

LIQUEFIED NATURAL GAS EXPORTS - PART 2



In August 2010, the fight against Liquefied Natural Gas (LNG) in Oregon took an unusual turn: Pacific Connector – the company behind a 234-mile-long, 36-inch-diameter underground natural gas pipeline that would extend from a Jordan Cove Liquefied Natural Gas importation terminal in Coos Bay, Oregon, southeast across the Klamath-Siskiyou mountains to its terminus near Malin, Oregon – went on the offensive. Rather than allow the state permitting process to run its course, Pacific Connector decided to sue the State of Oregon in federal district court in an effort to circumvent one of America’s most sacred values: the right of citizens to control the use of their private property.

The Fifth Amendment to the United States Constitution states that no person shall be “deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.” This fundamental premise of American government and society gives private property owners rather broad discretion to utilize their property – including land – in any manner consistent with other constitutional principles.

This respect for private property rights is shared by the State of Oregon and its administrative procedures and codes. One such requirement is the “landowner signature requirement,” which requires any person seeking to alter any waterways in the state to seek the approval of the Department of State Lands (DSL). Such approval requires the signature of the private landowner or authorization of the landowner, when the waterway is on private land. And here is where Pacific Connector ran into problems.

The Pacific Connector pipeline will cross hundreds of private property parcels on its 234-mile journey between Coos Bay and Malin. Many of those private property owners are staunchly opposed to the pipeline and have therefore refused to give the company any permission to enter onto their property, much less the authority to alter waterways found on their land. Therefore, it was impossible for Pacific Connector to complete the necessary DSL application, which itself is required

before the company can begin construction of the pipeline. No landowner permission, no permit, no pipeline.

Although the State was in the process of attempting to work with Pacific Connector to address this issue, Pacific Connector instead filed suit in federal district court and alleged that Oregon's landowner signature requirement was precluded by the Natural Gas Act, and more shocking, that it violated the Dormant Commerce Clause of the United States Constitution. The Dormant Commerce Clause derives from the Commerce Clause, and stands for the proposition that a state cannot pass legislation – such as the landowner signature requirement – that impermissibly burdens or discriminates against interstate commerce, such as construction and operation of a pipeline.

The Western Environmental Law Center (WELC) represents a coalition of eight private landowners with property within the pipeline's right-of-way who have intervened in the Pacific Connector v. Solliday litigation on the side of the State of Oregon. These landowners seek to defend basic private property rights and the landowner signature requirement.

In June 2011, the Oregon Legislature approved House Bill 2700 (HB 2700), which was supported by backers of the Pacific Connector pipeline and the Jordan Cove LNG terminal.

HB 2700 allows applicants like Pacific Connector to apply for and receive dredge and fill permits from the State of Oregon without landowner consent. The measure, which Governor Kitzhaber signed into law, prohibits actual ground-disturbing activities until landowner consent is obtained from either the landowner or from a court through eminent domain proceedings, which gives courts the power to decide that despite protests by landowners, the pipeline is in the public's "best interest".

Because the new law allows Pacific Connector to apply for a dredge and fill permit without landowner consent or signature, it is Oregon's (and the landowners') position that Pacific Connector's lawsuit against the landowner signature requirement is now moot: because there has been a change in the underlying law that Pacific Connector is challenging – i.e., HB 2700 has undermined the signature requirement – there is no live controversy about what the company must do to apply for the necessary permit from DSL, and therefore no basis in its lawsuit.

Unfortunately, Pacific Connector is still electing to maintain the Pacific Connector v. Solliday litigation. Pacific Connector's legal position is that federal law – in this case, the Natural Gas Act and the Energy Policy Act, as well as FERC's Certificate of Public Convenience and Necessity – preempts state law, including state regulations such as the landowner signature requirement.

While all of these federal laws, and even the Certificate, expressly state that Pacific Connector must comply with all state laws and requirements before it can begin construction of the pipeline, the company still maintains that the landowner signature requirement unlawfully restrains its ability to build and operate the project. Pacific Connector claims that because the pipeline impacts interstate commerce the Dormant Commerce Clause protects them from having to comply with state regulations, and thus the state has to stay out of the way.

Source: <http://readthedirt.org/liquefied-natural-gas-exports-part-2>