

Texas Landowners Challenge Eminent Domain For Oil Pipelines

What's an oil company to do? Texas landowners who for decades have sat by quietly accepting eminent domain to permit pipelines carrying precious energy to flow through their properties have been getting ornery of late. A slew of litigation has been filed challenging the actions of the Texas Railroad Commission, which regulates the pipelines and has used eminent domain to help the state transport crude for its vital and currently booming oil drilling industry.

But boom times in the oil business have given rise to an even greater need for transporting the fuel that runs our cars and heats our homes. The existing pipeline structure is insufficient. More lines, traveling over and under more private property, are needed. To keep up with demand, drillers have increasingly turned to alternative methods, including trucks, which some complain have clogged the roadways.

This state of affairs was recently featured on the *Dallas Morning News* [website](#), which notes that the right of landowners to take on the Railroad Commission was boosted by a Texas Supreme Court decision in March 2012 (confirmed in August) that gave property owners greater latitude to challenge eminent domain for pipeline use. That case, [Texas Rice Land Partners v. Denbury](#) (March 2, 2012), involved a pipeline carrying carbon dioxide from Louisiana to Texas. The court in *Denbury* upheld a landowner's challenge and "found the Texas Railroad Commission needed to do more in checking companies' assertions that they were opening their pipelines up to other companies—a requirement for eminent domain status." See also [Texas Rice Land Partners v. Denbury](#) (August 17, 2012), motion for rehearing denied.

Meanwhile, the controversy surrounding pipelines and eminent domain has also raised its head in connection with the Keystone XL pipeline. Construction is moving forward on Keystone XL, which will eventually connect Alberta, Canada, home to valuable oil sands deposits, to refineries on the Gulf Coast. The *Dallas Morning News* article opines that litigation is "not expected to stop the pipeline—just determine what the company ultimately must pay the landowners."

Whether that proves true may be determined by future decisions of the Texas Supreme Court. How far the court will go to protect landowners is unclear at present. But one thing does seem clear, property owners will likely raise an increasing number of challenges to the Texas Railroad Commission's use of eminent domain to take property for pipeline use.

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