

Landowners: Know Your Rights

Voluntary Easements & Eminent Domain

Do I have to sign a voluntary easement?

No.

What is a voluntary easement?

A voluntary easement means that the landowner is agreeing, without requiring the pipeline company to go through eminent domain, to give it a right to construct the pipeline on the landowner's property. The voluntary easement may give the company broader rights than it would get through eminent domain or it may provide for a lower payment than the landowner would get through eminent domain.

How does the eminent domain process work?

Eminent domain requires the pipeline company to go through a legal procedure to determine the rights of the landowner, particularly the amount of compensation for taking the easement. The determination would first be made by a committee of local landowners and local people familiar with real estate in your county. The case can then be appealed to a court jury of local people to review the compensation determined by the committee.

What options do I have?

You do not have to sign a voluntary easement. If you do not sign a voluntary easement, it is possible the company may be able to use the authority of eminent domain to take you to court and condemn your property for use to construct and permanently store the pipeline, and retain access to your property (sometimes, the terms even say "in perpetuity" = forever) to maintain the pipeline.

Oftentimes, the eminent domain process dictates a hearing before a local county judge with the pipeline company and you and your attorney, where the value of your property to be taken would be assessed by a county assessor and determined to be fair by a jury of peers. This hearing is only to negotiate the value of the land to be taken, and a landowner may not argue against their land being taken during condemnation.

What is a methane fracked gas pipeline (also referred to as "natural gas pipeline")?

Methane fracked gas is poisonous and explosive. Methane fracked gas leaks throughout the production and distribution system—at wellheads, along pipelines, from compressor stations, and in homes and businesses. These leaks pollute the air, water, and soil, contributing to adverse human health effects and contaminating natural resources that families and farmers depend on. Explosions and fires can be catastrophic. Pipelines have previously exploded without warning, causing injuries, death, and millions in damages.

Will I get more money for a voluntary easement rather than eminent domain?

Not necessarily. You need to do your homework to make sure the voluntary easement is giving you a fair price. It is also possible that eminent domain will award compensation for impacts that are not considered in the voluntary easement.

How will my land be impacted?

Based on experiences with the Dakota Access Pipeline, the fertility of cropland can be adversely impacted for several (or perhaps many) years. A 2021 Iowa State University study found “extensive soil disturbance from construction activities had adverse effects on soil physical properties, which come from mixing of topsoil and subsoil, as well as soil compaction from heavy machinery.” “Overall, in the first two years, we found the construction caused severe subsoil compaction, impaired soil physical structure that can discourage root growth and reduce water infiltration in the right-of-way,” said the lead soil physicist on the project. “They also found changes in available soil water and nutrients. The team found crop yields in the right-of-way were reduced by an average of 25% for soybeans and 15% for corn during the first and second crop seasons, compared to undisturbed fields.”

What did landowners and advocates learn from the Dakota Access Pipeline eminent domain process and pipeline construction?

Many landowners who signed voluntary easements later regretted their decision. They found that Dakota Access representatives had misled them. In addition, the landowners described threats and intimidation that had been used to get them to sign voluntary agreements. And during construction, the Dakota Access contractors did unacceptable damage to the property, especially in terms of destroying the fertility of farmland.

Why are permanent easements a problem?

A permanent easement preempts the landowner’s future plans for the property. Any easement over a property limits what a landowner can do on the property, such as requiring no structures or trees on the easement. The easement may affect what gets built nearby. The right to an easement allows representatives of the easement company to have access to the property 24 hours a day, without notice, using motorized equipment on the easement or flying above the property.

What is an Easement Action Team?

The first Easement Action Team was founded based on a successful model used by rural landowners in Nebraska facing the risky Keystone XL pipeline. By joining together, and hiring legal support, they were able to protect their land and water from the pipeline.

The Easement Action Team model has spread, and has helped protect property rights in Texas, Wisconsin, Oregon and many other towns and states. It is all about putting power back in the hands of landowners.

The model is different for each group and situation, but usually involves landowners and neighbors deciding to join together, along with community organizations, and getting a law firm involved to assist the group in their proceedings.

Experience shows that when neighbors band together, pipeline companies are caught off guard and are forced to be accountable, which leads to better outcomes for landowners.

What are the next steps to defend our property rights?

****Important** Do not sign a voluntary agreement.**

Once you sign a voluntary easement, you cannot reverse that decision. During the Keystone XL pipeline and Dakota Access pipeline campaigns, many landowners objected to voluntary easements but many landowners acted alone, rather than in a unified group. Acting alone allowed Dakota Access to use intimidation tactics to pick off the landowners one at a time, while in Nebraska during the Keystone XL fight, a group of nearly 100 landowners formed a legal co-op (Nebraska Easement Action Team), never signed easements, and had their land that was seized via eminent domain in the courts returned to them at the end of their decade-long fight. Landowners have more power if they work together and object to the voluntary easements together.

- Speak to an eminent domain attorney:
 - Steven Newton and John Ward of Nicholls and Crampton Law Firm:
 - Steven's contact: 919-781-1311 or SNewton@nichollscrampton.com
 - John's contact: 919-781-1311 or JWard@nichollscrampton.com
 - Cathy Cralle-Jones and Andrea Bonvecchio at Bryan Bryce Law Firm:
 - Cathy's contact: (919) 754-1600 or cathy@attybryanbrice.com
 - Andrea's contact: (919) 754-1600 or andrea@attybryanbrice.com
 - Chris Johns at Cobb & Johns Law Firm:
 - Chris's contact: chris@cobbjohns.com
- You are not alone! Contact your neighbors and let them know your concerns and direct them to nossep.org to sign up for more info.
- If you have any questions, please contact: Kasey - 336-539-1610