

IN THE IOWA DISTRICT COURT FOR CHEROKEE COUNTY

MARIAN D. JOHNSON by her agent)	Case No.
VERDELL JOHNSON, BRENT JESSE, and)	
RICHARD R. LAMB, trustee of the)	
RICHARD R. LAMB REVOCABLE TRUST)	
)	
Petitioners,)	PETITION FOR DECLARATORY
)	JUDGMENT
vs.)	
)	
IOWA UTILITIES BOARD, A DIVISION OF)	
THE DEPARTMENT OF COMMERCE,)	
STATE OF IOWA,)	
)	
Respondent.		

COME NOW the Petitioners seeking a declaratory judgment from this Court pursuant to Rule of Civil Procedure 1.1101 and stating as follows in support thereof:

PARTIES, JURISDICTION, AND VENUE

1. Petitioner Marian D. Johnson is a Cherokee County, Iowa resident who owns affected agricultural land in Cherokee County and brings this action by her agent Verdel Johnson pursuant to a duly executed power of attorney.
2. Petitioner Brent Jesse is a Buena Vista County, Iowa resident who owns affected agricultural land in Buena Vista County.
3. Petitioner Richard R. Lamb Revocable Trust is a Johnson County, Iowa resident who owns affected agricultural land in Boone County.
4. Respondent, Iowa Utilities Board is an administrative agency, created by Iowa Code Chapter 474.
5. This Court has personal jurisdiction over these parties.

6. Cherokee County is the appropriate venue as a portion of the agricultural land, subject to this action is located therein.

FACTUAL ALLEGATIONS

7. Petitioners own real property in tracts of ten acres or more that have been used for the production of agricultural commodities during the last three of five years.

8. Petitioners' real property is therefore "agricultural land" as defined by the Iowa Code.

9. Petitioners' agricultural land is situated in the path of a proposed interstate hazardous liquid pipeline seeking to bisect the state of Iowa.

10. The private developer of the proposed hazardous liquid interstate pipeline would transport crude oil from North Dakota to Illinois.

11. Petitioners have been approached by agents of the private developer and are led to believe that if they do not immediately consent to an easement that the Respondent will permit the private developer to utilize eminent domain and condemn the Petitioners' agricultural land for its hazardous liquid interstate pipeline.

12. Petitioners lack an adequate remedy at the administrative level because of the immediate and irreparable injury associated with the permanent grant of an easement under the threat of eminent domain. Petitioners require clarity from the Court as to whether they ultimately have a choice—are they negotiating with the interstate pipeline company at arm's length, or are the threats of eminent domain substantiated and therefore the Petitioners must ultimately acquiesce.

DECLARATORY JUDGMENT

13. Petitioners re-allege and incorporate by reference its allegations above as if fully pled herein.

14. Pursuant to Iowa Rule of Civil Procedure 1.1101, a genuine dispute or controversy exists with respect to the Respondent's ability to grant eminent domain and condemnation for agricultural land.

15. Specifically, Petitioners seek a declaration that Iowa Code §6A.21 governs and that the Respondent does not have either consent of the Petitioners or the relevant jurisdiction over an interstate pipeline and that such pipeline is not a utility.

16. A current dispute and controversy exists between the parties concerning their respective rights and obligations under Iowa Code §§6A.21 and 479B.16.

17. The parties dispute their present and future rights under these statutes.

18. The present and future rights of the parties need to be determined and declared in accordance with Iowa law.

19. Petitioners request an order declaring that eminent domain is unavailable as it relates to agricultural land protected by Iowa Code §6A.21 and that Respondents are unable to consider and grant eminent domain rights as a result thereof.

WHEREFORE Petitioners request an order declaring that eminent domain is unavailable as it relates to agricultural land protected by Iowa Code §6A.21 and that Respondents are unable to consider and grant eminent domain rights as a result thereof, and for such other relief as may be deemed appropriate, just and equitable under the circumstances.

/s/ William E. Hanigan

William E. Hanigan, AT0003284
215 10th Street, Suite 1300
Des Moines, IA 50309-3993
Telephone: (515) 288-2500
Facsimile: (515)243-0654
Email: billhanigan@davisbrownlaw.com
ATTORNEY FOR PETITIONERS

/s/ Richard A. Cook

Richard A. Cook, AT0001620
209 West Willow Street
P.O. Box 209
Cherokee IA 51012-0209
Telephone: (712) 225-5175
Facsimile: (712) 225-5178
Email: rich@cooklawcherokee.com
ATTORNEY FOR PETITIONERS