

Battle over eminent domain rights continues

Written by Marianne Goodland, State Capitol reporter
Wednesday, 20 February 2013 11:34 -

A bill that began as a simple, technical change to a 19th-century statute has turned into a much bigger battle over whether the state should grant eminent domain rights to oil and petroleum companies.

Sponsors of Senate Bill 13-021 claim the bill would merely make a technical correction in state law to add petroleum to the list of the kinds of things that can go through a pipeline.

But the state law that would be changed in the bill currently grants eminent domain rights for pipeline right-of-ways to companies that act in the public interest, such as utilities like natural gas and electricity. The rights of eminent domain have never been granted to oil and petroleum companies. The bill also seeks to overturn a 2012 Colorado Supreme Court decision.

Since 1963, Sinclair Oil has had an easement for a six-inch high-pressure oil pipeline on lands owned by Donna and Ivar Larson of Johnstown. The pipeline carries about a million gallons of petroleum a day from Sinclair, Wyo. to Henderson and eventually to Denver International Airport.

Ten years ago, the company sought an additional easement to install a 10-inch line that would carry two million gallons per day, a request the Larsons turned down in part because of safety concerns. The company then attempted to use its perceived power of eminent domain to obtain the land, and that led to a lawsuit. The case went all the way to the Colorado Supreme Court.

Last year, the Colorado Supreme Court agreed with the Larsons. In its decision on *Larson v. Sinclair Transportation*, the court said that the statute granted the right of eminent domain only to companies that seek right-of-way on pipelines for electrical power or natural gas. It rejected Sinclair's claim of eminent domain with regard to land it would use for oil pipelines.

The Senate Agriculture, Natural Resources and Energy Committee held two hearings about SB 21 in the past several weeks. During a Jan. 29 hearing, Andy Karsian of Colorado Counties, Inc. noted that the original statute limited powers of eminent domain to government entities for the public good or for specific for-profit companies that also acted for the public good.

"It's telling" that oil pipelines were not included in the statute, Karsian said. Eminent domain should be narrowly defined to avoid harming the property rights of private citizens, he explained.

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CCI, which represents county commissioners throughout Colorado, opposes the bill.

Attorney Ben Cohen, who represents the Larsons, told the Ag Committee that based on his research, oil companies, with “perceived authority of eminent domain,” have for many years obtained land for pipelines through condemnation proceedings. Few landowners, including those in rural areas, have the resources to fight those proceedings, he said. Ivar Larson told the committee that he and his wife borrowed \$2 million to cover the legal expenses it would take to fight Sinclair in court.

A second issue is the safety of the pipelines, Cohen told the committee. Neither the state, nor Weld County or the city of Johnstown took any action to set up safety setbacks regarding the Sinclair pipeline, Cohen said. The house nearest the six-inch pipeline is just 25 feet away, despite claims in a Sinclair brochure that they would not put in pipelines any closer than 100 feet away from any home.

According to the Larsons, the Rolling Hills Ranch subdivision, which is adjacent to their property, was built after the six-inch pipeline was installed. The 10-inch pipeline would be about 35 feet from the nearest home in Rolling Hills.

The Larsons intended to develop the land. Cohen told the committee the land cannot be developed because the pipeline should be at least 500 feet from any structure. As a result, Cohen said, Sinclair should pay condemnation damages for the land rendered undevelopable.

The Larsons were paid \$25,000 for the 50 feet of land needed for the pipeline. However, they believe about 150 acres of land were rendered undevelopable by the new pipeline, at a value of \$37,500 per acre as appraised by Sinclair, or about \$5.6 million total.

The Larsons say they are not opposed to pipelines. Ivar Larson told the committee they agreed to grant an easement to Xcel Energy for a natural gas pipeline that would include safety setbacks. A request for a 1,500-foot safety setback was made to Sinclair, but Larson said Sinclair rejected it as well as any other efforts to negotiate with the Larsons on the safety issue. “They were stubborn,” Larson said of Sinclair, and Xcel wasn’t.

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“I’m not opposed to pipelines,” Larson said. “I’m for pipelines—they’re a safe way to carry.”

Safety setbacks are not mandated in state or federal law, although cities and counties do have the right to require them. Setbacks are required in state law for oil wells and other mineral extractions. Last week, the Colorado Oil and Gas Conservation Commission, which has no authority over pipelines, bumped up the setbacks to 500 feet, with 1,000 feet for hospitals and schools.

SB 21 was supported by the Metro North Chamber of Commerce and the Colorado Association of Commerce and Industry. CACI representative Carly Dollar West said that the “technical amendment to current law” contained in SB 21 is essential for companies to continue to operate as they have for the past 100 years.

Sen. John Kefalas (D-Fort Collins) said during the Jan. 29 hearing that the safety issues merited further consideration. However, since the title for SB 21 referenced technical revisions, those safety issues probably could not be addressed in the bill.

Bill sponsor Sen. Mary Hodge (D-Brighton) said last week that she will change the bill title to a simpler one concerning pipeline right-of-way, making it broad enough to address the safety issues. She also said she plans to amend the bill to state that a pipeline right-of-way has to follow federal safety standards.

The potential that SB 21 may grant eminent domain rights to oil and petroleum companies got a chilly reception from House Majority Leader Dickey Lee Hullinghorst (D-Boulder).

Hullinghorst said recently that the bill deals with major policy, not a technical revision to state law. “I would be surprised if even Republicans supported eminent domain rights for private companies ... that’s pretty standard [and] non-partisan. Eminent domain is granted to the state” and to utilities. “I can’t imagine that would meet with much favor in the House.”

Hullinghorst also expressed concern about the safety setback issue. She added that once people understand that the bill is about eminent domain “it won’t get great reception [in the

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House]. Certainly not by me.”

Sen. Greg Brophy (R-Wray) said he believed the Supreme Court’s ruling was wrong. “There’s a legitimate public concern for putting in pipelines, just like there are in ditches. There’s often just one right place” for a pipeline, he said. “There has to be a mechanism by which a gas company can deliver their products to metropolitan areas ... I don’t see how you treat liquid petroleum differently than natural gas.”

The question is whether the process is fair to both parties, he explained. “We have to set up a system where the 800-pound gorilla has every incentive to play fair with the little guy; they have lots of capital and lawyers and the little guy has nothing.”

To the battle the bill might face in the House, Brophy said it’s an area where there needs to be compromise and leadership. “This is a problem that needs to be solved.”

In other action at the capitol in the past week:

Democratic lawmakers are moving swiftly on bills dealing with gun control. Hearings on four bills in the Democrats’ package took place in contentious all-day hearings in the past week.

The bills address high-capacity ammunition magazines, universal background checks and who would pay for those checks and concealed weapons on college campuses. The House Education Committee approved House Bill 13-1226, no concealed carry weapons on college campuses, on Feb. 13; the House Appropriations Committee approved it Feb. 14.

The House Judiciary Committee dealt with two of the bills on Feb. 12: HB 1224, on high-capacity magazines, and HB 1229, on universal background checks.

HB 1224 was amended to increase the limit on magazines from 10 to 15. The Appropriations Committee approved both bills on Feb. 14. The House Finance Committee approved HB 1228

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on Feb. 13, which would require those seeking to purchase guns to pay for their own background checks. The Appropriations Committee passed it the following day.

All of the bills passed on party-line votes, with all Democrats in support and Republicans opposed. All four are scheduled for final House votes this week.

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