
LEGAL UPDATE

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IOWA SUPREME COURT DECISION - DAKOTA ACCESS PIPELINE

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Puntenney v. Iowa Utilities Board

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www.iowacourts.gov/courtcases/3110/embed/SupremeCourtOpinion

Factual and Procedural Background. In October 2014, Dakota Access, L.L.C. (Dakota Access) filed documents with the Iowa Utilities Board (IUB) disclosing its intent to construct an underground crude oil pipeline from North Dakota to Illinois which would traverse 18 counties in Iowa over a distance of about 343 miles. As required by law, Dakota Access held informational meetings in each of the affected counties and subsequently filed a petition with the IUB for authority to construct the pipeline.

In March 2016, the IUB authorized Dakota Access to construct the pipeline in Iowa and use eminent domain where necessary to condemn easements along the pipeline route. In granting Dakota Access a permit to construct the pipeline under Iowa Code section 479B.9, the IUB determined that the public benefits of the proposed project, including increased safety of pipeline transport and overall economic benefits to Iowans, outweighed costs and other detriments and would therefore promote the public convenience and necessity.

Regarding the issue of eminent domain, the IUB determined that Iowa Code sections 6A.21 and 6A.22 (Iowa's eminent domain laws) gave Dakota Access, a pipeline company under IUB's jurisdiction, the authority to condemn an easement for "public use." The IUB sustained or rejected a series of objections by landowners to the exercise of eminent domain over their specific properties. The IUB rejected landowner Keith Puntenney's request to divert the pipeline's path because Puntenney wanted to install wind turbines on his property in the area of the proposed route, concluding that there was no firm plan to install wind turbines on the property and the evidence did not show that the pipeline would necessarily interfere with the possible future installation of wind turbines. The IUB also rejected landowner LaVerne Johnson's objection that the pipeline could not cross his tiling system, although the IUB required that the pipeline be bored under it.

In May 2016, several petitioners filed petitions for judicial review in district court, including Puntenney, Johnson, the Sierra Club, and a group of landowners known as the Lamb petitioners. In June 2016, Dakota Access began construction of the pipeline in Iowa. The IUB and the district court denied subsequent requests from the Lamb petitioners to stay any construction on their property. In February 2017, the district court denied the petitions for judicial review, concluding that the IUB had balanced the pros and cons of the project and entered a reasonable decision supported by substantial evidence that the pipeline would promote the public convenience and necessity. On the issue of eminent domain, the

district court concluded that Iowa Code sections 6A.21 and 6A.22 conferred condemnation authority on common-carrier pipelines under the jurisdiction of the IUB and found that the condemnations met the constitutional requirements because they were for a public use. The district court also overruled claims advanced by Punttenney and Johnson as to the exercise of eminent domain over their individual properties.

Punttenney, Johnson, the Sierra Club, and the Lamb petitioners appealed to the Iowa Supreme Court (Court).

Issues on Appeal:

1. Whether the Sierra Club has standing to represent the interests of members without property in the pipeline's direct path.
2. Whether the completion of the pipeline renders the appeal moot.
3. Whether the IUB erred in determining that the pipeline serves the public convenience and necessity under Iowa Code section 479B.9.
4. Whether the exercise of eminent domain by Dakota Access violated Iowa Code sections 6A.21 and 6A.22.
5. Whether the exercise of eminent domain by Dakota Access violated Article I, Section 18 of the Iowa Constitution or the Fifth and Fourteenth Amendments to the United States Constitution.

Holdings:

1. The Sierra Club has standing to represent the interests of its members without property in the pipeline's direct path because the members asserted concerns that the pipeline would have adverse environmental impacts on natural areas they use and enjoy.
2. The completion of the pipeline does not render the appeal moot because a decision in the case may have force or effect in the underlying controversy.
3. The IUB did not err in determining that the pipeline serves the public convenience and necessity under Iowa Code section 479B.9 because the balancing approach it applied was not based upon an irrational, illogical, or wholly unjustifiable application of law and was supported by substantial factual evidence.
4. The exercise of eminent domain by Dakota Access did not violate Iowa Code sections 6A.21 and 6A.22 because Dakota Access qualifies as both a company "under the jurisdiction of IUB" and a "common carrier," and therefore was not barred from utilizing eminent domain.
5. The exercise of eminent domain by Dakota Access did not violate Article I, Section 18 of the Iowa Constitution or the Fifth and Fourteenth Amendments to the United States Constitution because the pipeline is a valid public use under the Iowa and United States Constitutions.

Analysis.

Standing and Mootness. Dakota Access argued that the Sierra Club lacked standing to assert the interests of two of its members in this case because the Sierra Club had not shown that any of its members own property on the pipeline route. Dakota Access also argued that this appeal is moot because the pipeline has been completed. The Court concluded that the Sierra Club has standing in this case, finding that the Sierra Club members' concerns that the pipeline would have adverse environmental impacts on areas that they use and enjoy meets the standard for standing in environmental disputes as established by the United States Supreme Court. The Court further reasoned that the Iowa Code does not limit standing in pipeline proceedings to individuals whose property is in the direct path of the pipeline. As to the mootness argument, the Court described several past eminent domain appeals, including a seminal case from 1929, in which the Court ruled that the completion of a construction project renders an eminent domain challenge to such project moot. The Court nevertheless concluded that this appeal is not moot because its decision may have force or effect because, although dismantling the pipeline would not be feasible, the IUB still has the authority to impose terms, conditions, or restrictions to implement a ruling favorable to the petitioners.

Public Use and Necessity. The Court reviewed the IUB's determination that the pipeline serves the public use and necessity under Iowa Code section 479B.9. The Court explained that the Legislature clearly vested the IUB with the authority to interpret Iowa Code section 479B.9 and therefore it would only

reverse the IUB's balancing approach if it was "irrational, illogical, or wholly unjustifiable." The Court upheld the IUB's balancing approach, concluding that it is consistent with prior case law and is supported by legal authority elsewhere. The Court also concluded that the IUB's factual determinations that the pipeline serves the public use and necessity were supported by substantial evidence. The Court agreed that the pipeline provides public benefits to Iowa, a huge consumer of petroleum products, even though the pipeline also provides benefits to the shippers of such products. The Court further reasoned that it was proper for the IUB to consider secondary economic benefits such as construction employment and longer-term tax payments in making its determination.

Eminent Domain. The Court analyzed whether Dakota Access's exercise of eminent domain violated Iowa Code sections 6A.21 and 6A.22. The Court found no violation. Iowa Code section 6A.21 limits the authority to condemn agricultural land for private development by requiring landowner consent. However, this limitation does not apply to utilities, persons, companies, or corporations under the jurisdiction of the IUB. The Court concluded that Dakota Access qualifies as "a company under the jurisdiction of the IUB" and was therefore not required to obtain landowner consent prior to exercising eminent domain. The Court also concluded that Dakota Access qualifies as a "common carrier" under Iowa Code section 6A.22, which authorizes a common carrier to acquire any interest in property necessary to its function. The Court reasoned that allowing 10 percent of the pipeline's capacity to be made available for walk-up business was sufficient to consider a pipeline a common carrier, as was the case here.

Constitutional Claims. The most significant issue in the case involved the Court's analysis of whether use of eminent domain by Dakota Access violated the takings clause in Article I, Section 18 of the Iowa Constitution or the Fifth and Fourteenth Amendments to the United States Constitution, which requires that a taking further a valid public use. The Court discussed at length the United States Supreme Court's interpretation of the Fifth Amendment in a 2005 case, whereby the Supreme Court held that a city's decision to take property for the purpose of economic development satisfies the public use requirement of the Fifth Amendment. In declining to follow the majority opinion in that case, the Court held that trickle-down benefits of economic development are not enough to constitute a public use. However, the Court noted that there are more than just secondary economic benefits in this case, as the pipeline also provides public benefits in the form of cheaper and safer transportation of oil. Furthermore, the pipeline is a common carrier with the potential to benefit all Iowans. The Court concluded that the use of eminent domain for a traditional public use such as an oil pipeline does not violate the Iowa Constitution or the United States Constitution simply because the pipeline passes through the state without taking on or letting off oil.

Individual Claims. The Court also examined Punttenney's and Johnson's individual claims and found that the IUB's resolution of both claims were supported by the law and substantial evidence.

Dissents. Justice Wiggins, joined by Justice Appel, dissented, stating that the takings by Dakota Access violated Article I, Section 18 of the Iowa Constitution. The pipeline does not fit within the common-carrier exception because the Iowa public cannot use and does not derive a direct benefit from it. The use of eminent domain in this case also does not correspond with the purpose of Iowa Code chapter 479B (hazardous liquid pipelines and storage facilities).

Justice McDonald also dissented, stating that the construction and operation of the pipeline rendered this case moot.

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