

Casper Star-Tribune, Monday, Jan. 1, 2007

## Property power struggle

By DUSTIN BLEIZEFFER  
Star-Tribune energy reporter

GILLETTE -- Some say the cowboy is nothing more than a romantic image of an ideal that simply doesn't exist today in the West.

So is the notion that owning property means you can keep people out and conduct your own business on your own terms.

Growing numbers of property owners in Wyoming are demanding reform of the state's eminent domain laws to protect what they say might be a dying Western value.

Rancher Eric Barlow recently toured his neighbor's ranch in Powder River Breaks country between Gillette and Buffalo and noted a property line dividing the flat-bottom valley pasture between two brothers' ranches. On one side a coal-bed methane company had cut a long ditch carefully meandering to one side of the bottomland so it didn't disturb much of the pasture. On the other side of the property line, the man-made ditch was ripped zigzag from one side to the other, as if it were purposely cut to damage as much of the bottomland pasture as possible.

This, said Barlow, was no mistake. He believes it was meant to punish the one rancher for not agreeing to the company's terms. The company initiated eminent domain proceedings to cut the zigzagging ditch and force coal-bed methane water onto the ranch where it isn't wanted.

"A coal-bed methane company will not pass up an opportunity to make an example of a rancher, just to show the rest what they are capable of," Barlow said.

What coal-bed methane companies are capable of is taking private property for their own economic gain. They're not the only ones.

Under Wyoming's current set of eminent domain laws, a private company, municipality, railroad, utility, telecommunications firm -- most any entity -- can take private property. And not just for major power lines, roads and other things that can be construed as a benefit to the general public. Improving a company's bottom line -- disposing of wastewater, for example -- might be reason enough.

"Now they use eminent domain just to rush things along," Barlow said. "It's there, and it's real. It basically stamps 'rush' on a project."

In the year ahead, the question of preserving private property rights in the midst of a booming energy economy will play prominently throughout Wyoming. Legislators are under unprecedented pressure to both reform the state's eminent domain laws and to preserve them as they have existed for some 100 years.

The contentious issue was handed to the Joint Agriculture Interim Committee this year, which promised to introduce a draft bill in January. That draft bill has already received much criticism from both sides of the debate.

And both sides are powerful.

The battle lines

The desire to preserve the laws comes from the very entities that work the hardest at lobbying state legislators: the oil and gas industry, utilities, municipalities and the state itself. They say tinkering with eminent domain laws would not only upset decades of case law on the subject, but would strangle the state's ability to grow its economy and maintain vital infrastructure such as highway systems and the power grid.

Where would Wyoming's economy be, after all, without natural gas wells, pipelines, roads and power lines?

"If you make the cost of constructing facilities so expensive, either companies won't build or consumers end up paying for it," said Larry Wolfe, managing partner for the law firm of Holland & Hart, who has argued against changing Wyoming's eminent domain laws.

On the side for reform of eminent domain laws is the Landowners Association of Wyoming, which says it is anything but a legion of Birkenstock-wearing obstructionists placing themselves across the road of development. The group is backed by a growing number of Wyoming landowners and businessmen who have long embraced the pumpjack and the power line.

Ranchers including Barlow, Taylor Haynes, Rick Wehri and Gary Packard, and businessmen such as Bill Valdez consider themselves socially conservative and pro-development. Yet they never before imagined the prospect of playing host to hundreds of gas wells.

Or that a company would use the power of eminent domain just to run wastewater across his ranch.

Or that a railroad asking to borrow \$2.3 billion in public funds would offer only \$200 to access thousands of acres of private property.

Or that his business could be forced to move to make way for a turning lane.

Laurie Goodman, president of the Landowners Association of Wyoming, said supporters of eminent domain reform aren't asking to stop economic development. They're just asking that it doesn't happen at the detriment of their livelihoods.

"If you take something, you should pay for it," Goodman said. "These people are not asking for anything other than to be treated as if they actually have a stake in what happens on their property. Not one of them wants to stop economic development."

The issues

Both sides of the debate claim to be in "defensive" mode. Landowners say they're overrun by entities wielding the power of eminent domain when they refuse the terms offered by developers; industry leaders tend to portray reform supporters as opportunists seeking exorbitant payoffs and threatening economic progress for the general public.

"At its heart, the debate is, should a small group of landowners be in a position to say, 'No, you can't cross our land?' Society's determination is that in those circumstances, eminent domain can be used," Wolfe said.

Constructing power lines and pipelines that connect Wyoming to interstate commerce for thousands of miles is no easy -- or inexpensive -- task. Such projects are always at risk because they cross federal lands, which trigger a formal review process in which seemingly unaffected parties can object and stop a project from happening.

In its comments to an interim legislative committee regarding eminent domain reform, the Petroleum Association of Wyoming argued that convenience and project profitability are indeed reasons to invoke eminent domain.

In its formal comments to the committee, the association testified, "It is important to note that costs are minimized, ease of access is pursued and permits are obtained for a project to ensure that it is economic and viable."

Wolfe said Wyoming's eminent domain laws represent society's desire for smart growth, and they have evolved over many years of careful legal review.

"Our forefathers recognized that society as a whole needs to have the right

of eminent domain, and that just compensation be paid," Wolfe said.

Protections exist for private property owners, and when there's a "taking," there is compensation for it. Wolfe said whether the compensation is just is in the eyes of the beholder.

"Those mechanisms are already in the law, and they work quite well. And we know they work quite well because we don't have very many condemnation actions," Wolfe said.

That point, as well as others, is a flagrant attempt by industry to mislead the public on eminent domain issues, according to those involved with the Landowners Association of Wyoming. Rick Wehri, a rancher in the Thunder Basin National Grassland who faces potential condemnation by the Dakota, Minnesota & Eastern Railroad, said the power of eminent domain is wielded without formal proceedings.

Wehri said many landowners accept deals they think are unfair rather than fighting big corporations that have the financial wherewithal to sustain a long legal fight, especially when eminent domain laws seem to favor development.

"There's a lot of weight in the fear of going to court and paying a lawyer. It's just a great big club that's hanging over you," Wehri said.

Supporters of reform also dispute the notion that development is bogged down in Wyoming due to landowner objections.

In fact, Mike Eggl, spokesman for Basin Electric Power Cooperative, said his company has never had a project stopped in Wyoming due to objections from landowners -- although Eggl attributes his company's successful track record to its commitment to working in good faith with landowners.

Those opposed to reform also warn of "unintended consequences" of tinkering with Wyoming's eminent domain laws, alluding to the potential to undermine economic development. Barlow said just the opposite is true.

"This is not about creating new property rights. Right now we're dealing with the unintentional consequences of how eminent domain was never meant to be applied," Barlow said. "Everything that happens in a free market should be available to the property owner, and the economic burden should not be placed on the unwilling seller."

Worthy battle

While touring his neighbor's ranch last week, Barlow offered both criticism

and praise for the coal-bed methane industry. The truth is, he said, that many ranchers depend on supplemental income from oil and gas development. It's true that most of the time landowners and developers strike amicable business arrangements.

But with the sheer volume of activity on the land today, the disturbance sometimes outweighs the benefit to the landowner and increases the potential for disagreement. Barlow said that when both parties begin reaching for the law books, they should find legal remedies that don't bypass the notion that a property owner has something of value.

The doctrine of owning property and having a say in how development occurs on that property is not insignificant, Barlow said.

"Right now it's like they already own your property, and you just deal with what's left," he said.

Energy reporter Dustin Bleizeffer can be reached at (307) 682-3388 or <mailto:dustin.bleizeffer@casperstartribune.net> or [dustin.bleizeffer@casperstartribune.net](mailto:dustin.bleizeffer@casperstartribune.net).