related to the dredging of navigable waters within the district, the district may reasonably regulate and impose reasonable user fees for said projects.

** * **

(c) (ii) The board may establish, operate, and maintain in cooperation with the federal government and the state of Louisiana and its various agencies, subdivisions, and public bodies navigable waterway systems;

(iii) It may acquire land necessary for the business of the district;

** * **

(v) It may lease or sublease for processing, manufacturing, commercial, and business purposes lands or buildings owned, acquired, or leased as lessee by it, which leases may run for any term not exceeding forty years at a fixed rental, but may run for a term not exceeding ninety-nine years, provided they shall contain a clause or clauses for readjustment of the rentals upon the expiration of a primary term of forty years, and it may ratify, confirm, and approve any such leases heretofore granted by it;

** * **



- (vii) *It may maintain proper depths of water to accommodate the business of the district;*
- (viii) *It may provide mechanical facilities and equipment for use in connection with such wharves, sheds, docks, elevators, warehouses, and other structures;*
- (ix) *It may provide light, water, and police protection for the district and for all harbor and terminal facilities situated therein;*
- (x) *It may make and collect reasonable charges for and regulate the use of all structures, works, and facilities administered by the board and for any and all services rendered by it;*
- (xi) *It may regulate, reasonably, the fees and charges to be made by privately owned wharves, docks, warehouses, elevators, and other facilities within the limits of the district when the same are offered for the use of the public;*

* * *

- (xiv) *It may mortgage properties constructed or acquired by the district and it may mortgage and pledge any lease or leases and the rents, income, and other advantages arising out of any lease or leases granted, assigned, or subleased by it; and*

* * *

B. All buildings, railroads, wharves, elevators, and other structures, equipment, and facilities herein referred to are declared to be works of public improvement and title thereto shall vest in the public."

(emphasis added)

"§ 215. Powers and authority of district

Without impairing or diminishing the import and meaning of the other Sections of this Part, except as in the respects hereafter specifically shown and provided, the Lake Charles Harbor & Terminal District shall have the authority:

- (1) *To own, construct, operate, and maintain docks, wharves, sheds, elevators, locks, slips, laterals, basins, warehouses, docks, wharves, and all other property, structures, equipment, and facilities including belts and connecting lines of ships and railroads and works of public improvements necessary or useful for port, harbor, and terminal purposes to dredge and maintain shipways, channels, slips, basins, and turning basins;*



(2) To establish, operate, and maintain in cooperation with the federal government and the state of Louisiana and its various agencies, subdivisions, and public bodies navigable waterway systems;

* * *

(4) To lease or sublease for processing, manufacturing, commercial, and business purposes lands or buildings owned, acquired, or leased as lessee by said district, including environmental and pollution structures and installations, which lease may run for any term not exceeding forty years at a fixed rental and shall contain a clause or clauses for readjustment of the rentals until the expiration of the period of the lease;"

As shown above, some powers and functions were arguably limited by the legislature to be carried out "within the district" and others were not so limited.

This "within the district" language was not placed upon the following power and function:

"(iii) It may acquire land necessary for the business of the district;"

There is no law or statutory language which prohibits the District from purchasing property rights or land outside of the District's geographic boundaries and leasing it for any port activity. There is no statutory restriction on expenditure of District funds only for projects or services within the geographic boundaries of the District.

In fact, the itemized powers and functions set forth in La. R.S. 34:203 and La. R.S. 34:215 contemplate construction and operation of navigable waterways systems, including the Channel, as well as acquiring and operating rail belt lines and other general port activities which may extend well beyond the geographic limits of the District and the state itself.

Cameron LNG Property

In 1999, the District purchased for \$550,000 a 300± acre property site located just south of the Calcasieu/Cameron Parish line and along the Channel. The property was formerly owned by Amoco for many years. In 1997, Amoco, through a publicly advertised process, sold off much of its property in Cameron and Calcasieu Parishes. The property at issue was purchased by Deep Sea LLC, a group of individuals (a realtor, David Reinauer, and others) from this area. This group subsequently approached the District to see if the District would be interested in purchasing the property.



At the time, the property was inactive and much of it was low and marshy. It did have a slip for berthing vessels. A portion of the property, including the slip, was under a lease to Dynegy Corporation and the balance of the property not leased had previously served as a spoil disposal area. Prior to purchasing full ownership of the property, the District did own a dredge spoil disposal easement or servitude over a portion of this property which could be cancelled upon notice by the landowner and the District had utilized this area for spoil disposal for many years.

The District concluded it should purchase the property partially to ensure that the spoil disposal area would be "permanent" because the need for dredge material placement property is critical in this general area of the Channel. Additionally, the District hoped that the balance of the property -- after the Dynegy lease expired -- could be developed for some worthy purpose to enhance the economic well-being of the area.

A couple of years after this purchase, Dynegy exercised an option to extend the lease covering a portion of the property. Dynegy later approached the District with a proposal for a LNG terminal to be constructed on the property. A lease amendment was then negotiated which expanded the area covered by the lease and which extended the term of the lease. A new and increased lease rate was also agreed upon.

Dynegy subsequently transferred the lease and the proposed LNG terminal project to Cameron LNG/Sempra. All required permits have been secured and construction should soon commence.

Now, almost six (6) years after this purchase by the District, the WCP challenges the ability of the District to own the property and lease it to Cameron LNG for development of the LNG terminal.

In 1963, this identical objection was placed at issue in consolidated litigation through which the District sought to expropriate property in Cameron Parish.⁸

In these consolidated proceedings, the District sought to expropriate property in Cameron Parish for expansion and improvement of the Channel.

⁸ The consolidated proceedings were captioned, *Lake Charles Harbor & Terminal District vs Thomas Overton Wells, No. 3066*; *Lake Charles Harbor & Terminal District vs Thomas Overton Wells, No. 3057*, and *Lake Charles Harbor & Terminal District vs Thomas Overton Wells, No. 3068*, on the docket of the 14th Judicial District Court, Parish of Cameron. The ruling by Judge William Swift in these proceedings was not appealed.

The court ruled as follows:

"These suits are presently before the court on the defendants' exceptions of no cause or right of action and motions to dismiss.

The exceptions and motions are based on the defendants' contention that the plaintiff, Lake Charles Harbor & Terminal District, does not have the power or authority to expropriate the defendants' property in Cameron Parish inasmuch as the limits of the District lie entirely within the Parish of Calcasieu.

The evidence introduced reflects that by act dated January 18, 1961, the Governor of the State of Louisiana designated the plaintiff, for itself and also on behalf of the State of Louisiana, to furnish assurances of local cooperation to the Secretary of the Army of the United States for authorized improvements to the Calcasieu River and Pass Project, which improvements were authorized by the congressional act set forth in House Document No. 436. The documents I have referred to are D-1 and P-5.

Subsequently, the Police Jury of the Parish of Cameron Parish adopted a resolution, dated March 6, 1961, wherein the Governor was requested to rescind the previous designation, D-1, inasmuch as the Parish of Cameron had not consented to his authorizing the plaintiff to expropriate land in Cameron Parish. It was the position of the Cameron Parish Police Jury that if any land in Cameron Parish was to be expropriated in connection with the project, it should be done by the Parish of Cameron (D-2).

Thereafter by act dated March 14, 1962, the Governor amended the document D-1 so as to delete the authority referred to therein and also the expression of consent on the part of Cameron Parish.

There is posed for decision the question of whether the general authority to expropriate provided the State and its political corporations or subdivisions under R.S. 19:2 has been limited insofar as the Lake Charles Harbor & Terminal District is concerned by the provisions of R.S. 34:206, which provides generally that the board may acquire by purchase, donation, expropriation, and other means 'any and all lands in the district' needed for the purposes for which the district was created.

Of course, in case of conflict a general law is ordinarily controlled by a special law on the subject. However, in this instance there is nothing in R.S. 34:206 from which the court can find a clear legislative intent to restrict the general legislative intent to restrict the general expropriation authority granted to political corporations or subdivisions of the State under R.S. 19:2. R.S. 34:206 does say that the board 'may acquire' by expropriation all lands 'in the district'. But this language is simply permissive and certainly is not mandatory; and the Court believes if the legislature had intended to restrict the general authority which the Lake Charles Harbor & Terminal District, as a political subdivision of the State, would have to expropriate under R.S. 12:2, it would have done so in more specific and exact language.



* * *

The property involved in the present case is not only needed in the public use, it is necessary to the business of the district, which is the operation of a channel and port in southwest Louisiana. Certainly it is 'needed property' within the meaning of R.S. 19:2. (emphasis added)

The Cameron LNG Plant Site Property – “Needed Property” that is “...necessary for the business of the District.”



Counsel for the WCP asserts that the purchase and lease of the Cameron LNG plant site lease property is not "...necessary for the business of the District [La. R.S. 34:203A(2)c(iii)] or, as Judge Swift would say, "needed property".

At the time of the original purchase and presently, dredge material disposal capacity in the portion of the Channel fronting on the Cameron LNG plant site property is critically short. The Corps has made recent urgent demands on the District to acquire additional property rights in this area to ensure long-term new disposal capacity. The property was originally purchased with the thought that this would ensure a portion of the property would provide this needed long-term capacity.

At the point the Cameron LNG project was proposed for this site, the District had acquired other properties in the area for dredge material disposal and the District felt that, in addition to providing a needed economic stimulus to Cameron Parish and the surrounding area, the project represented a long-term stream of funding to meet the District's future obligations to acquire additional dredge material disposal area and otherwise meet its obligations relating to the Channel.

These Channel obligations represent a burden on the District of many millions of dollars. The District must meet these burdens through self-generated funds from its operations, including lease revenues. The District has no other means to meet these obligations other than looking to the state if self-generated funds fall short.

Providing for these needed funds and stimulating the local economy are very much the "...business of the District". Economic development through development of port facilities also qualifies as a public need which can, if necessary, justify expropriation of "needed property", like the Cameron LNG plant site property, by the District. (see *Lake Charles Harbor & Terminal District vs. Henning*, C.A. 1969, 409 F.Sd 932; *Wright vs. Lake Charles Harbor & Terminal District*, (La. App., 3rd Cir., 1966), 188 So.2d 449, writ denied 188 So.2d 922).



Implied Authority

Even if one disagrees with Judge Swift's ruling cited above that the District has authority to acquire property in Cameron Parish or that the Cameron LNG property is not needed, courts have, for many years, recognized that public bodies have an implied general grant of authority to exercise powers which are fairly incidental to the express powers which have been granted a public body.

It was stated in *Board of Commissioners of the Port of New Orleans vs. New Orleans Public Service, Inc.*, 161 La. 741, 109 So. 408 (1926), a case involving the right of the board to sell certain property, at 161 La. 744-45:

"In the second section of the statute creating the board of commissioners of the port of New Orleans, Act 70 of 1896, as amended by Act 36 of 1900 and Act 14 of Ex. Sess. 1915, it is declared that the board shall have and enjoy all of the rights, powers, and immunities incident to corporations. In State vs. Board of Commissioners, 153 La. 664, 96 So. 510, it was said that that provision in the statute meant merely that the board had all of the incidental or implied powers needed by a political corporation to perform the duties that were expressly imposed upon it, or to carry out the objects and purposes for which it was created. The object and purpose for which the board of commissioners of the port of New Orleans was created was to have charge of and administer the public wharves and landings of the port of New Orleans; and, to that end, the board has authority to buy land on which to construct any building that the board may deem necessary in aid of the commerce of the port."

This principle has been applied in many cases. For example, in *Lake Charles Ice, Light and W.W. Co. vs. City of Lake Charles*, 106 La. 65, 30 So. 289 (1901), a case involving the right of the city to contract for supplying of light and water, the Louisiana Supreme Court stated at 106 La. 69:

"A municipality would fail of the purpose intended in its organization if it failed entirely in taking such steps as are necessary to obtain enough water and sufficient light. They are intimately connected with its existence, if the purpose be to provide efficient systems when necessary in administering public affairs. There are decisions by this court and by the courts of sister states recognizing this important right of municipalities. We are not inclined to curtail a right as important and indispensable by deciding that express words must be used in order to warrant its exercise. It is sufficiently

granted, in our view, if the corporation is invested with the powers contained in the charter before us for interpretation. We find ample support in the following decisions: *Conery vs. Waterworks Co.*, 41 La. Ann. 910 (922), 7 South. 8; *New Orleans Gaslight Co. vs. City of New Orleans*, 42 La. Ann. 188, 7 South. 559."

(emphasis added)



The territorial limits of the city had been extended without designating what powers were to be possessed in the newly incorporated area, and the court found that the general grant of authority in the original charter applied. Also, in *Boos vs. McClendon*, 130 La. 813, 58 So. 582 (1912), a case involving the question whether a suit contesting an election should be brought in ordinary form instead of in the summary, the court stated at 130 La. 816-817:

"This argument, whatever force there may be in it, must yield to the common sense view taken by the learned trial judge, that in granting this right of review the legislature must be assumed to have intended to grant it in the form in which it could be effective – not in a form in which it could be of no value whatever, and that it would be of no value if restricted to ordinary process, since the adverse party, by simply invoking the legal delays of ordinary process could stave off the decision of the case until after the election at which the contestant desired to be a candidate had taken place"

"The rule is that: Statutes relating to remedies and procedure are to be construed liberally and with a view to the effective administration of justice." 36 Cyc. 1188

"Also, that: Whenever a power is conferred by a statute, everything necessary to carry out the power and to make it effectual and complete will be implied." 26 A. & E. E. 614

(emphasis added)

In *Town of Pineville vs. Vandersypen*, 212 La. 521, 33 So.2d 56 (1947), a case involving an attack on an ordinance regulating electrical installations and constructions, the court stated at 212 La. 524-525:

*"Municipal corporations, being creatures of the legislature, possess only such powers as are granted to them by the legislature in express words, or those that are necessarily or fairly implied in or incident to the powers so expressly conferred. They also possess those that are essential to the accomplishment of the purposes and objects of the corporation. 37 Am. Jur. 722, § 112; 19 R.C.L. 768, § 75; 43 C.J. 176, § 174; and *Montgomery vs. City of Lafayette*, 154 La. 822, 98 So. 259, and the authorities therein cited."*

(emphasis added)



Similarly, in *First Sewerage District of City of Lake Charles vs. City Council of City of Lake Charles*, 215 La. 428, 40 So.2d 808 (1949), a case involving the right of the city to expend funds derived from sale of sewerage bonds, the court, quoting from the judge's opinion, stated at 215 La. 440:

"It must be conceded that in the absence of statutory restrictions or prohibitions, municipal corporations enjoy a general power to make contracts in furtherance of corporate objects. The powers of a municipal corporation are not alone confined to that which is expressly and specifically granted. These powers may be divisible, those expressly granted and those that may be fairly implied. These implied powers include matters which are incidental to expressed powers, or fairly indispensable to the execution thereof. Such implied powers are such as may be naturally inferred as a result of the imposition of expressed powers and duties, the fulfillment of which could not be otherwise accomplished. Of necessity, these implied powers must be such as are germane, reasonable, and necessary and not such as may be foreign to the power or duty delegated to a municipality."

WCP Claims of Exclusive Jurisdiction

In his correspondence dated June 8, 2005 to Mr. Nicholas Gachassin, Jr., (the "Letter"), counsel for the WCP asserts that the WCP – and all ports in Louisiana – have "exclusive jurisdiction" within the geographical limits established by the particular port's enabling statutes. For this proposition, counsel cites La. R.S. 34:3103 dealing only with the Offshore Terminal Authority (counsel for the WCP mistakenly refers to this section of the law as creating the Millennium Port. The Millennium Port is established at La. R.S. 34:3471, et seq.).

In La. R.S. 34:3103, the legislature expressly granted the Offshore Terminal Authority ("OTA") "exclusive jurisdiction" to undertake its legislatively assigned powers and duties. The legislature also expressly provided that the OTA cannot control or regulate the activities of any other port harbor and terminal district. Similar language is included at La. R.S. 34:3473 regarding the Millennium Port Authority.⁹

⁹ Similarly, La. R.S. 45:123 grants exclusive jurisdiction in identified geographic areas to public utilities. Also, La. R.S. 2:131 grants exclusive jurisdiction in identified geographic areas to airports. Similar provisions were not provided for the WCP or the District.

Instructively, however, in the case of both the District and the WCP, the legislature did not grant either port "exclusive jurisdiction" or exclude one or the other from any particular activity within any particular area.

Obviously, as was done for the OTA and the Millennium Port Authority, had the legislature intended to grant the WCP exclusive jurisdiction, it could easily have done so.



Under these circumstances, the courts apply a general rule of statutory construction which states that statutes on the same or similar subject matter should be construed together (La. Civil Code Article 13). Further, the rule of *expressio unius est exclusio alterius* dictates that when the legislature fails to include a statutory provision which easily could have been provided, courts will conclude that the omission is intentional and the omitted provision was intended by the legislature not to apply. (see *Filson vs. Windsor Court Hotel, et al*, No. 2004-CC-2893, (La. 6/29/05), 2005, La. Lexis 2094)

Therefore, under this rule of statutory construction, the failure to include "exclusive jurisdiction" language in the WCP enabling statutes clearly expresses the legislature's intention to continue to allow the District to operate in Cameron Parish as it was doing at the time the WCP was created and as the District has done for many years before and after the creation of the WCP.

Prohibited Charges and Violations of the Shipping Act of 1984

In regard to the WCP, La. R.S. 34:2556 provides the following:

"§2556. Limitation on charges

Anything in this Chapter to the contrary notwithstanding, the commission shall not assess, levy, or charge any fee, rate, tariff or other charge on any person, vessel, watercraft or cargo on account of passage through the district unless such person, vessel, watercraft or cargo makes use of the facilities or services of the commission. The commission shall not by any rule, regulation or other act require the use of the facilities or services of the commission."

(emphasis added)

In meetings with the WCP representatives since this dispute started, the WCP has suggested that it must be paid something by the District in order for the District to lease its property to Cameron LNG and for the Cameron LNG project to move forward.



Initially these requested payments were termed by the WCP as a "carve out" – a portion of the Cameron LNG lease payments would be required to be paid to the WCP. In the Letter, counsel for the WCP asserts that the District must "repatriate to West Cameron all revenues received by Lake Charles from the property...".

In either case, the WCP is requesting payments for nothing. The WCP freely admits that it would provide no service or facilities for these payments and is simply entitled to payments because they exist and, under the WCP's erroneous theory of exclusive jurisdiction, the Cameron LNG project and the District's property ownership and lease agreements cannot exist or occur without the WCP's consent.

In effect, the WCP is asserting its perceived authority to act as a "toll taker" for the use of the Channel. By way of La. R.S. 34:2556, the legislature specifically prohibited this kind of conduct by the WCP.

Likewise, the Shipping Act of 1984, as amended, (46 App USC 1701, et seq.) similarly prohibits such unreasonable burdens by a port on maritime commerce.

In a series of decisions involving the Plaquemines Port Harbor and Terminal District, the Federal Maritime Commission and resulting appellate court decisions established a now well-understood principle that entities, such as the WCP, cannot impose fees on vessels simply traveling through the port authority unless the port authority is providing services or facilities whose cost are reasonably related to the benefits provided and are fairly distributed among those who benefit from the services. [see *New Orleans S.S. Ass'n vs. Plaquemines Port Harbor & Terminal District*, 874 F.2d 1018 (5th Cir., 1989); *Plaquemines Port Harbor & Terminal District vs. Federal Maritime Commission*, 838 F.2d 536 (D.C. Cir., 1988). Also see *Volkswagenwick Ag. vs. Federal Maritime Commission*, 390 US 261 (1968)].

In this case, the WCP is attempting to impose a charge simply for the privilege of entering or doing business in their port. No services or port facilities are being provided by the WCP. Therefore, the WCP's request for payments violates Article 1, Section 10, of the United States Constitution and represents an impermissible burden on interstate commerce. [see *Clyde Mallory Lines vs. Alabama, Ex Rel. State Docks Commission*, 296 US 261; 56 S.Ct. 194; 80 L.Ed 215 (1935); *Indiana Port Commission vs. Bethlehem Steel Corp.*, 653 F.Supp 604 (1987)]



The same is true for \$800,000 in annual payments which the WCP has "convinced" Cheniere Energy to pay the WCP in regard to two of its new LNG facilities locating in Cameron Parish.

These types of "payments for nothing" on businesses and industries locating in Louisiana and utilizing the public waterways of this state and country represent the worst sort of message a region can send to a business world that demands free, open, and competitive commerce. At a minimum, these demands for "payments for nothing" represent an impermissible and unconstitutional burden on interstate commerce which will not go unchallenged.

The Hospital Service District No. 2 Case

In the Letter, counsel for the WCP argues that the District may not conduct its business in Cameron Parish without the consent of the WCP.

In support of this proposition, counsel cites *Hospital Service District No. 2 of the Parish of Lafourche dba St. Anne General Hospital vs. Hospital Service District No. 1 of the Parish of Terrebonne*, 716 So. 2d 168 (La. App., 1st Cir., 1998).

In the *Hospital Service District* case, supra, the court rightly noted that the legislature, in the enabling statutes providing for the creation of hospital service districts by police juries, expressly provided in La. R.S. 46:1051 that a hospital service district in one parish cannot operate in another parish without the consent of the police jury governing the parish in which the hospital district wishes to operate.

As pointed out above with regard to the WCP "exclusive jurisdiction" argument, the legislature, in the case of the WCP and the District, enacted no similar provision requiring one port or parish to consent to the activities of the WCP or the District in another particular parish.

Hence, again, under the above cited statutory rule of construction, because the legislature could have easily done so and did not provide such language, the omission is intentional and expresses the intent of the legislature that no such prior consent is necessary.

Conclusion

For the above reasons, the District clearly has the authority to purchase and lease property in Cameron Parish as it has done so for many years and the recent dispute raised by the WCP is nothing more than an attempt to improperly extract money from the District and the Cameron LNG project.

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The District has, under the 1961 and 1962 designations from the governor, assumed the extensive and costly obligations of the state as Local Sponsor for the Channel. The District, therefore, is doing everything it can to generate needed revenues to fund those obligations and, at the same time, enhance the economic development of both Cameron and Calcasieu Parishes as well as the state.



If the WCP is successful in its efforts, the state, at a minimum, could well be burdened with millions of dollars in costs which it obligated itself to pay under Act 66 of 1960. More devastating, however, is the harm that the actions of the WCP will cause to the economic development efforts of the region and the state. The loss of the Cameron LNG project is minor when compared to the long-term negative message the WCP is sending to the business world as to what it takes to "get along" and do business in the state. The state should not tolerate this kind of conduct and the District will certainly challenge it in every appropriate way and in any judicial or administrative forum available to it.

Sincerely,

MICHAEL K. DEES

MKD/se

Cc: Adam McBride
Terry Ryder
Randall K. Theunissen



Allen & Gooch
A Law Corporation

August 26, 2005

Mr. Nicholas Gachassin, Jr.
First Assistant Attorney General
State of Louisiana
Office of the Attorney General
P. O. Box 94005
Baton Rouge, LA 70804-9005

Via email/Hard Copy to Follow

Re: Operations by Lake Charles Harbor and Terminal District ("Lake Charles") within the territorial jurisdiction of West Cameron Port, Harbor and Terminal District ("West Cameron")

Dear Mr. Gachassin:

This letter is in response by the West Cameron Port Harbor & Terminal District ("CAMERON") to the twenty two (22) page paper provided by the Lake Charles Harbor & Terminal District (the "LCP") in support of its operations outside of its legal boundaries and within the legal boundaries of CAMERON (the "LCP Paper").

A review of the LCP Paper reveals the following:

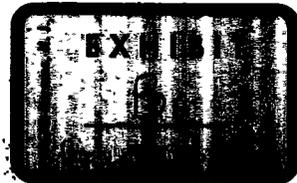
1. Approximately 10 ½ pages were devoted to the economic impact and strength of the LCP while attempting to disparage any attempts by CAMERON to improve, expand and grow as a thriving port, which has no bearing on the issue at hand.
2. Approximately 4 pages were devoted to LCP's designation as the Local Sponsor for the Calcasieu River Ship Channel (the "Channel") and LCP's operation and maintenance of the Channel, which has no bearing on the issue at hand.
3. Approximately 2 pages were devoted to attacks on other projects or activities of CAMERON in another attempt to disparage CAMERON by misguided facts and short sited analysis, which has no bearing on the issue at hand.
4. Approximately 2 pages devoted to case law surrounding the expropriation of property to maintain and operate the Channel, which has no bearing on the issue at hand.

Seventeen and one half (17 ½) pages, or approximately eighty (80%) percent of the LCP Paper was devoted to facts and legal issues other than the one at hand. CAMERON will further show in this paper why the balance of the LCP Paper's legal analysis must fail.

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The LCP analysis tends to focus on LCP's operation and maintenance of the Channel and the bootstrapping or expanding of those operations into the right to operate port, harbor and terminal facilities and services outside of its jurisdictional boundaries. CAMERON has shown that there is no legal justification for that position. The Sempra Project is the first time that LCP has attempted to provide port, harbor and terminal facilities and services outside of its boundaries. In fact, an informal survey of the general counsels to a number of the larger inland ports has revealed that none of them have provided port, harbor and terminal facilities and services outside of their respective boundaries. Each has affirmatively indicated that it would vigorously challenge such extra-jurisdictional activities should they be attempted within their boundaries. The ambitions of the LCP have grown beyond its legislative grant and the Sempra Project, without CAMERON involvement, is an example of the LCP exerting its economic prowess without regard for its legal limitations and without regard for the jurisdiction bestowed upon CAMERON to operate within its boundaries.

The concise legal issue between the ports is as follows: (the "Issue"):

Can LCP legally own land to operate a port facility outside of its jurisdictional boundaries and within Cameron's jurisdictional boundaries?

To be more straightforward, can LCP, using the extracted provisions 203 (b) and 203 (c) (iii) in isolation and out of context with other applicable provisions justify the ownership and operation of a port facility outside of its statutory jurisdiction and within the statutory jurisdiction of an opposing authority?

There is no dispute that: (i) the Sempra Project is located outside of LCP's jurisdictional boundaries and within CAMERON's jurisdictional boundaries, (ii) LCP entered CAMERON's jurisdiction without the permission of CAMERON, disregarding the legal boundaries of LCP's jurisdiction; and (iii) CAMERON has the power and legal authority to make the Sempra Project legal by cooperative agreement with LCP pursuant to La. R.S. 33:1324.

THE APPLICABLE LAW

In Title 34 of the Louisiana Revised Statutes, the Louisiana legislature created the various inland port authorities (collectively hereinafter the "Port Authorities" and singularly referred to as a "Port Authority"). This body of law (i) determines the objects and purposes of the respective Port Authorities generally, and the objects and purposes of LCP particularly (the "Objects and Purposes"), and (ii) sets the limitations intended by the legislature in creating each Port Authority by specific territorial limits (the "Jurisdictional Boundaries").

The Louisiana Civil Code provides standards for statutory interpretation which apply in evaluating and defining the Objects and Purposes as well as the intended limitations set by the Jurisdictional Boundaries:

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Art. 9. Clear and unambiguous law

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law should be applied as written and no further interpretation may be made in search of the intent of the legislature. (hereinafter "Art. 9")

Art. 13. Laws on the same subject matter

Laws on the same subject matter must be interpreted in reference to each other. (hereinafter "Art. 13")

The Louisiana Supreme Court, in *Montgomery v. City of Lafayette*, 154 La. 822, 98 So. 259 (1923), set the standards of statutory construction and review applicable to the issue:

A municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; those necessarily or fairly implied in or incident to the powers expressly granted; and, third, those essential to the declared object and purpose of the corporation, not simply convenient but indispensable. [citations omitted]

All fair and reasonable doubts concerning the existence of a power are to be resolved against a municipal corporation, and the power denied. [citations omitted]

In *Town of Pineville vs. Vandersypen*, 212 La. 521, 33 So.2d 56 (1947), the States Highest Court reaffirmed its position and set the standard of statutory construction and review of the powers which an instrumentality of the state has been legislatively granted:

Municipal corporations, being creatures of the legislature, possess only such powers as are granted to them by the legislature in express words, or those that are necessarily or fairly implied in or incident to the powers so expressly conferred. They also possess those that are essential to the accomplishment of the purposes and objects of the corporation. 37 Am. Jur. 722, § 112; 19 R.C.L. 768, § 75; 43 C.J. 176, § 174; and *Montgomery vs. City of Lafayette*, 154 La. 822, 98 So. 259, and the authorities therein cited.

THE ANALYSIS

First Step. Express Words of the Statutes

First, the enabling statutes must be viewed to determine the powers granted to each Port Authority in express words. Each statute in Title 34 for the respective inland Port Authorities commences with the establishment of specific geographical territories and

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limitations. The statutory titles are named accordingly¹. Read together with Article 6, Section 43 of the Louisiana Constitution, it is evident that the legislature's intent was to create Port Authorities to operate within specific geographical boundaries.

Furthermore, it is clear that the following are the specific Objects and Purposes for creating each of the Port Authorities:

- (i) to regulate traffic and commerce within each Port Authority's Jurisdictional Boundaries;
- (ii) to provide port, harbor and terminal facilities and services within each Port Authority's Jurisdictional Boundaries; and
- (iii) to tax within each Port Authority's Jurisdictional Boundaries.

By clear statutory dictate, these are the specific objects and purposes assigned to each Port Authority, restricted to the Jurisdictional Boundaries of each.

Second Step. Powers Necessarily or Fairly Implied

The second step in the analysis is to identify those powers and authorities that "are necessarily or fairly implied in or incident to the powers so expressly conferred." Port Authorities are unique in that they depend heavily upon maintenance of navigable waterways to achieve the operations of a port (the "Channel Maintenance Requirements"). The fact that the Channel Maintenance Requirements may include "necessary and incidental" port activities outside of a Port Authority's Jurisdictional Boundaries does not expand the Jurisdictional Boundaries or the right to indiscriminately provide port, harbor and terminal facilities and services outside those Jurisdictional Boundaries. The Objects and Purposes can only occur within the Jurisdiction Boundaries, however, as indicated by LCP, there are many other activities and actions which are "necessary and incidental" to the Objects and Purposes which must occur outside such Jurisdictional Boundaries.

Although the position can be taken that all these functions come under the "business of the port", the Port Authority system as created by statute does not allow for a bootstrapping of actions (those allowed within together with those allowed without) to posture that all activities included within the "business of the port" can occur everywhere, even beyond the Jurisdictional Boundaries of the Port Authority. For example, dredging and maintenance of navigable waterways providing access to a port and marketing around the world for shipping opportunities to or through port facilities located within its Jurisdictional Boundaries will necessarily occur where the navigable

¹ See LSA RS 34:2251. Creation of district, 2451. Creation of district, 2401. Creation of district, 2501. Creation of district, 201 Creation and territorial limits, 1701 Creation and territorial limits, 1351 Creation and territorial limit, 334.31 Creation and territorial limits, 241 Creation and territorial limits, 1601 Creation and territorial limits, 231 Creation and territorial limit, 335.1 Creation and territorial limits, 331.1 Creation and territorial limits, 334.1 Creation: territorial limits and 291 Creation: territorial limits and jurisdiction.

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waters flow and where the business opportunities originate. While these activities, "incidental to and necessary for" the operation of a port must be allowed to occur outside of the Jurisdictional Boundaries of a Port Authority, the provision of port, harbor and terminal facilities and services can only occur within the Jurisdictional Boundaries.

Third Step, Powers that are Essential and Indispensable

The third step in the analysis calls for consideration of those powers which are essential to the declared Objects and Purposes of the Port Authority, not simply those that are convenient, but only those that are indispensable. It simply cannot be argued with credibility that LCP's provision of port, terminal and harbor facilities and services outside of its Jurisdictional Boundaries is essential or indispensable to the declared Objects and Purposes of providing port, terminal and harbor facilities and services within its Jurisdictional Boundaries.

Again, the analysis starts with the enabling legislation for each Port Authority. When the statutory provisions are read together, the clear intent of the legislature was to create inland Port Authorities with specified geographical operating areas to serve the port, harbor and terminal needs within those Jurisdictional Boundaries. Next, the analysis should turn to the statutes governing the LCP to determine the particular powers and authorities granted to that body in fulfilling its Objects and Purposes as a port, harbor and terminal district and particularly, in this instance, the provisions concerning the acquisition of land.

To date, LCP has avoided the applicable statutes altogether, totally disregarding any jurisdictional boundaries imposed upon it, totally disregarding the statutorily prescribed Objects and Purposes, and selectively focusing on individual statutory provisions that, read in isolation and out of context with other applicable statutes, appear to support its legal position. Those selective provisions warrant extra scrutiny:

203 (b) It has all the rights, privilege, and immunities granted to corporations in Louisiana;

and

203 (c) (iii) It may acquire land necessary for the business of the district; . . .

The proper statutory construction would also require consideration and application of the following provisions in the LCP statutes selected for omission from the LCP Paper, but specifically addressing jurisdiction and acquisition of land:

§201. Creation and territorial limits

The Lake Charles Harbor and Terminal District is created as a political subdivision of the state and its territorial limits are fixed as follows:

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§203. Powers of Board; title to structures and facilities

(2)(c)(iv) It may acquire industrial plant sites and necessary property or appurtenance therefor, and it may acquire or construct industrial plant buildings with necessary machinery and equipment within the district;

§206. Acquisition of Lands

The Board may acquire by purchase, donation, expropriation, lease or otherwise, any and all lands in the district needed for railways, warehouses, docks, wharves, sheds, buildings, canals, channels, slips, basins and other facilities to be owned and operated by the board or to lease to others for manufacturing, commercial and business purposes to promote the industrial development of the district and may provide for the payment of such land out of the funds under its control not otherwise specially appropriated.

§207. Construction of Works of Public Improvement

The board may make or construct any of the works of public improvement in the district and anything in connection therewith that may be necessary or useful for the business of the board; it may purchase machinery, materials and equipment for performing such work, and supervise the making of the same, or make and construct such works through contracts with others; and generally it may do all other acts necessary or proper to carry out the powers hereby vested with regard to such works of public improvement.

§215 Powers and authority of district

(3) to acquire, by right of eminent domain purchase, lease, or otherwise, the land that may be necessary for the business of the district, including industrial plant sites and necessary property or appurtenances thereto, and to acquire or construct industrial plant buildings with necessary machinery and equipment within the district;

It is no surprise that for the second time, LCP excluded these provisions from its legal analysis. After considering all of the applicable statutes and applying Art 9, Art. 13, and the standards provided by *Montgomery*, supra and *Town of Pineville*, supra, there can be only one conclusion on the issue, that each respective Port Authority, including LCP, can render and/or provide port, harbor and terminal facilities and services only within its Jurisdictional Boundaries.

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LCP Statutory Construction Leads to Absurd Results

The extension of the analysis provided in the LCP Paper to other matters with respect to its powers and authorities will lead to equally absurd results. The LCP has the following general power to tax:

§203 (2)(c)(xiii) It may levy and collect taxes;

LCP also has the following power to acquire land:

§ 203 (2) (c) (iii) It may acquire land necessary for the business of the district;

If the LCP takes the position that it can acquire land outside of its district for any purpose, because the "within the district" language was not placed upon the power to acquire land, then surely we may be able to expect the levy and collection of taxes by the LCP throughout the Parish of Cameron, the State of Louisiana, and even maybe in Mexico, Canada and the Far East, for that matter. However, if § 203(2)(c)(xiii) is read together with the more specific statutory provision on the issue, §209, the absurd consequences would not occur. LSA RS 34:209 provides in pertinent part that:

The board may, when necessary, levy annually an ad valorem tax not to exceed two and one-half mills on the dollar on the property subject to taxation situated in the district.

When §203 (2)(c)(xiii) is read together with §209, it is clear and unambiguous that the LCP can only tax property within its territorial jurisdiction. When §203 (c)(iii) is read together with §201, §203 (2) (c) (iv), §206, §207 and 215, it is clear and unambiguous that LCP can only acquire property within its Jurisdictional Boundaries for purposes of providing and rendering port, harbor and terminal facilities and services. To read §203 (c)(iii) in isolation and out of context with other applicable provisions leads to the absurd position that creation of Jurisdictional Boundaries applies only to ability and power to tax and that no import should be given to §203 (2) (c) (iv), §206, §207 and 215 and their limitations on the use of property acquired by LCP.

The thrust of LCP's position is that it is bigger, stronger and more powerful than Cameron. In an effort to further this message, LCP focuses on its own "corporate like" powers asserting that Cameron is not afforded such statutory power. It is a misrepresentation of the status of the parties. LCP has apparently chosen to ignore the clear provision of L.S.A. R.S. 34:2551, which specifically states that Cameron "is hereby created as a political subdivision of the state, with full corporate powers." Thus LCP's attempts to create a superior position for itself and an inference that a broad grant of authority has been provided only to it by the legislature is erroneous under any reasonable interpretation of the law.

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The Louisiana Supreme Court in *City of Shreveport vs. Southwest Gas and Electric Co. et al* 92 S. 365 (LA 1922) aptly addressed the scope of authority which should be applied to the grant of corporate powers as follows:

In reading the city charter for ascertaining whether it confers this power we are to bear in mind that grants of power to a city beyond those necessary for its properly functioning as a municipality are construed strictly, and that any reasonable doubt is resolved against the corporation, 28 Cyc. 265.

'The Legislature of a state, merely by establishing a municipal corporation, does not delegate to such corporation the right to exercise all the governmental powers of the state within its territorial limits, or even such powers as are commonly exercised by a municipal corporation of the same class. It is well settled that a municipal corporation has only such powers as are clearly and unmistakably granted to it by its charter or by other acts of the Legislature, and consequently can exercise no powers not expressly granted to it, except those which are necessarily implied or incident to the powers expressly granted and those which are indispensable to the declared objects and purposes of the corporation. Any fair and reasonable doubt concerning the existence of the power, or any ambiguity in the statute upon which the assertion of the power rests, is to be resolved against the corporation and the power denied.' 19 R. C. L. 768.

This analysis must be applied to political subdivisions which are created with Jurisdictional Boundaries and declared Objects and Purposes. Again, the Objects and Purposes of each Port Authority are to (i) regulate commerce and traffic in the District, (ii) levy and collect taxes in the district and (iii) provide port, harbor and terminal facilities and services in the District, no more, no less. The granting of "corporate like" powers does not, in and of itself, expand the Object and Purposes or the Jurisdictional Boundaries.

The LCP Paper espouses a statutory construction theory that general statutes control over specific. It further espouses a practice of ignoring specific statutes when their specific statutory intent is contrary to LCP's position. In fact, the theories of statutory construction sought to be applied by LCP tend to mirror the dissent in the *Hospital Service District No. 2* case, the only legal precedent on an analogous issue². In *Hospital Service District No. 2*, supra, the intruding Terrebonne District had available to it a vehicle to implement the operation of a hospital in Lafourche District, it could do so with the consent of Lafourche. Similarly in this instance, LCP has a vehicle

² In *Hospital Service District of the Parish of Lafourche dba St. Anne General Hospital vs. Hospital Service District No. 1 of the Parish of Terrebonne*, 716 So. 2d 168 (La. App., 1st Cir., 1998), the Terrebonne Hospital District opened a hospital within the jurisdiction of the Lafourche Parish District. The Lafourche Parish District filed suit to stop such extra-jurisdictional activity and prevailed in a two to one decision. The case was discussed at length in the previous submission by Cameron.

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available to it to legally conduct operations outside of its jurisdictional boundaries and within the jurisdictional boundaries of Cameron, namely the execution of a cooperative agreement between the two ports in accordance with LSA. R.S. 33:1324. LCP chose not to consider or pursue such vehicle when it purchased the land; LCP chose not to avail itself of such vehicle when it entered into agreements to do the Sempra Project, and it apparently has again chosen not to consider this vehicle at this time to resolve its current problem. Like the Terrebonne situation, if litigation is necessary to resolve this issue, CAMERON believes and asserts that the actions and positions of LCP will be pronounced illegal, thus jeopardizing the Sempra Project. LCP's current position, which CAMERON contends is without legal authority, can only be legitimized by a cooperative agreement between the two ports. Only a cooperative agreement with CAMERON, the only party with the clear authority to act as LCP has, can legally resolve this exposure and safeguard the project. CAMERON has always been amenable to entering into such a cooperative agreement which is economically fair to both ports.

With kindest wishes, I remain

With kindest regards, I am

Very truly yours,



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RKT:jbc

cc: Michael K. Dees, General Counsel, Lake Charles Harbor and Terminal District
via email

Terry Hessick, *via email*

West Cameron Port Commission

TIMELINE

December 7, 2005 - West Cameron filed suit in Louisiana State District Court with respect to jurisdictional issues related to the Cameron LNG/Sempra project (the "State Court Suit")

December 20, 2005 - LC Port requested informal extension of time until January 27, 2006 within which to file responsive pleadings in the State Court Suit, which request was immediately granted by West Cameron.

January 23, 2006 - LC Port, in executive session on the evening of January 23, 2006 approved filing of Federal Maritime Complaint against West Cameron (the "Federal Maritime Complaint").

January 24, 2006 - An article appeared on the front page of the American Press which reported quotes from the Federal Maritime Complaint (See Exhibit "A") with the heading "**LC PORT BOARD Board: Terminal Shipping fee illegal**" and stating:

"The complaint raises the stakes in a legal battle between the two ports centered around a liquefied natural gas terminal in Cameron Parish being built by San Diego-based Sempra Energy."

January 24, 2006 The above referenced article in the American Press was the first notice that West Cameron received that West Cameron was alleged to be assessing a fee against vessels for use of the Calcasieu Ship Channel, that it had made any threats with respect thereto or that such threats would scare away potential investors on the Channel. Until this newspaper article, West Cameron received no notice, demand, inquiry, objection, cease and desists, or other indication, directly or indirectly from LC Port or otherwise with respect to the allegations in the Federal Maritime Complaint.

January 24, 2006 - LC Port files Federal Maritime Complaint

January 30, 2006 - LC Port filed the contractual documents evidencing the arrangements dated **December 31, 2002** with Cameron LNG/Sempra along with applicable amending documents.

February 3, 2006 - LC Port files Amended Complaint

February 15, 2006 - Federal Maritime Commission posted to LC Port a letter providing that, based upon representations of facts by counsel for LC Port, Cameron LNG was not an MTO and that LNG vessels were

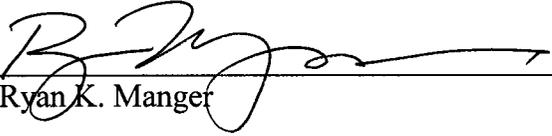


not "common carriers" and that the agreements were not subject to Federal Maritime Commission jurisdiction.

- February 16, 2006** - West Cameron filed its Motion to Dismiss the Federal Maritime Complaint
- March 3, 2006** - West Cameron filed a Motion to Stay Discovery pending ruling on Motion to Dismiss
- March 6, 2006** - LC Port filed Motion to Compel responses to outstanding discovery
- March 6, 2006** - LC Port files its Reply in Opposition to Motion to Dismiss
- March 15, 2006** - West Cameron obtains copies of proposed legislation on behalf of LC Port which would have the effect of retroactively legislating out all claims by West Cameron in the State Court Suit (the "Proposed Legislation").
- March 16, 2006** - Federal Maritime Commission issues order requiring West Cameron to respond to pending discovery, deferring ruling on Motion to Dismiss and setting deadline of April 10, 2006 for supplemental briefing.
- March 17, 2006** - Cameron Parish Police Jury posted notice of a meeting for the evening of March 20, 2006 for public discussion on the Proposed Legislation.
- March 20, 2006** - On the afternoon of the public meeting called by the Cameron Parish Police Jury to discuss publicly an opposition to the Legislation, LC Port filed in the Federal Maritime Proceeding the following:
1. Reply in Opposition to Motion to Stay (**which had already been ruled upon by the Federal Maritime Commission**)
 2. Motion for Partial Summary Judgment (**without request for specific relief**)
 3. Motion for Reduction of Time to Respond to Motion for Summary Judgment to **five days**.
- March 20, 2006** - Police Jury meeting where all political bodies in Cameron Parish unanimously opposed the Proposed Legislation.
- March 29, 2006** - West Cameron timely provided responses to discovery.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Reply to West Cameron Supplemental Brief has been served upon all parties of record by email this 13th day of April, 2006.


Ryan K. Manger