

2011 HOUSE ENERGY AND NATURAL RESOURCES

HCR 3007

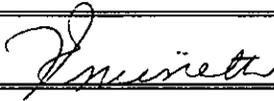
## 2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee  
Pioneer Room, State Capitol

HCR 3007  
01/28/2011  
13645

Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will open the hearing HCR 3007.

Rep. Amerman: I represent district 26 I am here today to introduce this bill today. This is a study that was brought forth last session. It passed the House Floor without any trouble but where we ran into trouble with it was the lower house the Senate. We decided to bring it back. The Keystone Pipeline came through prior to the last session. Some of the landowners didn't think negotiations were done like they should have been. If there is a study I hope you get the PSC, the landowners and the pipeline people to sit down and hear some testimony. I hope it is not the point of eminent domain I hope they would study the process as it first starts when a pipeline first wants to come through. We have 52 counties that have natural gas so we will see lots of pipelines. Eminent domain is probably necessary but it is such hammer so this needs to be studied. I give this a favorable recommendation.

Rep. Porter: Are there any questions for Rep. Amerman?

Rep. J. Kelsh: I am a representative from district 26 and I was the prime sponsor of this HCR in the last session. This resolution is not to impede process of oil or gas in North Dakota. It is to make sure that landowners are treated fairly in their dealings with pipeline companies and others that want to come across their land.

Rep. Porter: Are there any questions for Rep. Kelsh?

Paul Matthews: I am from Cogswell North Dakota. The first page of the handout is from the state of Kansas. On the top of the second page is a copy of the measure 2 from 2006 which the voters passed. (see attachment 1) In February of 2007 a land agent from the pipeline company came to me unannounced and said "I am here to get survey permission for your land."

"Where is the proposed pipeline going?" I asked. It was a map going through my house and I said "we have a problem here" I signed the permission and didn't hear anything for weeks. Two new agents came and said to my wife "we have a great deal for you" We have a check for you for \$1,000.00 that is twice as much as we would have offered last month. My wife asked "Where is pipeline going now?" They showed us the map it was 150 feet from the house. She said "I don't think so." In the two days a senior agent called me several times and asked me to sign this document. The next months were silent then he called and said "we will abide to the law which is 500 feet from the residence. The next few months the PSC had hearings and I didn't know what the status was. Shortly after the first hearings they appeared with the plans which showed the pipeline was 150 from the house. When the final hearing was over the agent came with the final document which I was begging to see puts it on the table and said here it is. I looked at the map it was 150 feet away excuse me it is 506 feet from the house. They later said I think we made some changes I asked to see them and they said no we will let you see them after the permit is granted. The permit was granted in late February. I got another phone call saying we have made the change. A better route is in process. I asked to see it they said no but you will see it soon. You will get a final order in the mail that will indicate that you have 10 days to answer us. FedEx delivered the paper and I had 10 days to respond. I called the senior agent and asked what changes are there? It doesn't show that. He said you have to trust us. Ten days later the sheriff appeared to serve us. What saved me was that the company wanted to construct that year and they were within a week of my property line. My attorney called and told me they would like to negotiate. We were then able to negotiate 1500 feet from our house but it took all of these steps to get there. I deal with things like this at times but what about all the senior citizens that were approached. Do they have the skills to think that out when they are under all that pressure? My settlement was a gag order. There some things I can't tell you about. I not against the pipeline or the eminent domain they have their purpose. I think that needs to be worked on. In my handout in says "eminent domain shall not be used for tax purposes." It seems to be one idea here and one idea there which one is right? I asked my neighbor how he was treated I found out they had the same land agents that I did. I found out they were treated the same. I am also concerned about the safety of the firefighters should they need to go out here in an emergency. Are they equipped to take care of the problem safely?

Rep. Clark: During this time, were you given a proposal as to whether it was satisfactory to you and what about the price? Where did the pipeline finally go?

Paul Matthews: Part of that question I can't answer because of the gag order. The pipeline is now approximately 1500 further away. I gave them the whole quarter.

Rep. Nelson: Was this a private company?

Paul Matthews: Yes

Rep. Brabandt: From start to finish what was the timeline?

Paul Matthews: February 2007 I believe the settlement was reached in July 2008. The pipe was installed in September of 2008.

Rep. Hanson: What were the benefits of the pipeline to the state of North Dakota?

Paul Matthews: In my opinion there is probably a great deal of tax benefits but the people looked at that with an eminent domain measure other than that some construction jobs which were temporary.

Rep. Hanson: Was this a natural gas pipeline?

Paul Matthews: It was cruel oil from Canada.

Rep Hanson: Since we don't have any refineries in Eastern North Dakota it went through the state.

Paul Matthews: It is a direct connection from Alberta to Oklahoma or Illinois.

Rep. Kasper: Did you retain legal council during this time when you were frustrated to try and help you, or complain to the Public Service Commission or did you do nothing beyond the frustrating?

Paul Matthews: It is hard to find an oil and gas attorney that would be familiar with eminent domain procedures in the state.

Rep. Hanson: Did you go to the Public Service Commission hearings with your frustrations and concerns so they could hear about it?

Paul Matthews: Absolutely. In the final hearing here which in September 2007 myself and two other landowner expressed that we had been faced with eminent domain threats and Commissioner Wefald did give them a stern look and a one line statement of concern.

Rep. Nelson: Your involvement as a volunteer fireman, was the Fire Department involved in this permit application? Were you given any additional training by the state?

Paul Matthews: After a call from our Fireman Chief to the pipeline asking what they should do if there was a leak in the pipeline. They did give us a nice little thing to put in our pocket that said 1-800- call us.

Rep. Kelsh: How many other people were treated like you were?

Paul Matthews: I don't know. I think the company said they started condemnation proceedings on 10-20 people. The thing is how many people fell victim to this?

Rep. Damschen: You aren't then opposed to the eminent domain as a last sort? Did you feel this was used as leverage to make you abide to what they wanted?

Paul Matthews: That is correct.

Rep. Porter: Are there further questions? Is there further testimony for HCR 3007?

Julie Ellingson: I represent the North Dakota Stockmen's Association. We are support of HCR 3007 which is calling for a study of the eminent domain laws and their impact by the property rights. The North Dakota Association has 6 standing policies that serve as a foundation of our policy. One of those is entitled eminent domain. The policy states" our organization's opposition to the exercise of eminent domain in the taking of private land, and condone that exercise only in the rare instances of absolute necessity. HCR 3007 does generate a helpful study and a healthy study in this issue amongst all stake holders which would cause a better relationship in the process. The resolution is in alignment with our standing policy and thus we ask that you give a favorable consideration to HCR 3007.

Rep. Clark: What is your definition of absolute necessity?

Julie Ellingson: I think that is a case by case basis.

Rep. Porter: This there further testimony in support of HCR 3007? Is there any opposition for HCR 3007?

Todd Kranda: I am an attorney from Kelsh law in Mandan. I am appearing before you in opposition of HCR 3007. I would like to defend my companies conduct and action and explain to you what exists in North Dakota Law already. This was a bill that was presented in the 2009 session and was defeated. I do represent Trans Canada, Keystone Pipeline, and the Alliance Pipeline. The two companies are a little different Alliance is a natural gas company. Trans Canada is a petroleum product company. The handout is for provided for you. (see attachment 2) In terms of a company process I think there was more contact made then the knock on the door. Alliance had meetings and Trans Canada also had community meetings along the route. I attended those, they were a series of days we had large maps of the different aspects of the project. They were there to answer the questions from the public. If you look at my other handouts (see attachments 3&4) this is what you would see when they are planning the pipeline. Then you would see what you are affecting? What are you involved with? Do you have to make some adjustments? Understanding the size and nature of these projects is very important. There are some financial figures on the back of the Trans Canada sheet.

There is some taxes paid by these companies, they are a benefit to the state. In addition the economic benefit that they generate while the operations are being built and then when they continue to have maintenance and individuals here checking pumps stations, compressor stations for each of these sites, they are located all the line. Alliance Pipeline is carrying natural gas out of the Baaken, and is making that market available to North Dakota. Keystone XL was of three routes connecting to get North Dakota petroleum. The actual resolution itself I think lines 3 and 4 the statement "without a direct benefit to the people of this state" is a benefit. The pipeline shows you the revenues. I think they generate a fair amount of tax. These pipelines are under ground, there is an easement in obtained through the landowners. We pay 3 years of crop loss. The benefits include the economic draws that were involved with the construction operations and the continuing operations. Lines 7&8 "the surrounding property and future uses of the property" I take issue with that to the extend that North Dakota Law provides for damages and just compensation to be paid. The Constitution says that is what they are entitled

too. It is first negotiated. Alliance was successful cutting across the state diagonally as you see. There was no commendation actions for Alliance issued but Keystone did. I was involved in the legal aspects in that. Because of the timing in the case and the delay with PSC which was several months, we had issues with it in reopening. The project was pushed into a very narrow window as a result we in started eminent domain in each of the eight counties. Eminent domain is the last resort the companies didn't want to do it. They pay me a lot to do the eminent domain work. We never proceeded with any of them. We dismissed all of them. None of them went to trial. I think the court says what your fees are, the attorney submits. I don't think there is anything in this bill that needs to be fixed.

Rep. Keiser: All of our hearings yesterday involved the landowners, the property right of the surface owners when we were on the property rights of the surface owners they said we would like to have an option to make an adjustment to have some communication and if something could be moved so I could work that land. It is already available to them but that wasn't followed. Is that right?

Todd Kranda: I agree to most of your comments but I do think it was followed I think it was a success. We it moved from the 156 to 500 which was the minimum that s the line that the PSC draws as a sighting. There were several wavers filed.

Rep. Hanson: you mentioned the cost. Why would Keystone run the pipeline down the valley verses running it straight down through Western North Dakota?

Todd Kranda: This is a question that has been asked a lot. If you look at the pipeline map it was a finical decision, they did pay more for the land and values because that part of the state wasn't used to that the activity and production and pipelines if you look at the map you will see that was a conversion. We didn't have to have a new green field. That was a pipe that was already in the ground that we changed over to oil from natural gas. There are 5 lines so we were able to convert without going back and relaying new pipe and then we tacked on and that was the straightest route down to where we needed to get to the cushing and to the Gulf Coast for refining. The location was decided way back then.

Rep. Kelsh: How did you determine the value of the easements that you secured that didn't fall in the eminent domain if there weren't appraisals done on these?

Todd Kranda: There are some general land agents that know the land value of the land. We do comparables and understand what the county values are.

Rep. Kelsh: How do you define the word common carrier?

Todd Kranda: Common carrier is defined by statute I don't think I have that definition copied here but we applied as a common carrier and the pipelines are a common carrier if they are open and we were open and subject to the same type of tariff that if a person wanted to bring their product in we would take it and put it on. The interconnection costs for someone to interconnect and that's what we dealt with the Baaken market link.

Rep. Kelsh: Under 16 it clearly states that purposes of eminent domain cannot include economic benefits of the tax benefits and yet you sighted that several times. Why do those economic benefits even apply to this pipeline?

Todd Kranda: Are you the Constitution page under 16. That was the modification that was made by the change in 2006 with the measure. The difference is that there are other economic gains that were available. One of them was a larger picture. We didn't look at just North Dakota we had a reliable source we had the opportunity for Baaken crude to interconnect. There were discussions about that the whole time at high levels.

Rep. Kasper: Did you hear Mr. Matthews testimony? When I listened to his testimony, talking about how he tried to get information about his land he felt misled. He was frustrated about not getting the paperwork when he asked for it. What does the North Dakota Law say about providing the land owner complete and accurate and honest information during the process when they ask for it?

Todd Kranda: I would have to disagree to that. I don't think the company has a policy to deceive the public. I think he may have misunderstood something.

Rep. Kasper: What does North Dakota Law say when a landowner says he wants a copy of the easement offer right now, the one you are looking at the one you want me to sign?

Todd Kranda: I don't know if it addresses that. I think as a company I would have said here take it. If it is an easement or it is a document whatever it is he wants he can take it to his attorney. I would rather deal with the person's attorney then the individual.

Rep. Kasper: Do you know what the law says about providing the documentation when the consumer asks for it? Is it silent? Do you not know the answer?

Todd Kranda: There is the duty negotiate, there is also the final letter offer I don't know if it says anything specific about proving any documentation in really I don't know that there is a problem with providing it because I think we would have provided it.

Rep. Kasper: In his testimony it wasn't provided. In this case maybe you could have done something better.

Todd Kranda: I wish we could have accommodated him better. We need to be there even though we are underground it is still important for us.

Rep. Hunskor: You talked at some length about the pipelines and the revenue and paying for crop loss which we all understand but the concern here is between the folks who contacted the landowner and as I understand from the testimony that the pipeline was running close to the house. He had some concerns and it took months before it got moved out. That social interaction should have been taken care of initially that wouldn't have put that stress on the landowner. Why couldn't that have been worked on when there was a problem?

Todd Kranda: I think it was. I don't think there was a big lack with the number of people involved in this project, the engineering that had to go thru it, the relocation of the pipeline, some of the dealings were wetlands, locations if you move his you affect someone else. There were a lot of considerations that needed to be looked at and the relocation did occur.

Rep. Anderson: Mr. Matthews was able to handle his issues. I get concerned about the landowner that wouldn't be capable like Mr. Matthews was. What would have happened in an instance like that? It does bother me that if hyou run into a person that is older and not capable to understand.

Todd Kranda: We had 100's of landowners very few of them who ended up coming to my office because they were resolved. The Public Service Commission exists there are comment periods we did have open houses and opportunities.

Rep. Damschen: There have been few complaints but I would like to add I do not like eminent domain. I view it as a necessary evil. Eminent domain should be used as a last resort. If you can't negotiate a solution or a agreement can't be reached than it could be used.

Todd Kranda: I agree with you eminent domain should be and is used as a last resort. In terms of how that is brought up. Sometimes a landowner asks "what is the last resort" and we tell them eminent domain is the last resort.

Rep. Damschen: The point is if the first offer was 150 feet or whatever and the landowner says what if I don't accept that agreement I would wish the company to say well could discuss moving it instead of saying well we are going to exercise eminent domain.

Todd Kranda: I agree I think the 156 was a non allowed location. We had about 17 or 18 of those situations along the route. We got 16 waivers so the majority said that is not a problem where you are trying to locate it. I think if it was a problem it should be moved.

Rep. Nelson: You brought up the 2006 measure that passed in the state where people wanted to limit the power of eminent domain concerning taking property from one private company or entity and giving it to another and yet we have a case where the common carrier has direct eminent domain responsibilities. Do you see there to be maybe some additional restriction on the private company that would be acceptable in some way?

Todd Kranda: I don't know that that needs to be tweaked any more. I think the measure with Heidi Heitkamp and Haugen was based on a case that involved taking some land to built a public mall and people said we are not going to allow that and that was this intend to get at. I don't think in terms of common carrier and the exception that is carved out in there has anything that relates the problems that you hear today.

Rep. Porter: Are there further questions for Mr. Kranda? Is there further opposition to HCR 3007? We will close the hearing on HCR 3007.

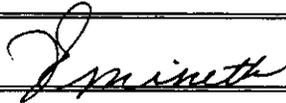
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Energy and Natural Resources Committee  
Pioneer Room, State Capitol

HCR 3007  
02/10/2011  
14417

Conference Committee

Committee Clerk Signature



Minutes:

Rep. Porter: We will open HCR 3007.

Rep. Kelsh: I handed out a copy from Minority Leader Rep. Kelsh listening to the testimony and in spite of our strong Constitutional requirements about eminent domain something went wrong in the process with the Keystone Pipeline project and there was some information that wasn't given to the affected landowners and I think we need to look forward with this as Rep. Kelsh states "we cannot turn a study or resolution into a bill" so we need to look at what went wrong in process during the interim and then formulate some legislation as we come back next session to try to address what we are missing in this process. (see attachment1)

Rep. Porter: Is there any other discussion? After Mr. Kranda spoke and gave the other side of the issue I don't disagree the individual that came in felt that he was wronged. I do think that everything went the way it is in the law and that there are areas that are followed when eminent domain is used. I am not sure what study of this issue of do. I think that it is used for those interstate projects and this is an interstate project, we are going to have an area up in Northwest North Dakota where we will have entrance into this pipeline to ship our Baaken and Crude down that pipeline as they finish that input area.

Rep. Kelsh: I understand that prospective, the resolution doesn't address this but there some things that the effected landowners were not given the the information when they requested it and were not being informed in what the process and where they were in the process. I think it is a shame that Mr. Matthews was affected by it and had to fight for 2 years in order to get to the end process where he legally was entitled to be in the first place.

Rep. Damschen: I believe the situation we heard in the testimony was mishandled. I dislike eminent domain on the other hand I am not sure the

study is the solution to the problem. I think this was an example of someone that used eminent domain as a bargaining tool and I don't think it was the law that was at fault or is at fault. I think it was the individual and I think the fact that was brought to light had a positive effect on future dealings.

Rep. Kelsh: I move a do Pass on HCR 3007.

Rep. Hunsakor: Second.

Rep. Porter: I have a motion on HCR 3007 we will try a voice vote on that. All those in favor Motion Carries. Carrier Rep. Kelsh. Put on the consent calendar.

Not on the tape last vote Yes 11 NO 4 Absent 0 /carrier Kelsh

Date: 2-11-11  
 Roll Call Vote #: 1

**2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 3007**

House House Energy and Natural Resources Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep Kelsh Seconded By Rep Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter			Rep. Hanson		
Vice Chairman Damschen			Rep. Hunskor		
Rep. Brabandt			Rep. Kelsh		
Rep. Clark			Rep. Nelson		
Rep. DeKrey					
Rep. Hofstad					
Rep. Kasper					
Rep. Keiser					
Rep. Kreun					
Rep. Nathe					
Rep. Anderson					

Total (Yes) 15 No 0

Absent 0

Floor Assignment Carrier Rep. Kelsh

If the vote is on an amendment, briefly indicate intent:

*voice vote taken motion carried  
 so the consent calendar*

Date: 2-11-11  
Roll Call Vote #: 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3007

House House Energy and Natural Resources Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep Kelsh Seconded By Rep Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter		✓	Rep. Hanson	✓	
Vice Chairman Damschen		✓	Rep. Hunskor	✓	
Rep. Brabandt	✓		Rep. Kelsh	✓	
Rep. Clark	✓		Rep. Nelson	✓	
Rep. DeKrey	✓				
Rep. Hofstad	✓				
Rep. Kasper	✓				
Rep. Keiser	✓				
Rep. Kreun		✓			
Rep. Nathe		✓			
Rep. Anderson	✓				

Total (Yes) 11 No 4

Absent 0

Floor Assignment Rep. Kelsh

If the vote is on an amendment, briefly indicate intent:  
to consent calendar

**REPORT OF STANDING COMMITTEE**

**HCR 3007: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** and **BE PLACED ON THE CONSENT CALENDAR**  
(11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HCR 3007 was placed on the  
Tenth order on the calendar.

2011 SENATE NATURAL RESOURCES

HCR 3007

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Natural Resources Committee  
Fort Lincoln Room, State Capitol

HCR 3007  
March 11, 2011  
Job # 15447

Conference Committee

Committee Clerk Signature *Monica Spurling*

## Explanation or reason for introduction of bill/resolution:

A concurrent resolution directing the Legislative Management to study eminent domain laws as they relate to pipeline siting.

## Minutes:

Testimony Attached

Chairman Lyson opened the hearing on HCR 3007.

**Representative Bill Amerman**, District 26: Pipelines are going to be a big issue in our state. A study resolution will take on a realm of its own if it is chosen. In the interim he serves on the WSI review committee which hears from claimants. The cases are dead cases but they bring the claimant and WSI together. We hear why claimants have trouble with WSI. We have a responsibility to assure the oil producers that they can go forward, but we also have a responsibility to our landowners, to hear their concerns. He asked for a Do Pass.

**Paul Mathews** from Cogsville, ND stood in support of HCR 3007. His family was threatened by eminent domain in 2007 and 2008 for pipeline purposes. See **Attachment #1**. In February of 2007 an agent came unannounced to his home. He told Mr. Mathews that there was going to be a pipeline constructed under the Mathews' newly constructed home. The pipeline was to be constructed to run under his house he had built 3 years earlier. It said this was for survey purposes only and Mr. Mathews should relax and not worry about it. A few months later 2 more agents stopped to visit his wife when he was in the field. They said they had a great deal for her. They wanted her to sign a waiver and they would pay her \$1000.00. Now it was going to be placed 156 ft from the house. Signing the paper would waive the codified 500 foot buffer. For the next few days he received phone calls from the supervisor who was trying to press him into signing that waiver. When he wouldn't sign he said Mr. Mathews' inaction would be a lasting disappointment to the company. "I should have heeded that warning because for the next year it was going to be torture." For weeks he heard nothing from them. Then the PSC set up hearings in July. He hadn't heard from the company. He called them and they didn't return his calls. He couldn't take action or testify at the PSC meetings because he didn't know if he would be impacted. A week later they assured him that his property would be impacted. A land agent came a week before the PSC meetings. He had a contract attached to the map. Mr. Mathews didn't

think the easement wording was correct and asked that it be change. It was still placed 156 ft. from his home. The agent said, "Well, this is what they sent with me. This is their position." Mr. Mathews asked if there was any chance to negotiate on it. The agent said he could only come back to him two more times in the next weeks and then Mr. Mathews would be placed in their contention file. Mr. Mathews attended the last PSC meetings at the Capitol Building. He was shocked when PSC asked the company if they had all the signed waivers they needed. The PSC was aware that Mr. Mathews was having some issues with it. The company said they had gotten a waiver from Mr. Mathews. He was shocked. During the break he spoke with the administrative judge. He told the judge he had a problem with it and he showed him his easement. It was 156 feet away! The judge said he would put Mr. Mathews on at the end because his views should be heard. Mr. Mathews testified at the end of the meeting. Naturally, they were embarrassed; they told the PSC and the judge that this was a mistake; the wrong map was attached to his easement. Two other landowners testified to the same thing. That seemed to make an impression. We got a chance to talk with the Calgary attorneys watching this process. It felt like we were making progress. Mr. Mathews asked why the agents couldn't negotiate. They said "We can't have them negotiate for us. That is not part of their job. They are just there to serve our papers. For the next month it seemed the process had stalled out. There was no progress made. In December 2007 there was an explosion in Clearbrook, MN. The news media contacted him the next day knowing that he had objected to a pipeline near his house. He said to them that this confirmed why he was concerned. The agents contacted him the next day. It seemed there was going to be progress. In January and in February the company would tell him to trust them. Mr. Mathews went to the PSC for advice. Three days after the permit was granted, the senior land agent was in touch with him. The agent assured him that things had changed. He told Mr. Mathews he would be getting papers from the company but not to worry about them. The next day Fed Ex delivered the final offer. He had 7 days to respond or they would begin actions against the Mathews. They told Mr. Mathews, "If you are concerned with condemnation, don't be. Just sign those existing documents, we have changed the route, we just can't tell you to where." Mr. Mathews inquired about the easement language. The final offer had the route 506 ft away. The agent said he should sign it or else he would face it. Ten days later the deputy sheriff came up to the door and said you have been served. The first days sprouted volumes of mail. This caused anxiety and he wondered if it was all worth it. Negotiation did provide a new confirmed corridor 1500 ft away from his house. It also produced some additional language that was important to Mr. Mathews. It took a long long time to get to that. Part of the agreement was that they put a gag order on him so there are certain things he won't be able to talk about. At that point he felt he had accomplished as much as the society or the pipeline company was going to allow. It was his understanding that if he didn't do what was in front of him at that point the court would assign his easement and he would have lost any easement language he fought so hard to get. On page 3 of Attachment #1 "common carrier" is defined. He feels public purpose needs to be looked at more closely. He encouraged a study by the state. He said a landowner's voice is like a whisper compared to the voice of a pipeline operator. Our neighboring states are all looking at eminent domain issues. Many of his neighbors feel the same way he does but feel that they don't have the stamina to fight the fight.

**Senator Burckhard:** Did you at any point get legal counsel? And how deep did they put the pipeline?

**Paul Mathews:** They stipulate 40 inches. He asked for another twelve inches. Finding good legal council to help in eastern North Dakota is pretty hard. Those who could have done it had conflict of interest. It was difficult to find legal help.

**Sheyna Strommen,** representing the ND Stockman's Association, presented written testimony in favor of HCR 3007. See **Attachment #2.**

**Senator Schneider:** Have you heard from your members on this?

**Sheyna Strommen:** I am sure there have been, but I can't quote them.

**Woody Barth,** ND Farmers Union, stood in support of HCR 3007. We believe in the surface owners rights to use land in the way they see fit.

**Chairman Lyson** closed the hearing on HCR 3007.

**Chairman Lyson** mentioned the handout from Kelsch Law Firm. He mentioned it would not be allowed as testimony because no one was there to be questioned.

**Senator Schneider** moved a Do Pass on HCR 3007.

**Senator Burckhard:** Second

**The motion carried** by voice vote.

**Carrier:** Senator Schneider

Date: 3-11-11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 3007

Senate Natural Resources Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Schneider Seconded By Burckhard

*carried by voice vote*

Senators	Yes	No	Senators	Yes	No
Chairman Lyson			Senator Schneider		
Vice-Chair Hogue			Senator Triplett		
Senator Burckhard					
Senator Freborg					
Senator Uglen					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Schneider

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HCR 3007: Natural Resources Committee (Sen. Lyson, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3007 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY

HCR 3007

## HRC 3007: Does Eminent Domain Need A Study?

### A bit of history.

Eminent domain, in its simplest terms, is the inherent power of a governmental entity to take private property and convert it to public use. More specifically, it is the power of a public entity to take private property without the owner's consent, conditioned upon the payment of just compensation. Eminent domain is a right founded on the law of necessity which is inherent in sovereignty and essential to the existence of government.

The power of eminent domain belongs exclusively to the legislative branch and to those entities or individuals authorized by statute to exercise the power.

The government's exercise of the power of eminent domain is subject to several important constitutional limits, including the requirement for payment of just compensation and the requirement that the property owner be granted due process of law, including notice and an opportunity for a hearing. (a)

### What's changed lately?

The U.S. Supreme Court on June 23, 2005, ruled in *Kelo v. New London* that the "public use" provision of the "takings clause" of the 5th Amendment of the U.S. Constitution permits the use of eminent domain for economic development purposes.

The case involved an economic development plan for the City of New London, Connecticut. The City had been in economic decline for many decades. In 1996, the U.S. Navy closed its Undersea Warfare Center, causing the loss of more than 1,500 jobs. In 1998, Pfizer, Inc., a large pharmaceutical company, announced plans to build a large research facility in New London on a site adjacent to the Fort Trumbull neighborhood. This neighborhood has been characterized as one with a high vacancy rate for nonresidential buildings, old buildings in poor shape, and with fewer than half of the residential properties in average or better condition. The homes of the petitioners in this case, however, did not fall into these categories.

The Supreme Court, in a 5-4 decision, recognized that the U.S. Constitution prohibits a "taking" whose "sole purpose" is to transfer one person's private property to another private person, even if just compensation is paid. It emphasized, however, that this was not the issue before the Court. Rather, "The disposition of this case therefore turns on the question whether the City's development plan serves a 'public purpose'." The decision went on to stipulate that "Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field." In writing for the majority, Justice Stevens noted, in fact, that "To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development." (a)

## Did North Dakota react to the Kelo decision?

North Dakota citizens joined the national uproar over that Supreme Court decision where a taking of property for benefit of private industry economic development and responded:

### **ND Measure 2**

*"For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.*

*Private property shall not be taken for the use of or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business."*

*Sponsored by: citizen initiative*

*Approved by voters on November 7, 2006 (67%-33%)*

## So How Does This Relate To HCR 3007?

1. In 2007 and 2008, a foreign pipeline entity obtained a permit to install a pipeline over the properties of ND. To proceed, the ND law cited above (common carrier) was advanced to grant that company the right to condemn private property should the North Dakota citizen offer any resistance. This particular company offered their terms for easements as the **only** acceptable language and compensation; otherwise you would be placed in their "condemnation file." ND landowners tried to negotiate what appear to be reasonable terms included examples as follows:

- A. Why "multiple pipelines" if only one installed?
- B. Why "pipelines carrying any products", including natural gas, if crude oil is this pipeline's purpose?
- C. Why should the company be able to "abandon pipe in place" and leave any reclamation issue to the existing landowner?
- D. Could the preferred route be altered to afford a larger buffer (than 500') between the pipe and homes?
- E. Why cannot an annual lease payment be considered vs. one time payment?
- F. Why the company could move intended route solely on its opinion without conferring with the impacted property owner?
- G. Could the company provide drinking water tests before installation to resolve questions later if an accident occurred?

How can any of these easement terms not be concerning to an affected citizen? Again, any resistance was met by "you will be condemned" and the result is the court will force this easement and route upon you. Who is better equipped to understand the properties attributes better than the landowner? Yet this expertise is seems to be discarded and viewed as resistance by the sole judge – the pipeline company. The ND PSC distanced themselves from such easement particulars considering this not a matter they are empowered to hear. Apparently the ND Attorney General's office has the same limitations. Thus it would appear the state has delegated nearly **all** respects of an eminent domain process to a private industry with the only public oversight (the courts) of whether just compensation is paid.

***Therefore, does North Dakota owe its citizen's additional oversight or rather leave the matter only to the moral virtues of such a condemner?***

2. Language included into 2006 initiative contains references to "common carrier." To laymen, this reference in the basic terms probably means the ability for the North Dakota public to put goods on a truck, bus, train or plane. What the voters probably didn't realize that without further restrictive language, foreign companies that delivers no products to North Dakota nor receives products into our state are granted eminent domain provisions. In other words, our sacred landscape could be viewed as only convenient geography where a straight line across our state obtains the lowest construction cost and to enhance private industry entity's profits.

***Therefore, should North Dakota reconsidered whether foreign companies will have sacred powers of eminent domain?***

***Also, should North Dakota re-examine language that permits common carriers exempted only if North Dakota destined or received products are involved?***

3. It is safe to assume the proponents lobbying to leave language as currently codified will suggest that public purpose is being served by letting foreign pipeline companies expand their holdings into North Dakota will somehow increase reliable oil supplies into our state at perhaps lower cost and greater homeland security. But to send crude oil to refineries in distant states or beyond to be diluted into other mass quantities of crude should have strict review and then a system of compliance reports needs to insure the promises the company offers to ND consumers at hearings render the intended results. Currently, whether its limited expertise or personnel, it seems ND PSC delegates any review of public purpose to federal agencies.

***Since eminent domain is a "state provided right," is it proper then to delegate this to federal agencies which may not have the same interest as North Dakota's?***

4. It is often mentioned that pipeline company's offer enhanced tax payments in localities. But reading the first part of the initiative, it is quite clear that our North Dakota citizens believed tax windfalls should not be considered.

***When this tax revenue is offered as a public reason for eminent domain, listeners should not be tempted or influenced by that aspect for justification as that is what propelled and created the citizen initiative in 2006 in the first place.***

5. It is also safe to assume proponents to leave language as currently written will also suggest that companies will avoid development in our state should they not have eminent domain powers. In 1997 the Illinois Commerce Commission denied a pipeline company the authority and required the company to try negotiations again. That pipeline was installed without eminent domain authority. In July 2009, that same Commission repeated and denied eminent domain privileges. Some states such as Connecticut do not grant such powers at all (b), but it's safe to assume pipelines do exist in such states. A listener to this kind of argument should be careful to weigh its merits and who's agenda they are forwarding; the companies trying to maximize its profits vs. the rights of the individual to quietly enjoy his/her private property.

***Therefore just having some limitations placed on pipeline operators doesn't translate a death of opportunities for pipeline development, but perhaps puts private individuals on more of a equal platform to negotiate a preferred route and easement terms.***

## Summary

Pipelines such as the recently installed one are labeled "hazardous" for good reason. They are federally regulated by PHMSA. But neither them nor ND PSC dictate a route – only the applicant develops a preferred route. Neither regulatory agency can adjust a route – only the applicant. Therefore when an applicant defines its route upon a private individual and then beckons eminent domain threats if the company senses resistance, **what meaningful leverage remains to a private landowner?**

**It appears only the state can manage and intercede since it is the state that empowers who has eminent domain privileges.**

Recent history demonstrates how hazardous products can affect our society after the 2010 spring Gulf of Mexico oil accident created an environment mess. Or the 2010 summer Michigan Kalamazoo River pipeline catastrophe when it resulted in extended residual health incidents (caused toxic components such as benzene) to the area's residents in its aftermath. (c) Our region witnessed the December 2007 explosion and fireball at Clearwater, MN where the accident consumed lives. Incidents routinely happen in the pipeline industry and eventually a significant one will happen in our state. Now try to imagine a landowner aware of such accidents, trying to protect his/her home or property as a private individual against a company that forces a situation of "sign here or else", a power granted them by state design.

People hold property rights dearly and tend to fiercely protect them. Property is an extension of them and people have evolved to believe they control property because of the belief it is "ours." The homes and farmland are so important. They are not just four walls and a roof or tillable/rangeland acres held for a farming enterprise, but represent much more than that. They represent nostalgia and help them remember their past and provide hope and livelihood in the future.

Those 2006 ND citizens were alarmed by the Kelo decision and voted overwhelming to restrict eminent domain powers by their power of initiative. Does the described pipeline eminent domain situation that materialized after 2006 appear to portray the virtues of North Dakota values?

At this time, let the legislative branch act prudently and examine the issues analyzed here and confined to this resolution. Let us join neighboring states legislative bodies which are concurrently modeling legislation in this area and at least study this issue.

## **What meaningful harm can sprout from a legislative study asked by HRC 3007?**

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### Resources:

- a. Kansas Legislative Research Department, Legislator Briefing Book 2011
- b. Growing Pains: Challenges to Development of Oil Pipeline, by Christopher J. Barr, JD George Washington Univ., published Energy Law Journal [Vol. 28:43 2007]
- c. Michigan Dept of Community Health, Acute Health Effects of the Enbridge Oil Spill, November 2010

DECLARATION OF RIGHTS *Attachment 2*

**Section 1.** All individuals are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; pursuing and obtaining safety and happiness; and to keep and bear arms for the defense of their person, family, property, and the state, and for lawful hunting, recreational, and other lawful purposes, which shall not be infringed.

**Section 2.** All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

**Section 3.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

**Section 4.** Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

**Section 5.** The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

**Section 6.** Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

**Section 7.** Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

**Section 8.** The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

**Section 9.** All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

**Section 10.** Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

**Section 11.** All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall

not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

**Section 12.** In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

**Section 13.** The right of trial by jury shall be secured to all, and remain inviolate. A person accused of a crime for which he may be confined for a period of more than one year has the right of trial by a jury of twelve. The legislative assembly may determine the size of the jury for all other cases, provided that the jury consists of at least six members. All verdicts must be unanimous.

**Section 14.** The privilege of the writ of habeas corpus shall not be suspended unless, when in case of rebellion or invasion, the public safety may require.

**Section 15.** No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

**Section 16.** Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, unless the owner chooses to accept annual payments as may be provided for by law. No right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money or ascertained and paid into court for the owner, unless the owner chooses annual payments as may be provided by law, irrespective of any benefit from any improvement proposed by such corporation. Compensation shall be ascertained by a jury, unless a jury be waived. When the state or any of its departments, agencies or political subdivisions seeks to acquire right of way, it may take possession upon making an offer to purchase and by depositing the amount of such offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the owner of such deposit. The owner may thereupon appeal to the court in the manner provided by law, and may have a jury trial, unless a jury be waived, to determine the damages, which damages the owner may choose to accept in annual payments as may be provided for by law. Annual payments shall not be subject to escalator clauses but may be supplemented by interest earned.

For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property shall not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.

**Section 17.** Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

**Section 18.** No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

**Section 19.** The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

**Section 20.** To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

**32-15-01. Eminent domain defined - How exercised - Condemnor defined - Exceptions.**

1. Eminent domain is the right to take private property for public use.
2. Private property may not be taken or damaged for public use without just compensation first having been made to or paid into court for the owner. When private property is taken by a person, no benefit to accrue from the proposed improvement may be allowed in ascertaining the compensation to be made therefor. Private property may not be taken for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business. A determination of the compensation must be made by a jury, unless a jury is waived. The right of eminent domain may be exercised in the manner provided in this chapter.
3. Notwithstanding any other provision of law, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.
4. For the purpose of this chapter, "condemnor" means a person empowered to take property under the power of eminent domain.

**32-15-02. Purposes for which exercised.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. All public uses authorized by the government of the United States.
2. Public buildings and grounds for the use of the state and all other public uses authorized by the legislative assembly of the state.
3. Public buildings and grounds for the use of any county, city, park district, or school district; canals, aqueducts, flumes, ditches, or pipes for conducting water for the use of the inhabitants of any county or city, or for draining any county or city; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other uses for the benefit of any county, city, or park district, or the inhabitants thereof, which may be authorized by the legislative assembly, but the mode of apportioning and collecting the costs of such improvement shall be such as may be provided in the statutes by which the same may be authorized.
4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, railroads and street railways, electric light plants and power transmission lines and canals, ditches, flumes, aqueducts, and pipes for public transportation, supplying mines, and irrigating, draining, and reclaiming lands.
5. Roads, tunnels, ditches, flumes, pipes, and dumping places for working mines, outlets, natural or otherwise, for the flow, deposit, or conduct of the tailings or refuse from mines and mill dams.
6. Byroads leading from highways to residences and farms.
7. Telegraph and telephone lines.

8. Sewage disposal of any city, or of any settlement consisting of not less than ten families, or of any public buildings belonging to the state, or of any college or university.
9. Cemeteries and public parks.
10. Oil, gas, coal, and carbon dioxide pipelines and works and plants for supplying or conducting gas, oil, coal, carbon dioxide, heat, refrigeration, or power for the use of any county, city, or the inhabitants thereof, together with lands, buildings, and all other improvements in or upon which to erect, install, place, maintain, use, or operate pumps, stations, tanks, and other machinery or apparatus, and buildings, works, and plants for the purpose of generating, refining, regulating, compressing, transmitting, or distributing the same, or necessary for the proper development and control of such gas, oil, coal, carbon dioxide, heat, refrigeration, or power, either at the time of the taking of said property or for the future proper development and control thereof.
11. Lands sought to be acquired by the state or any duly authorized and designated state official or board, which lands necessarily must be flooded in widening or raising the waters of any body or stream of navigable or public water in the state of North Dakota.

**32-15-03. What estate subject to be taken.** The following is a classification of the estates and rights in lands subject to be taken for public use:

1. A fee simple, when taken for public buildings or grounds, for permanent buildings, for reservoirs and dams and permanent flooding occasioned thereby, for an outlet for a flow or a place for the deposit of debris or tailings of a mine, or for the construction of parking lots and facilities for motor vehicles.
2. An easement, when taken for highway purposes or for any other use except, upon a proper allegation of the need therefor, the court shall have the power to order that a fee simple be taken for such other use.
3. The right of entry upon and occupation of lands and the right to take therefrom such earth, gravel, stones, trees, and timber as may be necessary for a public use.

However, the provisions of this section shall not authorize the state or any political subdivision thereof to obtain any rights or interest in or to the oil, gas, or fluid minerals on or underlying any estate or right in lands subject to be taken for a public use.

**32-15-03.1. Declaration of legislative intent.** Repealed by omission from this code.

**32-15-03.2. Termination of estates greater than an easement.** No transfer to the state of North Dakota or any of its political subdivisions of property for highway purposes shall be deemed to include any interest greater than an easement, and where any greater estate shall have been so transferred, the same is hereby reconveyed to the owner from which such land was originally taken, or to the heirs, executors, administrators, or assigns of such owner. Such reconveyance shall be subject to any existing contracts or agreements covering such property, and all rights and benefits thereof shall accrue to the grantee.

**32-15-04. What property may be taken.** The private property which may be taken under this chapter includes:

1. All real property belonging to any person.
2. Lands belonging to this state or to any county, city, or park district, not appropriated to some public use.

3. Property appropriated to public use, but such property shall not be taken unless for a more necessary public use than that to which it has been appropriated already, and use by a public corporation shall be deemed a more necessary public use than use for the same purpose by a private corporation or limited liability company, and whenever a right of way shall have been taken and the person, firm, corporation, or limited liability company taking such right of way shall fail or neglect for five years to use the same for the purpose to which it had been appropriated, the attempt by another person, firm, corporation, or limited liability company to appropriate such right of way shall be considered a more necessary public use.
4. Franchises for toll roads, toll bridges, ferries, and all other franchises, but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use.
5. Any system of waterworks, electric light and power plant, wells, reservoirs, pipelines, machinery, franchises, and all other property of any character whatsoever comprising a waterworks system or an electric light and power system.
6. All rights of way for any and all the purposes mentioned in section 32-15-02 and any and all structures and improvements thereon, and the lands held or used in connection therewith, shall be subject to be connected with, crossed, or intersected by any other right of way or improvement or structure thereon. They also shall be subject to a limited use in common with the owner thereof when necessary, but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and the least private injury.
7. All classes of private property not enumerated may be taken for public use when such taking is authorized by law.

**32-15-05. What must appear before property taken.** Before property can be taken it must appear:

1. That the use to which it is to be applied is a use authorized by law.
2. That the taking is necessary to such use.
3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use.

**32-15-06. Entry for making surveys.** In all cases when land is required for public use, the person or corporation, or the person's or corporation's agents, in charge of such use may survey and locate the same, but it must be located in the manner which will be compatible with the greatest public benefit and the least private injury and subject to the provisions of section 32-15-21. Whoever is in charge of such public use may enter upon the land and make examinations, surveys, and maps thereof, and such entry constitutes no claim for relief in favor of the owner of the land except for injuries resulting from negligence, wantonness, or malice.

**32-15-06.1. Duty to negotiate - Just compensation - Appraisals.**

1. A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.
2. Before initiating negotiations for the purchase of property, the condemnor shall establish an amount which it believes to be just compensation therefor and promptly shall submit to the owner an offer to acquire the property for the full amount so established. The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.

3. In establishing the amount believed to be just compensation, the condemnor shall disregard any decrease or increase in the fair market value of the property caused by the project for which the property is to be acquired or by the reasonable likelihood that the property will be acquired for that project, other than a decrease due to physical deterioration within the reasonable control of the owner.
4. The condemnor shall provide the owner of the property with a written appraisal, if one has been prepared, or if one has not been prepared, with a written statement and summary, showing the basis for the amount it established as just compensation for the property. If appropriate, the compensation for the property to be acquired and for the damages to remaining property shall be separately stated.

**32-15-06.2. Disclosures.** The condemnor, upon request, shall provide the property owner or the owner's representative with the names of at least ten neighboring property owners to whom offers are being made, or a list of all offerees if fewer than ten owners are affected. A current and relevant map showing all neighboring property affected by a project shall also be provided to the property owner. Upon request by an owner or the owner's representative, the condemnor shall provide the names of any other property owners within that county and adjacent counties whose property may be taken for the project. The owner or the owner's representative shall have the right, upon request, to examine any maps in the possession of the condemnor showing property affected by the project. The owner or the owner's representative may obtain copies of such maps by tendering to the condemnor the reasonable and necessary costs of preparing copies.

**32-15-07. Proceedings by civil action.** Repealed by omission from this code.

**32-15-08. Form of summons - When served.** Repealed by omission from this code.

**32-15-09. Service by publication.** Repealed by omission from this code.

**32-15-10. Copy of summons served through mails.** Repealed by omission from this code.

**32-15-11. Service complete, when.** Repealed by omission from this code.

**32-15-12. When note of issue filed.** Repealed by omission from this code.

**32-15-13. Jury may be demanded.** Whenever in an action brought under the provisions of this chapter an issue is formed whereby it appears that the attendance of a jury will be necessary to assess the damages in such action, the plaintiff therein may apply to the judge of the district court where the same is pending for an order requiring a jury to be summoned to assess the damages in such action. Thereupon the judge shall issue an order to the clerk of said court requiring a jury to be summoned, and in such order shall specify the number of jurors to be drawn, the place where they are to appear, and the time when they shall come, which shall be not less than eight days nor more than thirty days from the date thereof.

**32-15-14. When sheriff's fees to be advanced by plaintiff - Surety for jury fees.** Repealed by S.L. 1981, ch. 354, § 1.

**32-15-15. Note of issue, filing.** Repealed by omission from this code.

**32-15-16. Special term of court to hear issue.** The court shall sit at a special term to hear the case according to law and the practice of the court, and shall have the same power to complete the jury as is now provided by law, and the pay of such jurors, and the penalty for failure or refusal to appear, shall be the same as in other cases.

**32-15-17. Issues tried at any term of court.** The trial of any action under this chapter may be had at any general, special, or adjourned term of district court, held or called in the county in which such action may be pending, and such action may be tried at any such term. If

issue is not joined prior to the commencement of any regular, special, or adjourned term, the plaintiff nevertheless may require said cause to be tried on such day thereof as the court may order, but plaintiff shall serve upon the opposite party, or parties, a seven days' notice of trial, specifying the date of trial, as fixed by order of the court.

**32-15-18. What complaint must contain.** The complaint must contain:

1. The name of the corporation, association, commission, or person in charge of the public use for which the property is sought, who must be styled plaintiff.
2. The names of all owners and claimants of the property, if known, or a statement that they are unknown, who must be styled defendants.
3. A statement of the right of the plaintiff.
4. If a right of way is sought, the complaint must show the location, general route, and termini, and must be accompanied with a map thereof so far as the same is involved in the action or proceeding.
5. A description of each piece of land sought to be taken and whether the same includes the whole or only a part of an entire parcel or tract.

**32-15-19. Joinder, consolidation, and separation of proceedings.** All parcels of land lying in the county and required for the same public use may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to suit the convenience of parties.

**32-15-20. Who may defend.** All persons in occupation of, or having or claiming an interest in, any of the property described in the complaint or in the damages for the taking thereof, though not named, may appear, plead, and defend, each in respect to such person's own property or interest, or that claimed by such person, in like manner as if named in the complaint.

**32-15-21. Power of court.** The court shall have power:

1. To regulate and determine the place and manner of making connections and crossings, or of enjoying the common use mentioned in subsection 6 of section 32-15-04.
2. To hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor.
3. To determine the respective rights of different parties seeking condemnation of the same property.

**32-15-22. Assessment of damages.** The jury, or court, or referee, if a jury is waived, must hear such legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty and of each and every separate estate or interest therein. If it consists of different parcels, the value of each parcel and each estate and interest therein shall be separately assessed.
2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned and the construction of the improvement in the manner proposed by the plaintiff.

3. If the property, though no part thereof is taken, will be damaged by the construction of the proposed improvement, the amount of such damages.
4. If the property is taken or damaged by the state or a public corporation, separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff, and if the benefit shall be equal to the damages assessed under subsections 2 and 3, the owner of the parcel shall be allowed no compensation except the value of the portion taken, but if the benefit shall be less than the damages so assessed the former shall be deducted from the latter and the remainder shall be the only damages allowed in addition to the value of the portion taken.
5. As far as practicable, compensation must be assessed separately for property actually taken and for damages to that which is not taken.

**32-15-22.1. Eminent domain - Compensation for moving personal property.**  
Repealed by S.L. 1973, ch. 407, § 17.

**32-15-23. When right to damages accrues.** For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the taking and its actual value at that date shall be the measure of compensation for all property actually to be taken, and the basis of damages to the property not actually taken, but injuriously affected, in all cases when such damages are allowed as provided in section 32-15-22. The time of the taking shall be determined by the court.

**32-15-24. When title defective.** If the title acquired is found to be defective from any cause, the plaintiff again may institute proceedings to acquire the same as in this chapter prescribed.

**32-15-25. When judgment paid.** The plaintiff, within thirty days after the entry of final judgment, must pay the sum of money assessed, except where school or public land upon which no contract is outstanding is taken for public use under this chapter, the plaintiff shall pay for such land as follows: one-fifth of the sale price in cash at the time of the sale; one-fifth of the purchase price each five years thereafter on the anniversary date of the sale, with interest at the rate of not less than three percent per annum, payable annually in advance.

**32-15-26. Payment or deposit - Proceedings annulled.** Payment may be made to the defendant entitled thereto, or the money may be deposited in court for the defendant and be distributed to those entitled thereto. If the money is not so paid or deposited, the defendant may have execution as in civil actions, unless execution is stayed by order of the court pending a motion for a new trial or on appeal, and if the money cannot be made on execution, the court upon a showing to that effect must set aside and annul the entire proceedings.

**32-15-27. Final order - Filing.** When payments have been made as required in sections 32-15-25 and 32-15-26, the court must make a final order of condemnation, which must describe the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county and thereupon the property described therein shall vest in the plaintiff for the purposes therein specified.

**32-15-28. Public corporation bound by judgment.** In the event that any property is being acquired by any public corporation through condemnation proceedings, such public corporation shall be bound by the judgment rendered therein and within six months after the entry of such a judgment shall pay into court the full amount of the judgment on account of damages. If the public corporation shall dismiss the action prior to the entry of judgment thereon, the court shall award to the defendant reasonable actual or statutory costs, or both, which shall include reasonable attorney's fees.

**32-15-29. When possession taken - How money paid defendant - Acceptance - Abandonment of defenses.** At any time after the entry of judgment, whenever the plaintiff shall have paid to the defendant, or into court for the defendant, the full amount of the judgment, the district court in which the proceeding was tried, upon notice of not less than three days, may authorize the plaintiff to take possession of and use the property during the pendency of and until the final conclusion of the litigation and, if necessary, may stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into court for the defendant upon judgment, shall be entitled to demand and receive the same at any time thereafter upon obtaining an order therefor from the court. The court, or a judge thereof, upon application made by such defendant, shall order and direct that the money so paid into court for the defendant be delivered to the defendant upon the defendant's filing a satisfaction of the judgment, or upon the defendant's filing a receipt therefor and an abandonment of all defenses to the action or proceeding except as to the amount of damages that the defendant may be entitled to in the event that a new trial shall be granted. A payment to a defendant as aforesaid shall be held to be an abandonment by such defendant of all defenses interposed by the defendant, except the defendant's claim for greater compensation.

**32-15-30. Payment of money into court at risk of plaintiff.** The payment of the money into court as provided for in this chapter shall not discharge the plaintiff from liability to keep the said fund full and without diminution, but such money shall be and remain as to all accidents, defalcations, or other contingencies as between the parties to the proceedings at the risk of the plaintiff, and shall remain so until the amount of the compensation or damages finally is settled by judicial determination and until the court awards the money, or such part thereof as shall be determined upon, to the defendant, and until the defendant is authorized or required by order of court to take it. If for any reason the money at any time shall be lost, or otherwise abstracted or withdrawn, through no fault of the defendant, the court shall require the plaintiff to make and keep the sum good at all times until the litigation finally is brought to an end, and until paid over or made payable to the defendant by order of the court, as provided in section 32-15-29, and until such time or times the clerk of court shall be deemed to be the custodian of the money and shall be liable to the plaintiff upon the clerk's official bond for the same, or any part thereof, if for any reason it is lost, or otherwise abstracted or withdrawn.

**32-15-31. Deposit of money with state treasurer.** The court may order the moneys to be deposited in the state treasury and in such case the state treasurer shall receive all such moneys, duly receipt for and safely keep the same in a special fund to be entered on the state treasurer's books as a condemnation fund for such purpose, and for such duty the state treasurer shall be liable to the plaintiff upon the state treasurer's official bond. The state treasurer shall pay out such money so deposited in such manner and at such times as the court or judge thereof by order may direct.

**32-15-32. Costs.** The court may in its discretion award to the defendant reasonable actual or statutory costs or both, which may include interest from the time of taking except interest on the amount of a deposit which is available for withdrawal without prejudice to right of appeal, costs on appeal, and reasonable attorney's fees for all judicial proceedings. If the defendant appeals and does not prevail, the costs on appeal may be taxed against the defendant. In all cases when a new trial has been granted upon the application of the defendant and the defendant has failed upon such trial to obtain greater compensation than was allowed the defendant upon the first trial, the costs of such new trial shall be taxed against the defendant.

**32-15-33. Rules of practice.** Except as otherwise provided in this chapter, the provisions of the North Dakota Rules of Civil Procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this chapter.

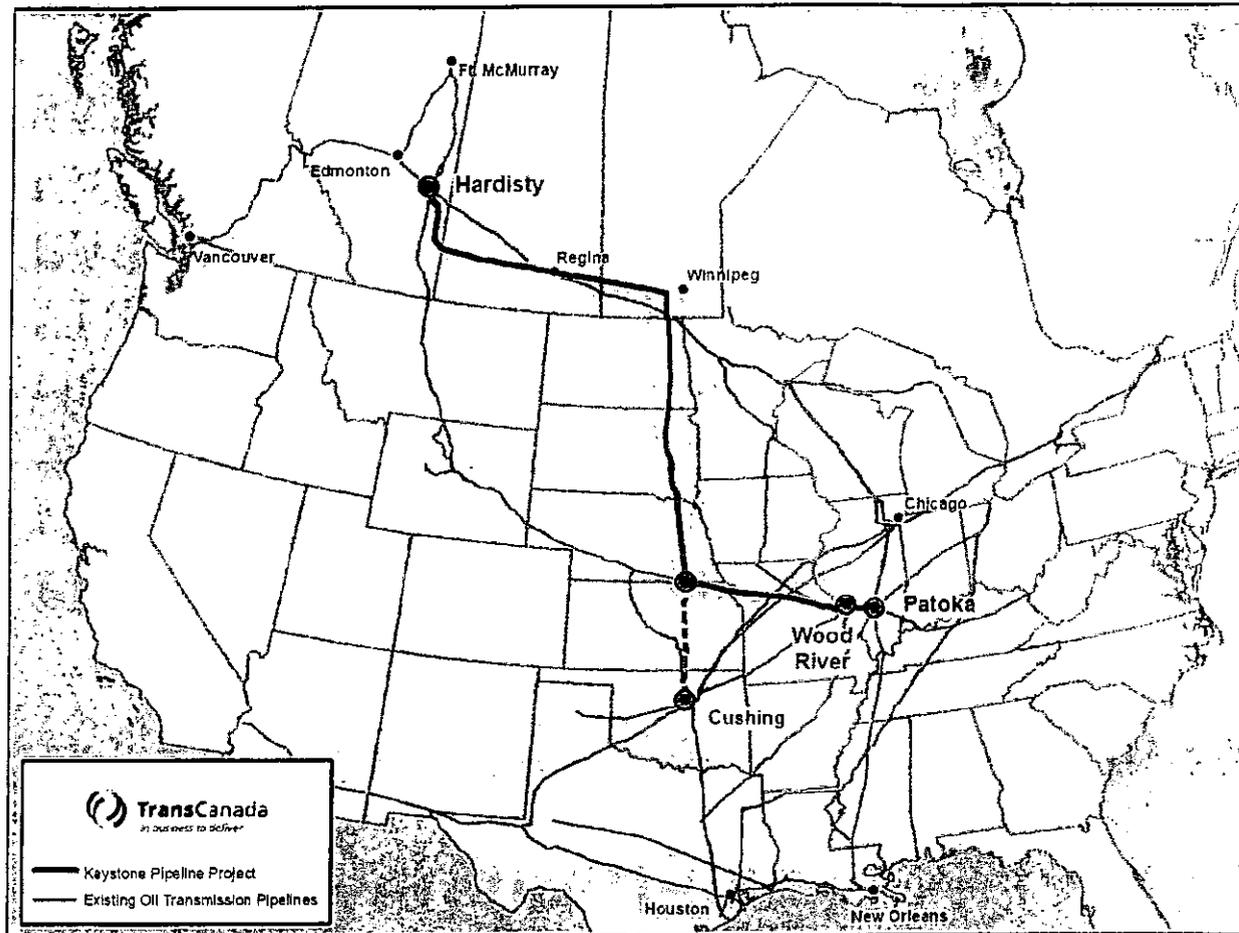
**32-15-34. New trials and appeals.** The provisions of this code relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this chapter, apply to the proceedings mentioned in this chapter, but upon the payment of the damages assessed the plaintiff shall be entitled to enter into, improve, and hold possession of the property sought to be condemned as provided in section 32-15-29 and to devote the same to the public use in question, and no motion for a new trial or appeal after such payment shall retard the

contemplated improvement in any manner. Any money which shall have been deposited, as provided in section 32-15-29, shall be applied to the payment of the recovery upon a new trial and the remainder, if there is any, shall be returned to the plaintiff.

**32-15-35. Eminent domain proceedings - Costs of defendant to be paid when proceedings withdrawn or dismissed by party bringing the proceedings.** Whenever the state acting by and through its officers, departments, or agencies, or any municipality or political subdivision of this state acting by and through its officers, departments, or agencies, or any public utility, corporation, limited liability company, association, or other entity which has been granted the power of eminent domain by the state, shall commence eminent domain proceedings against any land within this state and thereafter withdraws or has such proceedings dismissed without agreement of the defendant, the state, municipality, political subdivision, public utility, corporation, limited liability company, association, or entity commencing such eminent domain proceedings shall be liable for and pay to the owner of such land all court costs, expenses, and fees, including reasonable attorney's fees as shall be determined by the court in which the proceedings were filed.

# Keystone Pipeline Project - Overview

1,078 miles in US (ND border to Patoka)

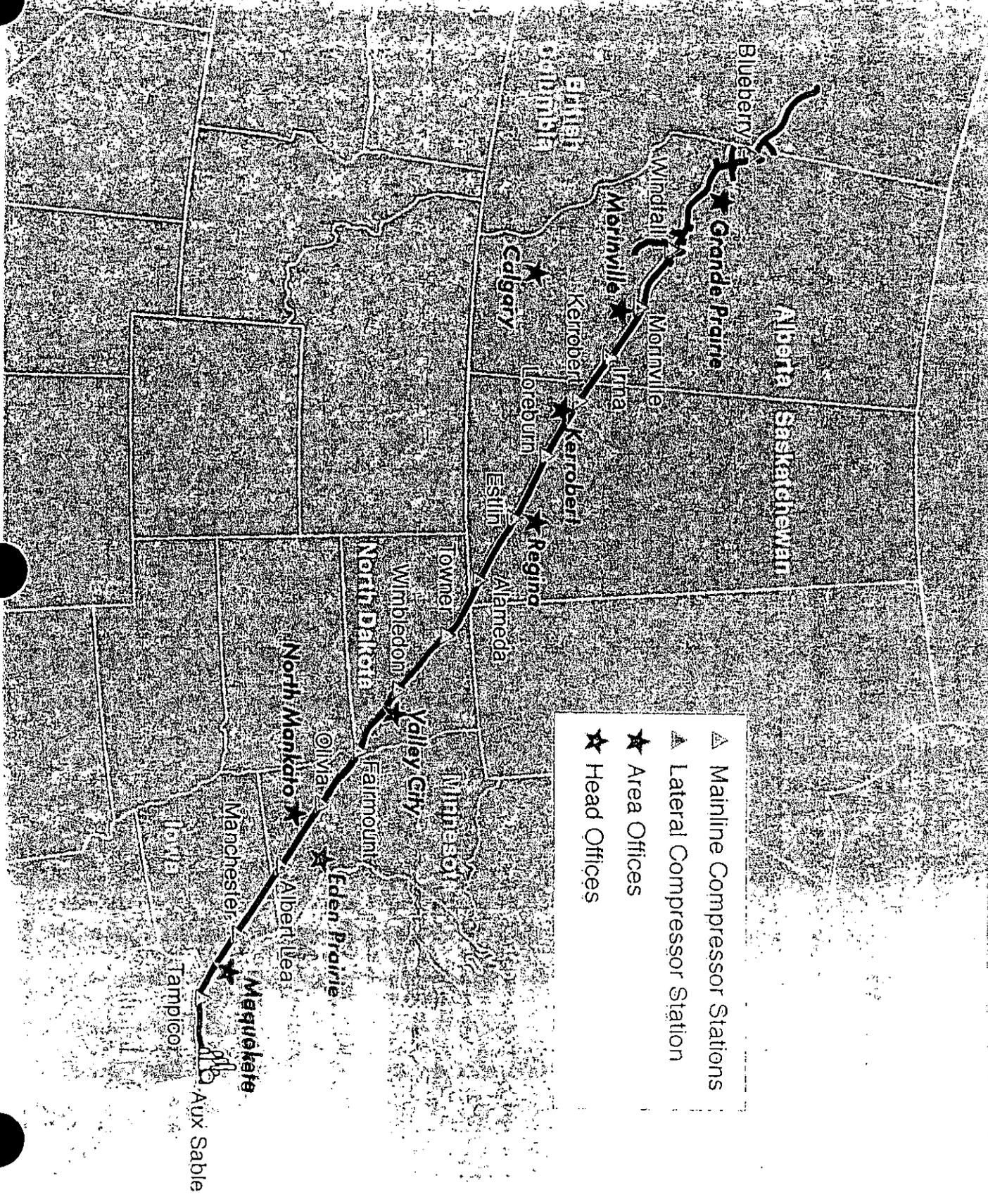


# TransCanada Keystone

## Projected Tax Revenues Per County in ND

PEMBINA	\$800,000	- \$1,000,000
CAVALIER	\$200,000	- \$250,000
WALSH	\$900,000	- \$1,100,000
NELSON	\$1,400,00	- \$1,700,000
STEELE	\$1,000,000	- \$1,200,000
BARNES	\$1,400,000	- \$1,800,000
RANSOM	\$950,000	- \$1,160,000
SARGENT	\$950,000	- \$1,175,000
NORTH DAKOTA	\$7,650,000	- \$9,385,000

\* PROJECTIONS BASED ON 2007 ESTIMATED CAPITAL COST



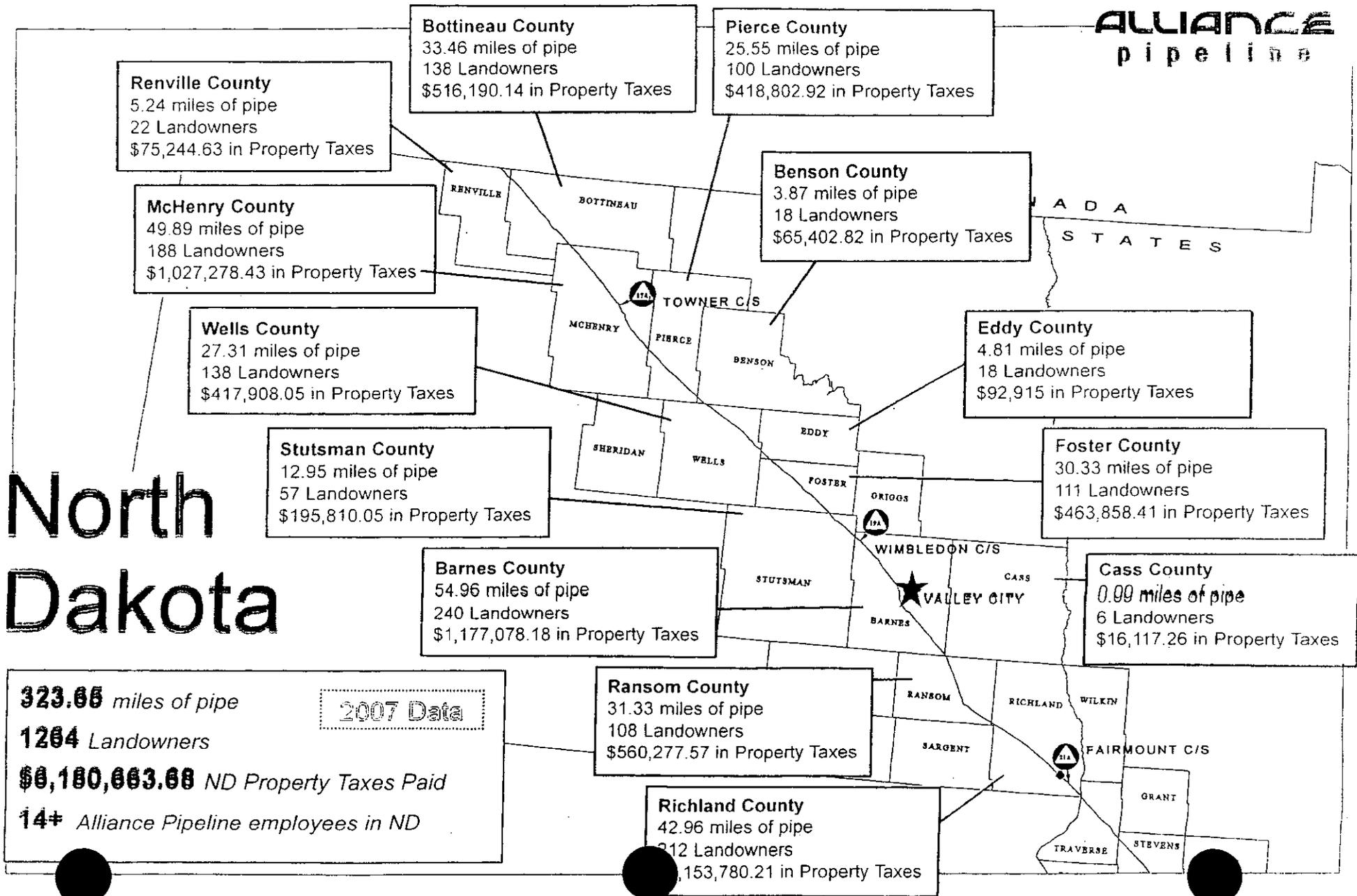
- ▲ Mainline Compressor Stations
- ▲ Lateral Compressor Station
- ★ Area Offices
- ★ Head Offices

**Call Before You Dig!**

**North Dakota One-Call (800) 795-0555**



**ALLIANCE**  
pipeline



HCR 3007

Mr. Chairman and Members of the House Energy and Natural Resources Committee,

My comments on the question asked about when eminent domain should be used: I feel eminent domain is the last resort. In the case of pipeline siting, if the company meets all the demands of the property owner and the property owner still refuses to sign an agreement, then maybe eminent domain is proper. It is not properly used as a threat during negotiations.

Mr. Kranda stated that they used the threat of eminent domain on a handful of people in all of the counties that they went through. This opinion may be adverse to what eminent domain is to be used for.

A study resolution cannot be turned into a bill, so please approve this study so that proper language for a bill can be drafted.

This resolution will not help Mr. Mathews. His problem has already passed. This proposal will help property owners, in the future, to remain free of the threat of eminent domain before negotiations.

Rep. Jerry Kelsh

#1

## HRC 3007: Does Eminent Domain Need A Study?

### A bit of history.

Eminent domain, in its simplest terms, is the inherent power of a governmental entity to take private property and convert it to public use. More specifically, it is the power of a public entity to take private property without the owner's consent, conditioned upon the payment of just compensation. Eminent domain is a right founded on the law of necessity which is inherent in sovereignty and essential to the existence of government.

The power of eminent domain belongs exclusively to the legislative branch and to those entities or individuals authorized by statute to exercise the power.

The government's exercise of the power of eminent domain is subject to several important constitutional limits, including the requirement for payment of just compensation and the requirement that the property owner be granted due process of law, including notice and an opportunity for a hearing. (a)

### What's changed lately?

The U.S. Supreme Court on June 23, 2005, ruled in *Kelo v. New London* that the "public use" provision of the "takings clause" of the 5th Amendment of the U.S. Constitution permits the use of eminent domain for economic development purposes.

The case involved an economic development plan for the City of New London, Connecticut. The City had been in economic decline for many decades. In 1996, the U.S. Navy closed its Undersea Warfare Center, causing the loss of more than 1,500 jobs. In 1998, Pfizer, Inc., a large pharmaceutical company, announced plans to build a large research facility in New London on a site adjacent to the Fort Trumbull neighborhood. This neighborhood has been characterized as one with a high vacancy rate for nonresidential buildings, old buildings in poor shape, and with fewer than half of the residential properties in average or better condition. The homes of the petitioners in this case, however, did not fall into these categories.

The Supreme Court, in a 5-4 decision, recognized that the U.S. Constitution prohibits a "taking" whose "sole purpose" is to transfer one person's private property to another private person, even if just compensation is paid. It emphasized, however, that this was not the issue before the Court. Rather, "The disposition of this case therefore turns on the question whether the City's development plan serves a 'public purpose'." The decision went on to stipulate that "Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field." In writing for the majority, Justice Stevens noted, in fact, that "To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development." (a)

## Did North Dakota react to the Kelo decision?

North Dakota citizens joined the national uproar over that Supreme Court decision where a taking of property for benefit of private industry economic development and responded:

### **ND Measure 2**

*"For purposes of this section, a public use or a public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.*

*Private property shall not be taken for the use of or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business."*

*Sponsored by: citizen initiative*

*Approved by voters on November 7, 2006 (67%-33%)*

## So How Does This Relate To HCR 3007?

1. In 2007 and 2008, a foreign pipeline entity obtained a permit to install a pipeline over the properties of ND. To proceed, the ND law cited above (common carrier) was advanced to grant that company the right to condemn private property should the North Dakota citizen offer any resistance. This particular company offered their terms for easements as the only acceptable language and compensation; otherwise you would be placed in their "condemnation file." ND landowners tried to negotiate what appear to be reasonable terms included examples as follows:

- A. Why "multiple pipelines" if only one installed?
- B. Why "pipelines carrying any products", including natural gas, if crude oil is this pipeline's purpose?
- C. Why should the company be able to "abandon pipe in place" and leave any reclamation issue to the existing landowner?
- D. Could the preferred route be altered to afford a larger buffer (than 500') between the pipe and homes?
- E. Why cannot an annual lease payment be considered vs. one time payment?
- F. Why the company could move intended route solely on its opinion without conferring with the impacted property owner?
- G. Could the company provide drinking water tests before installation to resolve questions later if an accident occurred?

How can any of these easement terms not be concerning to an affected citizen? Again, any resistance was met by "you will be condemned" and the result is the court will force this easement and route upon you. Who is better equipped to understand the properties attributes better than the landowner? Yet this expertise is seems to be discarded and viewed as resistance by the sole judge – the pipeline company. The ND PSC distanced themselves from such easement particulars considering this not a matter they are empowered to hear. Apparently the ND Attorney General's office has the same limitations. Thus it would appear the state has delegated nearly all respects of an eminent domain process to a private industry with the only public oversight (the courts) of whether just compensation is paid.

***Therefore, does North Dakota owe its citizen's additional oversight or rather leave the matter only to the moral virtues of such a condemner?***

2. Language included into 2006 initiative contains references to "common carrier." To laymen, this reference in the basic terms probably means the ability for the North Dakota public to put goods on a truck, bus, train or plane. What the voters probably didn't realize that without further restrictive language, foreign companies that delivers no products to North Dakota nor receives products into our state are granted eminent domain provisions. In other words, our sacred landscape could be viewed as only convenient geography where a straight line across our state obtains the lowest construction cost and to enhance private industry entity's profits.

***Therefore, should North Dakota reconsidered whether foreign companies will have sacred powers of eminent domain?***

***Also, should North Dakota re-examine language that permits common carriers exempted only if North Dakota destined or received products are involved?***

3. It is safe to assume the proponents lobbying to leave language as currently codified will suggest that public purpose is being served by letting foreign pipeline companies expand their holdings into North Dakota will somehow increase reliable oil supplies into our state at perhaps lower cost and greater homeland security. But to send crude oil to refineries in distant states or beyond to be diluted into other mass quantities of crude should have strict review and then a system of compliance reports needs to insure the promises the company offers to ND consumers at hearings render the intended results. Currently, whether its limited expertise or personnel, it seems ND PSC delegates any review of public purpose to federal agencies.

***Since eminent domain is a "state provided right," is it proper then to delegate this to federal agencies which may not have the same interest as North Dakota's?***

4. It is often mentioned that pipeline company's offer enhanced tax payments in localities. But reading the first part of the initiative, it is quite clear that our North Dakota citizens believed tax windfalls should not be considered.

***When this tax revenue is offered as a public reason for eminent domain, listeners should not be tempted or influenced by that aspect for justification as that is what propelled and created the citizen initiative in 2006 in the first place.***

5. It is also safe to assume proponents to leave language as currently written will also suggest that companies will avoid development in our state should they not have eminent domain powers. In 1997 the Illinois Commerce Commission denied a pipeline company the authority and required the company to try negotiations again. That pipeline was installed without eminent domain authority. In July 2009, that same Commission repeated and denied eminent domain privileges. Some states such as Connecticut do not grant such powers at all (b), but it's safe to assume pipelines do exist in such states. A listener to this kind of argument should be careful to weigh its merits and who's agenda they are forwarding; the companies trying to maximize its profits vs. the rights of the individual to quietly enjoy his/her private property.

***Therefore just having some limitations placed on pipeline operators doesn't translate a death of opportunities for pipeline development, but perhaps puts private individuals on more of a equal platform to negotiate a preferred route and easement terms.***

## Summary

Pipelines such as the recently installed one are labeled "hazardous" for good reason. They are federally regulated by PHMSA. But neither them nor ND PSC dictate a route – only the applicant develops a preferred route. Neither regulatory agency can adjust a route – only the applicant. Therefore when an applicant defines its route upon a private individual and then beckons eminent domain threats if the company senses resistance, what meaningful leverage remains to a private landowner?

It appears only the state can manage and intercede since it is the state that empowers who has eminent domain privileges.

Recent history demonstrates how hazardous products can affect our society after the 2010 spring Gulf of Mexico oil accident created an environment mess. Or the 2010 summer Michigan Kalamazoo River pipeline catastrophe when it resulted in extended residual health incidents (caused toxic components such as benzene) to the area's residents in its aftermath. (c) Our region witnessed the December 2007 explosion and fireball at Clearwater, MN where the accident consumed lives. Incidents routinely happen in the pipeline industry and eventually a significant one will happen in our state. Now try to imagine a landowner aware of such accidents, trying to protect his/her home or property as a private individual against a company that forces a situation of "sign here or else", a power granted them by state design.

People hold property rights dearly and tend to fiercely protect them. Property is an extension of them and people have evolved to believe they control property because of the belief it is "ours." The homes and farmland are so important. They are not just four walls and a roof or tillable/rangeland acres held for a farming enterprise, but represent much more than that. They represent nostalgia and help them remember their past and provide hope and livelihood in the future.

Those 2006 ND citizens were alarmed by the Kelo decision and voted overwhelming to restrict eminent domain powers by their power of initiative. Does the described pipeline eminent domain situation that materialized after 2006 appear to portray the virtues of North Dakota values?

At this time, let the legislative branch act prudently and examine the issues analyzed here and confined to this resolution. Let us join neighboring states legislative bodies which are concurrently modeling legislation in this area and at least study this issue.

## **What meaningful harm can sprout from a legislative study asked by HRC 3007?**

Paul Mathews, 9066 119<sup>th</sup> Ave SE, Cogswell ND 58017 (701-724-6470)

### Resources:

- a. Kansas Legislative Research Department, Legislator Briefing Book 2011
- b. Growing Pains: Challenges to Development of Oil Pipeline, by Christopher J. Barr, JD George Washington Univ., published Energy Law Journal [Vol. 28:43 2007]
- c. Michigan Dept of Community Health, Acute Health Effects of the Enbridge Oil Spill, November 2010

HCR 3007

Good morning, Chairman Lyson and members of the Senate Natural Resources Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

We appear in support of HCR 3007, which calls for a study of the eminent domain laws as they relate to pipeline siting and private property rights.

The Stockmen's Association has six standing policies, which serve as the foundation of our philosophy, and one of them is entitled "Eminent Domain." The policy states our organization's opposition to the exercise of eminent domain in the taking of private lands and condones that exercise only in those rare instances of absolute necessity.

HCR 3007 could generate a helpful study and a healthy discussion about this issue amongst stakeholders and help foster better relationships and communication in these instances.

HCR 3007 is aligned with our policy. Thus, we support the resolution and ask for you to do the same.