

**IN THE MATTER OF:
MEMBERS OF A CLASS OF
DESCENDANTS OF THE
FORMER OWNERS OF
CHENIERE RONQUILLO**

VERSUS

*** NO. 2001-CA-1548
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA**

*** * * * ***

MCKAY, J. DISSENTS WITH REASONS

I agree with the majority that the pivotal issue in this case is whether the State’s claim to the disputed lands deriving from the Swamp Land Act of 1849 can be characterized as an expropriation. However, I disagree with the majority’s conclusion that the acquisition of the disputed lands by the State from the government of the United States can in no way be considered an expropriation under any definition of the term. The fact that the State acquired the lands from the federal government through the actions of federal officials pursuant to an act of Congress does not change the nature of what happened, i.e. the taking of private property by the government for a public purpose.

Under Louisiana law, “expropriation,” which is the civil law equivalent of the common law concept of “eminent domain,” is the power of

the sovereign to take property for public use without the owner's consent. Mongrue v. Monsanto Co., 249 F.3d 422 (5th Cir. 2001). The power of expropriation is inherent in all government, coming into being *eo instante* with the establishment of government and continuing as long as government endures, and does not require recognition by constitutional provision. Tennessee Gas Transmission Co. v. Violet Trapping Co., 248 La. 49, 176 So.2d 425 (La. 1965), cert. denied, 86 S.Ct. 236, 382 U.S. 902, 15 L.Ed.2d 155 (1965). Accordingly, I believe that the acquisition of the disputed lands by the State from the government of the United States was indeed an expropriation. As such, I would reverse the trial court's granting of the exceptions of no right of action and no cause of action on those grounds. That being said the trial court would have to determine who would be the proper parties to bring this action.