

and the Texas Hill Country. The suit seeks declaratory relief and an injunction to stop exercise of private eminent domain authority against unwilling private landowners along the privately-chosen route for the Permian Highway Pipeline pending the responsible agency's establishment of constitutionally-sufficient, state-administered standards and controls over the private decisions to select the route that is the basis for forceable private seizure of the private property along the pipeline's path. This suit is *not* about standards for the actual construction and operation of such pipelines. Rather, it is about the necessary precursor to such construction and operation: the routing of such lines across acres and acres of private property in this State.

3) Eminent domain is an inherent power of sovereign government recognized in the Texas Constitution of 1876. Private entities do not possess this power. The Texas Legislature, however, may grant certain types of private entities the special privilege of exercising the power of eminent domain. This specially-granted state privilege has been legislatively granted to private natural gas utilities, subject to the jurisdiction and control of the Texas Railroad Commission.

4) By legislative design, the route choices of private natural gas pipeline companies—and the exercise of eminent domain authority which flows from such choices—are not supposed to be unfettered private exercises of power. The Texas Legislature in Section 121.151(2) of the Utilities Code has mandated that the Railroad Commission must establish rules for the “*full* control and supervision of the pipelines . . . in *all* their relations to the public.”

5) Underpinning this legislative mandate to the Commission are two state constitutional requirements. One prohibits standardless delegations of legislative authority to private actors—and Texas courts have long held that private selection of pipeline routes are the equivalent of legislative actions. The other prohibits “uncontrollable grant[s] of special privileges.”

6) The Railroad Commission has disregarded the legislative mandate and the state constitutional requirements underpinning it. Natural gas pipelines' "relations to the public" start with the acquisition of property along their privately-selected routes, which necessarily entails exercise of eminent domain authority. Instead of establishing rules for the "full control and supervision" of pipelines in their private route-selection, the Commission has relinquished all control to the pipelines themselves and imposes no standards whatever on them.

7) The Commission's abdication of its duty to oversee private pipeline route selection, along with the ensuing private exercise of eminent domain power, constitutes a standardless delegation of authority and uncontrollable grant of special privileges to the owner and operator of the Permian Highway Pipeline in violation of Texas constitutional requirements. This lawsuit seeks a remedy for these state constitutional violations before the Permian Highway Pipeline proceeds any further in the forced acquisition of private property along its self-selected route.

Parties, Venue, and Discovery

Plaintiffs

8) ANDREW SANSOM is a Travis County resident and owns a life estate in the 1,565-acre Hershey Ranch in Gillespie County about three miles south of the City of Stonewall, off the highway across from the Lyndon B. Johnson National Historical Park. He and his wife, Nona Sansom, are pleased to be charged with the responsibility of being good stewards of the historic ranch and spend roughly half of each week there managing the property. Mr. Sansom is a leading Texas conservationist who formerly served as Executive Director of the Texas Parks and Wildlife Department and Executive Director of the Texas Nature Conservancy and who currently serves as a Research Professor of Geography and Executive Director of the Meadows Center for Water at Texas State University. Permian Highway Pipeline, LLC ("Permian LLC") has notified Mr.

Sansom that it intends to condemn a permanent easement across the Hershey Ranch to install a portion of the Permian Highway Pipeline (the “PHP”). The proposed location of the pipeline cuts right through the middle of the ranch and threatens to interfere with the core value and purpose of the ranch, including the cultural and natural resources that are there and the holistic management of the property for the benefit of wildlife.

9) HEINZ STEFAN ROESCH is a resident of Blanco County who owns and lives on approximately 30 acres on Ranch Road 1623. Permian LLC has notified Mr. Roesch that it intends to condemn a permanent easement of 0.831 acres across Mr. Roesch’s property to install a portion of the PHP. The proposed location of the pipeline is approximately 400 feet from Mr. Roesch’s residence, placing him, his home, and his guests in danger in the event of a rupture or explosion. The proposed easement runs parallel to Mr. Roesch’s roadway frontage, which will prevent any future development of all of the roadway frontage of his property.

10) BEE SPRING, LTD. (“Bee Spring”), owned by Lana and Scott Nance, holds a fifty percent interest in several thousand acres in Hays County that have been held by the Nance family since 1838. Pursuant to an annexation and development agreement, the property was annexed by the City of Kyle in 2016 and is planned for residential and commercial development as part of Kyle’s rapid growth. Permian Highway LLC and Kinder Morgan Texas Pipeline, LLC (“KMTP”) have notified Bee Spring of their plan to install the PHP and an above-ground check valve in the area of the Nance property planned for residential and commercial development, which will disrupt the planned growth of Kyle and the development of the Nance property.

11) HAYS COUNTY is a political subdivision of the State of Texas under Article I, Section 1, of the Texas Constitution. It has a population of more than 220,000 people and is reported to “top the list of Texas counties that have experienced the most rapid growth” since the 2010 census. Its

Commissioners Court has responsibilities to ensure the provision of emergency management and preparedness services, fire prevention, and other public health, safety, and environmental protections in the large areas of the county lying outside municipal boundaries. The County owns Jacob's Well, a special and sensitive local environmental feature that lies within a mile of the PHP's projected path across the entire county. The bulk of the County's revenues derive from local property taxes which are dependent on property values which are threatened to be degraded significantly by the forced presence of a natural gas pipeline cutting through the heart of the county. The privately-made routing decision by Permian LLC and KMTP included neither consultation with Hays County or the affected residents and property owners nor any consideration or evaluation of proposals for any mitigation of the resulting impact and potential danger. The County appreciates the importance of the petroleum pipeline infrastructure to the Texas economy. However, in furtherance of its obligations to protect the health and safety of its residents, the County believes that decisions about the route of a 42" high pressure natural gas pipeline should be subject to public hearings and input in advance from affected property owners, communities, and local governments. While Permian LLC and KMTP have apparently made numerous small routing adjustments, they have wholly refused to consider alternative routes that avoid the County and its precious groundwater resources. Implementing the Railroad Commission's approval of the exercise of condemnation authority for such a pipeline through one of the fastest growing counties in the State, without any advance public input or involvement, reflects a failure to weigh and balance the health, safety, and economic impacts on the county community and the State as a whole.

12) CITY OF KYLE is a home rule city in Hays County. Kyle is a vibrant community that has experienced explosive growth in recent years. According to some projections, Kyle will be the

fastest growing city in the United States by 2020. The proposed route for the PHP passes through Kyle, including several residential areas, resulting in significant impacts to the health, safety, and economic development of the community. The PHP route also crosses tracts that are scheduled for development and annexation, potentially disrupting Kyle's plans for managed urban growth. This privately-made routing decision by Permian LLC and KMTP included neither consultation with the City of Kyle or the affected residents and property owners nor any consideration or evaluation of proposals for any mitigation of the resulting impact and potential danger. Kyle appreciates the importance of the petroleum pipeline infrastructure to the Texas economy. However, in furtherance of its obligations to protect the health and safety of its residents, Kyle believes that decisions about the route of a 42" high pressure natural gas pipeline should be subject to public hearings and input in advance from affected property owners, communities, and local governments. While Permian LLC and KMTP have apparently made numerous small routing adjustments, they have wholly refused to consider alternative routes that avoid the City of Kyle and those areas scheduled for annexation and development. Implementing the Railroad Commission's approval of the exercise of condemnation authority for such a pipeline through one of the fastest growing municipalities in the State, without any advance public input or involvement, reflects a failure to weigh and balance the health, safety, and economic impacts on the community and the State as a whole.

Defendants

- 13) TEXAS RAILROAD COMMISSION is an agency of the State of Texas, legislatively charged with responsibility for regulating natural gas pipelines and gas utilities subject to state regulation. Texas Railroad Commission has answered and appeared herein.*
- 14) CHRISTI CRADDICK is sued in her official capacity as Chair of the Texas Railroad Commission. Christi Craddick has answered and appeared herein.
- 15) RYAN SITTON is sued in his official capacity as Commissioner of the Texas Railroad Commission. Ryan Sitton has answered and appeared herein.
- 16) WAYNE CHRISTIAN is sued in his official capacity as Commissioner of the Texas Railroad Commission. Wayne Christian has answered and appeared herein.
- 17) WEI WANG is sued in his official capacity as Executive Director of the Texas Railroad Commission. Wei Wang has answered and appeared herein.
- 18) KARI FRENCH is sued in her official capacity as Director of the Oversight and Safety Division – Pipeline Safety of the Texas Railroad Commission. Kari French has answered and appeared herein.
- 19) PERMIAN HIGHWAY PIPELINE, LLC, is the owner of Permian Highway Pipeline and the entity asserting authority to exercise the power of eminent domain. Permian Highway Pipeline has answered and appeared herein.
- 20) KINDER MORGAN TEXAS PIPELINE, LLC, is the operator of the PHP and has been delegated by Permian Highway Pipeline, LLC, various duties including land acquisition through

* The Railroad Commission as an agency and the five official-capacity persons associated with the Commission will sometimes be referred to collectively as the “Railroad Commission Defendants” or simply the “Commission Defendants.”

the exercise of eminent domain. Kinder Morgan Texas Pipeline, LLC has answered and appeared herein.

Venue

21) Venue in Travis County is proper under Tex. Gov't Code § 2001.038 and Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) & (3).

Discovery track

22) A Level 3 discovery control plan under TEX. R. CIV. PROC. 190.4 is appropriate for this case.

Factual Background To Claims

Legal and regulatory context

23) Eminent domain—the power to take private property from others so long as it is taken for a public use and just compensation is paid—is an inherent prerogative of sovereign government. The Texas Constitution, in Article I, § 17, acknowledges this governmental power and sets conditions and limits on its exercise.

24) As private entities, Permian LLC and KMTP have no inherent right to exercise eminent domain powers. They only have eminent domain powers to the extent the Texas Legislature expressly allows.

25) Section 181.004 of the Utilities Code is the basic Texas legislative authorization for private entities, such as Permian LLC and KMTP, to exercise eminent domain powers in connection with constructing and operating natural gas pipelines: “A gas . . . corporation has the right and power to enter on, condemn, and appropriate the land, right-of-way, easement, or other property of any person or corporation.” Under Section 121.052(b) of the Utilities Code, the business of a gas utility, including the land acquisition and eminent domain aspects of such business, “may not be

conducted” unless the gas pipeline the business will be using “is subject to the jurisdiction” of the RRC.

26) The legislature’s general grant of eminent domain powers to private entities in § 181.004 is accompanied by a legislative determination that private exercise of those powers must be subject to rules and policies adopted and enforced by the Railroad Commission. Operation of a natural gas pipeline has been legislatively determined to be “in its nature . . . a monopoly,” and in part because of this, the legislature prohibited operation of the business of a natural gas pipeline unless it is subject to the jurisdiction of the Railroad Commission, which is to adopt “all necessary rules” for the exercise of such jurisdiction. Tex. Util. Code § 121.052; Tex. Nat. Res. Code § 81.052. For natural gas pipelines in particular, the legislature has imposed certain mandates on the Railroad Commission, directing that it “*shall . . . establish and enforce . . . rules for transporting . . . and delivering gas by pipelines*” in Texas; “*establish fair and equitable rules for the full control and supervision of the pipelines . . . in all their relations to the public;*” and “*prescribe and enforce rules for the government and control of pipelines . . . in respect to . . . transporting . . . facilities.*” Tex. Util. Code § 121.151(1), (2), (4) (emphasis added).

27) The Railroad Commission has promulgated rules generally dealing with natural gas pipelines subject to its jurisdiction, but it has *not* promulgated any rules that allow it to control and supervise the owners and operators of such pipelines in their exercise of eminent domain authority along the route that they privately choose at the beginning of the process. In particular, the Commission’s rules: a) establish no standards whatever for the owners and operators of natural gas pipelines in their determinations of the necessity of any given pipeline’s route; b) provide no process for the public to be made aware of the basis for such privately made decisions; and c) afford no opportunity for the public or affected land owners to challenge or comment on the routing

decisions and the exercise of eminent domain authority that follows therefrom. The void left by the Commission's failure means that there are no standards and no opportunity for public notice and comment on the private actions that trigger the exercise of private eminent domain authority along a natural gas pipeline's route. Without any publicly established or administered standards, private property is slated for seizure by private companies using private standards, who then install massive pipeline infrastructure (pipelines, compressor stations, and such) across such property.

28) The principal administrative rule that the Commission has adopted, and uses, in connection with the exercise of eminent domain authority by the owners and operators of private pipelines is Rule 3.70, found at 16 Tex. Admin. Code § 3.70. It requires each operator of a pipeline subject to Commission jurisdiction to "obtain a pipeline permit" using an online permitting system. The online application for the required permit is Form T-4, and the permit—formally titled "PERMIT TO OPERATE A PIPELINE IN TEXAS"—that the Commission issues is commonly called a T-4 permit. While a T-4 permit alone is not conclusive to confer the power of eminent domain, it is a prerequisite to the power's exercise. A pipeline operator claiming to be a gas utility must hold a T-4 permit before the power of eminent domain under Tex. Util. Code § 181.004 may be exercised.

29) The process established by Rule 3.70 is nothing but a perfunctory registration process, devoid of standards or of any opportunity for public involvement. It leaves the private routing choices of owners and operators of natural gas pipelines untouched and unexamined. There is no environmental, safety, or compatibility review. The Railroad Commission conducts no investigation, evaluates no alternative routes, entertains no adversarial inquiry, provides no notice, allows no hearing, and considers no evidence. *Texas Rice Land Ptnrs., Ltd. v. Denbury Green Pipeline-Texas, LLC*, 363 S.W.3d 192, 199-200 (Tex. 2012). It is so perfunctory that the Commission has delegated the authority to the Director of the Commission's Oversight and Safety

Division – Pipeline Safety to “administratively issue” T-4 permits and gives her no more than 30 days to approve the registration and trigger the eminent domain process. The approval process is handled jointly by staff in audit, permitting, and mapping groups in the Oversight and Safety Division – Pipeline Safety. Upon their joint concurrence that a T-4 application is in good order, a T-4 permit issues automatically on behalf of the RRC.

30) *After* gaining a T-4 permit, a gas utility’s specific eminent domain actions are governed by the same general provisions in Chapter 21 of the Property Code that govern all eminent domain proceedings in the state. Chapter 21, though, contains no standards or requirements for determining the necessity of a particular pipeline route or the exercise of Railroad Commission jurisdiction. Nonetheless, just as it does for all other condemnors, Section 21.021(a) authorizes a natural gas pipeline holding a T-4 permit to take possession of a condemnee’s property pending judicial disposition of any challenge to the private company’s right to exercise eminent domain authority. When and if eminent domain proceedings move into a judicial phase, the courts have no authority to address pipeline routing issues, including the advisability of alternative routes, in light of local concerns, needs, and environmental sensitivities.

PHP T-4 and the Private “Legislative” Determination of Necessity for Its Route

31) Permian LLC owns the PHP. PHP’s operator is KMTP, which also is the “governing person” of Permian LLC. KMTP’s “governing person” is Tejas Natural Gas, LLC.

32) The PHP is a proposed natural gas pipeline, 42” in diameter and designed to transport about 2 billion cubic feet of natural gas a day. The pipeline originates near Cayanosa in Pecos County—in an area known as the “Waha Hub”—and runs just over 420 miles across more than one thousand tracts of private property in 17 Texas counties to a termination point near Sheridan in Colorado County.

33) The pipeline’s chosen route crosses some of the most sensitive environmental features in Central Texas and the Texas Hill Country, including the recharge zones of the Edwards and Edwards-Trinity Aquifers (which provide the drinking water supply for towns and cities such as Fredericksburg and Blanco) and endangered species habitat. It will transect sites home to artifacts of cultural and historical significance. Its path will bring massive volumes of pressurized, combustible natural gas near residential subdivisions every day. It seeks to cut a 125-foot wide swath across thousands of acres of private land, disturbing the peace and quiet enjoyment of their land by private landowners throughout its length.

34) KMTP filed the T-4 permit application for the PHP in early- to mid-September 2018, and, shortly thereafter, the T-4 permit was dutifully issued by the Commission. KMTP—without providing any supporting documentation—simply checked a box to say that the PHP would be an “Intrastate” line. A copy of KMTP’s T-4 application with accompanying cover documents is attached as Exhibit A to this petition and incorporated herein. Still later, in a letter dated November 27, 2018, KMTP updated the information in its October T-4 application to show that the entirety of the pipeline would be 42” in diameter. A copy of this letter is attached as Exhibit B to this petition and incorporated herein.

35) The T-4 permit for the PHP was issued on December 3, 2018, by the RRC through staff under the direction of Kari French, Director of the Commission’s Oversight and Safety Division – Pipeline Safety. It allows KMTP to “operate [the PHP] pipeline[.]” Called here the “PHP T-4,” it is attached as Exhibit C to this petition and incorporated herein.

36) Texas eminent domain law characterizes selection of a pipeline’s route as a determination of “necessity.” A “necessity” determination is the precondition for any ensuing condemnations of

private property. It is long- and well-established that these “necessity” determinations are considered to be *legislative* actions.

37) Under Texas law, when such necessity determinations are made by public bodies (including by the two political subdivision plaintiffs here), they must be made in public (after appropriate advance notice under the Texas Open Meetings Act) and by the governing body of the political subdivision that is exercising its eminent domain authority.

38) In contrast, for natural gas pipelines such as the PHP, the “necessity” determination that establishes the route along which eminent domain will be exercised is made in private by the pipeline company’s board of directors (or their delegate) without the requirement of any input or consultation with any government body, affected property owner, or other public entity. The Railroad Commission does not have any rules or exercise any general or specific administrative authority allowing it, or the affected public, to play any role in the route’s selection. Nor does the Commission set any standards whatever for Permian LLC and KMTP—or any other natural gas pipelines—in selecting the route and targeting the landowners who will be faced with the compulsion of Permian LLC’s exercise of eminent domain authority or the future exercise of such authority by other natural gas pipelines claiming to be subject to Railroad Commission jurisdiction. In addition to the two political subdivision plaintiffs in this case, at least nine other political subdivisions—a county, four cities, a school district, and three groundwater conservation districts—transected by the PHP have passed resolutions opposing the routing, all to no avail.

39) KMTP and Permian LLC privately began developing the plans for the PHP route in the summer of 2018. Unencumbered by any governing rules from the Railroad Commission, Permian LLC and KMTP privately determined the PHP’s route and the private landowners to be targeted by the companies’ eminent domain actions. In early October of 2018, the Board of Directors of

Permian LLC formally, and privately, approved a “Consent Authorizing and Declaring a Public Necessity for the Acquisition of Easements and Rights-of-Way, by Purchase or Exercise of the Power of Eminent Domain, in Connection with the Construction, Operation and Maintenance of a Gas Utility Pipeline and Appurtenances for the Transportation of Natural Gas and Its Associated Substances.” A copy of this document is attached as Exhibit D to this petition and incorporated herein. Through their private exercise of the legislative decision that is made when they chose the PHP’s route across 400 or so miles of privately owned Texas property, Permian LLC and KMTP have not been subject to any guiding standards by the Railroad Commission, and their exercise of the specially-granted privilege of private eminent domain has been, and remains, uncontrolled by the State of Texas and the state agency specifically charged legislatively with exercising such controls over natural gas pipelines. Thus, the exercise by Permian LLC and KMTP, as well as such future actions by other natural gas pipeline companies, of eminent domain authority along the PHP’s and future pipeline routes is (and will be) constitutionally invalid in the following particulars because their actions are pursuant to the Railroad Commission’s standardless delegation of legislative authority for pipeline routing:

- a. There was no meaningful review by any government agency of the exercise of eminent domain by the owners and operators of the PHP insofar as routing is concerned.
- b. There is no opportunity for affected private property owners, or affected political subdivisions, to participate in any fashion in the PHP T-4 or routing decisionmaking process.
- c. Permian LLC and KMTP have been allowed to make all decisions about when, where, and how to exercise eminent domain power in furtherance of their plans for the

PHP, meaning that, at their sole discretion, they are making their own rules and imposing them on their targeted individuals.

d. The *core* interest of Permian LLC and KMTP is pecuniary, and they are held answerable to no other interest in their routing decisions. At no time does the Railroad Commission impose any actual public function obligation on them. Consequently, the delegation of legislative authority to them is governed solely by their private interest, which conflicts with all public interests and obligations that should be imposed on those exercising eminent domain powers.

e. The grant of eminent domain power to private natural gas pipelines such as the PHP permits private actors to take property and subject the former owners to criminal trespass sanctions for using what otherwise would have been their property.

f. The subject matter related to the delegation is a single area of what would otherwise be government action, but it is a particularly far-reaching sovereign power: eminent domain. The duration and extent of the eminent domain power granted to private natural gas pipelines such as Permian LLC and KMTP with respect to routing is perpetual and effectively unlimited.

g. Natural gas pipeline companies such as Permian LLC and KMTP have no expertise in land use or environmental protection. The only special expertise that they possess is how to maximize profits at the expense of landowners and the public. There is no basis to claim that Permian LLC and KMTP have special qualifications or training with regard to the protection of property owners or the public interest.

h. The Railroad Commission Defendants provide absolutely no standards to guide pipeline companies in their taking of private property by eminent domain, including their precursor choices of routing.

40) Plaintiffs seek only declaratory relief against the Railroad Commission Defendants. The challenges are based entirely on allegations that these defendants proceeded unconstitutionally in allowing Permian LLC and KMTP to unilaterally select the route for the PHP exercising legislative powers unrestrained by Railroad Commission standards of any sort, including use of the sovereign power of eminent domain. The Railroad Commission Defendants, though, have been assigned the legislative duty to impose such standards, and the Texas Constitution requires it. Thus, the Texas Railroad Commission itself is acting unconstitutionally, and the official-capacity Railroad Commission Defendants are acting *ultra vires* by refusing to impose and enforce constitutionally required standards or, alternatively, by failing to impose constitutionally required standards on statutorily authorized delegation of legislative authority to private entities within the RRC's jurisdiction.

41) As demonstrated by the facts alleged in paragraphs 8-12, above, each of the plaintiffs in this case has been, is, and will continue to be adversely affected by the system currently in place which provides natural gas pipeline companies *carte blanche* in terms of selecting the routes and, thus, the condemnation targets for their private pipelines. Despite the authority given it by the Legislature and the duty imposed on it by the Texas Constitution to do so, the Railroad Commission has been, is, and will continue to be utterly passive in the private routing choices by pipeline companies. Alternatively only, the Railroad Commission has been, is, and will continue to be utterly passive in the private routing choices by pipeline companies within its jurisdiction but using legislatively-derived authority.

42) The harms to the plaintiffs from the Commission’s failure to establish and administer public standards that pipeline companies must meet in pipeline routing are exacerbated by two other factors. First, the threats are greater than only those posed by pipelines carrying natural gas, though those threats are substantial in themselves. The easements that Permian LLC and KMTP seek to force upon plaintiffs and others who are similarly situated do not confine themselves to having to allow natural gas to be carried across their property and near their homes and other significant features of their property. Instead, it is common practice in the pipeline industry to establish pipeline “corridors,” which means that the location and installation of one pipeline across given territory serves as an open and obvious invitation to future pipelines to locate across the same territory. The upshot for these plaintiffs is that being forced to have the PHP installed across their property and their territory concretely forebodes a future of more pipelines—which in the absence of the relief requested herein against the Railroad Commission Defendants means being at the standardless mercy of private pipelines well into the future.

Claims

Claim 1 – Tex. Const. Art. II, § 1 (Separation of Powers).

43) By implementing its current toothless rules and issuing a T-4 permit to KMTP, thus triggering the right of Permian LLC and KMTP to implement the eminent domain process for the PHP, the Railroad Commission Defendants have authorized Permian LLC and KMTP to exercise the legislative power of choosing the route and the property to be forcibly taken without any guiding standards, in violation of Art. II, § 1, of the Texas Constitution. By exercising such legislative power in choosing the route and the property to be forcibly taken without any guiding standards, and by pursuing their business in this regard under the PHP T-4, Permian LLC and KMTP are acting in violation of Art. II, § 1, of the Texas Constitution.

44) In the alternative only under this Claim 1, the Railroad Commission Defendants are in violation of Art. II, § 1, of the Texas Constitution in allowing Permian LLC and KMTP to proceed with the standardless routing and forcible land acquisition for the PHP under the PHP T-4 under the existing statutory provisions related to such actions, and Permian LLC and KMTP are acting in violation of Article II, § 1, in so proceeding under the existing statutory provisions related to such actions.

Claim 2 – Tex. Const. Art. I, § 13 (Due Course of Law).

45) By implementing its current toothless rules and issuing a T-4 permit to KMTP, thus triggering the right of Permian LLC and KMTP to implement the eminent domain process for the PHP, the Railroad Commission Defendants have authorized Permian LLC and KMTP to exercise the legislative power of choosing the route and the property to be forcibly taken without any guiding standards, in violation of Art. I, § 13, of the Texas Constitution. By exercising such legislative power in choosing the route and the property to be forcibly taken without any guiding standards, and by pursuing their business in this regard under the PHP T-4, Permian LLC and KMTP are acting in violation of Art. I, § 13, of the Texas Constitution.

46) In the alternative only under this Claim 2, the Railroad Commission Defendants are in violation of Art. I, § 13, of the Texas Constitution in allowing Permian LLC and KMTP to proceed with the standardless routing and forcible land acquisition for the PHP under the PHP T-4 under the existing statutory provisions related to such actions, and Permian LLC and KMTP are acting in violation of Article I, § 13, in so proceeding under the existing statutory provisions related to such actions.

Claim 3 – Tex. Const. Art. I, § 17(d) (Uncontrolled Grant of Special Privileges)

47) By implementing its current toothless rules and issuing a T-4 permit to KMTP, thus triggering the right to initiate the eminent domain process for the PHP, the Railroad Commission Defendants have granted Permian LLC and KMTP an uncontrolled grant of the special private privilege of eminent domain along their chosen route for the PHP, in violation of Art. I, § 17(d), of the Texas Constitution. By exercising this uncontrolled grant of the special private privilege of eminent domain along their chosen route for the PHP without public and governmental accountability, and by doing this under the PHP T-4, Permian LLC and KMTP are acting in violation of Art. I, § 17(d), of the Texas Constitution.

48) In the alternative only under this Claim 3, the Railroad Commission Defendants are in violation of Art. I, § 17(d), of the Texas Constitution in allowing Permian LLC and KMTP to exercise an uncontrolled grant of special privileges with respect to routing and forcible land acquisition for the PHP under the PHP T-4 under the existing statutory provisions related to such actions, and Permian LLC and KMTP are acting in violation of Article I, § 17(d), in so proceeding under the existing statutory provisions related to such actions..

Relief requested

- 49) Based upon the foregoing allegations, facts, and claims, Plaintiffs pray for:
- a. a declaratory judgment under Tex. Gov't Code § 2001.038 that the administrative rules, policies, and practices of the Railroad Commission Defendants in force and effect governing issuance of both the PHP T-4 permit (thus authorizing exercise of eminent domain powers by Permian LLC and KMTP) and any future T-4 permits for natural gas pipelines subject to Railroad Commission jurisdiction are an unconstitutional delegation of legislative authority to Permian LLC and KMTP, as well as other natural gas pipelines in

the State, under Article I, § 13, and Article II, § 1, of the Texas Constitution, and an uncontrolled grant of special privileges under Article I, § 17(d), insofar as the Commission Defendants allow Permian LLC and KMTP, as well as other natural gas pipelines in the State, to select the location and amount of private property to be subject to their exercise of eminent domain powers for the PHP and future natural gas pipelines in the State;

b. in the alternative only to ¶ 49.a, and only with respect to the Railroad Commission Defendants, a declaratory judgment under Tex. Civ. Prac. & Rem. Code § 37.004(a) that the Texas statutory provisions governing the private exercise of eminent domain powers by natural gas utilities, including by Permian LLC and KMTP through the Railroad Commission's issuance of the PHP T-4 permit, are an unconstitutional delegation of legislative authority to natural gas pipelines in the State, including Permian LLC and KMTP, under Article I, § 13, and Article II, § 1, of the Texas Constitution, and an uncontrolled grant of special privileges under Article I, § 17(d), insofar as the Texas statutes and Commission Defendants allow natural gas pipelines in the State, including Permian LLC and KMTP, to select the location and amount of private property to be subject to their exercise of eminent domain powers for natural gas pipelines in the State, including the PHP;

c. a temporary and permanent injunction against Permian LLC and KMTP, prohibiting them from exercising any eminent domain authority pursuant to the PHP T-4 permit, or any other authority or approval they have obtained (or claim to have obtained) from the Railroad Commission Defendants with respect to the power of eminent domain in conjunction with the PHP, until the Railroad Commission has adopted legally sufficient

standards as declared pursuant to para. 46.a, above and applied such standards to an application for a permit for the PHP; and

d. such other and further relief as may be appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was delivered by e-mail to the following counsel of record on this, the 21st day of May 2019:

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/s/ Clark Richards

CLARK RICHARDS



9/10/2018

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RE: Kinder Morgan Texas Pipeline LLC
T-4 Permit No. TBD

Dear Mr. Waterman:

Please see attached permit submission under Kinder Morgan Texas Pipeline LLC.

Attached please find the following:

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> T-4 Permit Application | <input type="checkbox"/> PS-48 | <input type="checkbox"/> Form T-4B (fully completed) |
| <input type="checkbox"/> Form PS-8000A | <input checked="" type="checkbox"/> Overview Map. | <input type="checkbox"/> Form T-4B (partially completed) |
| <input type="checkbox"/> Sworn Statement | <input type="checkbox"/> Other Documents (specify:) | |

Please note the following:

We have a full submission but would like the digital file to be used to true up any minor edits or spatial changes.

T4 AMENDMENT CODE WITH MILEAGE AND SUMMARY

Add County(ies): Blanco, Caldwell, Colorado, Crane, Crockett, Fayette, Gillespie,
Gonzales, Hays, Kimble, Lavaca, Menard, Pecos, Reagan, Reeves, Schleicher, Upton
Remove County(ies):

Miles of Pipeline:	Existing	0.00
	NP	423.95
Total Remaining Miles:	<hr/>	
		423.95

If you have any questions, please do not hesitate to contact me by mail at the letterhead address, by telephone at (713) 420-3530 by fax at (713) 420-6652 or by e-mail at enrique_deleon@kindermorgan.com.

Sincerely,



Enrique DeLeon
Pipeline Engineer, Compliance

cc: Gary Taylor
Enrique DeLeon
Ryan Hilliard
Pat Romero
Jeffrey Allison

PIPELINE CLASSIFICATION CERTIFICATE

T-4 Permit Number T B D

Pursuant to Section 2(d) of the Application for Permit to Operate a Pipeline in Texas (see 16 Tex. Admin. Code § 3.70) (Railroad Commission of Texas Form T-4), Kinder Morgan Texas Pipeline LLC. certifies that:

I. Pipeline Classification:

- (i) Requested Classification (Common Carrier, Gas Utility or Private Pipeline):

Gas Utility (Intrastate)

- (ii) Is the Operator seeking to obtain a new pipeline permit or to amend a permit because of a change of classification?

Yes No

If the answer to (ii) is "Yes", the following documentation and information related to the requested change in classification (described above) and purpose of the pipeline (described below) is included as part of this Certificate as set forth below:

(A) A sworn statement from the Operator providing the Operator's factual basis supporting the classification and purpose being sought for the pipeline, including, if applicable, an attestation to the applicant's knowledge of the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Office of the Attorney General of Texas:

Kinder Morgan Texas Pipeline LLC new permit request meets the requirements of Texas Utility Code 121.001 (1) (A) but the permit is not yet in service.

(B) Documentation to provide support for the classification and purpose being sought for the pipeline, if applicable, and any other information requested by the Commission.

- _____
- (iii) Is the Operator seeking to renew an existing permit, to amend an existing permit for any reason other than a change in classification, or to cancel an existing permit?

Yes No

If "Yes", specify the reason for the filing:

If the answer to (iii) is "Yes", the following documentation and information is included as part of this Certificate as set forth below:

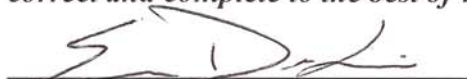
- (A) The contact information for the individual who can respond, when applicable, to any questions concerning the pipeline's change in operator, ownership, or other change including cessation of pipeline operation:

- (B) A statement from the pipeline operator confirming the current classification and purpose of the pipeline or pipeline system as a common carrier, a gas utility or a private line, if applicable:

- (C) Any other information requested by the Commission:

AFFIDAVIT

I declare under penalties prescribed in Texas Natural Resources Code § 91.143, that I am authorized to make this certification to the Railroad Commission of Texas, that this Certificate was prepared by me or under my supervision, and that data and facts stated herein are true, correct and complete to the best of my knowledge.


COMPANY REPRESENTATIVE (signature)

Pipeline Engineer
TITLE (type or print)

Enrique DeLeon
COMPANY REPRESENTATIVE (type or print)

9/07/2018
DATE

Inquiries regarding this Certificate should be directed to:

Enrique DeLeon
NAME (print)

1001 Louisiana, Ste 1000, Houston, TX 77002
ADDRESS

713-420-3530
TELEPHONE

enrique_deleon@kindermorgan.com
EMAIL

Railroad Commission of Texas
 Oversight and Safety Division
 Pipeline Safety Department
 Permitting/Mapping

APPLICATION FOR PERMIT TO OPERATE A PIPELINE IN TEXAS
Natural Gas Pipelines
 (See 16 Texas Administrative Code §3.70)



Permit Number TBD

ORGANIZATIONAL INFORMATION

1. Operator Name: **Kinder Morgan Texas Pipeline, LLC** P-5 No.: 463345

Operator Address:
 1001 Louisiana Street, Houston, Texas 77002

2. Does the operator identified in item 1 own the pipeline? Yes No If "No", give name and address of owner

Owner Name: **Permian Highway Pipeline, LLC**
 Owner Address:
1001 Louisiana Street, Houston, Texas 77002

3. Does the operator control the economic operations of the pipeline? Yes No If "No", provide name, address, and P5# of economic operator

Eco. Operator Name: **Permian Highway Pipeline, LLC** P-5 No.: 655813
 Eco. Operator Address:
1001 Louisiana Street, Houston, Texas 77002

PIPELINE INFORMATION

1. Mark the appropriate box for each of the following questions:
 a) New permit? Yes No New Construction Report Number: __NC__
 b) Renewal for same operator? Yes No
 c) Extensions or modifications? Yes No
 d) Change in Operator or Ownership? Yes No
 If "Yes", submit Form T-4B with this application
Total Permit Miles: 423.950
 (after all changes)

2. Mark the appropriate box for each of the following questions:
 a) Are the pipelines covered under this permit: Interstate Intrastate
 b) Commodity transported: Natural Gas Full Gas Well Stream Gas – Other (specify): _____
 c) Does the commodity contain H2S? Yes No If "Yes", at what concentration? _____ ppm
 d) Requested Pipeline Classification (Gas Utility or Private Pipeline): Gas Utility
 e) Does pipeline use any public highway or road, railroad, public utility easement, or other gas utility right-of-way? Yes No
 f) Does the pipeline carry only the gas produced by the operators? Yes No If "No", select the activity below:
 Purchased from others Owned by others but transported for a fee Both purchased from and transported for others
clear f)

3. Select the purpose being sought for the pipeline.
 Transmission Gas Lift
 Gathering Gas Plant
 Gas Injection Own Consumption

Basis for Requested Classification Select the basis supporting a requested classification of Private Pipeline. If requesting Gas Utility status select the Not Applicable block below.

This pipeline ONLY handles natural gas produced by the operator (and is not already a Gas Utility due to other operations).

The purpose of this pipeline is solely for the operator's own consumption.

This pipeline is Interstate (gathering).

While this pipeline handles natural gas other than the operator's own production, it meets the standards set forth in Texas Utility Code §121.005 (in-or-within the vicinity of the field where produced, and no condemnation ever used and no Town Border/City Gate deliveries). Attach a Non-Utility Certificate to support a Private Pipeline classification.

Other. Attach a Sworn Statement to support the basis for Private Pipeline status.

Not Applicable. Operator is requesting Gas Utility status.

Maps of Pipeline Indicate below if maps are attached to this application or being submitted concurrently separately.

- An overview map (24" x 24" / 1" = 20 miles or less) Attached Submitted Separately
- Digital shape files for new, added, removed, or transferred pipelines. Attached Submitted Separately

Affirmation When requesting Gas Utility status, the following affirmation must be made.

- The applicant attests that they have read and understand the eminent domain provisions in Texas Property Code, Chapter 21, and the Texas Landowner's Bill of Rights as published by the Office of Attorney General of Texas.

Attached Documentation Indicate below all of the attachments for this application

- Form PS-48, *New Construction Report*
- Form T-4B, *Pipeline Transfer Certification*
- Non-Utility Certificate
- Overview Map
- Other(s). Brief description of purpose(s): _____

PIPELINE CONTACT INFORMATION

Related to the Construction, Operation and Maintenance of the pipeline

Name: Gary Taylor	Title: Compliance Manager
Address: 1001 Louisiana St, Suite 1000 Houston, Texas 77002	
Phone: (713) 420-5356	Email: gary_taylor@kindermorgan.com

Related to the Permit Application Packet

Name: Enrique DeLeon	Title: Pipeline Engineer
Address: 1001 Louisiana St, Suite 1000 Houston, Texas 77002	
Phone: (713) 420-3530	Email: enrique_deleon@kindermorgan.com

Related to Mapping / GIS

Name: Ryan Hilliard	Title: GIS Coordinator
Address: 1001 Louisiana St, Suite 1000 Houston, Texas 77002	
Phone: (713) 420-5810	Email: ryan_hilliard@kindermorgan.com

Each pipeline permit must contain at least one System, with at least one Segment. The following page(s) contain System and Segment information related to this permit application.

- If this is an annual renewal with no changes to the required information so indicate below or continue with System and Segment data.
- Annual Renewal with no changes System and Segment information to follow

CERTIFICATE: I declare under penalties in Section 91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct, and complete to be the best of my knowledge.

Signature  Digitally signed by ryan_hilliard@kindermorgan.com
 DN: cn=ryan_hilliard@kindermorgan.com, Date: 2018.10.02 12:33:20 -0500 Title **GIS Coordinator** Date **09/10/2018**

Exhibit A to First Amended Petition APPLICATION FOR PERMIT TO OPERATE A PIPELINE IN TEXAS (cont.)
Page 7 of 7 **Natural Gas Pipelines**

Operator Name: Kinder Morgan Texas Pipeline, LLC **Permit Number:** TBD

PIPELINE SYSTEM AND SEGMENTS

Each pipeline permit must contain at least one System, with at least one Segment
 Use a separate sheet for the 'Transmission', 'Gathering' and 'Other' Segments of each System

(if an PHMSA or PES ID is unknown, leave it blank)

System Name: Permian Highway Pipeline	PHMSA Operator ID: 31451
Commodity Transported: Natural Gas	System Status: Construction
Pipeline Function: <input checked="" type="checkbox"/> Trunkline / Transmission <input type="checkbox"/> Gathering <input type="checkbox"/> Other (describe):	
Total Miles of pipeline in this System: 424	PES System ID:

Segment Name, Line No. / Identification	Pipeline Segment Specifications:	Location Designation	Population Designation	County
	Length (miles)	<input type="checkbox"/> Land <input type="checkbox"/> Bay Area <input type="checkbox"/> Navigable Waterway <input type="checkbox"/> Offshore	<input type="checkbox"/> Class 1 <input type="checkbox"/> Class 2 <input type="checkbox"/> Class 3 <input type="checkbox"/> Class 4	
	Outside Diameter (inches)			
	Wall Thickness (inches)			
	MAOP			
	Pipe Grade			
	Pipe Standard			
	High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No			
	Length (miles)	<input type="checkbox"/> Land <input type="checkbox"/> Bay Area <input type="checkbox"/> Navigable Waterway <input type="checkbox"/> Offshore	<input type="checkbox"/> Class 1 <input type="checkbox"/> Class 2 <input type="checkbox"/> Class 3 <input type="checkbox"/> Class 4	
	Outside Diameter (inches)			
	Wall Thickness (inches)			
	MAOP			
	Pipe Grade			
	Pipe Standard			
	High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No			
	Length (miles)	<input type="checkbox"/> Land <input type="checkbox"/> Bay Area <input type="checkbox"/> Navigable Waterway <input type="checkbox"/> Offshore	<input type="checkbox"/> Class 1 <input type="checkbox"/> Class 2 <input type="checkbox"/> Class 3 <input type="checkbox"/> Class 4	
	Outside Diameter (inches)			
	Wall Thickness (inches)			
	MAOP			
	Pipe Grade			
	Pipe Standard			
	High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No			
	Length (miles)	<input type="checkbox"/> Land <input type="checkbox"/> Bay Area <input type="checkbox"/> Navigable Waterway <input type="checkbox"/> Offshore	<input type="checkbox"/> Class 1 <input type="checkbox"/> Class 2 <input type="checkbox"/> Class 3 <input type="checkbox"/> Class 4	
	Outside Diameter (inches)			
	Wall Thickness (inches)			
	MAOP			
	Pipe Grade			
	Pipe Standard			
	High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No			
	Length (miles)	<input type="checkbox"/> Land <input type="checkbox"/> Bay Area <input type="checkbox"/> Navigable Waterway <input type="checkbox"/> Offshore	<input type="checkbox"/> Class 1 <input type="checkbox"/> Class 2 <input type="checkbox"/> Class 3 <input type="checkbox"/> Class 4	
	Outside Diameter (inches)			
	Wall Thickness (inches)			
	MAOP			
	Pipe Grade			
	Pipe Standard			
	High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No			

ATTACH ADDITIONAL PAGES AS NEEDED. No additional pages Additional pages ____ (# of additional pages)

Exhibit B to First Amended Petition
Page 1 of 2

11/27/2018

Mr. Bruce Waterman
Railroad Commission of Texas
Safety Division, Permit Section
P. O. Box 12967
Austin, Texas 78711-2967

RE: Kinder Morgan Texas Pipeline, LLC
T-4 Permit No. T09970

Dear Mr. Waterman:

Please see attached permit submission under Kinder Morgan Texas Pipeline, LLC

Attached please find the following:

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> T-4 Permit Application | <input type="checkbox"/> PS-48 | <input type="checkbox"/> Form T-4B (fully completed) |
| <input type="checkbox"/> Form PS-8000A | <input type="checkbox"/> Overview Map. | <input type="checkbox"/> Form T-4B (partially completed) |
| <input type="checkbox"/> Sworn Statement | <input type="checkbox"/> Other Documents (specify:) | |

Please note the following:

As this is a preliminary project, the data will be updated as the project gets closer to construction. Please update the Diameter to 42" for the entirety of the line.

T4 AMENDMENT CODE WITH MILEAGE AND SUMMARY

Add County(ies):

Remove County(ies):

Miles of Pipeline: Existing 423.95

Total Remaining Miles:

 423.95

If you have any questions, please do not hesitate to contact me by mail at the letterhead address, by telephone at (713) 420-5810 by fax at (713) 420-6652 or by e-mail at ryan_hilliard@kindermorgan.com.

Sincerely,

A handwritten signature in blue ink that reads "Ryan Hilliard". The signature is written in a cursive style and is positioned above a horizontal line.

cc: Gary Taylor
Ryan Hilliard
Pat Romero
Jeffrey Allison

CHRISTI CRADDICK, CHAIRMAN
RYAN SITTON, COMMISSIONER
WAYNE CHRISTIAN, COMMISSIONER



KARI FRENCH,
DIVISION DIRECTOR

RAILROAD COMMISSION OF TEXAS

OVERSIGHT AND SAFETY DIVISION - PIPELINE SAFETY

PIPELINE PERMITTING AND MAPPING SECTION

PERMIT TO OPERATE A PIPELINE IN TEXAS

12/03/2018

Permit Number: 09970
Commodity transported: Gas
Classification: Gas Utility
Payment Trace Number:

KINDER MORGAN TEXAS PIPELINE LLC
Attn: Gary Taylor
1001 Louisiana
Houston, TX 77002

This is to certify that KINDER MORGAN TEXAS PIPELINE LLC has complied with Railroad Commission rule 16 Tex. Admin. Code §3.70 governing pipelines in accordance with Texas Natural Resources Code, §81.051, and is granted this permit by the Commission to operate the following pipeline or pipelines located in the following county or counties:

BLANCO, CALDWELL, COLORADO, CRANE, CROCKETT, FAYETTE, GILLESPIE, GONZALES, HAYS,
KIMBLE, LAVACA, MENARD, PECOS, REAGAN, REEVES, SCHLEICHER, UPTON

Total Permitted Miles: 423.07

Regulated Miles: 423.07

Unregulated Miles: 0.00

Pipeline Operator:
KINDER MORGAN TEXAS
PIPELINE LLC

Economic Operator:
PERMIAN HIGHWAY PIPELINE
LLC

Pipeline Owner:
PERMIAN HIGHWAY PIPELINE
LLC

This permit is valid until 10/22/2019

If additional information is needed, please contact the Pipeline Permitting Section by phone at 512-463-7058, or by email at pops@rrc.texas.gov

PERMIAN HIGHWAY PIPELINE LLC

**CONSENT AUTHORIZING AND DECLARING A PUBLIC NECESSITY FOR THE
ACQUISITION OF EASEMENTS AND RIGHTS-OF-WAY, BY PURCHASE OR
EXERCISE OF THE POWER OF EMINENT DOMAIN, IN CONNECTION WITH THE
CONSTRUCTION, OPERATION AND MAINTENANCE OF A GAS UTILITY
PIPELINE AND APPURTENANCES FOR THE TRANSPORTATION OF NATURAL
GAS AND ITS ASSOCIATED SUBSTANCES**

Effective: October 3, 2018

The undersigned, being all of the members of the board of directors (the "Board") of Permian Highway Pipeline LLC (the "Company"), a Delaware limited liability company, duly authorized to conduct business in the State of Texas, having received a Certificate of Authority from the State of Texas to transact business in the state, in accordance with the limited liability company agreement of the Company, upon the execution of this Consent, consent to and adopt the following resolutions of the Company:

WHEREAS, the Company is engaged as a gas utility in the pipeline business for the transportation of natural gas, and owns and will operate a gas utility pipeline transportation system in the State of Texas, and the Board in its reasonable and prudent business judgment has determined it is necessary and proper and in the best interest of the citizens and public of the State of Texas that the Company should acquire by purchase or, if the necessary easement rights cannot be obtained upon acceptable terms by voluntary conveyance, by exercise of the power of eminent domain, permanent easements and rights-of-way on, in, over, under, through and across certain lands located in Reeves, Pecos, Crane, Upton, Reagan, Crockett, Schleicher, Menard, Kimble, Gillespie, Blanco, Hays, Caldwell, Gonzales, Lavaca, Fayette, and Colorado Counties, Texas, generally along the route designated as "Permian Highway Pipeline", as more particularly described in Exhibit A to this Consent (the "Property"), in connection with the construction, operation and maintenance of approximately 425 miles of 42-inch natural gas pipelines and appurtenances (including drips, traps, valves, meters, fittings, connections, risers, pipeline launchers and receivers, cathodic test leads, AC mitigation, power line drops, line markers, other protective equipment, compressor stations and facilities, and such other above- and below-ground equipment and facilities as is used or useful in the use, operation, protection, and maintenance of the pipeline) for the transportation or carrying of natural gas and its associated substances (the "Pipeline").

WHEREAS, there is a public need, the public convenience and necessity require, it is in the public's interest, and it is a public use and purpose within the meaning of applicable law, for the construction, operation and maintenance of the Pipeline to transport natural gas and its associated substances for industrial, commercial, educational, governmental and other uses in the State of Texas. The Pipeline will provide transportation services for others on an open-access, non-discriminatory basis. The Pipeline is necessary to help meet the demands and requirements of the public in Texas for natural gas and its associated substances and to provide facilities by

14

which buyers and sellers of such products may have a means to transport such in the State of Texas.

WHEREAS, the Company has conducted, or caused to be conducted, examinations and surveys for the selection of an appropriate route for the Pipeline.

WHEREAS, pursuant to the Company's Amended and Restated Limited Liability Company Agreement and the Construction Management Agreement between Kinder Morgan Texas Pipeline LLC ("KMTP") and the Company, dated September 4, 2018 (the "Agreements"), KMTP, in its capacity as Manager, was authorized and directed to effect the acquisition of the Property on behalf of and in the name of the Company as set forth therein and the actions that Manager and its officers, agents, attorneys and Authorized Persons (as defined below) are empowered, authorized, and directed to take as set forth in the resolutions below are to be done strictly in accordance with the Agreements.

WHEREAS, in order to achieve the public purpose served by the Pipeline, the Company in its reasonable and prudent business judgment find it is a public use and is necessary and required by the public convenience and necessity that the Company acquire land, perpetual easements and temporary construction and work space easements, and access rights (the "Property Interests") on, under and across the best selected route, a portion of which is in Reeves, Pecos, Crane, Upton, Reagan, Crockett, Schleicher, Menard, Kimble, Gillespie, Blanco, Hays, Caldwell, Gonzales, Lavaca, Fayette, and Colorado Counties, Texas, for the use, development, construction, improvement, maintenance, ownership, operation, and protection of the Pipeline in the name of the Company. Acquisition of the Property Interests is for the public use, is in the public interest, and is a public necessity to Texans and pursuant to Texas law.

WHEREAS, the Company has or will attempt to purchase or cause to be purchased the Property Interests necessary for the construction, ownership, development and operation of the Pipeline. While these efforts will likely result in the acquisition of many of the Property Interests, negotiations may continue with various property owners. Should the Company fail, by such negotiations, to timely acquire by conventional agreements the Property Interests necessary for the project, the Company must commence eminent domain proceedings to acquire such rights.

NOW, THEREFORE, BE IT RESOLVED:

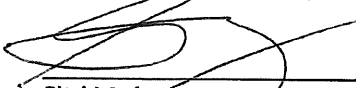
1. That the recitals and preamble stated above are found to be true and correct and are made a part hereof for all purposes.
2. That the Board has determined, through the exercise of reasonable and prudent business judgment, that public convenience requires, and a public need and necessity exist, and a public use exists for the use, development, construction, improvement, maintenance, ownership, operation, and protection of the Pipeline.
3. That the officers and agents of Manager, for and on behalf of the Company, have been authorized, empowered, and directed, to take or cause to be taken all necessary and

appropriate actions to prepare, file and prosecute necessary condemnation proceedings and other legal proceedings to acquire the Property Interests described herein and pursuant to all applicable statutes and laws of the State of Texas.

4. That the Board has determined, through the exercise of reasonable and prudent business judgment, that the acquisition of said Property Interests is in the public interest, and is a public necessity and for the public use within the meaning of the laws of the State of Texas.
5. That Manager, through one or more of its duly authorized officers, agents and/or attorneys has been authorized, empowered and directed to:
 - (a) Make or cause to be made determinations with respect to the best selected route for the Pipeline, generally along the route shown on Exhibit "A" hereto, with the final route to be determined or modified as may be necessary due to route changes or other unforeseen occurrences after all necessary surveys are completed, to serve its public purpose and any subsequent alterations to that route;
 - (b) Authorize or cause to be authorized examinations and surveys in connection with the construction and operation of the Pipeline, as well as the delegated authority to oversee the employment of surveyors, appraisers, right-of-way agents, attorneys, engineers, and other personnel and take such other actions it deems appropriate for acquisition of the appropriate real property interests through negotiation, contract, condemnation or otherwise;
 - (c) Determine or cause to be determined which properties should be subject to eminent domain proceedings and to authorize, verbally or otherwise, the appropriate persons or entities ("Authorized Persons") to commence and conduct eminent domain proceedings. Such authorization of the Authorized Persons shall constitute a finding by the Company that acquisition of that particular property subject to the eminent domain action is a public necessity, and for the public's convenience and use. Once the Authorized Persons have received the authorization, they are authorized and directed to acquire said interest in land as above-described and pursuant to all applicable statutes and laws of the State of Texas, including but not limited to the applicable Sections under the Texas Utilities Code;
 - (d) Acquire or cause to be acquired by negotiation, contract, condemnation or otherwise, the Property Interests which the Manager determines are necessary for the proper use, development, construction, improvement, maintenance, ownership, operation, and protection of the Pipeline; and
 - (e) Take such other and further actions deemed necessary or desirable to carry out the purpose and intent of this Consent and the Company's public purpose.
6. That any and all acts heretofore taken in good faith by an authorized representative of Manager including any officer of Manager on behalf of the Company in accordance with

and in furtherance of the foregoing resolutions are hereby ratified, confirmed, approved and adopted.

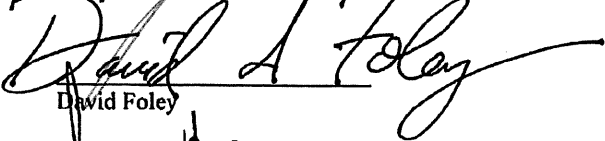
BOARD OF DIRECTORS



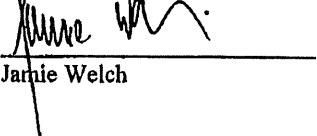
Sital Mody



Larry Bell



David Foley



Jamie Welch

EXHIBIT A
PERMIAN HIGHWAY PIPELINE LLC
PIPELINE ROUTE

