

A Second Major Legal Victory

in fight against eminent domain abuse by private transmission

Canadian corporation promises legislative “patch” around ruling

On December 12, 2010, Judge Laurie McKinnon of the Ninth Judicial District Court of Montana ruled that a Canadian developer of a high-voltage power line has no authority to condemn private property for the project. The judge ruled that the Montana Alberta Tie Line (MATL), a subsidiary of Tonbridge Power Inc. of Toronto, has no power of eminent domain.

Following are excerpts from that ruling (emphasis added):

“Most Montana judicial decision in eminent domain focuses on defining what a **public use** is. No judicial decision that this Court is aware of provides authority for MATL's position that a **private merchant transmission line** ... may pursue eminent domain proceedings ...”

“The legislature's grant of the eminent domain power to governmental bodies must be strictly construed... **Private real property ownership is a fundamental right**, Article II, section 3, Montana Constitution, and any statute which allows the government to take a person's property must be given its plain interpretation, favoring the person's fundamental rights ... **MATL does not possess the power of eminent domain**, either express or implied, and **it has no authority to take the private property of a nonconsenting land owner.**”

(Read ruling in full at <http://www.greatfalls Tribune.com/assets/pdf/G11679371214.PDF>)



MSTI and Chinook — The MATL ruling has implications for private merchant/export transmission proposed through Jefferson Valley. MATL, running from Lethbridge, AB to Great Falls, MT, at 230 kilovolt (kV), is relatively small compared to these proposed lines:

- 1) **Mountain States Transmission Intertie (MSTI)**, a 500 kV alternating current line proposed by NorthWestern Corporation d/b/a NorthWestern Energy (NYSE: NWE), based in Sioux Falls, SD; and,
- 2) **Chinook**, a 500 kV high voltage direct current (HVDC) line proposed by TransCanada Corporation (TSX, NYSE: TRP). TransCanada's application to the Washington Area Power Administration (WAPA) for US taxpayer “stimulus” funding of Chinook goes so far as to propose “supersizing” (their word) Chinook to 800 kV HVDC.

The fix is in? Now Tonbridge Power Inc., the Canadian owner of MATL and recipient of \$161 million in US “stimulus” loans, promises a legislative “patch” around the ruling, as quoted in this Canadian news excerpt (emphasis added):

Rob McFarland, a spokesman for the parent company of MATL, Tonbridge Power Inc., said Thursday the **political might** of Montana legislators, the governor's office and efforts of all concerned utilities **will help reverse the decision** ...

McFarland is confident a “**patch**” on the court ruling will be secured by March. This week's court decision will have no impact on keeping the MATL line on schedule, he said ...

“The state can't continue to operate without a **patch**,” he said, suggesting the ruling will stall all future utility development in Montana ...

Lethbridge Herald, front page, Friday, December 17, 2010

Who needs a “patch” around Montanans’ fundamental rights?

Is Tonbridge Power's smug assurance of its influence over the Montana legislature realistic? Potentially, yes. Senator Alan Olson (District 23, from Roundup, MT) is now drafting 18 “energy” bills related to eminent domain, major facilities siting, and transmission. What's in these bills? Ordinary citizens don't know yet, but it appears that corporate special interests are preparing a legislative onslaught upon citizens' recent constitutional victories. Go to SaveScenicJV.org for a link to read the bills (once they are released) and follow the bills' status.

Fight now to protect recent legal victories for local government consultation and against eminent domain abuse during the Montana state legislative session:

Write your state senator and representative: No “patch” around Montanans' fundamental rights! Local consultation!

Write Senator Baucus and Senator Tester: No more “stimulus” subsidies to private and foreign corporations that degrade our communities, condemn our land, and raise our electricity rates with gigantic, wasteful export/merchant lines!

Write Governor Schweitzer: Please find a Montana solution to private merchant/export transmission that doesn't subsidize Californians or Canadians on the backs of Montanans!



Save Scenic Jefferson Valley Coalition

Please Help Fund the Fight! Despite having the US and Montana Constitutions on our side, the fight to protect Jefferson Valley from exploitation by high voltage merchant/export transmission is only beginning.

I don't want Californians' energy subsidized on the backs of Montanans. Enclosed is my check to SSJVC for _____.

Name: _____

Address: _____

Email: _____ Phone: _____

My comments: _____

Note: Contributions to SSJVC are *not* tax deductible.

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