



Eminent Domain and Water Districts

PRESERVE the rights of state authorities to use eminent domain for water supply, wastewater, flood control, and drainage projects.

In June 2005, the U.S. Supreme Court in *Kelo v. City of New London* affirmed the right of state and local governments to exercise the power of eminent domain for economic development purposes. Since then, many state legislatures, including that of Texas, have passed new laws to clarify how local governments may use eminent domain for economic development and other purposes.

Congress also responded to the Supreme Court's decision. Among other federal legislative initiatives, Sen. Christopher Bond (R-Mo.) inserted an amendment in the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Act, 2006 (H.R.3058) creating a condemnation-restricting condition of federal funds for monies appropriated under that statute. Section 726 of H.R.3058 provides that "no funds in this Act may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use." President Bush signed H.R.3058 into law on November 30, 2005 as P.L. 109-115.

In 2007, three pieces of legislation were filed addressing eminent domain. One is H.R.3053, filed by Representative Maxine Water (D-Ca.). The bill which would create a private right of action for any property that is used for economic development within seven years after the exercise. Applying such a provision to subsequent uses of property is problematic since tremendous economic benefits are conferred on an area after reservoirs are built for flood control or water supply. This legislation could result in a property owner successfully convincing a court to require a condemning authority to return property because a portion of the acquired property now is leased to a marina or similar facility located around the newly built reservoir.

TWCA is concerned that federal legislation may be overly broad and prohibit the use of eminent domain for the kinds of water and wastewater infrastructure Texas must develop to grow and remain competitive. While the Supreme Court's decision affirmed the right of state and local governments to exercise the power of eminent domain for economic development purposes, it also specified that it was incumbent upon the states to regulate this power.

Congress should follow the Court's lead and allow the state legislatures, which are better positioned to respond to local and regional interests, to resolve concerns relating to the use of eminent domain for economic development purposes. For example, the Texas Legislature in 2005 enacted Senate Bill 7 (79th Second Called Special Session), specifically preserving the authority of river authorities, navigation districts and other conservation or reclamation districts authorized by law to take private property through the use of eminent domain for water supply, wastewater, flood control, and drainage projects. TWCA suggests including similar language in pending legislation.

TWCA does not support using eminent domain for private or purely economic development programs. However, well intentioned federal legislation may have the result of impairing or preventing the proper exercise of this power for public projects, such as reservoir and other water supply and flood control projects, that have secondary economic development impacts. Legislation limiting the power of eminent domain must be carefully considered to ensure that unintended consequences do not prevent the fulfillment of public projects essential to providing adequate water supplies for a rapidly expanding population and controlling flooding to protect that population.

