

THE BUSINESS OF GAS PIPELINE CONDEMNATION: A MULTISTATE ANALYSIS

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I.	INTRODUCTION	130
A.	<i>Overview</i>	130
B.	<i>What is Eminent Domain?</i>	132
C.	<i>Geographic Statistical Data</i>	135
1.	U.S. Natural Gas Pipeline Network	135
2.	Case Study: Keystone Pipeline System	137
II.	PRE-PROCEEDING REQUIREMENTS	140
A.	<i>Generally</i>	140
B.	<i>Colorado</i>	142
1.	Good Faith Negotiation.....	142
2.	Appraisals.	143
3.	Necessity.	143
4.	Map and Survey Requirements.	144
C.	<i>North Dakota</i>	144
1.	Good Faith Offer.	144
2.	Appraisals.	144
3.	Necessity.	145
4.	Right to Survey.	145
5.	Special Notices.	145
D.	<i>New Mexico</i>	146
1.	Good Faith Offer.	146
2.	Agreement.	146

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	3. Negotiation.....	146
	4. Appraisals.....	146
E.	<i>Montana</i>	147
	1. Good Faith Offer.....	147
	2. Survey and Notice.....	147
	3. Necessity.....	148
F.	<i>Texas</i>	148
	1. Good Faith Offer.....	148
	2. Appraisals.....	148
	3. Confidentiality.....	149
	4. Public Hearings.....	149
	5. Special Notices.....	149
G.	<i>Utah</i>	150
	1. Conditions Precedent to Taking.....	150
	2. Public Hearings.....	150
	3. Negotiation and Disclosure.....	150
	4. Right to Survey.....	151
H.	<i>Wyoming</i>	152
	1. Good Faith Offer.....	152
	2. Necessity.....	153
	3. Appraisals.....	154
	4. Special Notices.....	154
III.	INITIATING THE PROCEEDING.....	155
A.	<i>Generally</i>	155
B.	<i>Colorado</i>	156
	1. Jurisdiction and Venue.....	156
	2. Petition Requirements.....	156
	3. Trial.....	157
	4. Board of Commissioners.....	157
C.	<i>North Dakota</i>	159
	1. Jurisdiction and Venue.....	159
	2. Petition Requirements.....	160
	3. Court Hearing.....	160
	4. Assessment of Damages.....	160
	5. Trial.....	161
	6. Post-Trial, Repurchase and Other Matters.....	162
D.	<i>New Mexico</i>	162
	1. Jurisdiction and Venue.....	162
	2. Petition Requirements.....	162
	3. Notice of Condemnation.....	164
	4. Appointment of Commissioners and Objections.....	164
	5. Trial.....	166
E.	<i>Montana</i>	166
	1. Jurisdiction and Venue.....	166
	2. Petition Requirements.....	166

3. Commissioners' Hearing and Findings.	167
4. Trial.....	169
F. <i>Texas</i>	170
1. Jurisdiction and Venue.....	170
2. Petition Requirements.....	171
3. Commissioners' Hearing and Findings.	171
4. Objections.....	171
5. Trial.....	172
6. Post-Trial, Repurchase and Other Matters.....	172
G. <i>Utah</i>	172
1. Petition Requirements.....	172
2. Powers of Court or Judge.....	173
3. Settlement.....	173
4. Trial.....	174
5. Post-Trial and Other Matters.....	174
H. <i>Wyoming</i>	175
1. Petition Requirements.....	175
2. Commissioners' Hearing and Findings.	175
3. Trial.....	175
4. Compensation for the Taking.	176
5. Explicit Right to Eminent Domain of Pipeline Companies. The Wyoming Eminent Domain Act explicitly provides that:	176
IV. CONCLUSION	176

I. INTRODUCTION

A. *Overview*

The media uproar surrounding the proposed interstate Keystone XL Pipeline expansion and its sister Gulf Coast Project have brought pipeline condemnation proceedings to the forefront of public debate.¹ With regards to the necessity and safety of such projects, controversy reigns. Various groups, ranging from environmentalists to independent economic analysts to government officials, have publicly weighed in on the pros and cons of the proposed pipelines.² In order to access private land

1. *Infra* notes 2, 3, 12; See John M. Broder & Clifford Krauss, *Keystone XL Pipeline*, N.Y. TIMES (Feb. 28, 2012), http://topics.nytimes.com/top/reference/timestopics/subjects/k/keystone_pipeline/index.html.

2. See, e.g., *id.*; Lara Skinner, et al., CORNELL UNIV. ILR SCH. GLOBAL LABOR INST., *Pipe Dreams? Jobs Gained, Jobs Lost by the Construction of Keystone XL* (Sept. 2011), http://www.ilr.cornell.edu/globallaborinstitute/esearch/upload/GLI_KeystoneXL_Reportpdf.pdf.

for the proposed pipeline expansion, dozens of eminent domain actions against landowners have been filed from South Dakota to Texas.³ Many more such actions are not only anticipated, but will be necessary to complete these and other projected pipeline projects.

The majority of U.S. pipeline mileage is for (natural) gas and associated products.⁴ According to the U.S. Department of Transportation, Pipeline & Hazardous Materials Safety Administration: (1) onshore and offshore U.S. gas transmission pipelines total approximately 321,000 built miles; (2) hazardous liquid pipelines total approximately 175,000 built miles; and (3) gas distribution mains and service pipelines total approximately 2,066,000 built miles.⁵

Gas gathering pipeline systems gather raw natural gas from production wells, while transmission pipeline systems transport natural gas thousands of miles across many parts of the continental U.S.⁶ Natural gas distribution pipeline systems can be found in thousands of communities from coast to coast and distribute natural gas to homes and businesses through mains and service lines.⁷ Natural gas gathering and transmission pipeline systems are constructed from steel pipe, which range in size from 2 inches to 42 inches in diameter.⁸

Natural gas pipelines are located in every state of the U.S.⁹ The U.S. natural gas pipeline grid is comprised of more than 210 natural gas pipeline systems, 305,000 miles of interstate and intrastate transmission pipelines, 1400 compressor stations and 400 underground natural gas storage facilities.¹⁰ This network is currently concentrated in Texas, Louisiana, Oklahoma, Ohio, and Pennsylvania (see Section C, Map No. 1 [“U.S. Natural Gas Pipeline Network, 2009”] below).¹¹

With the recent development of shale gas fields, natural gas pipeline growth is expected to expand greatly in the western

3. See John Hurdle, *Texas Keystone Pipeline Critics Resist Use of Eminent Domain*, AOL ENERGY (Oct. 25, 2012), <http://energy.aol.com/2012/10/25/texas-keystone-pipeline-critics-resist-use-of-eminent-domain/>.

4. See *id.*

5. See U.S. Dept. of Transp., *Pipeline Basics* (Mar. 19, 2013), <http://primis.phmsa.dot.gov/comm/PipelineBasics.htm?nocache=9668>.

6. See *id.*

7. *Id.*

8. U.S. Dept. of Transp., *Natural Gas Pipeline Systems* (Mar. 19, 2013), <http://primis.phmsa.dot.gov/comm/NaturalGasPipelineSystems.htm>.

9. U.S. Energy Info. Admin., *About U.S. Natural Gas Pipelines* (Mar. 19, 2013), http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/index.html.

10. *Id.*

11. See *id.*

U.S., especially in the so-called "Rocky Mountain" states of Colorado, North Dakota, Montana, New Mexico, Utah and Wyoming. Much of this new pipeline right-of-way will be over private land (sometimes called "fee acreage"), and these new rights-of-way will come from the power of natural gas utility companies to condemn the land they need for pipeline purposes. In Texas, for example, it has been reported that most pipeline projects have been completed with an average of 4% to 10% of condemned land.¹² TransCanada's Gulf Coast Project, however, "has condemned more than 100 of the 800 or so tracts - or about 12.5% - of the land it needed to complete a 485-mile portion of the [36-inch] pipeline that runs through Texas."¹³

This article will examine pipeline condemnations in a select group of Rocky Mountain states, including the various condemnation proceeding and pre-proceeding requirements. Although the federal Natural Gas Act and many other state laws may affect condemnation procedures (from state government codes to state utility codes), this article will generally confine itself to discussion of the principal condemnation statute for each selected state as shown below.

B. *What is Eminent Domain?*

Eminent domain is the inherent power of a governmental entity to take private property for public use, subject to reasonable compensation.¹⁴ The power of eminent domain has long been recognized in the U.S.¹⁵ The concept of eminent domain has existed for hundreds of years, and has been described as an incident of sovereignty.¹⁶ For common law states, limitations on the exercise of the power of eminent domain are found as far back as the Magna Carta.¹⁷

Eminent domain is tacit within the U.S. Constitution, though not expressly provided for.¹⁸ The Fifth Amendment contains language regarding protection of private property, which many legal commentators have named the "Eminent

12. Associated Press, *Texas landowners take a rare stand against Big Oil*, CORPUS CHRISTI CALLER (Oct. 17, 2012), <http://www.caller.com/news/2012/oct/17/texas-landowners-take-rare-stand-against-big-oil/?print=1>.

13. *Id.*

14. BLACK'S LAW DICTIONARY 601 (9th ed. 2009).

15. *See, e.g.*, *Bauman v. Ross*, 167 U.S. 548(1897).

16. *See id.* at 574.

17. Daniel P. Dalton, *A History of Eminent Domain*, 3 PUB. CORP. L. QUARTERLY 1, 1 (2006).

18. *Id.* at 4.

Domain Clause.”¹⁹ Many states have adopted provisions, which enumerate or expand the protection of private property under their state constitutions.²⁰

Condemnation is the exercise of eminent domain by a governmental entity, and constitutes a formal determination and judicial declaration that certain property will be taken from its present owner and given to the public for its use.²¹ “Public use” is usually a question of law. Generally, any legislative declaration on public use is binding on the courts unless the use is clearly and palpably private.²²

A state may delegate its power of eminent domain.²³ Such delegation of authority includes so-called “common carriers.”²⁴ Common carriers are entities, which transport passengers or goods for a fee, such as a railroad or an airline.²⁵ Additionally, the concept of a common carrier implies that if the approved and/or required fee is paid and the goods to be transported are the kind of goods the carrier usually transports, the common carrier may not refuse transport.²⁶ By contrast, a private carrier is not bound to accept business from the general public.²⁷

In most states, oil and gas pipeline companies are considered common carriers, and are sometimes called “gas utilities.” Some states directly provide for such common carrier authority and resultant eminent domain powers. In North Dakota, the right of eminent domain for gas pipelines and associated plants is directly provided for by statute.²⁸ Montana statutes allow the right of eminent domain to be exercised for “common carrier pipelines.”²⁹

Both federal and state governments regulate oil and gas

19. BLACK’S LAW DICTIONARY 601 (9th ed. 2009).

20. See, e.g., TEX. CONST. art. I, § 17 (providing for “adequate compensation” when private property is taken, damaged or destroyed for public use); ALASKA CONST. art. I, § 18 (providing that “private property shall not be taken or damaged for public use without just compensation”); CAL. CONST. art. I, § 19 (providing that “private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner”).

21. BLACK’S LAW DICTIONARY 332 (9th ed. 2009).

22. See, e.g., Circle X Land & Cattle Co., Ltd. v. Mumford Independent School Dist., 325 S.W.3d 859, 863-64 (Tex. App.—Houston [14th Dist.] 2010, pet denied).

23. Aloysius A. Leopold, *What entities possess eminent domain powers in Texas*, 5A TEX. PRAC., LAND TITLES AND TITLE EXAMINATION § 39.4 (2012).

24. *Id.*

25. GEORGE BLUM ET AL., 13 AM. JUR. 2D *Carriers* § 5 (2013).

26. See GEORGE BLUM ET AL., 13 AM. JUR. 2D *Carriers* § 2 (2013).

27. See GEORGE BLUM ET AL., *supra* note 25.

28. N.D. CENT. CODE § 32-15-02(10) (2012).

29. MONT. CODE ANN. § 70-30-103 (West 2011) (enumerating public uses); MONT. CODE ANN. § 69-13-104 (West 2011) (providing provisions for common carrier pipelines).

utility pipeline companies.³⁰ Regulations include rate controls, operations, services for unincorporated areas, taxation schemes, statewide evaluation for achieving efficiencies, and compliance.³¹ Hundreds of miles of pipelines are constructed yearly, with peak building usually occurring during the spring and summer months.³² States assume all or part of the intrastate regulatory and enforcement responsibility through annual certifications and agreements.³³

Most states have enacted specific laws proscribing procedures for condemnation.³⁴ North Dakota eminent domain laws are found in Chapter 32-15 of the North Dakota Century Code.³⁵ In Montana, eminent domain laws are enacted in Chapter 30 of Title 70 of the Montana Code.³⁶ The laws of eminent domain in New Mexico are included in Chapter 42A of the Statutes of New Mexico.³⁷ For California, eminent domain provisions are found in Title 7 of Code of Civil Procedure.³⁸ Protections afforded under statutory condemnation procedures must be liberally construed for the benefit of the landowner.³⁹

Almost any type of property may be subject to condemnation. Property types include absolute fee, minerals, life estates, air or space, streams and lakes, leased lands, homestead property, fixtures, mortgaged property, easements, rights-of-way, *etc.* For example, the North Dakota Century Code states that any private property belonging to any person may be taken.⁴⁰ In Montana, "all real property belonging to any person" may be taken.⁴¹ However, most oil and gas pipeline condemnations in the U.S.

30. GLENDA K. HARNAD, 19A MICH. CIV. JUR. OIL AND NATURAL GAS § 3 (2013).

31. See Jane Edwards, *Regulation of Oil Pipelines in the U.S. and the Enbridge Oil Spill*, 19 MICH. B.J. 50, 50-51 (2011).

32. Rita Tub, *2012 Worldwide Pipeline Construction Report*, 239 PIPELINE & GAS J., www.pipelineandgasjournal.com/2012-worldwide-pipeline-construction-report?page=show (last visited March 7, 2013).

33. *Federal/State Authorities: State Programs*, PHMSA.COM, <http://www.phmsa.dot.gov/portal/site/PHMSA/menuitem.ebdc7a8a7e39f2e55cf2031050248a0c?vgnextoid=ad1420072ebb9110VgnVCM1000009ed07898RCRD&vgnextchannel=a576ef80708c8110VgnVCM1000009ed07898RCRD&vgnextfmt=print> (last visited March 3, 2013).

34. See COLO. REV. STAT. ANN. §§ 38-1-101 to -122 (West 2013); UTAH CODE ANN. §§ 78B-6-501 to -522 (West 2012); WYO. STAT. ANN. §§ 1-26-501 to -817 (West 2012); TEX. PROP. CODE ANN. §§ 21.001 – 21.103 (West 2011).

35. See N.D. CENT. CODE ANN. § 32-15-02 to -35 (West 2011).

36. See MONT. CODE ANN. §§ 70-30-101 to -323 (West 2011).

37. See N.M. STAT. ANN. §§ 42A-1-1 to -4-1 (West 2012).

38. See CAL. CIV. CODE §§ 1230.010 – 1273.050 (West 2012).

39. *City of McKinney v. Eldorado Park, Ltd.* 206 S.W.3d 185, 191 (Tex. App.—Eastland 2006, pet. denied)(citation omitted).

40. N.D. CENT. CODE ANN. § 32-15-04 (West 2011).

41. MONT. CODE ANN. § 70-30-103 (West 2011).

are for taking mere easements to construct and operate the pipeline, and not for a complete taking of property.

C. *Geographic Statistical Data*

1. U.S. Natural Gas Pipeline Network

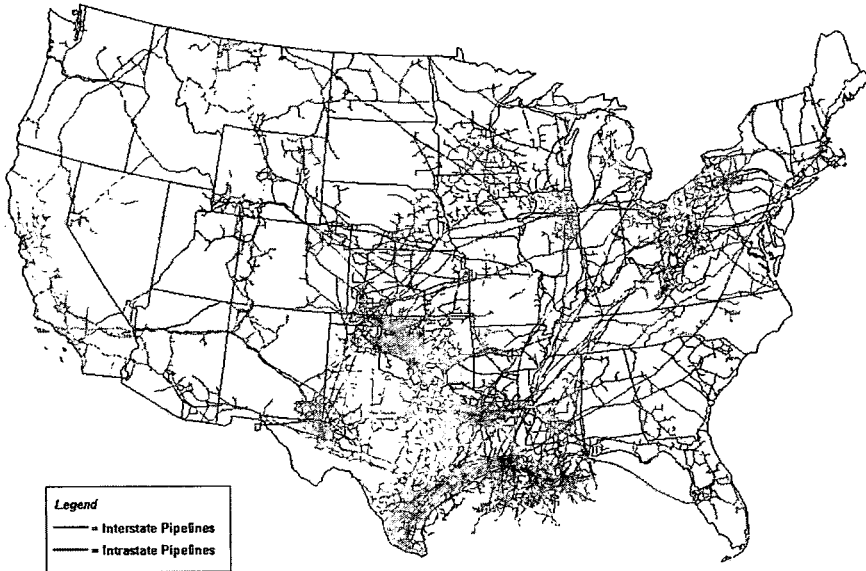
“The U.S. natural gas pipeline network is a highly integrated transmission and distribution grid that can transport natural gas to and from nearly any location in the Lower 48 States” (see Map Nos. 1 and 2 [“Natural Gas Market Centers and Hubs in Relation to Major Natural Gas Transportation Corridors, 2009”] below).⁴² As stated in Section A above, the natural gas pipeline grid comprises more than more than 210 natural gas pipeline systems, 300,000 miles of interstate and intrastate transmission pipelines, 1400 compressor stations and 394 underground natural gas storage facilities.⁴³ Additionally, the grid is comprised of (1) more than 11,000 delivery points, 5,000 receipt points, and 1,400 interconnection points that provide for the transfer of natural gas throughout the U.S.; (2) 24 hubs or market centers that provide additional interconnections; (3) 49 locations where natural gas can be imported/exported via pipelines; and (4) 8 LNG (liquefied natural gas) import facilities and 100 LNG peaking facilities.⁴⁴

42. U.S. Energy Administration, *About U.S. Natural Gas Pipelines*, NATURAL GAS, http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/index.html (last visited November 30, 2012).

43. *Id.*

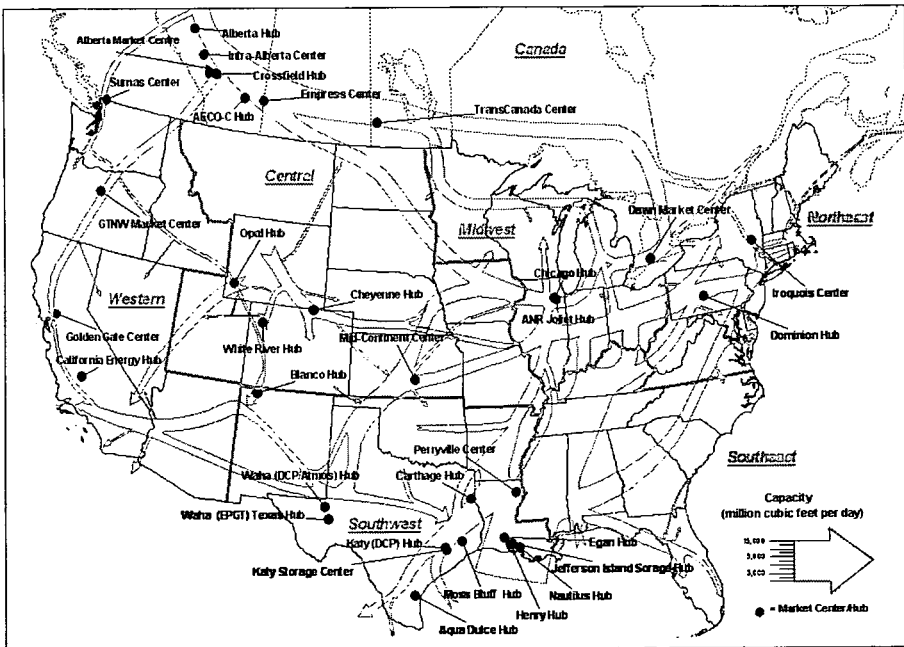
44. *Id.*

Map No.1: U.S. Natural Gas Pipeline Network, 2009



Source: Energy Information Administration, Office of Oil & Gas, Natural Gas Division, Gas Transportation Information System

Map No.2: Natural Gas Market Centers and Hubs in Relation to Major Natural Gas Transportation Corridors, 2009



Note: The relative widths of the various transportation corridors are based upon the total level of interstate pipeline capacity (2008) for the combined pipelines that operate on the generalized route shown.⁴⁵

Source: Energy Information Administration, Office of Oil and Gas, Natural Gas Division, Natural Gas Market Hubs Database, as of April 2009.

The Energy Information Administration has determined that the informational map displays here do not raise security concerns, based on the application of the Federal Geographic Data Committee's *Guidelines for Providing Appropriate Access to Geospatial Data in Response to Security Concerns*.⁴⁶

2. Case Study: Keystone Pipeline System

"In 2005, TransCanada announced its plan to address expected increases in [Canadian oil and gas production] by constructing the Keystone Pipeline System" (see Map No. 3 below ["Keystone and Proposed Keystone XL pipelines"]).⁴⁷ "When complete, the system would transport crude oil and associated gas from Hardisty, Alberta, to U.S markets in the Midwest and Gulf Coast."⁴⁸ "The pipeline system was proposed as two segments, the Keystone (complete and in service) and Keystone XL."⁴⁹

The Keystone segment was completed in two phases: (1) the Keystone Mainline and (2) the Cushing Extension.⁵⁰ "The main pipeline is 1,353 miles of 30-inch pipeline from Hardisty, Alberta, to U.S. refineries in Wood River and Patoka, Illinois."⁵¹ "The U.S. portion of the pipeline runs 1,086 miles and begins at the [Canadian border] in Cavalier County, North Dakota, and has been in service since June 2010."⁵² "The Cushing Extension is 298 miles of 36-inch pipeline and associated facilities that run from Steele City, Nebraska to existing crude oil terminals and tanks farms in Cushing, Oklahoma."⁵³ "The Cushing Extension

45. *Id.*

46. *Id.*

47. Paul W. Parfomak et al., *Keystone XL Pipeline Project: Key Issues*, CONGRESSIONAL RESEARCH SERVICE, 3 (November 5, 2012), <http://www.fas.org/sgp/crs/misc/R41668.pdf>.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

has been in service since February 2011.”⁵⁴

As proposed by TransCanada in 2008, the Keystone XL pipeline was also to be completed in two phases.⁵⁵ The first phase, or “Gulf Coast Project,” consists of 435 miles of 36-inch pipeline and associated facilities linking the Cushing tank farms to refineries in Houston and Port Arthur, Texas.⁵⁶ “TransCanada anticipates this segment to be in service mid-to-late 2013.”⁵⁷ The second phase, or Keystone XL, consists of 1,179 miles of 36-inch pipeline and associated facilities linking Hardisty to Steele City.⁵⁸ Originally estimated to cost approximately \$5.3 billion to build,⁵⁹ this segment, which is expected to be completed in late 2015, includes the Bakken Marketlink Project that would provide receipt facilities in Baker, Montana for crude oil from the Williston Basin producing region for delivery to Steele City then Gulf Coast refineries.⁶⁰

54. *Id.*

55. *Id.* at 4.

56. *Id.*

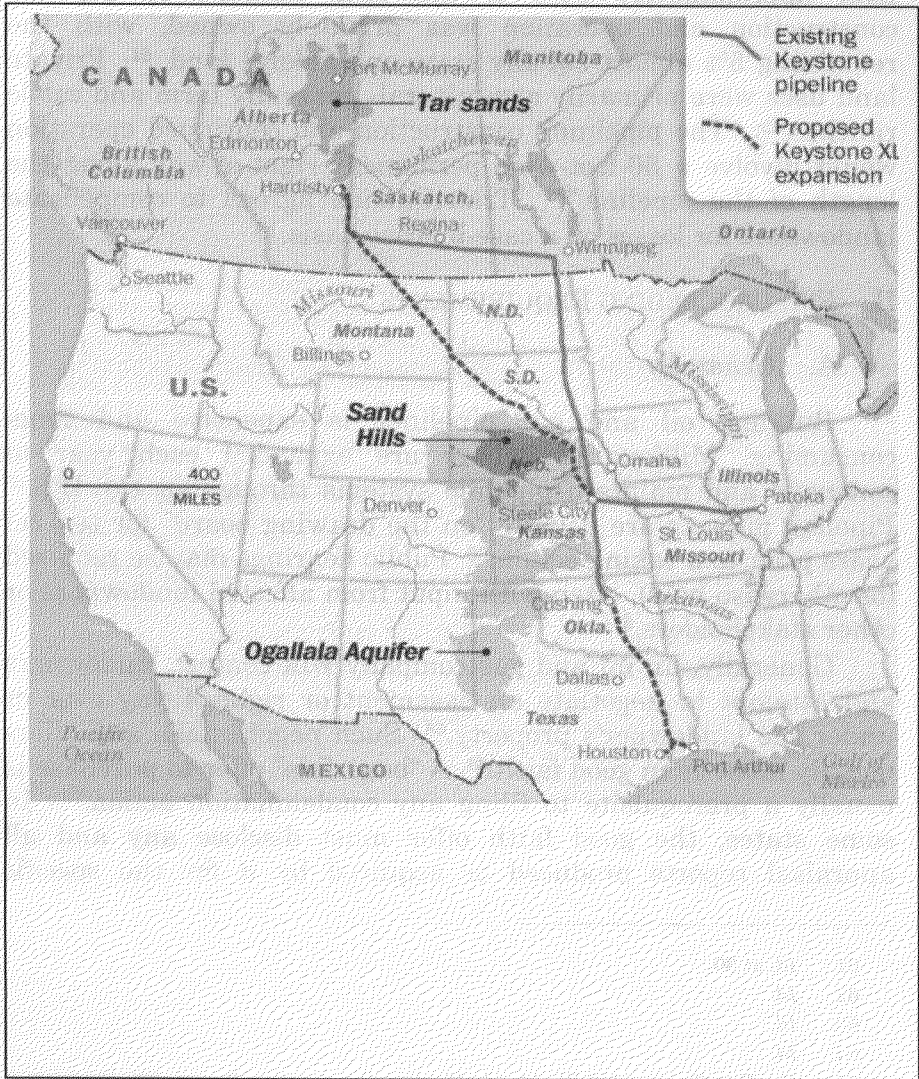
57. *Id.*

58. *Id.*

59. TransCanada Keystone Pipeline, L.P., *Application of TransCanada Keystone Pipeline, L.P. for a Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Pipeline Facilities for the Importation of Crude Oil to be Located at the United States-Canada Border*, submitted to the U.S. Department of State, May 4, 2012, p. 39, available at http://keystonepipeline-xl.state.gov/proj_docs/permitapplication/index.htm.

60. Parfomak, *supra* note 47, at 4.

Map No.3: Keystone and Proposed Keystone XL Pipelines



For the pipeline project represented in the August 2011 final EIS, approximately 95% of the land affected by pipeline construction and operation was privately owned, with the remaining 5% almost equally state and federal land.⁶¹ Private land uses were primarily agricultural- generally farm and cattle ranches.⁶² “The pipeline’s construction and continued operation would involve a 50-foot-wide permanent right-of-way along the length of the pipeline.”⁶³ TransCanada agreed to compensate landowners for losses on a case-by-case basis.⁶⁴

II. PRE-PROCEEDING REQUIREMENTS

A. Generally

Building oil and gas pipelines is expensive and time-consuming. Millions of dollars are expended each year to construct and maintain pipeline systems throughout the U.S.⁶⁵ Pipeline projects are usually “on the drawing board” for several years prior to a taking action.⁶⁶ Public hearings may be required (or otherwise held), often with input from affected landowners or other stakeholders.⁶⁷

Generally, an oil and gas company will contact landowners and attempt to negotiate an easement or right-of-way over or under the landowner’s property.⁶⁸ Such negotiations and offers usually must be in good faith.⁶⁹ A “bona fide” offer to purchase is usually a prerequisite to filing any condemnation action.⁷⁰ In some states, the good faith offer must disclose any and all appraisal reports produced or acquired by it for the specific

61. *Id.* at 30.

62. *Id.*

63. *Id.*

64. *Id.*

65. See Rita Tubb, *2012 Worldwide Pipeline Construction Report*, 239 PIPELINE & GAS J. 1 (2012), available at <http://www.pipelineandgasjournal.com/2012-worldwide-pipeline-construction-report?page=show>.

66. See, e.g., Craig R. McCoy & Joseph Tanfani, *Eminent-Domain Questions Divide Even Pipeline Companies*, PHILADELPHIA INQUIRER (Dec. 13, 2011), available at http://www.philly.com/philly/news/special_packages/inquirer/marcellus-shale/20111213_Eminent-domain_questions_divide_even_pipeline_companies.html.

67. See, e.g., Fred Knapp, *Views of Keystone XL Pipeline Clash in Albion*, KVNO NEWS (Dec. 5, 2012), <http://www.kvnonews.com/2012/12/views-of-keystone-xl-pipeline-clash-in-albion/>.

68. See, e.g., TEX. PROP. CODE ANN. § 21.0113 (West 2011); WYO. STAT. ANN. § 1-26-509 (West 2012).

69. See, e.g., TEX. PROP. CODE ANN. § 21.0113 (West 2011); WYO. STAT. ANN. § 1-26-509 (West 2012).

70. See, e.g., TEX. PROP. CODE ANN. § 21.0113 (West 2011); WYO. STAT. ANN. § 1-26-509 (West 2012).

property within specific time frames.⁷¹

Statutes require compensation to be “fair,”⁷² but fair market value of property can be difficult to accurately quantify. The basic measure of damages is the market value of the property at the time of the taking.⁷³ For pipeline takings, a four or six foot wide easement constitutes a typical partial taking, and may have no readily apparent “market value.”⁷⁴ However, other factors contribute heavily upon the valuation of such takings.⁷⁵

Factors used in determining market value may include:

- (1) extent of the taking (whole or partial);
- (2) contingent conditions;
- (3) limiting conditions, such as limited ingress and egress;
- (4) present use of property;
- (5) number and extensiveness of buildings, structures or other improvements;
- (6) necessity of relocation;
- (7) taxes owed upon the target land;
- (8) extent of deprivation of beneficial use; and
- (9) benefits received by the landowner resultant of the taking.⁷⁶

If the oil and gas company and the landowner cannot agree, the company will send a final offer letter to document its offer and the landowner’s rejection.⁷⁷ Typically, a final offer letter will contain the following language:

Pursuant to our previous discussions with you and your family, it is necessary to construct a pipeline across/under your property above-referred. Thank you for the opportunity to discuss the purchase of an easement and/or right-of-way for said pipeline. As we have been unsuccessful in agreeing to a

71. See, e.g., N.M. STAT. ANN. § 42A-1-5(A) (West 2012); TEX. PROP. CODE ANN. § 21.0111 (West 2011).

72. See, e.g., WYO. STAT. ANN. § 1-26-702 (West 2012).

73. *Id.*

74. See Gary Valentine, *Appraising Pipeline Easements: A Practical Approach*, RIGHT OF WAY, Mar.-Apr. 2008, at 20, 22, available at <http://www.irwaonline.org/eweb/upload/0308a.pdf> (illustrating that a survey of non-exclusive pipeline easements by pipeline companies is about 5 feet); see Ronald L. Baird, *Easement Condemnation and State v. Doyle: Fair Market Value Without a Market*, 6 ALASKA L. REV. 199, 207 (1989) (concluding that a substitute valuation rule for easements is necessary as there is an absence of market value for easements).

75. See *infra* note 76 and accompanying text.

76. See generally Leslie A. Fields, *Anatomy of an Appraisal*, 27 NO. 1 PRAC. REAL EST. LAW. 9, 10-13 (2011) (listing the various factors involved in a typical appraisal report in a condemnation action).

77. See, e.g., MONT. CODE ANN. § 70-30-111 (West 2011).

location and price for the proposed easement and/or right-of-way, please allow this letter to serve as a final offer. According to the authority vested in _____ [*name of oil and gas pipeline company*] under _____ [*citation of any applicable state statute*], we hereby offer you the total sum of \$_____ [*dollar amount of final bona fide offer*] for your property rights in the above-described land. If you are due relocation expenses under any applicable state law, such expenses are not included in the foregoing amount. If you desire to accept this final offer, please notify the undersigned immediately. If this offer is not accepted within ____ [*number of days*] from the date of your receipt of this letter, we will consider our offer as rejected. If you reject our offer, we may be forced to institute eminent domain proceedings against the property in order to condemn it for the proposed easement and/or right-of-way. We urge you to reconsider this offer in order to avoid such proceedings.

If eminent domain proceedings are filed, the court will _____ [*briefly describe statutory proceedings, such as appointed of special commissioners, hearings dates and deadlines, possible objections to award, etc.*]⁷⁸

If the landowner rejects the final offer, the oil and gas company will usually then file condemnation proceedings to effect the taking.⁷⁹ Selected state pre-proceeding requirements are shown below.

B. Colorado

1. Good Faith Negotiation.

Condemnation is only appropriate if “the compensation to be paid for, in respect of property sought to be appropriated . . . cannot be agreed upon by the parties interested.”⁸⁰ To satisfy the good faith negotiation requirement, the condemning authority

78. Cf. Robert F. Brown, *Eminent Domain After Senate Bill 18*, TEXASCITYATTORNEYS.ORG, 28 app. pt. 3 (Jun. 6, 2012), <http://www.texascityattorneys.org/2012speakerpapers/summerconference/EminentDomain-afterSB18-Paper.pdf> (including a sample offer letter subject to Texas standards).

79. See, e.g., TEX. PROP. CODE ANN. § 21.0112 (West 2011).

80. COLO. REV. STAT. § 38-1-102(1) (2012).

must make a reasonable good faith offer to reach an agreement with the property owner, and allow the owner sufficient time to respond to the offer.⁸¹ If the parties fail to reach an agreement on the fair market value of the property, the condemning party must furnish all owners of record a written final offer, prior to proceeding to trial on the issue of valuation.⁸²

2. Appraisals.

As soon as a condemning authority determines that it intends to acquire an interest in property, it must give notice of such intent, together with a description of the property interest to be acquired, to anyone having an interest of record in the property involved.⁸³ If the property has an estimated value of five thousand dollars or more, such notice shall advise that the condemning authority shall pay the reasonable costs of an appraisal.⁸⁴ Upon receipt of notice, the landowner may employ an appraiser of its choosing to appraise the property interest to be acquired.⁸⁵ Within ninety days of the date of such notice, the landowner may submit to the condemning authority a copy of such appraisal.⁸⁶ The condemning authority (immediately upon receipt) shall submit copies of its appraisals to the landowner.⁸⁷ All of these appraisals may be used by the parties to negotiate in good faith for the acquisition of the property interest, but neither party shall be bound by the appraisals.⁸⁸

3. Necessity.

When determining the necessity of taking private land or non-federal public land for the installation of a pipeline, the court shall require the pipeline company: (1) to show that the particular land lies within a route which is the most direct route practicable; (2) to post a bond with the court equal to double the amount which the court determines to be the estimated cost of restoring the affected land to the same or as good a condition as it was in prior to the installation of the pipeline; however, said bond shall not be released until the court is satisfied that the

81. *Sheridan Redev. Agency v. Knightsbridge Land Co.*, 166 P.3d 259, 266 (Colo. App. 2007) (quoting *City of Holyoke v. Schlachter Farms R.L.L.P.*, 22 P.3d 960, 963 (Colo. App. 2001)).

82. COLO. REV. STAT. § 38-1-121(6) (2012).

83. *Id.* § 38-1-121(1).

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. COLO. REV. STAT. § 38-1-121(1) (2012).

condemned land has been restored to the same or as good a condition as existed prior to the installation of the pipeline; and (3) to consider existing utility rights-of-way before any new routes are taken, if the land to be condemned is adjacent to existing utility rights-of-way.⁸⁹

4. Map and Survey Requirements.

Any pipeline corporation desiring to avail itself of the benefit of Colorado's condemnation law shall file with the county clerk and recorder of the county in which it is proposed to operate a map or survey of the proposed pipeline for which it desires a right-of-way, together with a statement showing the route of the proposed pipeline and the patented or unpatented mining claims or other property through which it is proposed to construct the same, and may file supplementary maps and surveys upon any lawful change of its proposed line.⁹⁰

C. *North Dakota*

1. Good Faith Offer.

A condemnor shall make every reasonable and diligent effort to acquire property by negotiation.⁹¹ 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.⁹² The amount shall not be less than the condemnor's approved appraisal or written statement and summary of just compensation for the property.⁹³

2. Appraisals.

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.⁹⁴ "If appropriate, the compensation for the property to be acquired and for the damages to the remaining

89. *Id.* § 38-1-101.5(1)(a)-(c).

90. *Id.* § 38-4-112.

91. N.D. CENT. CODE § 32-15-06.1(1) (2012).

92. *Id.* § 32-15-06.1(2).

93. *Id.*

94. *Id.* § 32-15-06.1(4).

property shall be separately stated.”⁹⁵

3. Necessity.

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, and (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.⁹⁶

4. Right to Survey.

In all cases in which land is required for public use, the person or corporation (or their respective 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 32-15-21.⁹⁷ 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.⁹⁸

5. Special Notices.

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.⁹⁹ A current and relevant map showing all neighboring property affected by a project shall also be provided to the property owner.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² The owner or the owner’s representative may obtain copies of such maps by tendering to

95. *Id.*

96. N.D. CENT. CODE ANN. § 32-15-05 (West 2011).

97. *Id.* § 32-15-06.

98. *Id.*

99. *Id.* § 32-15-06.2.

100. *Id.*

101. *Id.*

102. N.D. CENT. CODE ANN. § 32-15-06.2 (West 2011).

the condemnor the reasonable and necessary costs of preparing copies.¹⁰³

D. *New Mexico*

1. Good Faith Offer.

An action to condemn property may not be maintained over timely objection by the landowner condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action.¹⁰⁴ An offer to purchase made in substantial compliance with Sections 42A-1-3 through 42A-1-4 is prima facie evidence of good faith under Subsection A of this section.¹⁰⁵

2. Agreement.

At any time before or after commencement of a condemnation action, the parties may agree to and carry out a compromise or settlement as to any matter, including all or any part of the compensation or other relief.¹⁰⁶

3. Negotiation.

A condemnor shall make reasonable and diligent efforts to acquire property by negotiation.¹⁰⁷

4. Appraisals.

Unless prohibited by federal law, if the condemnor or condemnee has had prepared appraisals for the property, he shall make such appraisals available to the other party during the negotiation period.¹⁰⁸ If the parties are unable to negotiate a settlement, the condemnee may, within twenty-five days after written notice by the condemnor of its intent to file a condemnation action in district court, give written notice to the condemnor requesting an appraisal to determine the amount that would constitute just compensation for the taking of the condemnee's property and obtained from: (1) one appraiser appointed by the condemnor; (2) one appraiser appointed by the landowner condemnee; and (3) one appraiser jointly appointed by the appraisers for the condemnor and the landowner

103. *Id.*

104. *See, e.g.*, N.M. STAT. ANN. § 42A-1-6(A) (West 2012).

105. *Id.* § 42A-1-6(B).

106. *Id.* § 42A-1-3.

107. *Id.* § 42A-1-4(A).

108. *Id.* § 42A-1-4(B).

condemnee.¹⁰⁹ After receiving a copy of the appraisals provided for pursuant to this section, the condemnor may establish an amount which it believes to be just compensation and may submit to the condemnee an offer to acquire the property for the full amount so established.¹¹⁰ If the condemnor tenders an offer pursuant to this section, the amount offered for the property shall not be less than the amount of compensation shown by the final common appraisal of the three appraisers or if all three appraisers do not agree, the offer shall not be less than the appraisal prepared by the condemnor's appraiser.¹¹¹ The condemnee must reject or accept the offer made by the condemnor pursuant to this section within fifteen days after the offer is tendered.¹¹²

E. *Montana*

1. Good Faith Offer.

Before a condemnation proceeding may take place, an effort to obtain the property interest sought to be taken must first be made by submission of a written offer and the offer rejected.¹¹³ Prior to or at the time of rejection of the final written offer, the landowner condemnee may provide to the condemnor the landowner condemnee's claim of appropriate measures that the condemnee considers necessary to minimize damages to the property directly affected by the project as well as to minimize damages incurred to the remaining parcel of property.¹¹⁴

2. Survey and Notice.

In all cases in which land is required for public use, the state or its agents in charge of the public use may survey and locate the land to be used. The use must be located in the manner that will be most compatible with the greatest public good and the least private injury, and the location is subject to the provisions of [Section] 70-30-206. The state or its agents in charge of the public use may, after giving 30 days' written notice to the owners and persons in possession of the land, enter upon the

109. See, e.g., N.M. STAT. ANN. § 42A-1-5(A) (West 2012).

110. *Id.* § 42A-1-5(E).

111. *Id.*

112. *Id.*

113. MONT. CODE ANN. § 70-30-11 (West 2011).

114. *Id.*

land and make examination, surveys, and maps of the land. The entry does not constitute a cause of action in favor of the owners of the land except from injuries resulting from negligence or intentional acts. Upon written request of the state or its agents, the owner shall provide the names and addresses of all persons who are in possession of the owner's land within 14 days from receipt of the written notice. The state or its agents shall within 14 days from receipt of that information furnish written notice to the listed persons.¹¹⁵

3. Necessity.

Before property can be taken, the condemner shall show by a preponderance of the evidence that the public interest requires the taking based on the following findings: (1) the use to which the property is to be applied is a public use pursuant to [Section] 70-30-102; (2) the taking is necessary to the public use; (3) if already being used for a public use, that the public use for which the property is proposed to be used is a more necessary public use; (4) an effort to obtain the property interest sought to be taken was made by submission of a written offer and the offer was rejected.¹¹⁶

F. *Texas*

1. Good Faith Offer.

A bona fide offer to purchase is a prerequisite to filing an action.¹¹⁷

2. Appraisals.

The condemning entity's initial offer must disclose any and all appraisal reports produced or acquired by it for the specific property within the previous 10 years.¹¹⁸ In turn, under Texas Property Code Section 21.0111, the property owner "shall disclose" to the entity "any and all current and existing appraisal reports produced or acquired by the property owner" which relates to the property and "used in determining the owner's

115. *Id.* § 70-30-110(1).

116. *Id.* § 70-30-111.

117. TEX. PROP. CODE ANN. § 21.0113(a) (West 2011).

118. *Id.* § 21.0111(a).

opinion of value.”¹¹⁹

3. Confidentiality.

The condemning entity “may not include [any] confidentiality provision[s] in [its] offer or agreement to acquire the property.”¹²⁰ The entity must also “inform the landowner that the landowner has the right to: (1) discuss [with others] any offer or agreement regarding the . . . [proposed] acquisition . . . or (2) keep the offer or agreement confidential, unless the offer or agreement is subject to” Government Code, Chapter 552 Public Information, which concerns public access of certain information under open government laws.¹²¹

4. Public Hearings.

In 2011, Chapter 2206 of the Texas Government Code (the “Truth in Condemnation Procedures Act”) was enacted.¹²² Beginning on September 1, 2011, any condemnation suit brought by a government entity exercising eminent domain must authorize condemnation proceedings at a public meeting and recorded vote, as well as place the proposed proceeding as an item on the public meeting agenda.¹²³

5. Special Notices.

Under Property Code Section 21.0112, the condemning entity must also provide a “[L]andowner’s [B]ill of [R]ights” statement to the landowner pursuant to the requirements contained in Government Code Section 402.031.¹²⁴ The Landowner’s Bill of Rights must include various statutory notices, including (1) notice of the proposed acquisition, (2) negotiation in a bona fide good faith effort on the part of the entity condemning, (3) an assessment of damages to the owner resulting from the taking, (4) right to a hearing, (5) the owner’s options during a condemnation, and (6) the condemning authority’s obligations to the property owner.¹²⁵ If the pipeline company and the targeted landowner cannot agree to a bona fide offer, or to the proposed value of the land at issue, the condemning entity will usually begin condemnation

119. *Id.* § 21.0111(b).

120. *Id.* § 21.0111(c).

121. *Id.*

122. TEX. GOV’T CODE ANN. § 2206.051 (West 2011).

123. *Id.* § 2206.053.

124. TEX. PROP. CODE ANN. § 21.0112 (West 2011).

125. TEX. GOV’T CODE ANN. § 402.031(b) (West 2008).

proceedings.¹²⁶

G. *Utah*

1. Conditions Precedent to Taking.

Before property can be taken it must appear that: (a) the use to which it is to be applied is a use authorized by law; (b) the taking is necessary for the use; (c) construction and use of all property sought to be condemned will commence within a reasonable time as determined by the court, after the initiation of proceedings under this part; and (d) if already appropriated to some public use, the public use to which it is to be applied is a more necessary public use.¹²⁷

“Property may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking.”¹²⁸

2. Public Hearings.

Before taking a final vote to approve the filing of an eminent domain action, the governing body of each political subdivision intending to take property shall provide written notice to each owner of property to be taken of each public meeting of the political subdivision’s governing body at which a vote on the proposed taking is expected to occur and allow the property owner the opportunity to be heard on the proposed taking.¹²⁹

3. Negotiation and Disclosure.

A political subdivision of the state that seeks to acquire property by eminent domain or that intends to use eminent domain to acquire property if the property cannot be acquired in a voluntary transaction shall: (a) before the governing body . . . of the political subdivision takes a final vote to approve the filing of an eminent domain action, make a reasonable effort to negotiate with the

126. See TEX. PROP. CODE ANN. § 21.0112 (West 2011).

127. UTAH CODE ANN. § 78B-6-504(1)(a)-(d) (West 2012).

128. *Id.* § 78B-6-504(2)(b).

129. *Id.* § 78B-6-504(2)(c).

property owner for the purchase of the property; and (b) . . . as early in the negotiation process . . . as practicable, but no later than 14 days before the day on which a final vote is taken to approve the filing of an eminent domain action: (i) advise the property owner of the owner's rights to mediation and arbitration under Section 78B-6-522, including the name and current telephone number of the property rights ombudsman, established in Title 13, Chapter 43, Property Rights Ombudsman Act; and (ii) provide the property owner a written statement explaining that oral representations or promises made during the negotiation process are not binding upon the person seeking to acquire the property by eminent domain.¹³⁰

The same holds true for a person, other than a political subdivision of the state, "that seeks to acquire property by eminent domain."¹³¹

4. Right to Survey.

If land is required for public use, the person or the person's agent in charge of the use may survey and locate the property. It must be located in the manner which will be most compatible with the greatest public good and the least private injury. The person or the person's agent in charge of the public use may, at reasonable times and upon reasonable notice, enter upon the land and make examinations, surveys, and maps of the land. Entry upon land as authorized under Subsection (2)(a) does not constitute a cause of action in favor of the owners of the lands, except for actual damage to the land and improvements on the land caused by the entry and which is not repaired on or before the date the examinations and surveys are completed.¹³²

130. See, e.g., *id.* § 78B-6-505(1).

131. *Id.* § 78B-6-505(2).

132. UTAH CODE ANN. § 78B-6-506(1)-(2)(b) (West 2012).

H. *Wyoming*

1. Good Faith Offer.

Pursuant to the Wyoming Eminent Domain Act, a condemnor shall make reasonable and diligent efforts to acquire property by good faith negotiation. In attempting to acquire the property by purchase under § 1-26-510, the condemnor [is required] to negotiate in good faith and may contract with respect to: (1) any element of valuation or damages recognized by law as relevant to the amount of just compensation payable for the property; (2) the extent, term or nature of the property interest or other right to be acquired; (3) the quantity, location or boundary of the property; (4) the acquisition, removal, relocation or disposition of improvements upon the property and of personal property not sought to be taken; (5) the date of proposed entry and physical dispossession; (6) The time and method of payment of agreed compensation or other amounts authorized by law; and (7) any other terms or conditions deemed appropriate by either of the parties. [Furthermore,] good faith negotiation shall include written notice of the following: (1) to the extent reasonably known at the time, the proposed project, the land proposed to be condemned, plan of work, operations and facilities in a manner sufficient to enable the [landowner] condemnee to evaluate the effect of the proposed project, plan of work, operations and facilities on the [landowner] condemnee's use of the land; (2) the name, address, telephone number and, if available, facsimile number and electronic mail address of the condemnor and his designee, if any; (3) an initial written settlement offer that shall include: (a) a description of the general location and extent of the property sought, with sufficient detail for reasonable identification; (b) an offer that, at the [landowner] condemnee's request, a representative of the condemnor will tour the property sought with the condemnee or the condemnee's representative at a mutually agreeable time prior to the deadline for the condemnee's response to the initial written offer to discuss issues related to the

property sought and the initial offer; (c) an estimate of the fair market value of the property sought and the general basis for such estimate; (d) a discussion of the reclamation planned by the condemnor for the property disturbed by the condemnor's project; (e) an offer to acquire the property sought, allowing the condemnee up to [65] days from the date the initial written offer was sent via certified mail to respond or make a counter-offer in writing; and (f) a written notice that the condemnee is under no obligation to accept the initial written offer[,] but if the condemnee fails to respond to the initial written offer the right to object to the good faith of the condemnor may be waived under § 1-26-510(a), that the condemnor and the condemnee are obligated to negotiate in good faith for the purchase of the property sought, that formal legal proceedings may be initiated if negotiations fail and that the condemnee has a right to seek advice from an attorney, real estate appraiser, or any other person of his choice during the negotiations and any subsequent legal proceedings.¹³³

An action to condemn property may not be maintained over timely objection by the landowner condemnee unless the condemnor made a good faith effort to acquire the property by purchase before commencing the action. A landowner condemnee may not object to the good faith of the condemnor if the condemnee has failed to respond to an initial written offer as provided in §1-26-509(c)(iii)(E) and the condemnor has met the requirements of § 1-26-509(c). Negotiations conducted in substantial compliance with § 1-26-509(b) through (e) are prima facie evidence of "good faith" by the condemnor.¹³⁴

2. Necessity.

Except as otherwise provided by law, the power of eminent domain may be exercised to acquire property for a proposed use only if the following

133. See, e.g., WYO. STAT. ANN. § 1-26-509(a)-(c) (West 2012).

134. *Id.* § 1-26-510(a)-(b).

three conditions are established: (1) the public interest and necessity require the project or the use of eminent domain is authorized by the Wyoming Constitution; (2) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (3) the property sought to be acquired is necessary for the project.¹³⁵

3. Appraisals.

A condemnor and its agents and employees may enter upon real property and make surveys, examinations, photographs, tests, soundings, borings and samplings, or engage in other activities for the purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to condemn if the entry is: (1) preceded by prior notice to the landowner condemnee specifying the particular activity to be undertaken and the proposed use and potential recipient of the data thereby obtained and the landowner condemnee has been given 15 days to grant written authorization; (2) undertaken during reasonable hours, normally during daylight; and (3) accomplished peaceably and without inflicting substantial injury to land, crops, improvements, livestock or current business operations.¹³⁶

4. Special Notices.

When a public entity determines that there is a reasonable probability of locating a particular public project on specifically identifiable private property and that the project is expected to be completed within two (2) years of that determination, the public entity shall provide written notice of the intention to consider the location and construction of the project to the owner as shown on the records of the county assessor. The notice shall include a description of the public interest and necessity of the proposed

135. *Id.* § 1-26-504(a).

136. *See, e.g., id.* § 1-26-506(a).

project. The public entity shall provide an opportunity for the private property owners to consult and confer with representatives of the public entity regarding the project.¹³⁷

III. INITIATING THE PROCEEDING

A. Generally

As above-shown, a bona fide or final offer to purchase is usually a prerequisite to filing an action.¹³⁸ After the final offer is rejected, most states allow for immediate filing of a lawsuit to condemn the property.

Jurisdiction for condemnation actions is generally in district court, although some states provide for concurrent jurisdiction in county courts of law. Venue is usually the situs county of the land to be condemned.

Condemnation petitions should include any lienholders with an interest in the property. Many petitions contain a showing of the authority for the pipeline company to condemn the property.¹³⁹ Each below-selected state possesses a condemnation statute with minimum petition requirements.¹⁴⁰

The majority of condemnation litigation involves three major issues: (1) whether the target property has been taken, damaged,

137. *Id.* § 1-26-504(c).

138. See COLO. REV. STAT. ANN. § 38-1-101 (West 2013); TEX. PROP. CODE ANN. § 21.0113 (West 2011).

139. See, e.g., CAL. CIV. PROC. CODE § 1250.310 (West 2012) (requiring “[a] statement of the right of the plaintiff”); COLO. REV. STAT. ANN. § 38–1–102(1) (West 2013) (requiring to state “by reference, his authority in the premises”); DEL. CODE ANN. tit. 10, § 6105(b) (West 2013) (requiring “a short and plain statement of the authority”); FLA. STAT. ANN. § 73.021(1) (West 2012) (requiring “the authority under which . . . the property is to be acquired”); KAN. STAT. ANN. § 26-502 (West 2012) (requiring “the authority for . . . the taking”); KY. REV. STAT. ANN. § 416.570 (West 2012) (requiring “to show that the petitioner is entitled . . . to exercise the right”); MISS. CODE ANN. § 11-27-5 (West 2012) (requiring to “state with certainty the right to condemn”); MONT. CODE ANN. § 70-30-203(1)(c) (West 2011) (requiring “a statement of the right of the plaintiff”); NEB. REV. STAT. ANN. § 76-704.01(1) (West 2012) (requiring “[a] statement of authority for the acquisition”); NEV. REV. STAT. ANN. § 37.070(1)(d) (West 2011) (requiring “[a] statement of the right of the plaintiff”); N.M. STAT. ANN. § 42A-1-17(B)(2) (West 2012) (requiring “a statement by the petitioner of its authority to bring the action”); N.D. CENT. CODE ANN. § 32-15-18 (West 2011) (requiring “[a] statement of the right of the plaintiff”); UTAH CODE ANN. § 78B-6-507(1)(c) (West 2012) (requiring “a statement of the right of the plaintiff”); VA. CODE ANN. § 25.1-206(1)(a) (West 2012) (requiring a short and plain statement of “[t]he authority for the taking”).

140. See, e.g., COLO. REV. STAT. ANN. § 38–1–102(1) (West 2013); MONT. CODE ANN. § 70-30-203(1) (West 2011); N.M. STAT. ANN. § 42A-1-17(B) (West 2012); N.D. CENT. CODE ANN. § 32-15-18 (West 2011); TEX. PROP. CODE ANN. § 21.012(b) (West 2011); UTAH CODE ANN. § 78B-6-507(1) (West 2012); WYO. STAT. ANN. § 1-26-602 (West 2012).

or destroyed; (2) whether the landowner was offered or paid “adequate” compensation; and (3) whether the targeted property was taken for “public use.”

Selected state condemnation proceeding requirements are shown below.

B. *Colorado*

1. Jurisdiction and Venue.

The district court appears to have original jurisdiction for condemnation actions.¹⁴¹ Upon final determination in the district court, “the judgment is subject to appellate review as provided by law and the Colorado appellate rules.”¹⁴²

2. Petition Requirements.

The condemning entity must file a petition with the clerk, setting forth,

by reference, [1] his authority in the premises, [2] the purpose for which [the] property is sought to be taken or damaged, [3] a description of the property, [4] the names of all persons interested as owners or otherwise, as appearing of record, if known, or, if not known, stating that fact, and [5] praying [the district court] to cause the compensation to be paid to the owner to be assessed.¹⁴³

If the proceedings seek to affect the property of persons under guardianship, the guardians or conservators of persons having conservators shall be made parties defendant. Persons interested whose names are unknown may be made parties defendant by the description of the unknown owners. In all such cases an affidavit shall be filed by or on behalf of the petitioner, setting forth that the names of such persons are unknown.¹⁴⁴

“Any number of separate parcels of property situate in the

141. See COLO. CONST. art. VI, § 9(1) (district courts are “trial courts of record with general jurisdiction” and “have original jurisdiction in all civil . . . cases”); COLO. REV. STAT. ANN. § 38–1–102(1) (West 2013) (requiring the plaintiff “to apply to the judge of the *district court* where the property or any part thereof is situate”) (emphasis added).

142. COLO. REV. STAT. ANN. § 38–1–110 (West 2013).

143. *Id.* § 38–1–102(1).

144. *Id.*

same county may be included in one petition.”¹⁴⁵

3. Trial.

“No cause shall be heard earlier than thirty days after service upon the defendant or upon due publication as provided in section 38-1-103.”¹⁴⁶ If more than one parcel of property has been included in the petition, “[t]he compensation for each shall be assessed separately by the same or different commissions or juries, as the court may direct.”¹⁴⁷

Should it become necessary at any stage of the proceeding to bring a new party before the court, the court has the power to make such rule or order in relation thereto as may be deemed reasonable and proper, and also has the power to make all necessary rules and orders for notice to parties of the pendency of the proceeding and to issue all process necessary to the execution of orders and judgments as they may be entered.¹⁴⁸

4. Board of Commissioners.

Unless a jury is requested by the owner of the property as provided in section 38-1-106, the court shall appoint a board of commissioners of not less than three disinterested and impartial freeholders to determine compensation in the manner provided in this article to be allowed to the owner and persons interested in the lands, real estate, claims, or other property proposed to be taken or damaged in such county for the purposes alleged in the petition.¹⁴⁹

“The court shall fix the time and place for the first meeting of [the] commissioners.”¹⁵⁰ The meeting must be “held at least thirty days prior to the date scheduled for the trial to determine compensation.”¹⁵¹ “At the meeting, a voir dire examination [is] conducted by the court and the parties [in order] to determine whether the proposed commissioners are disinterested and

145. *Id.* § 38-1-104.

146. *Id.* §§ 38-1-103(2) to -104.

147. *Id.* § 38-1-104.

148. COLO. REV. STAT. ANN. § 38-1-104 (West 2013).

149. *Id.* §§ 38-1-105(1), -106.

150. *Id.* § 38-1-105(1).

151. *Id.*

impartial freeholders.”¹⁵² “If the court determines that any of the proposed commissioners is not disinterested and impartial, the court shall replace such person and appoint another commissioner, who shall also be subject to voir dire examination.”¹⁵³ “At the hearing to determine compensation, the court [1] administer[s] an oath to the commissioners, [2] instruct[s] them in writing as to their duties, and, [3] at the conclusion of the testimony, . . . instruct[s] them in writing as to the applicable and proper law to be followed by them in arriving at their ascertainment.”¹⁵⁴ “The court [will] fix reasonable compensation for the services and expenses of said commissioners and shall provide the services of a court reporter to record all proceedings had by the commissioners.”¹⁵⁵ “The commissioners may request the court. . . to issue subpoenas to compel witnesses to attend the proceedings and testify as in other civil cases and may adjourn and hold meetings for that purpose.”¹⁵⁶ “They may request the court to make rulings upon the propriety of the proof or objections of the parties.”¹⁵⁷

The commissioners: hear the proofs and allegations of the parties according to the rules of evidence and, after viewing the premises or other property and without fear, favor, or partiality, shall ascertain and certify the proper compensation to be made to said owner or parties interested for the lands, real estate, claims, or other property to be taken or affected, as well as all damages accruing to the owner or parties interested in consequence of the condemnation of the same.¹⁵⁸

The commissioners are under a duty to “make, subscribe, and file with the clerk of the court . . . a certificate of their ascertainment and assessment, in which such lands, real estate, claims, or other property shall be described with convenient certainty and accuracy.”¹⁵⁹

The court, upon the filing of such certificate or returning of a verdict of a jury as provided in

152. *Id.*

153. *Id.*

154. COLO. REV. STAT. ANN. § 38-1-105(1)(West 2013).

155. *Id.*

156. *Id.* § 38-1-105(2).

157. *Id.*

158. *Id.*

159. *Id.*

section 38-1-107 and due proof that such compensation and separate sums, if any, are certified or found to have been paid to the parties entitled to the same or have been deposited to the credit of such parties in court or with the clerk of the court for that purpose, shall make and cause to be entered in its minutes a rule describing such lands, real estate, claims, or other property, such ascertainment or compensation with the mode of making it, and each payment or deposit of the compensation, a certified copy of which shall be recorded and indexed in the office of the county clerk and recorder of the proper county in like manner and with like effect as if it were a deed of conveyance from the owner and parties interested to the proper parties.¹⁶⁰

Upon the entry of such rule, the petitioner shall become seized in fee unless a lesser interest has been sought, except as provided in this section, of all such lands, real estate, claims, or other property described in said rule as required to be taken, and may take possession and hold and use the same for the purposes specified in such petition, and shall thereupon be discharged from all claims for any damages by reason of any matter specified in such petition, certificate, or rule of said court.¹⁶¹

“No right-of-way or easement acquired by condemnation shall ever give the petitioner any right, title, or interest to any vein, ledge, lode, deposit, oil, natural gas, or other mineral resource found or existing in the premises condemned, except insofar as the same may be required for subsurface support.”¹⁶²

C. *North Dakota*

1. Jurisdiction and Venue.

Pursuant to the North Dakota Century Code, the district court sits “at a special term to hear the case according to law and the practice of the court.”¹⁶³ “The trial of any action under this

160. COLO. REV. STAT. ANN. § 38-1-105(3) (West 2013).

161. *Id.* § 38-1-105(4).

162. *Id.*

163. N.D. CENT. CODE ANN. § 32-15-16 (West 2011).

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.”¹⁶⁴

2. Petition Requirements.

The required elements of the original complaint in North Dakota include:

(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.¹⁶⁵

3. Court Hearing.

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; and (3) to determine the respective rights of different parties seeking condemnation of the same property.¹⁶⁶

4. 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

164. *Id.* § 32-15-17.

165. *Id.* § 32-15-18.

166. *Id.* § 32-15-21.

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, [the amount by which] 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; [and] (5) as far as practicable, compensation must be assessed separately for property actually taken and for damages to that which is not taken.¹⁶⁷

5. Trial.

In order to assess the issue of damages, “the plaintiff . . . may apply to the judge of the district court where the same is pending for an order requiring a jury to be summoned . . . in such action.”¹⁶⁸ The jury or court hears “legal testimony as may be offered by any of the parties to the proceedings and thereupon must ascertain and assess . . . [t]he 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

167. *Id.* § 32-15-22.

168. *Id.* § 32-15-13.

therein.”¹⁶⁹

6. Post-Trial, Repurchase and Other Matters.

“The plaintiff, within thirty days after the entry of final judgment, must pay the sum of money assessed.”¹⁷⁰ “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.”¹⁷¹ “In the event that any property is being acquired by any public corporation through condemnation proceedings, such public corporation,” within six months after the entry of a judgment, should “pay into court the full amount of the judgment on account of damages.”¹⁷²

At any time after the entry of judgment . . . the district court in which the proceeding was tried . . . 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.¹⁷³

D. *New Mexico*

1. Jurisdiction and Venue.

Unless otherwise specifically provided by law, if property is sought to be appropriated for public use by a person authorized to acquire property pursuant to the laws of New Mexico, and the condemnor and the [landowner] condemnee cannot agree to the transfer of the property or interest in question the condemnor may file a petition with the court of the county where the property or any part thereof lies.¹⁷⁴

2. Petition Requirements.

The petition . . . shall include . . . the following: (1) a designation as plaintiff each person on whose behalf the property is sought to be taken; (2) a statement by the petitioner of its authority to bring

169. N.D. CENT. CODE ANN. § 32-15-22 (West 2011).

170. *Id.* § 32-15-25.

171. *Id.* § 32-15-26.

172. *Id.* § 32-15-28.

173. *Id.* § 32-15-29.

174. N.M. STAT. ANN. § 42A-1-17(A) (West 2012).

the action; (3) a general description of the public purpose for which the property is being condemned; (4) a statement that the action is brought pursuant to and in compliance with the provisions of the Eminent Domain Code; (5) an accurate surveyed description of the property to be condemned describing the property by metes and bounds or center line description tied at regular intervals to statutory corners or other monumented points incorporated in the petition with or without reference to maps or plats attached to the petition; the property of each condemnee to be condemned shall be described separately, and each tract under separate ownership shall be consecutively numbered for ease in identification; provided that interests of several owners in the same property may be described and numbered together; (6) the interest to be taken; (7) an allegation that the petitioner has been unable to agree with one or more of the defendants having an interest in a particular tract as to just compensation; (8) a statement of the amount offered as compensation for each tract affected; (9) a map, plat or plan included or attached to the petition showing the improvement to be constructed and indicating the property of the condemnee to be condemned; and (10) unless an appraisal was prepared pursuant to Section 42A-1-5 NMSA 1978, a request for the appointment of three commissioners to assess the damages which the condemnees may severally sustain in consequence of the proposed taking.¹⁷⁵

“The petition may also include a prayer requesting that the court grant the condemnor the right of immediate possession . . . and that the court hold a hearing concerning this matter within thirty days from the date of the filing of the petition.”¹⁷⁶

The petition shall name as defendants, and shall list their addresses, if known, all the parties who own or occupy the property or have any interest therein as may be ascertained by a search of the county records, and if any such parties are known

175. *Id.* § 42A-1-17(B).

176. *Id.* § 42A-1-17(C).

to the petitioner to be minors and persons of unsound mind or suffering under any other legal disability, when no legal representative, custodian or guardian appears in their behalf, the court shall on motion appoint a guardian ad litem to protect the interest of those under any legal disability.¹⁷⁷

3. Notice of Condemnation.

Upon filing a petition in condemnation in the district court, the [court clerk issues and gives] notice of condemnation which [contains]: (1) a copy of the petition and the appraisal, if one was prepared pursuant to Section 42A-1-5 NMSA 1978; (2) the title of the action; (3) the name or designation of the court and county in which the action is brought as well as the cause number; (4) a direction that the condemnee appear and answer to the petition within thirty days after service of notice, and a statement that unless the condemnee appears and answers, the petitioner will apply to the court for the relief demanded in the petition; (5) the name and address of the petitioner's attorney shall appear on every notice; and (6) a general statement of the nature of the action and a general description of the property involved in the action.¹⁷⁸

4. Appointment of Commissioners and Objections.

If appraisers have not been appointed pursuant to Section 42A-1-5 NMSA 1978 and if the court is satisfied that proper notice of the petition has been given, it shall appoint up to three disinterested commissioners who are residents of the county in which the property or a part thereof is situated and who are familiar with the property values in the area of the proposed taking. The commissioners shall assess the damages which the [landowner] condemnees may severally sustain by reason of the proposed taking and make a report to the clerk of the court within thirty days, unless extended by the court for good cause shown, setting forth the

177. *Id.* § 42A-1-17(D).

178. *Id.* § 42A-1-18(A).

amount of the damages. The clerk of the court shall file the report prepared by the commissioners. Should more than one [landowner] condemnee be included in the petition, the commissioners shall state the damages allowed each condemnee separately, together with a specific description of the property for which such damages are assessed.¹⁷⁹

The condemnor shall pay to the clerk the amount assessed [by the Commissioners]. Upon the failure by the condemnor to pay the assessment, the court may, upon motion and notice by the party entitled to damages, enforce payment by execution. By motion before entry of judgment, the condemnee may apply to the court to withdraw an amount not to exceed sixty-six and two-thirds percent of the amount deposited pursuant to Subsection C of this section. The condemnee shall specify in his motion the property for which the deposit was made and the amount requested to be withdrawn. A condemnee who withdraws funds . . . waives all objections and defenses to the condemnation action, except for any claim to greater compensation. The court shall direct that the funds deposited . . . and not withdrawn . . . be invested by the clerk of the court in federal securities or in federally insured interest-bearing accounts in financial institutions located within the judicial district. All income from such investment shall accrue to the benefit of the condemnee.¹⁸⁰

Upon the filing of the report of the commissioners . . . the clerk of the court shall notify the attorneys of record for all of the parties to such proceeding who have entered appearances or, if not represented by attorney, all parties who have entered appearances at their respective post-office addresses of record, of the filing of the report. . . . The report of the commissioners may be reviewed by the court in which the proceedings are

179. *Id.*

180. N.M. STAT. ANN. § 42A-1-19(C) (West 2012).

had on written exceptions filed in the clerk's office by either or any party within thirty days after the time of the filing of the report in the clerk's office. The court shall either confirm the report or order a second appraisal either by the commissioners already appointed or by three other qualified commissioners to be appointed for that purpose.¹⁸¹

5. Trial.

Within 20 days after the filing of the petition if an appraisal has been prepared pursuant to Section 42A-1-5 NMSA 1978 or after the final confirmation of the report of the commissioners, a party may demand trial of any issues remaining in the cause. The cause shall be tried de novo, and unless waived, the parties shall be entitled to a trial by jury. If no issues other than compensation are raised, the court shall render a final judgment awarding the property to the condemner contingent upon payment of the awarded compensation to the condemnee. In all other cases, the court shall render final judgment upon decision of all contested questions of law and fact.¹⁸²

E. *Montana*

1. Jurisdiction and Venue.

"All proceedings must be brought in the district court of the county in which the property or some part of the property is situated."¹⁸³

2. Petition Requirements.

"A proceeding must be commenced by filing a complaint and issuing a summons."¹⁸⁴ A summons served under this chapter must contain a notice to the [landowner condemnee(s)] to file and serve an answer."¹⁸⁵

The complaint for condemnation must contain: [1]
the name of the corporation, association,

181. *Id.* § 42A-1-20(A).

182. *Id.* § 42A-1-21(A).

183. MONT. CODE ANN. § 70-30-202 (West 2011).

184. *Id.*

185. *Id.*

commission, or person in charge of the public use for which the property is sought to be taken, who is the plaintiff; [2] the names of all owners, purchasers under contracts for deed, mortgagees, and lienholders of record and any other claimants of record of the property sought to be taken, if known, or a statement that they are unknown, who are the defendants; [3] a statement of the right of the plaintiff to take the property for public use; [4] statements of each of the facts necessary to be found in 70-30-111; [5] a description of each interest in real property sought to be taken, a statement of whether the property sought to be taken includes the whole or only a part of the entire parcel or tract, and a statement that the interest sought is the minimum necessary interest. All parcels 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 the parties.¹⁸⁶

Furthermore, the petition “must contain a statement of the condemnor’s claim of appropriate payment for damages to the property proposed to be taken as well as to any remaining parcel of property.”¹⁸⁷

“If a right-of-way is sought, in addition to the items listed in subsection (1), the complaint must show the location, general route, and termini and must be accompanied with a map of the route, so far as the route is involved in the action or proceeding.”¹⁸⁸

3. Commissioners’ Hearing and Findings.

The condemnation commissioners shall meet at the time and place stated in the order appointing them. The meeting time may not be more than 10 days after the order of appointment. The commissioners shall examine the lands sought to be taken. At a time appointed by the judge and within the 10-day period, the commissioners shall

186. *Id.* § 70-30-203(1)(e).

187. *Id.* § 70-30-203(1)(f).

188. *Id.* § 70-30-203(2).

hear the allegations and evidence of all persons interested in each parcel of land.¹⁸⁹

“The hearing must be attended by and presided over by the presiding judge, who . . . [makes] all necessary rulings upon procedure and the admissibility of evidence.”¹⁹⁰

At the conclusion of the hearing, the judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, based solely upon their examination of lands, the evidence produced at the hearing or hearings, and the instructions of the court, the appropriate findings provided for in subsections (3)(b) through (3)(d).¹⁹¹

The commissioners shall determine the current fair market value of the real property sought to be taken and all improvements pertaining to the real property and of each separate estate and interest in the real property and improvements. If the real property consists of different parcels, the current fair market value of each parcel and each estate or interest in the real property must be separately assessed.¹⁹²

If the property sought to be taken constitutes only a part of a larger parcel, the commissioners shall determine the depreciation in current fair market value that will accrue to the remaining parcel by reason of the condemnation and the construction of the improvements in the manner proposed by the condemnor.¹⁹³

The commissioners also determine how much the remaining parcel and each estate or interest in the remaining parcel will be benefited, if at all, by the construction of the improvements proposed by the condemnor. If the benefit is equal to the amount assessed under subsection (3)(c)(i), the compensation to the condemnee is limited to the value of the portion taken. However, if the benefit is less than the amount assessed under subsection (3)(c)(i), the benefit to the condemnee must be

189. MONT. CODE ANN. § 70-30-301(1) (West 2011).

190. *Id.* § 70-30-301(2).

191. *Id.* § 70-30-301(3)(a).

192. *Id.* § 70-30-301(3)(b).

193. *Id.* § 70-30-301(3)(c)(i).

deducted from the amount assessed under subsection (3)(c)(i) and the remainder is the only amount allowed in addition to the current fair market value.¹⁹⁴

Finally, “[t]hrough examination of the property, the commissioners determine the appropriate payment for damages to the property taken, as well as to any remaining parcel of property that may be adversely impacted by the project, to assist the court in making a final determination pursuant to 70-30-309.”¹⁹⁵

When there are two or more estates or divided interests in property sought to be taken, the condemnor is entitled to have the amount of the award for the property first determined as between the condemnor and all condemnees claiming any interest in the property. In the same proceeding, the respective rights of each of the landowner condemnees in and to the total award must be determined by the commissioners, under supervision and instruction of the court, and the award must be apportioned accordingly.¹⁹⁶

4. Trial.

After a complaint as described in [section] 70-30-203 is filed and prior to the issuance of the preliminary condemnation order, all parties shall proceed as expeditiously as possible, but without prejudicing any party’s position, with all aspects of the preliminary condemnation proceeding, including discovery and trial. The court shall give the proceedings expeditious and priority consideration. The preliminary condemnation proceeding[, however,] must be tried by the court sitting without a jury.¹⁹⁷

“Within 6 months from the date that the summons is served, unless the court shortens or lengthens that time for good cause, the court, sitting without a jury, shall commence a trial on the issue of whether a preliminary condemnation order should be

194. *Id.* § 70-30-301(3)(c)(ii).

195. MONT. CODE ANN. § 70-30-301(3)(e) (West 2011).

196. *Id.* § 70-30-301(4).

197. *Id.* § 70-30-206(5).

issued.”¹⁹⁸

The court in a condemnation proceeding “may: (a) regulate and determine the place and manner of making the connections and crossings and enjoying the common uses mentioned in 70-30-103(1)(e); or (b) subject to 70-30-104(2), limit the interest in real property sought to be taken if in the opinion of the court the interest sought is not necessary.”¹⁹⁹ Furthermore,

if the court finds and concludes from the evidence presented that the public interest requires the taking of an interest in real property and that the condemnor has met the burden of proof under 70-30-111, the court shall enter a preliminary condemnation order providing that the condemnation of the interest in real property may proceed in accordance with the provisions of this chapter.²⁰⁰

Lastly,

[t]he court shall appoint three persons, qualified and recommended as experts by the board of oil and gas conservation, to assist and advise the commissioners in determining the compensation and damages to be paid by the condemnor to each person for each person’s interest in the property sought to be taken. The fees and expenses of the experts are chargeable as costs of the proceedings to be paid by the condemnor.²⁰¹

F. *Texas*

1. Jurisdiction and Venue.

“District courts and county courts at law have concurrent jurisdiction in eminent domain cases.”²⁰² Generally, the petition is filed in the situs county.²⁰³

198. *Id.* § 70-30-202.

199. *Id.* § 70-30-206(1).

200. *Id.* § 70-30-206(2).

201. MONT. CODE ANN. § 70-30-206(4) (West 2011).

202. TEX. PROP. CODE ANN. § 21.001 (West 2011).

203. Greg Abbott, Attorney General of Texas, *2012 Texas Eminent Domain Laws MADE EASY*,

https://www.oag.state.tx.us/AG_Publications/pdfs/eminent_domain_easy.pdf.

2. Petition Requirements.

The required elements of the original petition in Texas include (1) a description of the targeted property, (2) a statement of the intended public use, (3) the name of the property owner or owners, (4) an averment that the parties are unable to agree on damages, (5) if applicable, a statement that the condemning entity provided the landowner's bill of rights, and (6) an averment that a bona fide offer was made.²⁰⁴

3. Commissioners' Hearing and Findings.

After filing the original petition, the presiding judge appoints three special hearing commissioners who conduct a hearing and assess damages.²⁰⁵ The special commissioners have the authority to issue a report.²⁰⁶ After ruling, the special commissioners file their written decision with the court, who then notifies the parties.²⁰⁷ Any party objecting to the commissioners' ruling must file specific, written objections.²⁰⁸ Objections include abuse of discretion, no public necessity, lack of authority to condemn, failure to use proper measure of damages, inadequate damages, excessive damages, *etc.*²⁰⁹ If no objections are filed, the court will adopt the commissioners' findings.²¹⁰ Condemnation proceedings are administrative in nature through the award of the special commissioners.²¹¹ The proceedings convert from administrative to judicial upon the filing of objections to the award of damages.²¹² The special commissioners hear evidence as the (1) value of the property to be condemned, (2) property injury due to condemnation, (3) benefits resulting to the remainder of the property, and (4) the actual use of the condemned property.²¹³

4. Objections.

If the parties object to the commissioners' written statement, a timely objection from either party converts the administrative

204. TEX. PROP. CODE ANN. § 21.012 (West 2011).

205. *See id.* §§ 21.014 - .016.

206. *See id.* § 21.014.

207. *See id.* §§ 21.014 - .016.

208. *Id.* § 21.018 (West 2011).

209. *See id.* § 21.018.

210. TEX. PROP. CODE ANN. § 21.061 (West 2011).

211. *See id.* § 21.014.

212. *See id.* § 21.018.

213. *Id.* § 21.041.

proceeding into a civil action.²¹⁴ The effect of timely objections is to nullify the award, and all issues are subject to trial *de novo*.²¹⁵

5. Trial.

After objections to the commissioner's report, trial is *de novo* on all issues.²¹⁶ Injunctive relief is available.²¹⁷ The trial is conducted as with other civil cases. The appeal of the trial *de novo* judgment is as in other civil cases.²¹⁸ Injunctive relief is available.²¹⁹

6. Post-Trial, Repurchase and Other Matters.

The appeal of the trial *de novo* judgment is as in other civil cases.²²⁰ Texas Property Code Section 21.101 provides for the right of repurchase of the condemned property upon the occurrence of certain conditions, such as cancellation of public use, "no actual progress" within 10 years, *etc.*²²¹

G. Utah

1. Petition Requirements.

The complaint shall 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, its location, general route, beginning and ending, and be accompanied by a map of the proposed right of way, as it is involved in the action or proceeding; [5] if any interest in land is sought for a right of way or associated facilities for a subject activity as defined in Section 19-3-318: the permission of the governor with the concurrence of the Legislature

214. *See id.* § 21.018(b).

215. *See id.* § 21.018.

216. *See* TEX. PROP. CODE ANN. § 21.063 (West 2011).

217. *Id.* § 21.064.

218. TEX. R. OF CIV. P. 574b (West 2013)(may no longer be the case as rule 574b will be repealed effective May 1, 2013); TEX. PROP. CODE ANN. § 21.063 (West 2011).

219. TEX. PROP. CODE ANN. § 21.064 (West 2011).

220. TEX. R. OF CIV. P. 574b (West 2013) (may no longer be the case as rule 574b will be repealed effective May 1, 2013); TEX. PROP. CODE ANN. § 21.063 (West 2011).

221. TEX. PROP. CODE ANN. § 21.101 (West 2011).

authorizing: [the] use of the site for the subject activity; and [the] use of the proposed route for the subject activity; and the proposed route . . . ; and [6] a description of each piece of land sought to be taken, and whether it includes the whole or only part of an entire parcel or tract. All parcels 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.²²²

2. Powers of Court or Judge.

“The court shall have the power to hear and determine all adverse or conflicting claims to the property sought to be condemned, and the damages; and determine the respective rights of different parties seeking condemnation of the same property.”²²³

3. Settlement.

A plaintiff described in Subsection 78B-6-507(1)(a) may make a settlement offer . . . at any time: (i) following the close of discovery as ordered by the court, but no later than 60 days before the first day of trial; or (ii) if no order setting the close of discovery exists: (A) more than nine months from the day that the complaint is filed; and (B) no later than 60 days before the first day of trial.²²⁴

The offer shall (1) be in writing; (2) be served in accordance with Rule 5, Utah Rules of Civil Procedure, on each defendant to whom the offer is addressed; (3) and be made: (a) to the defendant; or (b) if more than one defendant, jointly to all defendants who have appeared in the case and have not been dismissed; (4) state that the offer is being made under Subsection (3)(a); and (5) specify the amount.²²⁵

“A defendant who receives an offer under Subsection (3)(a) may accept the offer by serving an acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil

222. UTAH CODE ANN. § 78B-6-507 (West 2012).

223. *Id.* § 78B-6-509(2).

224. *Id.* § 78B-6-509(3)(a).

225. *See, e.g., id.* § 78B-6-509(3)(b).

Procedure.”²²⁶ “If there is more than one defendant, [the] defendants may accept the offer by serving a joint acceptance of the offer, prior to its expiration, in accordance with Rule 5, Utah Rules of Civil Procedure.”²²⁷

A plaintiff is entitled to a final judgment of condemnation as prayed for in the complaint upon paying to the defendant or defendants, or depositing with the court clerk for the benefit of the defendants: (i) the amount of total just compensation agreed to in the offer accepted as described in Subsection (4)(a); and (ii) any interest due as provided by law.²²⁸

4. Trial.

The court, jury, or referee shall hear any legal evidence offered by any of the parties to the proceedings, and determine and assess: [1] the value of the property sought to be condemned and all improvements pertaining to the realty; [2] the value of each and every separate estate or interest in the property; and [3] if it consists of different parcels, the value of each parcel and of each estate or interest in each [parcel] shall be separately assessed.²²⁹

5. Post-Trial and Other Matters.

“The plaintiff shall, within 30 days after final judgment, pay the sum of money assessed.”²³⁰

Payment may be made to the defendants entitled to payment, or the money may be deposited in court for the defendants and distributed to those entitled to payment. If the money is not paid or deposited, the defendants may have execution as in civil cases; and if the money cannot be made on execution, the court upon a showing to that effect shall set aside and annul the entire proceedings, and restore possession of the property to the

226. *Id.* § 78B-6-509(4)(a).

227. *Id.* § 78B-6-509(4)(b).

228. UTAH CODE ANN. § 78B-6-509(4)(d) (West 2012).

229. *Id.* § 78B-6-511(1).

230. *Id.* § 78B-6-514.

defendants, if possession has been taken by the plaintiff.²³¹

When payments have been made and the bond given, if the plaintiff elects to give one, . . . the court shall make a final judgment of condemnation, which shall describe the property condemned and the purpose of the condemnation. A copy of the judgment shall be filed in the office of the county recorder and the property described in it shall vest in the plaintiff for the purpose specified.²³²

H. Wyoming

1. Petition Requirements.

“A party may file with the court a written request that the issue of the amount of compensation be determined under [the Wyoming Eminent Domain Act], identifying the property and setting forth the amount of the condemnor’s latest offer and the condemnee’s latest demand for compensation.”²³³

2. Commissioners’ Hearing and Findings.

If the court determines that the [written request pursuant to section 1-26-602] should be granted, it shall hold a hearing upon reasonable notice to the parties to determine compensation.” The court shall proceed without a jury and in an informal manner. The parties may present oral and documentary proof and may argue in support of their respective positions but the rules of evidence need not be followed. Neither party is required to offer the opinion of an expert or to be represented by an attorney. Unless demanded by a party and at his own expense, a record of testimony received at the hearing need not be kept.²³⁴

3. Trial.

(a) Either party, within thirty (30) days after entry of the judgment, may reject the judgment and file a written demand for trial. The action shall be

231. *Id.* § 78B-6-515.

232. *Id.* § 78B-6-516.

233. WYO. STAT. ANN. § 1-26-602 (West 2012).

234. *Id.* § 1-26-603.

restored to the docket of the court as though proceedings under this article had not occurred.

(b) If the condemnor files a demand under subsection (a) of this section and ultimately obtains a judgment no more favorable to him, the court may require him to pay, in addition to costs, the condemnee's litigation expenses incurred after the demand was filed.²³⁵

4. Compensation for the Taking.

The measure of compensation for a taking of property is its fair market value determined under [section] 1-26-704 as of the date of valuation. If there is a partial taking of property, the measure of compensation is the greater of the value of the property rights taken or the amount by which the fair market value of the entire property immediately before the taking exceeds the fair market value of the remainder immediately after the taking.²³⁶

5. Explicit Right to Eminent Domain of Pipeline Companies.

The Wyoming Eminent Domain Act explicitly provides that:

[w]henever any utility or any petroleum or other pipeline company, authorized to do business in this state, has not acquired by gift or purchase any land, real estate or claim required for the construction, maintenance and operation of their facilities and appurtenances or which may be affected by any operation connected with the construction or maintenance of the same, the utility or company has the right of eminent domain and may condemn the easement required by the utility or company.²³⁷

IV. CONCLUSION

Shale gas fields have created a demand for new pipelines. A

235. *Id.* § 1-26-604.

236. *Id.* § 1-26-702.

237. *Id.* § 1-26-814.

large portion of these new pipelines will be built in the Western United States. Dozens of eminent domain actions are currently planned and/or filed throughout the Rocky Mountain states, and pipeline condemnation proceedings now constitute a daily portion of the public debate.²³⁸

With an estimated 4% to 12% of underlying land for each new pipeline to be condemned,²³⁹ public discourse (and protest) is unlikely to abate. Modern landowners and stakeholders are able to share their objections about proposed pipelines with one another via media outlets. Thus, modern common pipeline carrier condemnation projects are being held to higher scrutiny and legal challenges. These legal challenges should not be taken lightly. This article has examined the principal condemnation statutes from select states, and hopefully illuminated important proceeding and pre-proceeding requirements required therein.

238. See, e.g., Lisa Song, *Unequal Risks and Benefits for Citizens in Six States on Keystone XL Pipeline Route*, TRUTHOUT (Jan. 7, 2012, 4:47 PM), <http://www.truthout.org/news/item/5966:unequal-risks-and-benefits-for-citizens-in-six-states-on-keystone-xl-pipeline-route>.

239. See Ramit Plushnick-Masti, *Texas Landowners Take a Rare Stand Against Big Oil*, BLOOMBERG BUSINESSWEEK (Oct. 30, 2012), <http://www.businessweek.com/ap/2012-10-17/texas-landowners-take-a-rare-stand-against-big-oil#p1>.