



Snapshot Exercise: Survey of Eminent Domain in Wyoming

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Summary of Key Results

- Given the number of responses and potential entities that could exercise the power of eminent domain, caution should be exercised in extrapolating this survey data beyond the responses received. LSO received 75 of 197 surveys (38%).
- In general and according to the 75 survey responses, eminent domain in Wyoming is: (i) exercised relatively rarely; (ii) generally done so after some, even extensive, negotiation; (iii) proceeds to court even more rarely; and (iv) is exercised by government entities at a somewhat higher rate than private companies.

Summary of Key Results

- The majority (43 of 75) of respondents have not acquired property for which eminent domain could be exercised in the last five years.
- Of the approximately 8,500 property acquisitions reported by the survey respondents over the last five years, the acquiring organization reported serving a condemnation roughly 40 times (less than one half of one percent). The majority of those were acquisitions by DOT.
- Of the notices served, 17 of the 40 (43%) went on to be adjudicated in court.

Summary of Key Results

- Of the 32 organizations that did acquire property during the last five years, 21 (66%) raised the issue of condemnation during negotiations.
- While the timing of these discussions varies quite widely, the majority (12, or 57%) did so “late, after relatively extensive negotiations and multiple offers have [had] been extended.”

Eminent Domain Survey Background

- On July 28, 2006, LSO Research Staff surveyed 197 public and private entities on their use of eminent domain over the last five years, since July 2001.
- The selection criteria for surveyed entities included the following: (i) all major state agencies that were likely to exercise eminent domain; (ii) all municipalities and counties; (iii) all regulated pipelines, railroads; electric and telecommunication utilities; and (iv) private businesses that had previously expressed an interest in eminent domain with the Legislature, particularly through the Joint Agriculture Committee's work.

Eminent Domain Survey Background

➤ LSO received the following responses:

- ✓ 75 total responses (~38% response rate)
- ✓ 28 responses from the private sector (~38%)*
- ✓ 36 responses from municipalities (36%)
- ✓ 8 responses from counties (35%)
- ✓ 3 responses from state agencies (100%)

- Some private companies filed one survey response for two requests; another filed multiple responses for each subsidiary. These types of response *nearly* cancelled out.

➤ See Attachment A for a complete list of questions and summary of results.

Summary of Results: Private Companies I

- 14 of the private companies (50%) reported that they had acquired property in Wyoming for which eminent domain could have been exercised.
- Ten of those 14 companies (71%) reported raising the use of eminent domain during negotiations for property.
- However, for eight of the ten companies, the companies reportedly raised the issue “late” in the negotiations, “after relatively extensive negotiations and multiple offers have been extended.”
- The number of properties (including easements) obtained by private companies responding to the survey reflects extraordinary variance, from 0 in the last five years to 3,100.

Summary of Results: Private Companies II

- In total, more than 6,000 properties (including easements) were acquired by ten private companies that reported *ever* bringing up eminent domain in negotiations.
- Of those 6,000 + properties, the responding companies indicated that they filed for condemnation in just 5 separate instances. In all 5 cases, the property owner was served with condemnation proceedings.
- Two of the five filings went to court to determine right of possession. The other three did not report going to court, so it is presumed by LSO they were settled prior to court proceedings.

Summary of Results: Counties and Municipalities I

- 16 municipalities and counties responding to the survey (36%) reported that they had acquired property in Wyoming for which eminent domain could have been exercised.
- Ten of those these sixteen municipalities and counties (63%) reported raising the use of eminent domain/condemnation at some point during negotiations for property.
- Although about half of the municipal and county respondents indicated that they, like the private companies, brought the issue of condemnation up “late” in the negotiations, three reported condemnation was brought up “early” in the negotiations. In fact, in three instances, municipalities and counties responded that condemnation is brought up *before the first offer is made*.

Summary of Results: Municipalities and Counties II

- Of the responding ten municipalities and counties acquiring property for which condemnation could be used, a total of approximately 140 properties (including easements) had been acquired over the last 5 years.
- Of those 140 properties, the responding municipalities and counties indicated that they had filed for condemnation in 10 separate instances. In all 10 cases, the property owner was served with condemnation proceedings.
- Seven of the 10 filings went to court for a range of reasons including right of entry, right of possession, valuation of the property, and other reasons.

Summary of Results: State (DOT)

- The only responding state agency with significant exercise of eminent domain was the Department of Transportation (DOT).
- DOT reported acquiring approximately 2,000 properties (including easements) during the last five years.
- Further, DOT reported filing and serving condemnation proceedings approximately 25 times (1.25%).

Summary of Results: State (DOT)

- Of the 25 parcels on which condemnation proceeding were served by DOT, approximately 7 went to court – all for right of possession.
- In summary, DOT lead all public agencies in acquiring property for which eminent domain could be exercised; led all survey respondents with the number of court filings; and accounted for approximately two out of every five court proceedings.
- DOT also reported typically making one offer prior to raising discussions of condemnation proceedings. This is among the lowest of responding entities.

Caveats and Discussion Points

- Although most municipalities reported no acquisitions and no use of eminent domain during the last five years, a number of them indicated they are currently contemplating either acquiring property and potentially exercising eminent domain to do so.
- As relayed to LSO in the survey, for pipelines regulated by FERC, the federal government requires the distribution of a brochure to property owners. The brochure includes an explanation that eminent domain can be used to acquire the easement. As a result, the issue of eminent domain may be raised much earlier in the process compared to most other acquiring entities.

Caveats and Discussion Points

- One respondent reported no property “acquisitions” during the last five years, but did report requesting and receiving permission to conduct surveys. In some of the discussions between the survey respondent and the property owner, Wyoming statutes that allow entry to perform studies and surveys were discussed with the property owner. This organization did file six actions in court and went to court two times to obtain right of entry. However, due to the unique circumstances, this response is not included in the overall summary.

Caveats and Discussion Points

- Finally, one county wanted to stress that “all acquisitions of property by a governmental entity could have been acquired through eminent domain,” thus potentially skewing the results for governmental entities.
- Second, one county expressed a concern that “beginning a conversation for the purchase of property by threatening condemnation could...be found not to constitute ‘good faith’.”
- However, this survey appears to uncover the potential use of condemnation as a negotiating tactic for some public entities, at least in a limited number of instances.

ATTACHMENT A

LSO Survey on Eminent Domain (Summary of Results)

1. Name and title of person responding to survey: 197 surveys sent; 75 responses (38%)
2. Organization representing, e.g., Wyoming Department of Transportation: 28 private companies; 47 government organizations
3. Since July 2001 has your organization ever acquired property in Wyoming for which condemnation or eminent domain could have been exercised? 32 Yes 43 No (if no, then please ignore questions 4 through 10 and return the survey as directed)
4. Since July 2001 has your organization ever raised the discussion of condemnation or eminent domain in negotiations for property in Wyoming where such powers could have been exercised? 21 Yes 11 No [**of those responding affirmatively to question #3**] (if no, then please ignore questions 5 through 10 and return the survey as directed)
5. Of all of the property acquisitions referred to in Question #4 (for which condemnation/eminent domain powers could be exercised and discussion arose), in what stage of negotiations for property did discussion of condemnation or eminent domain arise? (please circle the letter of the best response for your organization)
4 (19%) a. early, condemnation or eminent domain is discussed at or near the on-set of negotiations,
3 (14%) b. midway, after at least one offer has been made,
12 (57%) c. late, after relatively extensive negotiations and multiple offers have been extended, or
2 (10%) d. at any point when the property owner(s) refused to negotiate.
6. How many offers did your organization typically make before discussions of condemnation or eminent domain arise, based upon your last five years of history in Wyoming? (please circle the letter of the best response for your organization)
4 (19%) a. No offers,
1 (5%) b. One offer,
5 (24%) c. Two offers, or
11 (52%) d. More than two offers.
7. How many separate property acquisitions for which condemnation or eminent domain could ultimately have been exercised, including fee, easements, or rights-of-way, has your organization initiated since July 2001 in Wyoming?
~ 8,500
8. Of the total property acquisitions referenced in Question #7, in how many instances has your organization filed for condemnation/eminent domain in Wyoming?
~ 40, less than one half of one percent
9. Of the total filings for condemnation/eminent domain referenced in Question #8, in how many instances have persons or entities been served with a condemnation/eminent domain proceeding?
~ 40, all
10. Of the total services of condemnation/eminent domain referenced in Question #9, in how many instances have condemnation/eminent domain proceedings gone to court for each of the following reasons: (Total = ~17)
 - a. Right of entry 9
 - b. Right of possession ~ 13,
 - c. Valuation of the property 7, or
 - d. All other reasons 4.