

Phase 1 Environmental Impact Comments: What is Surface Transportation Board looking for?

(From Kankakee Farm Bureau)

Agricultural impacts of the proposed GLB and Utility Corridor for the Area must be determined by identifying the total number of acres of farmland that would be converted to a different use, determining the acres of prime farmland within the converted farmland being impacted, estimating the number of agriculture parcel severances, and determining the potential in crop production and cash receipts. Agricultural severances, uneconomical remnants, and landlocked parcels must be determined as well.

Important Concepts, Phrases, & Buzzwords

A **severed farm parcel** is defined as a parcel of farmland that is traversed by the proposed project, resulting in dividing one larger parcel of land into two smaller parcels. The owner/operator is inconvenienced by farming two smaller parcels instead of one larger parcel of land. In addition, the severance may cause adverse travel for owners/operators compared to the distance traveled without the proposed project.

A **landlocked parcel** is defined as land that is isolated by the proposed roadway corridor footprint in a way that the parcel becomes inaccessible to the current owner/operator due to lack of access from a public road, existing easement, adjacent property under the same ownership, or access road.

An **uneconomical remnant** is defined as farmland that is severed from a larger parcel of farmland that is too small to be economically or practically farmed by the existing owner/operator. For example, the Illinois Department of Agriculture (DOA) identifies a stating frame of reference for uneconomical remnants as three acres or less in size, but this may vary depending on the shape of the remnant and the concerns of the owner/operator.

Adverse travel is defined as the length of additional distance, round



trip, an owner/operator would have to travel in order to operate a parcel that has become severed or is otherwise affected as a result of the proposed project. Adverse travel results in additional time and fuel expense that would not be re-

quired to operate one continuous parcel.

Relocated farmsteads include residences with farm buildings that require relocation of the residence. An agribusiness is a business related to agricultural production and includes production, supply, distribution, processing, marketing, and sales of agriculturally related products.

Get Involved!

The Surface Transportation Board has an Office of Proceedings and employs paralegals to answer questions from the public about items on the STB docket and the commenting process. Feel free to call them directly.

Contact information is below. In order to be respectful, please make your first contact to the general number at the top of this list. If you cannot get the help you seek at the first number, please call the second contact listed. She will likely be helpful, but may ask to have someone else in the organization follow-up with you directly.

That party is likely to be the third party listed below. Please do not call him until you have tried to talk with each preceding contact. It is important and helpful to follow the STB Office of Proceedings (Rail) chain-of-command identified in the listing below:

1. Office of Proceedings: Rail Paralegal Assistance (General Number)

(202) 245 - 0245

2. Andrea Pope-Matheson, Management Information and Legal Support Services Supervisory Paralegal.

(202) 245 - 0363

3. Michael Higgins, Deputy Director, Rail Public Assistance and Compliance

Is GLBT abusing eminent domain?

The U.S. Constitution gives all citizens inalienable rights. The Fifth Amendment details 5 rights granted to all of us: Rights of citizens with respect to grand juries, double jeopardy, self-incrimination, due process, and just compensation. Eminent domain is outlined in its "Takings Clause" and defines the authority to seize private property for public use and a private property owner's right to "just compensation."

While this may sound simple, a series of Supreme Court decisions has expanded the concept of eminent domain. Many believe that current use of federal eminent domain overreaches and exceeds what the Constitution was written to establish. Perhaps the key case that started this trend is *Kohl v. United States* (1876). The Supreme Court upheld eminent domain, stating that it "is essential to the governmental duty to serve the public and outweighs any inconvenience to individuals."

Recently, the definition of "public use" has been expanded and now includes general public welfare. While historically, eminent domain was used for construction of projects and water supply, and such; today it includes actions that encourage economic growth. Prevailing interpretations appear to accept a tradeoff of harming private property owners for a great public good.

In *Kelo v. City of New London* (2005) the New London Development Corporation (NLDC) gave the pharmaceutical company *Pfizer* the power to seize private land from Susette Kelo in New London, Connecticut. The SCOTUS accepted this use of eminent domain, because it declared economic development a "public use."

Justice Sandra Day O'Connor, in an important dissenting opinion, challenged definitions of "public" and "private" property use. Her point was that economic-development did not provide a constitutional context for eminent domain, since individual benefits for *Pfizer* and New London residents could not be clearly defined.

This line of thinking applies to *Great Lake Basin Transportation's* claims that eminent domain can be lawfully used to coerce landowners to sell property for their railroad. We all can see that managing partner Frank Patton and GLBT benefit. A



farmer or small landowner that will never ship nor receive any transportation services? Not so much so. Though all applications of federal eminent domain claims demand land owners be given fair market value for condemned property, abuse of the process can result in economic harm to those forced to sell

land so that others can extract profits.

Perhaps more important, claims of future economic-development benefits cannot be accurately and precisely defined. In Susette Kelo's landmark case, 8 years later, her condemned and bulldozed property was abandoned as a wasteland after *Pfizer*, and 1,400 jobs, left New London.

"Public use" and "public need" are 2 distinctly different concepts. Claims of "public need" place one private property owner's land into the hands of another private owner, as opposed to a public owner. The result of previous SCOTUS opinions is that property owners have seen their rights negatively affected.

The federal government, however, has not recognized the clear difference between "public uses" and "public needs". Until the SCOTUS addresses these concerns, eminent domain abuse will continue and increase.

Perhaps the unresolved case that best applies to GLBT's use of eminent domain is the contentious debate with *TransCanada Corporation's* proposed construction of the Keystone XL pipeline. This project, officially "dead" since 2014, combines public use and public need. If built, the plan creates infrastructure that is dubiously represented as benefiting all Americans. On its surface, this claim could be construed as meeting the historical definition of eminent domain.

However, the project is for a private company's profits. Would the SCOTUS rule that this was constitutional on the grounds of economic-development? We will now never know as the proposal has been abandoned. The nation's highest court was not required to clearly define "public needs" and "public uses." The former sounds like something that the people may support. Most will accept resolving unmet needs.

The devil is in the details. Is it fair and just to claim to be meeting a vague and difficult to quantify need by seizing property, evicting homeowners and ruining small businesses?

Please let STB know what you think

Citizens are invited to file scoping comments regarding the proposed Great Lakes Basin Railroad. Comments are due by June 15. **Please refer to Docket No. FD 35952 in all correspondence, including e-filings, addressed to the Board.**

Scoping comments may be submitted electronically at www.stb.dot.gov by clicking on the "E-FILING" link on the home page and then selecting "Environmental Comments." Accounts are not needed to file environmental comments electronically, and comments can be typed into the text box provided or attached as a file. **Anyone having difficulties with the e-filing process should call 202-245-0350.**

Scoping comments also can be submitted by mail to: **Dave Navecky, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, Docket No. FD 35952.**



www.blockglbrailroad.com

WARNING: GLBT has no authority to negotiate a price, do a survey, or even take a core sample

If you notice any strange activity on your land, ask for IDs, copies of any and all documents, take photos of license plates, and notify the Sheriff. No one has authority to be on YOUR land! Please make sure your friends, neighbors, and especially the elderly in assisted care facilities or any landowner within 30 miles of the proposed route is aware of what is going on. And most important: **DO NOT SIGN ANYTHING!!**