

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF GRAND FORKS

NORTHEAST CENTRAL JUDICIAL DISTRICT

North Dakota Pipeline Company LLC,)

Plaintiff,)

Vs.)

James R. Botsford and Krista L. Botsford,)

As Trustees of the James and Krista)

Botsford Trust dated November 24, 1999,)

Defendants.)

CIVIL NO. 18-2014-CV-01058

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF TAKING
TEMPORARY AND PERMANENT
RIGHT-OF-WAY AND EASEMENT
AND JUDGMENT**

The above-entitled matter having been filed in the District Court in the County of Grand Forks, North Dakota, and the Court having heard the motions for Summary Judgment of the parties following briefing and oral argument of the issues and the parties having appeared for the trial in this matter on the issue of damages on August 11, 2015 and following a ruling on the Motion in Limine on the issue of introduction of evidence of a prior offer of settlement made by the Plaintiff North Dakota Pipeline Company, LLC, and then having stipulated to the damage amount of \$12,158.96 and the Court being fully appraised in the premises does hereby make the following:

FINDINGS OF FACT

1. The Plaintiff properly served upon the Defendants on the 23rd day of July, 2014 a Summons and Complaint, with attachments thereto, which Complaint was responded to by the Defendants. The Complaint sought a right-of-way and easement across Defendants' land for construction, operation and maintenance of a portion of the Sandpiper Pipeline.
2. On February 4, 2015, the Plaintiff made a motion for partial summary judgment in this

matter, seeking summary judgment on all issues except for the value of the easement to be paid to the Defendants. Summary judgment was requested on issues of public use, necessity, more necessary public use and on the issue of whether Plaintiff had met all other statutory requirements for condemnation.

3. The Defendants responded to the motion for partial summary judgment and filed a cross-motion in their favor for partial summary judgment. The Defendants' brief dated March 19, 2015 resisted partial summary judgment in Plaintiff's favor on the issue of public use.
4. On March 23, 2015, the Court heard oral arguments on the motions for partial summary judgment. The Court considered the numerous exhibits submitted by each party as well as the briefs filed on the issues.
5. The Court granted the motion of the Plaintiff for partial summary judgment on all issues raised in the motion.
6. As determined in the Order Granting Plaintiff's Motion for Partial Summary Judgment and Order Denying Defendants' Motion for Rule 56(f) Continuance, Plaintiff is a common carrier and is committed to accepting oil of any citizen of North Dakota, without discrimination, at prices regulated and prescribed by the Federal Energy Regulatory Commission.
7. The Sandpiper pipeline meets the requirement of a public use. The public does have a right to benefit from the pipeline. The public will derive a substantial and direct benefit. The citizens of North Dakota will benefit from the pipeline in areas other than economic benefits. The pipeline will provide the citizens of North Dakota with the ability to transport their oil across the state to the oil refineries, without discrimination, as required by N.D.C.C. Sec. 49-19-11.

8. The requirements of "necessity" and "more necessary public use" were not raised by the Defendants, nor were any claims regarding the other necessary statutory requirements for condemnation. The taking in this matter is necessary to the public use. It is necessary to the construction of the Sandpiper pipeline. There is no more necessary public use which is applicable. The conditions of N.D.C.C. Sec. 32-15-05 have been met.
9. That the Court's further findings in its Order Granting Plaintiff's Motion for Partial Summary Judgment and Order Denying Defendants' Motion for Rule 56(f) Continuance are hereby adopted by reference and incorporated herein.
10. That the Court found, prior to trial of this matter on August 11, 2015, that a prior offer of Plaintiff for an easement and right-of-way in the amount of \$38,062 was inadmissible as evidence of a prior settlement offer under Rule 408 of the North Dakota Rules of Evidence and as unduly prejudicial under Rule 403 of the North Dakota Rules of Evidence. That the parties' experts had submitted reports indicating that damages were \$2,000 (Plaintiff's expert) and \$12,158.96 (Defendants' expert).
11. That an offer of proof was taken from the Defendants indicating that the \$38,062 offer was made by Plaintiff to Defendants prior to institution of this action.
12. That the Court's oral findings on the motion made in open court on the 11th day of August, 2015 are hereby adopted by reference and incorporated herein.
13. That the parties stipulated to the damage amount of \$12,158.96 as being the amount of damages in the case in light of the expert reports and the Court's Order on the motion in limine.
14. That the parties have submitted proposals for the form of the property interest to be granted to the Plaintiff in this matter, and the Court adopts the language referenced in its

Order of September 24, 2015 set forth in the Final Order of Condemnation in this matter which will be executed in conjunction herewith.

CONCLUSIONS OF LAW

15. That this Court has jurisdiction over the parties and subject matter of this proceeding.
16. That the Plaintiff properly has the ability to exercise eminent domain over the real property that is the subject matter of this proceeding.
17. That the Plaintiff has met all requirements set forth in N.D.C.C. Sec. 49-19-12, Sec. 32-15- 05, 32-15-18, and 32-15-06.1 as well as any other requirements set forth in North Dakota's eminent domain statutes.
18. That the Defendants' challenges to this condemnation on the issue of claimed lack of a public use are hereby denied.
19. That the Plaintiff's application for a Final Order of Condemnation is hereby granted as to both the permanent easement and temporary easement requested. Easement terms will be for a right-of-way and 99-year easement to survey, locate, construct ... one 24" pipeline ... for the transportation of oil, as defined by N.D.C.C. § 38-08-02(9). NDPL is authorized to engage in these types of activities as long as they are "necessary for the construction, maintenance, or authorization" of the pipeline.
20. That upon notice of deposit by Plaintiff of the amount of \$12,158.96 into Court, the Court shall execute the Final Order of Condemnation in the form attached. That the terms of the property interest granted to the Plaintiff shall be as set forth in the Final Order of Condemnation.
21. Attorneys' fees are awarded to Defendant by Plaintiff in the amount of \$41,944.00, as

delineated in the Court's Order of September 24, 2015. Costs are awarded to Defendant from Plaintiff in the amount of \$2,950.00.

Dated this ____ day of _____, 2015.

THE HON. DEBBIE KLEVEN
JUDGE OF THE DISTRICT COURT

JUDGMENT

The above Findings and Order are hereby entered as the final Judgment of the Court.

Dated this ____ day of _____, 2015.

CLERK OF THE DISTRICT COURT