

Kinder Morgan Claims Subsurface Rights In Oil Pipe Row

By **Patrick Boyle**

Law360, Washington (March 7, 2016, 10:56 PM ET) -- Petroleum pipeline company Kinder Morgan asked a California federal court Friday to declare that it owns the easement rights to run its pipeline underground in a community where residents contend they own the land and should be paid for its subsurface use.

Kinder Morgan inherited the subsurface rights along a railroad's right of way from its predecessor companies and repeatedly over the past decades informed people living along the route about the locations of its pipelines, the company said in a counterclaim.

The Houston-based company said it needs the court to declare that it owns the easement rights in order to mount a defense in a group of consolidated lawsuits against Kinder Morgan and Union Pacific Railroad Co.

The suits are among several nationwide claiming Union Pacific unlawfully used landowners' subsurface rights in the 1950s to construct underground oil and gas pipelines within the railroad's right of way. They say the congressional easement to Union Pacific's corporate predecessor, Southern Pacific Transportation Co., allowed the railroad to use the subsurface only to support railway operations, and the landowners should have been paid to let the pipeline go through.

Kinder Morgan, which transports natural gas, refined petroleum products, crude oil and carbon dioxide through pipelines around the country, wants the court to find that it has subsurface rights for pieces of property in San Bernardino County that are claimed by two sets of plaintiffs: Martin and Susan Wells and Sandra L. Hinshaw, who represent the estates of family members.

The company said the families should have known for many years that Kinder Morgan claimed the rights to run its pipes under the properties. It said it operates a public awareness campaign that includes targeted mailings to households and businesses along the pipeline, including information about how to find the precise location of a pipeline and how to contact the company. It said it sent those mailings in 2006, 2008, 2010, 2012 and 2014.

The company asked the court to rule that Wells and Hinshaw have no rights to the land below the surface along the right of way, that it has the right to use the easement for its pipeline, and that it doesn't have to pay the families for doing so.

In December, Union Pacific asked the court to dismiss the suits filed by several families, saying their

claim for compensation “hinges on several faulty theories.” Union Pacific said the landowners can’t show where their lines of ownership fall within the right of way that Congress gave the railroad in the 1800s, and can’t show they lost any money by the construction of a petroleum pipeline under that right of way.

Attorneys for Kinder Morgan, Wells and Hinshaw did not immediately respond to requests for comment.

Kinder Morgan is represented by Steven M. Strauss, M. Ray Hartman III, Summer J. Wynn and Catherine J. O'Connor of Cooley LLP.

Union Pacific is represented by Joseph Rebein, Tammy B. Webb and John K. Sherk III of Shook Hardy & Bacon LLP.

The Wells family is represented by Norman E. Siegel, Barrett J. Vahle, Ethan M. Lange and Jason S. Hartley of Stueve Siegel Hanson LLP, Steven M. Wald, and Thomas S. Stewart of Stewart Walk and McCulley LLC. Hinshaw is represented by Norman E. Siegel.

The consolidated case is In re: SFPP Right-of-Way Claims, case number 8:15-cv-00718, in the U.S. District Court for the Central District of California.

--Editing by Philip Shea.