



Right of Way Condemnation by Private Companies Recent Colorado Court of Appeals Decision

***Sinclair Transportation Company v. Sandberg*, No. 08CA1249
(September 17, 2009)**

By: [Andrew Bremner](#)

A recent case from the Colorado Court of Appeals sheds new light on whether companies may condemn a right of way across private lands for gathering and other infrastructure associated with oil and gas operations. Sinclair Transportation Company (STC) owned and operated a refined products pipeline crossing private property owned by the Appellants. STC requested a modification of its existing easement across the Appellants properties in order to install another refined products pipeline within the existing 50' easement originally acquired in 1963. The purpose of the pipeline was to transport refined products from Wyoming to a terminal in Henderson, Colorado for distribution to customers in metro Denver and out of state. The Appellants refused to grant the modification to the existing easement. In response STC filed a condemnation action pursuant to C.R.S. § 38-5-105. The Weld County District Court granted STC's request holding that it was a pipeline company authorized to condemn private property under the statute for the purposes granted therein.

On appeal, the court addressed several issues, but two in particular are of interest to Colorado operators. First, the court addressed whether STC is a "pipeline company" under C.R.S. § 38-5-105 thereby allowing STC to exercise eminent domain authority in order to install the pipeline in their existing right of way. The second issue was whether installation of STC's refined products pipeline to serve its customers is a sufficient public purpose allowing STC to condemn a right of way across private lands pursuant to C.R.S. § 38-5-105. In answering both issues in the affirmative, the Court of Appeals upheld the trial court's findings that STC is a pipeline company under C.R.S. § 38-5-105 and that the record supports the public purpose of allowing condemnation.

The term “pipeline company” as used in the Colorado statutes includes STC since it has existing pipelines in Colorado and is a foreign corporation (Wyoming) authorized to do business in Colorado. To reach this conclusion, the court resorted to the plain meaning of the term since that term is not defined in the statute. The Appellants argued that the trial court’s definition of “pipeline company” was too broad and that another statute, C.R.S. § 7-43-102, should be used to narrow the definition. The court held that Appellants interpretation of C.R.S. § 7-43-102 would be too restrictive since it would require a company to form a corporation for the sole purpose of constructing a pipeline for the conveyance of gas, water or oil in order to be considered a “pipeline company” under the condemnation provision.

The court further held that STC’s pipeline was being developed for a public purpose. The court noted that the public purpose analysis is on a case by case basis citing to factors enunciated by the U.S. Supreme Court in *Kelo v. City of New London*, 545 U.S. 469 (2005). Those factors include the land’s physical conditions, community needs, character of the benefit conferred on the community and the improvement’s necessity in developing the state’s resources. The court held that the record before the lower court was sufficient to support its finding this pipeline was for an adequate public purpose. The court specifically cited testimony from STC’s general counsel that the pipeline was to serve customers in the Denver metropolitan area and customers outside of Colorado but distributed from the terminal in Henderson. Further, the proposed pipeline would create a redundancy in that should one or the other lines need to be shut down for maintenance or other reason, it would allow product to continue moving through the pipeline.

This case provides a potential avenue for operators to secure rights of way across private land to support production operations. Choosing this avenue for operators should be done after careful consideration of all aspects of the project and the potential consequences.

Please contact [Andrew Bremner](#) for a copy of the case.