

## Eminent domain effort threatens farm and ranch property

Written by

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Last Monday's opinion piece in the Great Falls Tribune arguing that MATL should be provided eminent domain authority is plain wrong on many levels.

Supreme Court Justice Sandra Day O'Connor predicted, in her dissent in the Kelo case, "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more."

These words echo today in our state Capitol.

It is incorrect that MATL's hands were tied by the DEQ permit preventing route changes for Salois and for several other landowners. MATL wasn't hesitant in filing an amendment to "fix" the certificate for its

concerns on wetlands. MATL just doesn't have the same concerns for landowners and told DEQ not to amend the certificate to address landowner concerns.

It is incorrect to say that MATL has been willing to meet landowners halfway. "Every and I mean every single change and improvement in this line has been the result of a concerted and consistent efforts through the permitting process of interested citizens and impacted landowners," stated Chris Stephens, a landowner whose property is in MATL's path.

"The first look at the easement we were expected to sign came two years after the certificate was issued with a 'Chicken Little' the sky is falling letter," he said. "Every thing with this company has been this way — rush, rush, rush."

Stephens stated he and his family have problems with the following provisions in the current MATL easement:

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- The pole placement was in violation of the certificate issued by the DEQ. When Stephens contacted the land man he said he had never

read the certificate.

- MATL required that Stephens and other landowners obtain mortgage releases or pay off the mortgage on the affected parcels before the landowners would receive payment. Stephens said he had never had to do this for numerous easements he and his family had given to previous power lines, oil

and gas lines.

"When we discussed these and other concerns with Gene Kammerman, MATL's land agent based in Conrad, we were informed that the documents were given to them from their financier (WAPA) and no wording or provisions could be changed," Stephens explained. "When I contacted WAPA they said that was incorrect and that their participation in the line began only once the line was built and in commission." Also, according to Stephens and my other clients, MATL delivered documents with a take it or leave it message. This is not negotiation — this is an ultimatum. In this case, MATL has made mistakes — it has not met half-way with landowners. MATL only wants to bulldoze ahead. Yet, some in the Legislature, the governor and obviously the Great Falls Tribune want to overlook MATL's actions and reward them despite this behavior. Some who support MATL use the excuse that we have to give MATL eminent domain because power lines and many other people have had eminent domain for over 100 years. Some of my clients wonder if the

historical domination of Montana by corporations is still true today. It seems that Justice O'Connor was correct when she stated that allowing liberal application of eminent domain laws would result in those with political power overrunning of regular folks who have less resources and political power. House Bill 240, sponsored by Rep. Kelly Flynn, would be helpful; however, it seems the Senate is moving toward passing a study bill instead of passing HB240 to better protect landowners. It's a sad day in Montana if some believe the only way to create jobs is to reapportion property at the expense of Montana's loyal farming and ranching community — the foundation of our tax base.

**Hertha L. Lund practices law at Lund Law PLLC in Bozeman. She represents Chris Stephens and other landowners against whom MATL sought to condemn property.**

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