

SUPREME COURT OF THE  
STATE OF LOUISIANA

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DOCKET NO: \_\_\_\_\_

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STEVE CROOKS AND ERA LEA CROOKS

VERSUS

THE STATE OF LOUISIANA, DEPARTMENT OF NATURAL RESOURCES

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A CIVIL ACTION

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**CONSERVATIONISTS'  
AMICUS CURIAE BRIEF  
IN SUPPORT OF WRIT APPLICATION**

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**ON BEHALF OF  
LOUISIANA WILDLIFE FEDERATION,  
BACKCOUNTRY HUNTERS & ANGLERS,  
And  
DELTA WATERFOWL FOUNDATION**

THIRD CIRCUIT COURT OF APPEAL  
DOCKET NUMBER 17-750-CA  
THE HONORABLE JOHN D. SAUNDERS, MARC T. AMY, AND D. KENT SAVOIE,  
PRESIDING

NINTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 224,262  
HONORABLE JAMES HUGH BODDIE, JR., PRESIDING

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Respectfully submitted,

BALDWIN, HASPEL, BURKE & MAYER, LLC

BY:



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## **INTRODUCTION**

The undersigned amici curiae file this brief in order to ensure that this Honorable Court possesses the proper context when reviewing the State of Louisiana’s Writ Application. This brief will not duplicate the substantive arguments being offered by the Applicant and is deliberately concise to respect the Court and to avoid burdening its staff and facilities. Should this Court grant the Writ Application and agree to hear this case, the Amici intend to fully cover the substantive gaps that may be left between the additional briefs, but at this stage we simply seek to inform the Court that there are thousands of individuals and organizations outside of the parties to this underlying action who are concerned with the potential implications of the Third Circuit’s decision and are looking to the Louisiana Supreme Court to provide clarification. The undersigned organizations do not seek to involve themselves in the underling property dispute, their interest is solely in the protection of the natural resources of Catahoula and in the public’s rights to access those natural resources.

This case has implications beyond property lines, beyond jurisprudential formulas for categorizing waterbodies, and beyond the various parties’ interest in the property or payments in question. There are many ripe, nuanced, and intriguing legal questions presented by this matter, which this Court can and should wrestle with, but this Court should do so without losing sight of the context in which this property dispute rests. Catahoula Lake is an ecosystem unlike any other in Louisiana and its import has been internationally recognized. It serves as a critical piece of the Mississippi Flyway for hundreds of species of migratory birds (game birds and not), it is one of the final frontiers of publically-accessible land for hunters in central Louisiana, and its history as a haven for hunters, anglers, boaters, bird watchers, and outdoorsmen and women (boasting visitation numbers in the tens of thousands each year)<sup>1</sup> makes it a cornerstone of Louisiana’s Sportsmen’s Paradise brand. Catahoula Lake has been called “the most important inland wetland for water birds and shorebirds in Louisiana.”<sup>2</sup> As such, it has been managed and improved for decades with public funds, as a public trust asset, and for the benefit of natural resources for their

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<sup>1</sup> Louisiana Department of Wildlife and Fisheries, Information Sheet on Ramsar Wetlands (2004), Available at <https://rsis.ramsar.org/RISapp/files/RISrep/US523RIS> (last visited Jan. 27, 2019).

<sup>2</sup> U.S. Fish and Wildlife Service: Wetlands of International Important; <https://www.fws.gov/refuges/whm/ramsar.html> (last visited Jan. 27, 2019).

own sake. The Third Circuit Court of Appeal's 2018 judgment privatizes Catahoula Lake, which jeopardizes the sustainability of an entire chain of ecosystems that form the Mississippi flyway, harms thousands of Louisianans and visitors who have enjoyed Catahoula Lake, and undercuts every taxpayer's investment in the natural resources of this state.

### **IDENTIFICATION OF AMICI CURIAE**

**Louisiana Wildlife Federation ("LWF")** is a statewide, non-profit conservation, education and advocacy organization dedicated to conserving Louisiana's natural resources and the citizens' rights to enjoy them. For 79 years, LWF has been advocating for the mission to restore, preserve, develop and increase the birds, fish, game, forestry, wild flowers and other wildlife resources of the State of Louisiana. As a federation, LWF's membership includes nearly 7,000 members and the following 22 separate state and local organizations:

Acadiana Sportsman's League	Lake Pontchartrain Basin Foundation
Louisiana Chapter of Safari Club International	Louisiana Association of Professional Biologists
American Sportsman Against Poachers (ASAP)	Louisiana Ornithological Society
Avoyelles Wildlife Federation	Louisiana Trappers & Alligator Hunters Association
Baton Rouge Audubon Society	New Orleans Power Squadron
Bayou Chapter of the Ozark Society	Orleans Audubon Society
East Ascension Sportsman's League	Rapides Wildlife Association
Friends of Black Bayou Lake NWR	Shreveport Society for Nature Study – Bird Study Group
Friends of Red River NWR	Toledo Bend Lake Association
Friends of Grand Isle	Woodlands Conservancy
Friends of the Atchafalaya	

Thus, LWF represents a broad constituency of Louisiana hunters, anglers, campers, birders, hikers, boaters and other outdoor-oriented citizens. LWF has individual members who have previously enjoyed the aesthetic and recreational offerings of Catahoula Lake and hope to continue doing so in the future. The proper management of natural resources such as Catahoula Lake, the wildlife that relies on it, and the citizenry's right to access and enjoy those natural resources are of paramount importance to LWF and to the future of Louisiana.

**Backcountry Hunters & Anglers ("BHA")** is a non-profit organization whose seeks to ensure North Americas' outdoor heritage of hunting and fishing in a natural setting, through education and work on behalf of wild public lands and waters. In all, BHA, North America's fastest growing sportsman's organization, has over 30,000 members with chapters in 39 states and 2

Canadian provinces, and nearly 1,200 members in its Southeast Chapter, which includes Louisiana. BHA has individual members who have previously enjoyed the aesthetic and recreational offerings of Catahoula Lake and hope to continue doing so in the future. BHA recognizes that the freedom to hunt and fish depends on available, accessible and viable habitat.

**Delta Waterfowl Foundation (“Delta”)** is an international waterfowl conservation and waterfowl hunting non-profit organization that traces its roots to 1911. Delta has 25 volunteer chapters and 6,500 members in Louisiana and 60,000 members across the United States and Canada. Delta has long standing as a leader in waterfowl research and is an advocate for both ducks and duck hunters. As Catahoula Lake is a wetland resource of international significance and as it provides substantial public hunting opportunities for waterfowl hunters, its future is an important issue for Delta’s members and mission.

The foregoing amici curiae will be hereinafter referred to as the “Conservationist Amici” or “Conservationists.”

### **CONSIDERATIONS SUPPORTING ISSUANCE OF A WRIT**

As is substantively addressed by the State of Louisiana, the Third Circuit Court of Appeal’s December 28, 2018 judgment presents numerous considerations supporting the issuance of the writ. However, in an effort to limit the scope of this brief to those particular legal errors and factual misunderstandings most relevant to this Amicus Brief, Conservationists submit that the following grounds exist under Rules of Supreme Court of Louisiana, Rule X, §1(a) for the granting of this writ: that the Louisiana Third Circuit’s sanctioning of the misapplication of *State v. Placid Oil Co.*, 300 So.2d 154 (La. 1974) and this Court’s consistent jurisprudence setting out an objective framework for defining bodies of water, which constitutes either a **conflicting decision with the this Court**,<sup>3</sup> or an **erroneous interpretation of the law of this state**.<sup>4</sup>

For decades, courts around the state have been compelled to follow this Court’s prior pronouncements when attempting to define a particular body of water as either a river or a lake. The Louisiana Third Circuit’s decision is a sidestep of those judicious methods outlined by this Court and should not be allowed to stand.

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<sup>3</sup> La. Sup. Ct. R. X, §1(a)(1).

<sup>4</sup> La. Sup. Ct. R. X, §1(a)(4).

## **ARGUMENT**

### **1. The Third Circuit’s Decision Risks Upending Decades of Investment in Publicly-Accessible Habitat That Was Consistently Managed for the Betterment of the Whole Ecosystem.**

It is clear from the trial court and the Louisiana Third Circuit’s decisions that there is a general acknowledgment that Catahoula Lake is exceptional. In fact, the court stated “[t]he unique characteristics of Catahoula Lake and indeed the Basin itself cannot be overemphasized since it is truly a ‘one of a kind,’ geographic area.”<sup>5</sup> However, that recognition seems to begin and end with what Catahoula Lake *is* in a physical, geomorphological or hydrological sense. Those qualities of Catahoula Lake are indeed unique and definitely relevant to the “river v. lake” consideration, but what the Third Circuit either glosses over or completely ignores is what Catahoula Lake *means* to the people of Louisiana and to the natural resources that depend on the ecosystem being managed in a comprehensive and competent manner.

The record is clear that Catahoula Lake has been enjoyed by outdoor enthusiasts as a public asset and conduit to this state’s immense natural resources for generations prior to this litigation. The potential loss of the public’s use of this habitat is offensive enough to merit this brief. But what is more, for decades, at least since 1969, the Catahoula Lake complex has been managed by both federal and state agencies, using public funds, for the benefit of the hundreds of species that call it home and use it as a key rest stop. Even if a single angler, hunter, or birdwatcher was never again authorized to publicly-access Catahoula Lake, the risk of threatening the decades of cohesive management in the public’s and the habitat’s best interest may be the most consequential result of this decision. Left to the whims of a handful of newly-designated, individual property owners, Catahoula Lake could quickly deteriorate as a critical habitat, which could reverberate far beyond the lake itself and could undermine the sustainability of the migratory path of too many species to name.

Article IX, § 1 of the Louisiana Constitution establishes the backbeat of all matters related to natural resources and states that “[t]he natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected,

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<sup>5</sup> *Crooks v. Dep’t of Nat. Res.*, 2017-750 (La. App. 3 Cir. 12/28/18).

conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.” These principles have been employed for decades on Catahoula Lake, but the Third Circuit’s decisions risks upending that investment in the natural resources of this state. In recognition of the management efforts and importance of the habitat, Catahoula Lake has been designated as a “Globally Important Bird Area” and is recognized as a “Wetland of International Importance” under the international treaty for the conservation and sustainable use of wetlands known as the Ramsar Convention.<sup>6</sup>

For the members of the undersigned organizations, the stakes are much higher than a simple property dispute. The immense natural resources that we seek to protect, access, enjoy and sustain rest in the balance.

## **2. The Third Circuit Court’s Analysis, Regardless of the Ultimate Outcome, Leaves the Long-Term Management of Catahoula Lake in Flux.**

The needle threaded by the trial court and upheld by the Third Circuit followed an impressive and nuanced path to the ultimate findings that Catahoula Lake was actually the flooded banks of the Little River and that the Plaintiffs were entitled to compensation for the inverse condemnation of their land. However, the impact of this decision on the habitat’s future management and the wildlife and resources that depend on it is as murky as the waterbody in question.

As recounted by the Third Circuit, “[f]irst, the trial court concluded that, in 1812, the area known as Catahoula Lake constituted the banks of Little River. Therefore, the trial court declared the Lake Plaintiffs to be the **owners of the area known as Catahoula Lake** according to Louisiana’s laws of riparian ownership.”<sup>7</sup> (Emphasis added.) However, the court also found that the United States inversely condemned the Plaintiffs’ land and the State is now responsible to compensate the Plaintiffs under merged theories of takings, damaging and continuous torts. Thus, the decision possesses an internal inconsistency in relation to the final impact of the court’s ruling. If the waterbody is a river, and the riparian owners own to the ordinary low-water mark, and the periodic overflow of that land constitutes a continuing tort of inverse condemnation by the federal

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<sup>6</sup> “Convention on Wetlands of International Importance especially as Waterfowl Habitat,” Ramsar (Iran), 2 February 1971. UN Treaty Series No. 14583. As amended by the Paris Protocol, 3 December 1982, and Regina Amendments, 28 May 1987.

<sup>7</sup> *Crooks v. Dep’t. of Nat. Res.*, 2017-750, 2018 WL 6816853 (La. App. 3 Cir. 12/28/18).



government, to be paid for by the State, then who is the owner today? Attempting to write the prior sentence was difficult, but conceptualizing the court's ruling is more so.

From the Conservationists' perspective, it matters very little whether the actions of the State of Louisiana or federal government resulted in a compensable taking, instead, it matters who has the right to manage the habitat moving forward, and for whose or what's benefit. Multiple grounds exist to reverse the lower court's decision, but at a minimum, this Court's review and guidance is necessary to clarify how the management of the waterbody will continue (or not) after a final decision.

A more specific example of the confusion created by the trial court's decision requires going one step beyond the decision of whether Catahoula Lake is a river or a lake. Assuming *arguendo* that the decision remains in place, the Plaintiffs would own to the ordinary low-water mark of the alleged underlying river, and the State would own the bottom of the river. In fact, in its Written Reasons for Judgement, the trial court found just that. "The State still holds in its sovereign capacity all the land below the ordinary low-water mark."<sup>8</sup> But the court failed to take the next step of actually defining the contours and thus the location of the river or channel that remained owned in the state's sovereign capacity. If this Court denies writs or otherwise extends a blanket affirmation of the decision below, the state, federal government and the thousands of outdoorsmen and women, many of whom are members of the undersigned organizations, would be left wondering what was private and what was public. Seemingly some portion of the waterbody formerly known as Catahoula Lake (in this hypothetical) would remain publically accessible, but the lack of clarity in the trial court's decision destines the interested parties for years of trespass suits, declaratory actions and potential on-the-water confrontations. As the suit currently stands, it is unclear if the Plaintiffs would be authorized to take actions that would be inconsistent with management best practices or with public access. For instance, can the plaintiffs fence in their newly-designated property? If so, where will the fences begin and end? The current decision by the Third Circuit leaves far too many open questions about the future of Catahoula Lake, which

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<sup>8</sup> R. 2564.

would not only be damaging to the parties involved, but it would also harm all Louisiana taxpayers and could be detrimental to the sustainability of the habitat.

As reiterated throughout this brief, the long-term management of the Catahoula Lake ecosystem must be placed into consideration. Regardless of whether the Plaintiffs own or owned parts or all of Catahoula Lake and are due a large sum of money from the government's uncompensated taking, any outcome should address what will become of this critical habitat, and this Honorable Court should help ensure the continued management for the benefit of wildlife, fisheries, and the women and men who have relied on this public trust asset for generations.

### **3. The Third Circuit's Misapplication of the *Placid Oil* Factors Creates Confusion and Risks Inconsistent Applications Across the State.**

Although this brief acknowledges reversible errors in the lower courts decisions, it is necessary to be clear that the undersigned amici do not file this brief to involve themselves in the particulars of the property ownership dispute in and around Catahoula Lake. As has been previously discussed, the Conservationists seek to reorient this Court's focus to the potential impact of this decision on important natural resources and the citizens who depend on continued public access thereto. Implicit in these caveats is the fact that the **preservation of Catahoula Lake** as a publically-accessible ecosystem, **managed for the benefit of the natural resources** for their own sake and for the general public authorized to enjoy them, **can and should be the outcome of this case regardless of whether the Crooks or the State end up as winner, loser, or in a draw.**

The ultimate outcome of this case obviously turns on the legal definition of whether Catahoula Lake is a river or a lake. On this point, the Conservationists must take a brief detour into the fight over that legal definition. As this Court is aware, and as will be discussed *ad nauseam* in the additional briefs, *State v. Placid Oil Co.*, was established by this Court as the multifactor<sup>9</sup> test for determining whether a waterbody is a lake or river under the Louisiana Civil Code and the interpreting jurisprudence. In so doing, this Court brought a level of objectivity and an evidentiary set of checks and balances to be applied uniformly across the state to a legal analysis that is

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<sup>9</sup> (1) Size, especially its width as compared to the streams that enter it; (2) Depth; (3) Banks; (4) Channel; (5) Current, especially as compared to that of streams that enter it; and (6) Historical Designation.

otherwise subjective. For decades now, attorneys, judges, and juries have wrestled with those factors and applied them to coastal and inland waterbodies across the state.

However, the trial court quickly brushed *Placid Oil* aside and charted its own course towards defining Catahoula Lake. In its written reasons, the trial court stated:

[I]n this court's view, *Placid Oil*, does not nor was it ever intended to apply to mere temporary bodies of water created when a river seasonally overflows its channel. In view of extensive and exhaustive research into Louisiana jurisprudence, the court is convinced that no such jurisprudence exists holding that a temporary body of water can legally be classified as a lake. Nor has any party to this litigation come forward with any such case. Thus, the court is convinced that the factors in that decision [were] intended to address permanent bodies of water – not temporary ones.<sup>10</sup>

Upon review, the Third Circuit found “we cannot say that the trial court was manifestly erroneous in finding that, in 1812, the area in contention was “a permanent river that seasonally overflowed and covered its banks.”<sup>11</sup> The accuracy of that finding will likely be addressed in detail, by the State’s merits brief (should this Court grant writs), but what is more striking is that the Third Circuit does not address the trial court’s sidestep of *Placid Oil*, which could reverberate beyond the acreage at issue. Nowhere in this Court’s *Placid Oil* decision are the applicable factors limited as the trial court suggests. With the objective *Placid Oil* factors out of the way, the trial court instead reviewed the “widely divergent views among the plaintiffs’ and defendant’s experts on the determinative issue ... whether the so-called Catahoula Lake is a river or a lake...”<sup>12</sup> and chose these opinion of the Plaintiffs’ experts over the Defendant’s. This diversion from established precedent should not be allowed.

With all due respect to the capable and credentialed experts qualified to testify in Louisiana as to the definition of a waterbody, that definition is a legal one, which necessitates the application of legal principles in addition to the factual and scientific opinion of the experts. This legal definition should not be a simple battle of the experts without an objective and reviewable set of factors to fit that testimony into. Given the level of deference bestowed upon trial courts regarding witness credibility determinations, the procedure employed by the trial court herein grants immense power over the map of Louisiana to a particular expert’s ability to present convincing

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<sup>10</sup> *Crooks v. Dep’t of Nat. Res.*, 2017-750, 2018 WL 6816853 (La. App. 3 Cir. 12/28/18)).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* At 21.

testimony to a trial judge. That trial judge's decision then becomes subject to a heightened standard of review over the credibility determination of a particular witness, rather than providing appellate courts the opportunity to compare the trial judge's decisions to clear, statewide factors. The trial judge's procedure is furthermore ripe for manipulation by the more financially-supported litigant and runs a significant risk of having inconsistent standards for defining waterbodies across judicial districts.

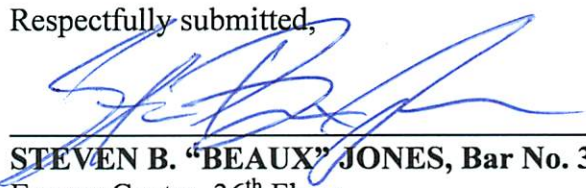
In addition to the importance of this particular habitat, locally and internationally, it is important for this Court to consider the time and context in which it is being asked to review this case. Coastal Louisiana is in a race against time, sea level rise, and subsidence. As this state continues to lose land to water, all three branches of government will be faced with immense challenges to adapt. Undoubtedly, Louisiana courts will be asked in the near future to decide important legal questions about the ownership and classification of new and modified coastal waterbodies. These decisions will have a significant impact on the future of recreation, restoration, and the economy in coastal Louisiana. Thus, it is vitally important that our legal system preserves and develops fair and objective tests for navigating our dynamic and fluid geomorphology. The Third Circuit's tacit allowance of the trial court's unfounded dodge of *Placid Oil* is a step in the wrong direction.

### **CONCLUSION**

This Honorable Court should grant the State's Writ Application and docket the case for briefing and oral argument. This case satisfies the Court's Writ Grant Considerations contained in Rule X, § 1(a): in that the Third Circuit's decision conflicts with prior decisions of this Court and amounts to an erroneous interpretation of the law of this state. This Court's wisdom and guidance is further necessitated by the potential consequences of this decision on a priceless natural resource asset that should be held and managed in the public trust. Finally, even if the Third Circuit's definition of Catahoula Lake is left unchanged, this Court should exercise its supervisory authority to order the lower courts to clarify the outcome of that decision on the management and boundaries of the Catahoula Lake.

For the foregoing reasons, this Honorable Court should grant the writ application and docket this case for briefing and oral argument.

Respectfully submitted,



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**VERIFICATION OF SERVICE**

**STATE OF LOUISIANA**

**PARISH OF ORLEANS**

**BEFORE ME**, the undersigned notary, personally came and appeared:

STEVEN B. "BEAUX" JONES

who deposed and said that he is the attorney for the Louisiana Wildlife Federation, Backcountry Hunters & Anglers, and Delta Waterfowl Foundation; that the allegations contained in this Amicus Brief In Support of Writ are true and correct; and that copies of this Amicus Brief In Support of Writ has been served upon the following via U.S. Mail, properly addressed, this 28<sup>th</sup> day of January, 2019.

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