Eminent Domain and Private Property

Bill Hanigan
and
Sarah Franklin
Davis Brown Law Firm

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Current Projects

- Dakota Access
- Rock Island Clean Line
- Keystone XL Pipeline

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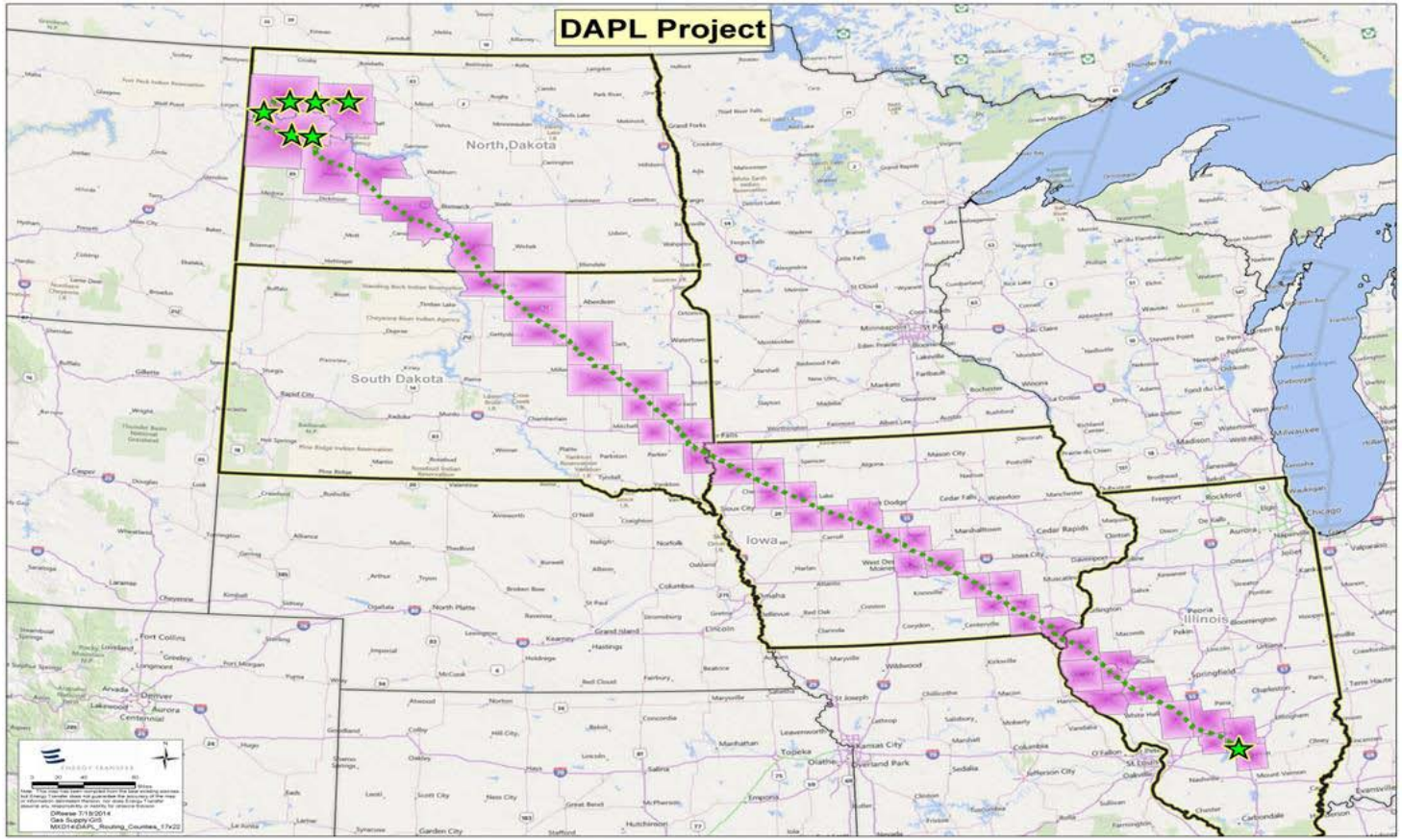
Dakota Access



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Dakota Access

Project Facts:

- 1,134 mile pipeline system.
- Carry 570,000 barrels per day of light sweet crude from Bakken and Three Forks through North Dakota, South Dakota, Iowa and Illinois to a crude oil hub near Patoka, Illinois.
- 343 miles in Iowa of 30-inch diameter pipeline.
- Dakota Access seeks a 50-foot permanent easement. May seek temporary easement during construction of 35-100 additional feet.
- Proposed payments to landowners will be based on valuation per acre. Additional payment for crop loss from 100 percent in year one to 60 percent in year three.

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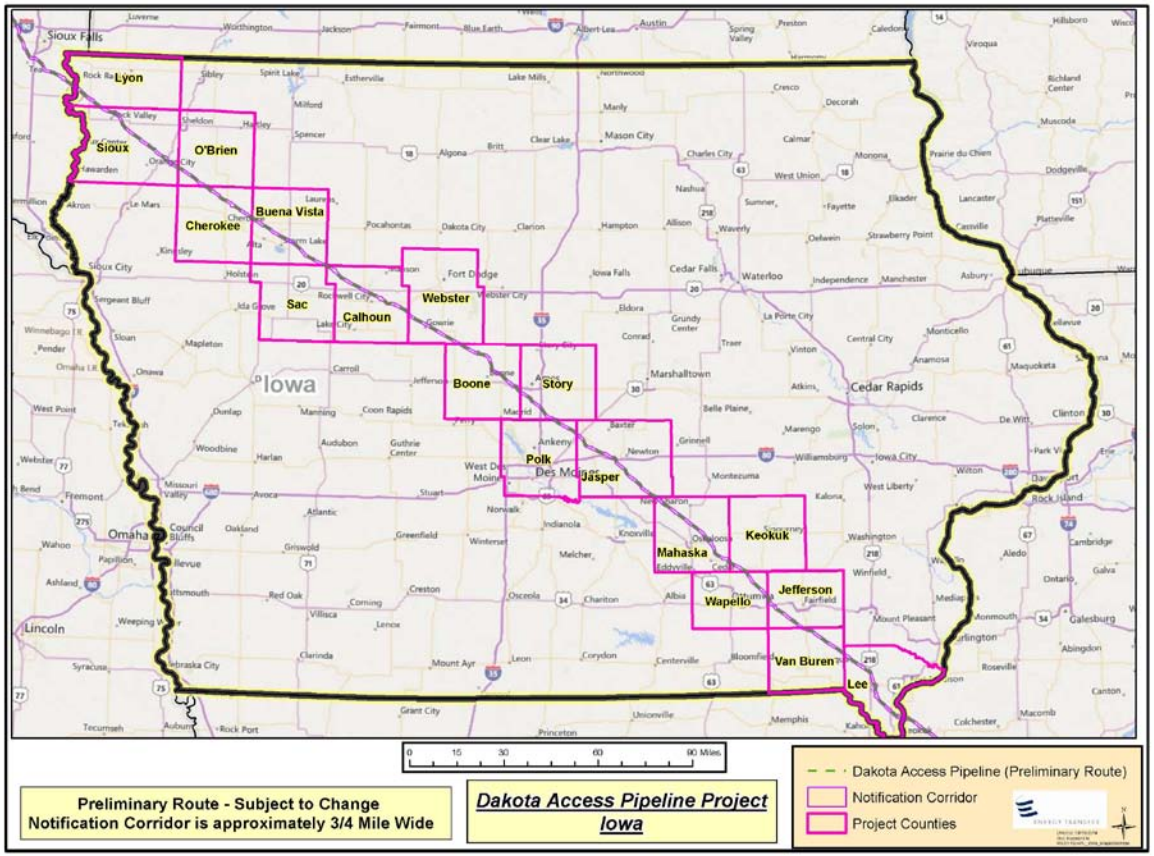

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Eminent Domain

- The U.S. Constitution and Iowa Constitution provide that private property cannot be taken for public use without just compensation.
- Two restrictions:
    1. The taking must be for a public use; and
    2. The owner must be justly compensated.
- Iowa's eminent domain laws are codified at Iowa Code Chapter 6B.
- The Iowa Utilities Board will initially determine whether the condemnation of private property is for a public use. Courts may review the legislature's decision, but will only reverse a legislative determination of public use where it is clear, plain and palpable that the use is private in character.

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Eminent Domain

What constitutes public use?

- Generally means public benefit.
- The test is whether there is reasonable assurance that the intended use will come to pass.
- Power to take property is limited to such property as is reasonably necessary for the public use in question.

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Eminent Domain

<u>Kelo v. City of New London</u>, 545 U.S. 469 (2005)

Facts: City of New London, Connecticut condemned privately owned property to use as part of a comprehensive private redevelopment plan aimed at revitalizing the local economy. The City purchased most of the property from willing sellers, but initiated condemnation proceedings against owners who refused to sell. These owners filed a lawsuit arguing that condemnation of their property for private development violated the "public use" restriction in the Fifth Amendment.

Holding: The Supreme Court decided 5-4 that the general benefits a community enjoyed from economic growth qualified private redevelopment plans as a permissible "public use" under Takings Clause of Fifth Amendment.

Iowa response: In 2006 the Iowa legislature passed a bill restricting the use of eminent domain for economic development. Gov. Vilsack vetoed the bill, but following a special session the veto was overruled by the legislature.

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Process:

- **Summer 2014 –** Initial meetings with Iowa Utilities Board ("IUB")
- **December 2014 –** Project informational meetings at county level. After the informational meetings, Iowa law permits a pipeline company to enter private land to conduct a survey by giving ten days notice.
- **January 20, 2105 –** Dakota Access filed its Petition for Hazardous Liquid Pipeline. IUB will now set the Petition for hearing. Following the hearing, IUB will decide whether to grant Dakota Access a permit and, if requested, the right to eminent domain.

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- If Dakota Access cannot obtain voluntary easements from landowners, it may petition the IUB for the authority for eminent domain.
- Iowa Code 479B.16 provides that a pipeline company granted a permit "shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board…." See Iowa Code 479B.16.
- If eminent domain is requested, IUB will determine whether the pipeline is needed to serve public use.
- If eminent domain is granted, a Compensation Commission appointed from each county will determine just compensation.

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Dakota Access

What remedies do landowners have?

- Any person whose rights or interest may be affected by the pipeline may file written objections with the IUB. The objections must be filed at least five days before the hearing. See Iowa Code 479B.7.
- At the hearing the IUB will consider the Petition, any objections and may hear testimony needed to aid the IUB in its decision. See Iowa Code 479B.8.
- Within twenty days of the IUB's final decision, any party *may* apply for rehearing within twenty days after the final decision. See Iowa Code 479B.22; 476.12. A party may also seek judicial review under Iowa Code Chapter 17A within 30 days of decision on rehearing or final decision. See Iowa Code 17A.19.
- Under some circumstances, a party may also be able to appeal to federal court.

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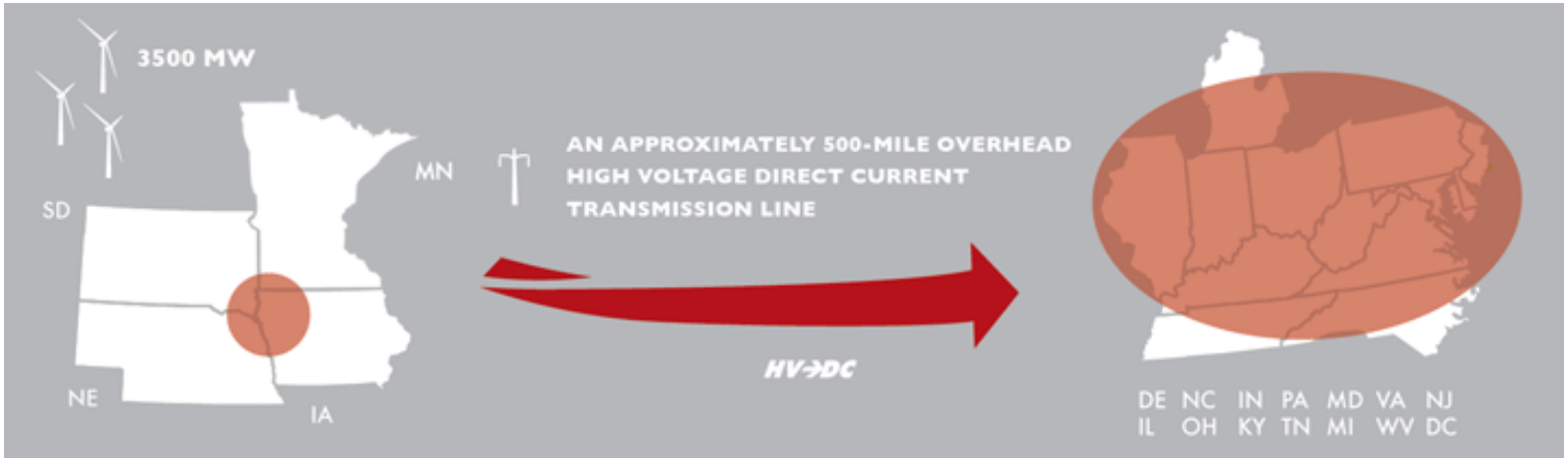
Rock Island Clean Line

- 500-mile overhead high voltage direct current transmission line that will deliver 3,500 megawatts from northwest Iowa to communities in Illinois and other states to the east.



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Rock Island Clean Line

- Rock Island Clean Line filed petitions with the IUB in November 2014 seeking approval to erect, maintain and operate an electric transmission line in 16 Iowa counties. IUB has yet to set a hearing date.
- The Illinois Commerce Commission approved an Order granting Rock Island Clean Line the certificate necessary to construct and operate the Illinois portion of the power line.

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Keystone XL Pipeline

- Proposed pipeline that would run from the Western Canadian Sedimentary Basin in Alberta, Canada to refineries in Illinois and Texas.
- In April 2014, President Obama announced that review of the pipeline would be delayed pending a Nebraska legal challenge that could alter the proposed route.
- In January 2015, the Nebraska Supreme Court overturned a lower court ruling that found a Nebraska state law which had the effect of granting eminent domain to TransCanada unconstitutional. The Nebraska Supreme Court could not reach a majority on the constitutionality of that statue, but did hold that the landowners did not have standing to challenge the law.
- Since the Nebraska Supreme Court decision TransCanada has filed eminent domain papers in nine Nebraska counties. Landowners have also filed new lawsuits attempting to stop TransCanada from exercising eminent domain.

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Discussion and Questions

- Do the proposed projects meet the “public use” requirement?
- What is the public benefit of the proposed projects?
- What remedies do landowners have?

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Thank you

Bill Hanigan
BillHanigan@DavisBrownLaw.com
(515) 246-7935

Sarah Franklin
SarahFranklin@DavisBrownLaw.com
(515) 246-7941

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