

GUEST OPINION

# Rural property rights at stake in Helena debate

By HERTHA L. LUND

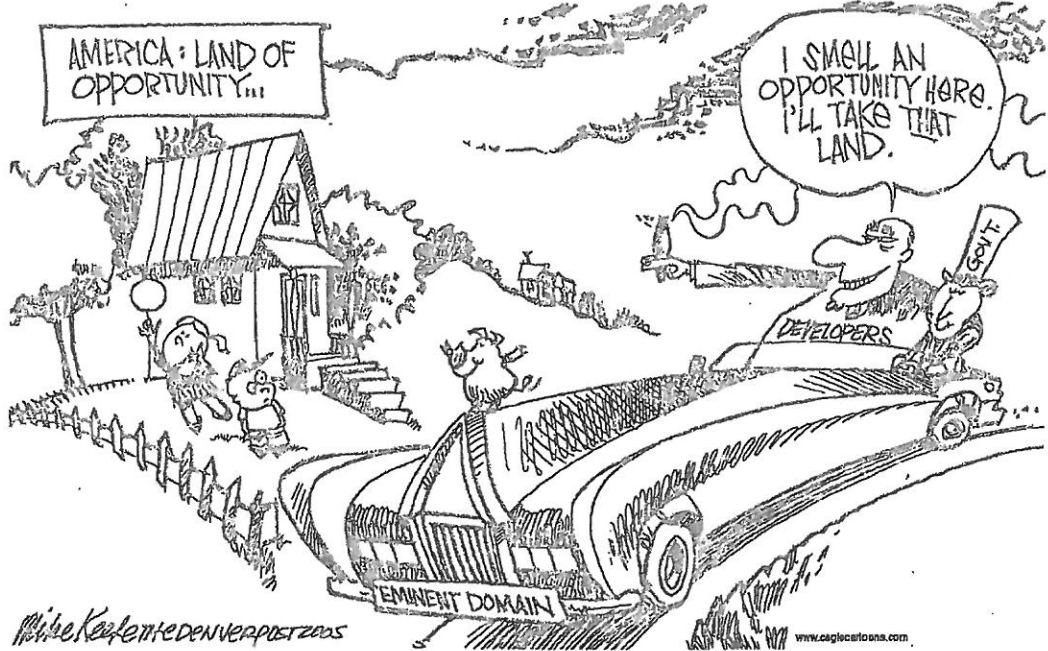
These are already crazy times at the Legislature in Helena. It seems that some are willing to compromise fundamental rights, such as private property rights, in search of the elusive "jobs, jobs, jobs." At a time when the Republicans in Congress read the Constitution on the floor, and plan a return to limited government, Montana may be willing to ignore basic constitutional protections. How can it be expedient to run over one person's fundamental rights to allow a business a leg up?

Last week, a House hearing addressed whether a Canadian merchant power line that is funded with U.S. stimulus dollars can use the state's power to condemn private property. The sponsor of the bill, House Bill 198, argued that the legislation was needed to create jobs. Rep. Ken Peterson, R-Billings, argued that his bill was necessary for development and that with no development, there would be no new jobs.

HB198 was drafted in response to a court's determination that MATL, a private company, did not have the right to condemn property. MATL is part of a Toronto-based company that is trying to build a 214-mile private electrical transmission line from Lethbridge to Great Falls.

As drafted, the main jobs that HB198 would create are jobs for attorneys who seek to defend landowners' rights. Both Montana and the United States Constitutions prohibit the taking of private property without due process. HB198 would violate these constitutional rights and hold up any pending projects due to litigation.

According to the Environmental Impact Study for the transmission line that MATL is attempting to build, the "expected beneficial effect of this long-term employment on the line would be minor." The CEO



of the company once told his stockholders that the project would be virtual, meaning few if any employees in Montana. Also, MATL was given a significant tax break in the 2007 special session, which would have significant impact on local government revenues, according to the bill's fiscal note.

Based on the EIS and the tax breaks afforded to MATL, HB198 will create relatively few jobs. I don't think it is worth impinging on basic constitutional rights protecting private property just so MATL can meet its deadline to spend its \$160 million in stimulus dollars.

Montana has been very reluctant to allow condemnation of private property for economic development. In 2007, in response to *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the Legislature passed a law to prevent condemnation for urban development. HB198 would treat rural landowners differently than urban landowners because it would allow eminent domain for purpose of economic development.

Rural landowners should

not be sacrificed for the false choice between "development" or "property rights." MATL can still do what it always should have done: Treat landowners fairly and negotiate to reach an agreement about compensation and placement of the electrical line on their private property. If a private entity, such as MATL, has condemnation authority, it has every incentive to forgo civil, fair negotiations and to instead jump to the threat of eminent domain in order to speed up the process. MATL should be spending its resources and time to work with the landowners instead of lobbying the Legislature to give the company the state's right to condemn property.

The appropriate way to fix the problem, if one exists, is for the Legislature to pass legislation that:

- Only provides condemnation authority for an entity that is regulated by the Public Service Commission.

- Requires the entity to meet with landowners prior to siting the line.

- Requires that any transmission line project fit into a

state plan.

- Prohibits an agency charged with environmental review from making constitutional determinations regarding property rights or whether a transmission line is necessary to upgrade the state's transmission lines; and, requires just compensation for the overall negative impact on property, which includes the fact that a transmission line reaches from the ground into the sky. Current compensation provides for surface damage, and is not equitable for transmission lines.

- Doesn't retroactively seize the property of the landowners in the path of MATL's project.

Legislation with these components would protect private property. Also, it would help ensure that any transmission line that was built was necessary and did not end up being a tool for Enron-like arbitrage in electricity marketing between Canada and America.

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