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Landowners under siege in the Big Bend

Amy Hardberger, For the Express-News

Updated 5:30 pm, Monday, January 25, 2016

It is safe to say that property rights are sacred in Texas. We inherited our love of the land from past generations who toiled to make the harsh landscape bloom. Nowhere is this truer than in the Big Bend region of Texas.

In 2012, the Texas Attorney General's Office issued a Landowner's Bill of Rights specifying all the protections each of us has against government interference, including the taking of property under eminent domain. One of the requirements for land condemnation is that it be for a public use. This is to ensure that the burden placed on a few will benefit the larger community; however, the mechanisms for balancing private property rights against the public good are now being exploited by profit-driven companies.

The so-called TransPecos pipeline proposed by Dallas-based [Energy Transfer Partners](#), or ETP, calls for a 125-foot-wide trench to be cleared across approximately 143 miles of private property in some of the most pristine country in Texas. A channel also will be tunneled beneath the Rio Grande River.

While Texas landowners will be burdened by this pipeline, they will not receive the benefits. This pipeline was commissioned by the [Federal Electricity Commission of Mexico](#), a foreign entity. The natural gas flowing through this enormous 42-inch pipeline is destined for Mexico, where most of it will be liquefied and shipped to markets in Asia.

To protect landowners from such abuses, the power to take private property through eminent domain condemnation should require:

Due process.

Proof that the taking is in the public interest, for the public good.

Fair compensation.

However, in this case, a single clause in the [Texas Utilities](#) Code removes any avenue for due process and denies private landowners the ability to challenge a gas pipeline owner or operator with respect to the public interest it claims to serve.

Although it is a privately owned company, ETP is able to call itself a public utility based on Texas Utilities Code 121.001 (2), which defines anyone who owns or operates a gas pipeline in the state of Texas as a gas utility, a form of common carrier. This entitles that entity to access the powers of eminent domain condemnation without public involvement or regulatory oversight.

Instead of protecting landowners, the “regulatory oversight” of the [Railroad Commission of Texas](#) stifles due process:

No permit is required to build an intrastate pipeline in the state of Texas.

No public hearings, no mechanism for public comment, no environmental oversight required.

No method of challenging the routing of the pipeline.

No proof required, nor any debate about the public interest or public good.

This is in stark contrast to the process by which the [Public Utility Commission](#) permits utility lines. There, public comment and review are required prior to the approval of any proposed project.

Energy Transfer Partners is currently threatening various landowners who object to even one of the company’s sweeping terms, including:

Easements granted in perpetuity.

Arbitrary use of the easement, for any hydrocarbon product.

The ability to change the topography of the land and erect fences and gates.

In concrete terms, landowners are being offered \$5.40 to \$10.55 per linear foot of easement as a one-time payment. Market-based pricing in other areas, like the Eagle Ford or Barnett shale regions, are in the neighborhood of \$84 per linear foot.

For landowners who resist, the multibillion-dollar company is filing for grant of a temporary restraining order and injunction against the resistant landowner, along with a civil lawsuit, seeking damages of \$100,000, legal fees, court costs and a threat of eminent domain condemnation.

This is not only unfair, it’s un-Texan.

Surely, this is not what was intended when landowner protections were enumerated by the [Texas Attorney General’s Office](#). The proposed TransPecos pipeline creates a dangerous precedent for private property rights holders all over Texas.

The Big Bend may seem like a world away from here, but the next pipeline might be in your backyard.

Amy Hardberger is an associate professor of law at St. Mary’s University.

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