

Hydraulic Fracking, Pipelines and Land Rights: Ohio Judge Rules against Pipeline Consortium

Wood County Judge Nixes Pipeline Builder's Eminent Domain Plans

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Kinder Morgan has been negotiating with landowners in 14 Ohio counties

BOWLING GREEN, OHIO — A Wood County Common Pleas judge ruled today that the company behind the Utopia East pipeline project does not have eminent domain rights, throwing a potentially expensive roadblock into the project's path.

Judge Robert Pollex ruled that Kinder Morgan's plan to pipe ethane from the Utica shale region in eastern Ohio to a chemical company in Windsor, Ont., is not necessary and not for a public use, and thus the company cannot use eminent domain to force Wood County landowners to give easements on their property.



Kinder Morgan, North America's largest energy-infrastructure company, has been negotiating with landowners in 14 Ohio counties to build the 12-inch pipeline, which would transport the ethane — used in the production of plastics — to a pipeline in Michigan that then heads to Canada. The product would solely be used by NOVA Chemicals Corp., a Canadian company.

Wood County Common Pleas Judge Robert Pollex ruled today that the company behind the Utopia East pipeline project does not have eminent domain rights, throwing a potentially expensive roadblock into the project's path.

For property owners who have not been willing to sell, or sell at the price Kinder Morgan proposed, the company has petitioned Ohio courts for the right to appropriate the property at fair value. Some of those cases are in Wood County, including one involving PDB Farms of

Wood County, which is south of Pemberville.

Several dozen landowners have been represented by Andrew Mayle of the Fremont law firm Mayle, Ray & Mayle and by Maurice Thompson a lawyer and the founder and director of the 1851 Center for Constitutional Law in Columbus.

Judge Pollex's ruling involved PDB Farms and several other landowners represented by Mr. Mayle and Mr. Thompson, as the judge consolidated several of the cases.

The product Kinder Morgan wants to transport is a byproduct of hydraulic fracturing of shale to extract oil and natural gas. Mr. Mayle said that pipeline companies are becoming increasingly aggressive, asserting eminent domain rights as they build pipelines across the Midwest.

"It's probably the most important eminent domain case in the United States right now," he said.

A Kinder Morgan official said this afternoon the company was reviewing the decision and would have a statement by the end of the day.

Ohio allows some private companies the right to use eminent domain if the project is for the public good. Among those companies are "common carriers," which can include pipeline companies transporting petroleum products.

Kinder Morgan has argued that the project is necessary and for the public use because the Utopia East pipeline would help in the development of America's energy infrastructure, create hundreds of temporary union jobs and several permanent positions, and would amount to a \$500 million investment.

However, Judge Pollex ruled that Kinder Morgan's proposed project is not necessary or for public use, and does not qualify as a common carrier, because only the Canadian company would directly benefit. He also expressed incredulity that state law allows private companies to essentially grant themselves eminent domain rights.

"It is astonishing to this court that Kinder Morgan is able to make its own determination to proceed and not be required to obtain any permit or permission from a governmental entity," Judge Pollex wrote.

The judge also wrote that, if Ohio's laws were read to make Kinder Morgan a common carrier, that law would be an "unconstitutional infringement on the property rights of the defendants."

Mr. Mayle said he believes other judges in Wood, Lucas, Seneca, Sandusky, and other counties will use the ruling in their decisions in similar cases.

"We think this decision was spot on, and it was the right decision, and we think other courts will be persuaded by it and follow it," he said.

The inability of Kinder Morgan — potentially other companies seeking to build pipelines — to use eminent domain would give landowners significantly more leverage in negotiations with the companies or force the companies to alter their pipeline routes.

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