March 8, 2016

Chairman Schmidt and Honorable Representatives & Senators:

I am Paul Mathews a landowner residing in southeast ND.

Today, I hope to enlighten the Committee from a landowner's view. In 2008, I was subject to a condemnation action on property where I live in rural ND. That action was not from a Water District board, but a pipeline company. It may seem to you that today's topic where a water project's need is much different, but for me, I can see many similarities in the mind of a property owner targeted by condemnation.

First, I am not here to speak on seeking demise to a water district's ability to use eminent domain.

Rather to me, the topic is whether water districts should be blessed with unrestrained quick take powers. It is my guess that legislators have not experienced a condemnation action which they could personally relate to. Therefore for you to begin a serious consideration of a landowner's perspective, you might find my input valuable. You have already heard from groups or advocates of keeping existing interpretation (of maybe expansion of) of the current eminent domain powers to include quick take. But the small group I belong to certainly doesn't have such an organized voice. In a sense, we are expecting our Legislators to be our voice.

Though proponent's position may on the surface appear to be from a "public" platform, you might recall the water district members are not an elected body, but are appointed with seemingly no oversight after the appointment other than what a Court may impose upon them. That is an important distinction here to grasp as we consider what powers of eminent domain convey upon condemners. The water district's powerful decision may be invoked by as few as two members in agreement where a three member board exists. I believe that many water board members are truly honorable with all their intentions; but we should also assume this honorability is not valid 100% of the time on all events. When society blesses unelected, unsupervised agents of the public with eminent domain powers, I believe it is your role now to dictate if some specific restrictions within law need to be inserted to insure a public taking remains fair to its citizens who might have to face the challenge of losing their property for public need.

Second, there seems to be this idea that landowners have a lot of power in deciding the fate and fairness in a condemnation action. The reality is just the opposite. I would guess each of you would state that you are strong proponents and protectors of private property rights. There is hardly a more threatening component to owning property than to have someone take it away from you against your will. Your study of the subject may retell of the Constitutional guarantees of fair compensation for the public need.

An in depth look at fair compensation would seem elementary as just to make adjacent land sales be a guide to establish a "fair" per acre price. It is not that easy. Here I can offer myself as prime example of how a current board's corridor can later increase the landowner's burden beyond most anyone's imagination at a time of signing an easement. Last year in a lawsuit action against me, my water board tried to turn an easement document into ownership of a drain corridor. The few hundred dollars of "fair" compensation paid in 1918 really is pale in comparison to the thousands of dollars of legal fees spent to have the ND Supreme Court stop this 2015 water board's aggressive misguided behavior. This real life example is one where if the easement didn't exist on the land, I would not have had to defend it. Fair compensation for an easement truly can instead be a very difficult number to compile in an amicable fashion as many unforeseen variables can exist in real life. Fair negotiating tactics should and must occur without threatening behaviors being used.

So take a minute to consider "fair compensation." Would it not be the value established where a willing seller / willing buyer negotiate to a conclusion of back and forth offers? Taking this example into a condemnation action, we can now eliminate the "willing seller" component and ultimately there is only one willing buyer bidding. Not only that facet, but since the one willing buyer, who has eminent domain powers, can unilaterally decide when to quit negotiating. In a sense, the condemner has decided alone what it deems reasonable. Trained agents for condemners know of this leverage and use this to their advantage with routine success.

Why is there success? Again your study of this topic will include the idea landowners can seek a Court to intercept unreasonable offers and the public may have to pay for landowners legal costs. Okay, we need to take this idea in steps again in order to realize whether a landowner right is hindered here too. While this reimbursement of legal costs is stipulated, the wording "may "appears. Landowners who start this avenue to secure a lawyer's help will have to pay fees until the conclusion of the trial. They will have no idea what amount the Court may decide is reasonable legal costs. Now in most cases today we are talking about a small fraction of the landowners parcel, maybe as few as 5 acres, and therefore for discussion purposes, say the District's offer is $5,000. From my experience, qualified legal representation to take the issue to trial will far exceed that amount plus all the landowner's time and emotional stress that are going to strain the landowner's life in wait of trial's end.

We may resort to the belief that this is merely the "cost" of being a landowner. But also consider these targeted landowners may be young beginner farmers with debt burdens or a senior citizen living off a fixed rental income. Can you now envision this type of landowner pursuing a condemnation trial to seek fairness? Hence, the idea that laws indicating that a landowner has a right to seek the Court's intervention to insure a fair review of the facts is currently not how most of North Dakota lives. Again experienced condemners know of this advantage and use it routinely. There might be times the condemner might not even realize their negotiating posture is viewed by the landowner as being a "bully," but when ever does a bully realize that vice of themselves?

Hopefully you understand this first problem, then maybe realizing how "quick take" can make the landowners situation become truly a horrible one. Consider a situation where the landowner has mustered enough strength and resolve to have a Court trial and the Court finds a much larger compensation award (so much so the route should have been altered) or even the public purpose for the corridor fails in the Court's opinion. If quick take provided the entity the ability to build the facility before trial, the property has already been damaged and forever scarred. Most all the objections the landowner considered so strongly to have the Court review are muted by that the facility was being built anyway and which would not have occurred without quick take powers.

In conclusion, it may be the reality that some public projects would be delayed a short period of time. But I believe a short and important interlude to let the landowner have their day in Court before the public taking is an important feature to remain in our state's law to protect private property rights. Eminent domain abuse can and does happen as I was a victim of. My condemner did not have quick take powers in 2008 which allowed for a period of fairer negogiations transpiring. I believe keeping quick take powers controlled by a specific need or emergency situation is an important public concept to adhere to. Now is your opportunity to demonstrate your belief to uphold private property rights.

Thank you for your attention and I would be pleased to answer your questions.

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