

No. D-1-GN-19-002161

ANDREW SANSOM,  
HEINZ STEFAN ROESCH,  
BEE SPRING, LTD.,  
HAYS COUNTY, and  
CITY OF KYLE,  
*Plaintiffs,*

vs.

TEXAS RAILROAD COMMISSION,  
CHRISTI CRADDICK, in her official  
capacity as Chair, Texas Railroad  
Commission,  
RYAN SITTON, in his official capacity  
as Commissioner of the Texas  
Railroad Commission,  
WAYNE CHRISTIAN, in his official  
capacity as Commissioner of the  
Texas Railroad Commission,  
WEI WANG, in his official capacity  
as Executive Director of the Texas  
Railroad Commission, and  
KARI FRENCH, in her official capacity  
as Director of the Oversight and  
Safety Division – Pipeline Safety  
of the Texas Railroad Commission;  
PERMIAN HIGHWAY PIPELINE, LLC, and  
KINDER MORGAN TEXAS PIPELINE, LLC;  
*Defendants.*

§ IN THE DISTRICT COURT

§ FOR TRAVIS COUNTY, TEXAS

§ 345th JUDICIAL DISTRICT

### **ORIGINAL PETITION**

#### **Nature of the Case**

- 1) Our state constitution requires publicly-administered standards for the routing of private pipelines owned by private companies utilizing the power of eminent domain. Yet, there are no such standards administered or even in place for natural gas pipelines in Texas.
- 2) This suit under the Texas Constitution is directed at state agency and private actions in furtherance of construction and operation of a private natural gas pipeline across Central Texas

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 privilege 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. Citation may be effectuated by service on the agency at its offices in Travis County,

Texas, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.\*

14) CHRISTI CRADDICK is sued in her official capacity as Chair of the Texas Railroad Commission. Citation may be effectuated by service on Chair Craddick at her offices in Travis County, Texas, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

15) RYAN SITTON is sued in his official capacity as Commissioner of the Texas Railroad Commission. Citation may be effectuated by service on Commissioner Sitton at his offices in Travis County, Texas, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

16) WAYNE CHRISTIAN is sued in his official capacity as Commissioner of the Texas Railroad Commission. Citation may be effectuated by service on Commissioner Christian at his offices in Travis County, Texas, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

17) WEI WANG is sued in his official capacity as Executive Director of the Texas Railroad Commission. Citation may be effectuated by service on Mr. Wang at his offices in Travis County, Texas, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

18) KARI FRENCH is sued in her official capacity as Director of the Oversight and Safety Division – Pipeline Safety of the Texas Railroad Commission. Citation may be effectuated by service on Ms. French at her offices in Travis County, Texas, William B. Travis State Office Building, 1701 North Congress Avenue, Austin, Texas 78701.

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\* 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.”

19) PERMIAN HIGHWAY PIPELINE, LLC, is the owner of Permian Highway Pipeline and the entity asserting authority to exercise the power of eminent domain. Citation may be effectuated by service on Permian Highway Pipeline, LLC, by serving its registered agent, Capitol Corporate Services, Inc., 206 E. 9<sup>th</sup> St., Ste. 1300, Austin, TX 78701.

20) KINDER MORGAN TEXAS PIPELINE, LLC, is the operator of the PHP and may be served with citation through its registered agent, Corporation Service Company, 800 Brazos, Austin, Texas 78701.

### **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.”

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.

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 over a

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 duly issued by the Commission. KMTP's original T-4 application sought a classification of the PHP as a Private Pipeline, but KMTP later submitted a new T-4 application, checking the box that says the pipeline is a "Gas Utility." KMTP—without providing any supporting documentation—also simply checked a box to say that the PHP would be an "Intrastate" line. The cover letter and certificate accompanying the second application bear the same early September dates borne by the corresponding documents accompanying the original application; however, the signature on the actual Commission form of the second application shows that it was signed on October 2, 2018. A copy of KMTP's second 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 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 delegee) 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) 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. 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 decision making 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 use the sovereign power of eminent domain by exercising legislative powers unrestrained by Railroad Commission standards of any sort. 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.

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.

42) The harm 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, they extend the easement to be crammed down the throats of private property owners to also cover transportation of “oil [and] petroleum and its associated hydrocarbon substances.” Second, 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 still more pipelines transporting still more and even different hydrocarbons—which in the absence of the relief requested herein against the Railroad Commission 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.

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

44) 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.

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

45) 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.

**Relief requested**

46) 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. 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
- c. such other and further relief as may be appropriate.

Respectfully submitted,

/s/ Clark Richards  
Daniel R. Richards  
State Bar No. 00791520  
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/s/ Renea Hicks  
Renea Hicks  
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**ATTORNEYS FOR PLAINTIFFS**



9/10/2018

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. 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
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Mr. Bruce Waterman

September 10, 2018

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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](mailto:enrique_deleon@kindermorgan.com).

Sincerely,



Enrique DeLeon  
Pipeline Engineer, Compliance

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

Unofficial copy Travis Co. District Clerk Velda L. Price

## PIPELINE CLASSIFICATION CERTIFICATE

T-4 Permit Number T-4-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

Natural Gas Pipelines  
(See 16 Texas Administrative Code §3.70)



Permit Number TBD

ORGANIZATIONAL INFORMATION

1. Operator Name: <b>Kinder Morgan Texas Pipeline, LLC</b>	P-5 No.: <b>463345</b>
Operator Address: <b>1001 Louisiana Street, Houston, Texas 77002</b>	
2. Does the operator identified in item 1 own the pipeline? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "No", give name and address of owner	
Owner Name: <b>Permian Highway Pipeline, LLC</b> Owner Address: <b>1001 Louisiana Street, Houston, Texas 77002</b>	
3. Does the operator control the economic operations of the pipeline? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "No", provide name, address, and P5# of economic operator	
Eco. Operator Name: <b>Permian Highway Pipeline, LLC</b> Eco. Operator Address: <b>1001 Louisiana Street, Houston, Texas 77002</b>	
P-5 No.: <b>655813</b>	

PIPELINE INFORMATION

1. Mark the appropriate box for each of the following questions:		New Construction Report Number: <u>NC</u>
a) New permit?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
b) Renewal for same operator?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
c) Extensions or modifications?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
d) Change in Operator or Ownership?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If "Yes", submit Form T-4B with this application		
		<b>Total Permit Miles: <u>423.950</u></b> (after all changes)
2. Mark the appropriate box for each of the following questions:		
a) Are the pipelines covered under this permit: <input type="checkbox"/> Interstate <input checked="" type="checkbox"/> Intrastate		
b) Commodity transported: <input checked="" type="checkbox"/> Natural Gas <input type="checkbox"/> Full Gas Well Stream <input type="checkbox"/> Gas - Other (specify): _____		
c) Does the commodity contain H2S? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "Yes", at what concentration? _____ ppm		
d) Requested Pipeline Classification (Gas Utility or Private Pipeline): <u>Gas Utility</u>		
e) Does pipeline use any public highway or road, railroad, public utility easement, or other gas utility right-of-way? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
f) Does the pipeline carry only the gas produced by the operators? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "No", select the activity below:		
<input type="checkbox"/> Purchased from others <input checked="" type="checkbox"/> Owned by operator but transported for a fee <input type="checkbox"/> Both purchased from and transported for others clear f) <input type="radio"/>		
3. Select the purpose being sought for the pipeline.		
<input checked="" type="checkbox"/> Transmission <input type="checkbox"/> Gas Lift		
<input type="checkbox"/> Gathering <input type="checkbox"/> Gas Plant		
<input type="checkbox"/> Gas Injection <input type="checkbox"/> 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

*Ryan Hilliard*

Digitally signed by ryan\_hilliard@kindermorgan.com  
DN: cn=ryan\_hilliard@kindermorgan.com  
Date: 2018.10.02 12:33:20 -05'00'

Title

GIS Coordinator

Date

09/10/2018

**Exhibit A to Original 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)

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

Segment Name, Line No. / Identification	Pipeline Segment Specifications:	Location Designation	Population Designation	County
	Length (miles) Outside Diameter (inches) Wall Thickness (inches) MAOP Pipe Grade Pipe Standard High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No	<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	
	Length (miles) Outside Diameter (inches) Wall Thickness (inches) MAOP Pipe Grade Pipe Standard High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No	<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	
	Length (miles) Outside Diameter (inches) Wall Thickness (inches) MAOP Pipe Grade Pipe Standard High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No	<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	
	Length (miles) Outside Diameter (inches) Wall Thickness (inches) MAOP Pipe Grade Pipe Standard High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No	<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	
	Length (miles) Outside Diameter (inches) Wall Thickness (inches) MAOP Pipe Grade Pipe Standard High Consequence Area: <input type="checkbox"/> Yes / <input type="checkbox"/> No	<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	

**ATTACH ADDITIONAL PAGES AS NEEDED.** ☐ No additional pages ☐ Additional pages \_\_\_\_ (# of additional pages)



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
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Total Remaining Miles:	<hr/>	423.95
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**Exhibit B to Original Petition**

Mr. Bruce Waterman

Page 2 of 2  
November 27, 2018

Page 2

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](mailto: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

Unofficial copy Travis Co. District Clerk Velda L. Price

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, CRAWFORD, CROCKETT, FAYETTE, GILLESPIE, GONZALES, HAYS, KIMBLE, LAVACA, MENARD, PECOS, FEGAN, 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](mailto:pops@rrc.texas.gov)