

NO. 002-335-2013

SEAWAY CRUDE PIPELINE
COMPANY, LLC

Plaintiff,

V.

FREDDY J. DAVENPORT

Defendant.

§
§
§
§
§
§
§
§
§
§

EMINENT DOMAIN
PROCEEDING IN

THE COUNTY COURT AT LAW NO. 2

COLLIN COUNTY, TEXAS

**DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL
COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION,
MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT
INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER**

TO THE HONORABLE COURT:

COMES NOW Freddy J. Davenport, Defendant in the above-styled and –numbered cause, and files these Objections to the Findings of the Special Commissioners, Special Appearance, and Plea to the Jurisdiction, Motion to Dismiss, and Original Answer. In support thereof, Defendant respectfully shows the Court as follows:

I.

**SPECIAL APPEARANCE, PLEA TO THE JURISDICTION, AND
MOTION TO DISMISS**

This Court does not have jurisdiction over this matter and Defendant objects to same. The basis for this lack of jurisdiction is that Plaintiff is not a common carrier and does not have eminent domain authority. Only a party meeting the definition of a common carrier may apply for and receive eminent domain authority from the State of Texas. Only in that instance does this Court have jurisdiction under the Texas Property Code. Plaintiff does not meet the definition and

therefore this Court does not have jurisdiction. Plaintiff wholly lacks the authority of eminent domain and cannot under any circumstance take Defendant's property. Plaintiff is not operating a pipeline for public use or for public good. Instead, it is an affiliation of some of the largest publicly traded companies who are taking private land from Texas landowners for Plaintiff's own profit. Plaintiff and its affiliates are foreign business entities that own pipelines, storage tanks, trucks, shipping, service companies, oil, and bitumen and devised a scheme to make outrageous profits for themselves while pretending to be a common carrier operating for the public good so they can take land on the cheap from Texans. They own the pipelines, most of the oil flowing through the pipelines, the companies that service the pipelines, and companies and tanks that store the oil between the pipelines. The "public" does not even have reasonable access to the pipelines much less have the "good" of using the pipeline. The pipeline will not even result in a lowering of fuel prices. In fact, it is a North to South flowing pipeline with no access to the pipeline in Texas. The closest access is in Cushing, Oklahoma. The end point is the Gulf of Mexico where it will be shipped overseas. In fact, the installation of the pipeline actually will result in higher fuel prices for Texas.

Defendant says that Plaintiff does not legally possess the power of eminent domain; to wit, it does not meet the requirements of a common-carrier and/or does not "serve the public" as required by law. Plaintiff cannot serve the public by transporting its own oil, oil owned or controlled by its affiliates, or even by giving a small portion of pipeline capacity to unrelated entities. Merely making a small portion of the pipeline's capacity available through a small window for a lottery system is insufficient to meet the heavy burden necessary to secure the State's power of eminent domain and take Defendant's property. *Texas Rice Land v. Denbury*

Green Pipeline, 363 S.W.3d 192, 201 (Tex. 2012).

DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 2

Further, Plaintiff does not possess a T-4 permit as alleged in its petition. Permit No. T05161 does not belong to Plaintiff; nor does it belong to either of Plaintiff's organizers: Enbridge Holdings (Seaway) L.L.C. and Enterprise Seaway L.P. See Application for Registration of a Foreign Limited Liability Company attached as Exhibit A; See Application Form T-4C attached as Exhibit B. "Seaway Crude Pipeline Company, LLC" does not have a T4 permit from the Railroad Commission of Texas.

Even if Plaintiff has a valid T-4 permit it does not establish eminent domain authority. *Texas Rice Land v. Denbury Green Pipeline*, 363 S.W.3d 192, 198 (Tex. 2012). The Railroad Commission of Texas does not have the power to confer common carrier status or bestow eminent domain power. <http://www.rrc.state.tx.us/about/faqs/eminentdomain.php>, at paragraph 2 (accessed June 25, 2013). Defendant says Plaintiff is without eminent domain power and its suit should be dismissed. The burden of proof therefore shifts to Plaintiff to prove valid eminent domain authority. *Denbury*, at page 202. Plaintiff cannot meet its burden to prove it is a common carrier. Plaintiff cannot meet its burden to prove it "serves the public" rather than private interests. Therefore, the Findings of the Special Commissioners must be withdrawn and the above-styled and -numbered cause dismissed.

In addition, Plaintiff intends to pump bitumen through the Seaway pipeline. Bitumen is not crude oil; it is not natural gas. Its properties are wholly different than crude oil. It is not listed as permissible in the Texas Natural Resources Code. The Railroad Commission of Texas does not have any regulatory power over a bitumen pipeline. Plaintiff has no power or right to take Defendant's land to install a bitumen pipeline. A permit allowing a crude oil pipeline is not sufficient authority to install a bitumen pipeline. Plaintiff does not have a proper permit to construct or operate a bitumen pipeline.

DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 3

Since this Court lacks jurisdiction, the Findings of the Special Commissioners are a nullity and this Court must dismiss this case.

II.

COMMISSIONERS HEARING

The Special Commissioners held a hearing pursuant to Texas Property Code § 21.015, on June 21, 2013. The Commissioners' findings are attached as Exhibit C. Defendant objects to these findings as being erroneous and against the great weight and preponderance of the evidence presented.

Defendant owns over 42 acres of land at the northeast corner of CR 604 and 605 in Collin County near Farmersville. The rectangular plot is bisected by an existing pipeline, creating one approximately 20 acre parcel to the west and another of approximately the same size to the east. Defendant planned a subdivision and had it surveyed for this purpose and a rough plan created. Defendant sold a one acre plot of the west parcel for over \$22,000. Later, that one acre plot came back to him through foreclosure. Thus, there is a demonstrated value of at least \$22,000 per acre for this parcel of land. The proposed pipeline is going to bisect the eastern acreage diagonally – rendering almost all of that entire 20-some-odd eastern acreage useless for building roads and homes – especially homes that will require septic systems as this area requires. Moreover, that eastern acreage includes the highest elevation of the parcel, which is the most valuable section of the land. The pipeline is to be built across the side of that hill and will interrupt the acreage on the south portion that fronts onto CR 605 where the pipeline exits the parcel to the south. Similar one-acre tracts within feet of this property [across CR 604 to the west] have been sold recently for over \$36,000 per one unimproved acre. Defendant will

completely lose at least two, perhaps more, acres at this place on the property alone. This amounts to an unconstitutional taking under Texas Const. art. I, section 17.

Here is an aerial view of the property, with North pointing up toward the top of the page:



III.

The Findings of the Special Commissioners attached as Exhibit C violate the Texas Constitution and the United States Constitution and amount to an impermissible taking of property for private use. The Findings do not recognize, much less adequately compensate, Defendant for the damage to the remainder property at all. It is without question that the remainder of the property has suffered some degree of damage or diminishment in value. In reality, Plaintiff and its affiliates have caused so much damage in oil spills in recent years that no one would build a house on the east side of this parcel of land once the new pipeline is installed. It will be difficult enough to sell the western half of the land now. Certainly, those acres will be sold at a steep discount. The Findings of the Special Commissioners don't compensate

Defendant even one penny for this damage in value to the remainder property. Thus, the Findings are fatally flawed and must be rejected.

IV.

THE PROCESS THAT PLAINTIFF USED TO SECURE A T-4 PERMIT AND ITS ALLEGED EMINENT DOMAIN POWER IS UNCONSTITUTIONAL UNDER BOTH THE UNITED STATES AND TEXAS CONSTITUTIONS

The process that Seaway used to obtain a T-4 permit and attempt to take Defendant's land is unconstitutional because it gives away the State of Texas' immense power of eminent domain over Defendant's land with nothing more than a checkmark on a one-page application form. The Railroad Commission of Texas' process is unconstitutional for all of the reasons described by the Texas Supreme Court in *Texas Rice Land v. Denbury Green Pipeline*, 363 S.W.3d 192 (Tex. 2012). The permitting system violates Defendant's right to due process under both the State of Texas and United States' Constitutions and is impermissible.

V.

SO WHAT IS PLAINTIFF'S REAL STORY?

Back in 2011, Plaintiff was a Limited Liability Company. Seaway was owned 50% by ConocoPhillips and 50% by Enterprise Products Partners, LP. – which according to internal documents is the “largest publicly traded energy partnership with an enterprise value of more than \$70 billion (64th on Fortune 500 and 226th on Fortune Global 500). Among its holdings was the south-to-north seaway pipeline that pumped crude oil from Houston to Cushing Oklahoma.

In 2011, a company from Canada called Enbridge Inc. – one of the largest energy companies in the world – came up with a scheme: it could purchase ConocoPhillips' 50% share

DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 6

of Seaway, reverse the flow of oil in the Seaway Houston to Cushing pipeline so that it could pump 135,000 barrels per day southbound, install another pipe next to the existing one, ramp up total capacity to 400,000 barrels per day with an ultimate goal of 850,000 barrels per day. If it would then be able to pump far more oil southbound through its other southbound pipelines that were being slowed by insufficient pumping capacity from Cushing to Houston, increase capacity on pipelines further south, maximize profits in its affiliates that ship, truck, store, and export the oil. On top of that Enbridge owns virtually all of the bitumen in Alberta, Canada, which they could then pump through the pipeline as part of the long-range part of the plan. And, even though it might seem that it couldn't get better than that, Enbridge came up with a scheme to pass on all of its costs to others by including the costs associated with purchase of ConocoPhillips' share of Seaway, reversing the flow of the pipeline, and other associated costs in its rate proposals at the Federal Energy Regulatory Commission ["FERC"]. For that part of the scheme, they minimized estimated flow-rates, relevant rate-determining time-periods, and over-estimated costs, as well as passing on the acquisition cost for that 50% interest into the formula. They even minimized the plan to ramp up the flow to 400,000 then 850,000 barrels per day after they got their rates approved. Of course, other energy companies have cried foul and that part is being hashed out currently at FERC in Docket Number IS12-226, *In re Seaway Crude Pipeline Company, LLC*.

Just to get a sense of how sweet a deal this was for Enbridge, one might note that Enbridge paid \$1.5 billion cash in return for only \$59 million worth of Seaway assets. Doesn't that tell us how much of a deal Enbridge had put together for itself and its affiliates?

And, according to internal documents, one reason Plaintiff wanted to increase flow capacity through Seaway's pipeline north-to-south to relieve the glut of oil at Cushing was to

DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 7

keep oil prices higher; not lower. The glut was keeping prices lower than Plaintiff wanted them to be and Plaintiff surmised it could keep prices higher by getting North American Crude Oil onto ships and exported as much as possible as fast as possible. This is the opposite of public good.

Enterprise and Enbridge, according to their own documents as well as sworn testimony at FERC own directly or through affiliates most of the oil to be pumped through the pipeline, the servicing companies, the trucking companies, the storage facilities, and the transfer and shipping companies that service the pipeline. It is a scheme designed for one and only one thing: to make as much money for Enterprise and Enbridge as possible. They make money on every side of every transaction. A scheme like this means that Seaway is absolutely not a common carrier and is not operating the pipeline for public use and absolutely does not have eminent domain power. *See Texas Rice Land v. Denbury Green Pipeline*, 363 S.W.3d 192 (Tex. 2012).

VI.

REQUEST FOR TEMPORARY AND PERMANENT INJUNCTION AND DECLARATORY JUDGMENT

A. Plaintiff is not a Common Carrier Vested with Eminent Domain Power; Declaratory Judgment

Plaintiff is not a common carrier and cannot meet its burden of proof to show common carrier status or the right of eminent domain. It is not seizing land for public use or for the public good, as those terms are defined by law.

The Texas Supreme Court issued its opinion in *TEXAS RICE LAND PARTNERS v. DENBURY GREEN*, 09-0901 (Tex. 8-26-2011), in which the Court made clear that the process of obtaining a T-4 permit by checking a box on a one-page form at the Railroad Commission of

Texas is unconstitutional and does not in any way vest a company with eminent domain power. The Railroad Commission of Texas has made clear since then that it does not in any way have the power to grant eminent domain power to any entity. Yet, after that date, Seaway Crude Pipeline Company has continued to seize private land representing to the landowners that it has eminent domain power without informing them of the Texas Supreme Court decision or the Railroad Commission of Texas' disclaimer. The representations made by Seaway to unsophisticated landowners amounts to fraud. Thus, each of the easements obtained since August 2011 by sale/purchase or settlement agreement based on Seaway's representation that the T-4 permit gave Seaway the power of eminent domain and without disclosure of the Texas Supreme Court's *Denbury* decision or without the Railroad Commission's disclaimer is void or is voidable under Texas law. Defendant seeks a Declaratory Judgment to that effect.

The burden of proof now shifts to Plaintiff. Until Plaintiff can prove that it is a common carrier with the right of eminent domain it should be enjoined from entering Defendant's land for any reason. Plaintiff must prove its pipeline is for the public good or for public use; it cannot do so. Merely selling a small portion of pipeline capacity to others is insufficient to make this showing. Defendant will likely prevail on the merits. Defendant seeks a Temporary Injunction with that relief and after hearing a permanent injunction is requested. An injunction is appropriate because Plaintiff intends to make permanent changes to Defendant's property and once those changes are made it will be very costly or even impossible to return the land to its original state.

B. Further Grounds for Injunctive Relief

This action is for injunctive and declaratory relief relating to construction and operation of an interstate pipeline for the conveyance of refined petroleum products from Cushing,

DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 9

Oklahoma, to the Texas Gulf Coast and offshore. Defendant seeks to have the federal government perform a full-fledged review, as required by the National Environmental Policy Act of 1969 (sometimes, “NEPA”), of the environmental consequences of federal action that would allow a 37-year old pipeline originally built to carry crude oil from the Texas Gulf Coast to Cushing, Oklahoma to be converted to a pipeline carrying materials south up to as much as 400,000 barrels per day of diluted bitumen and other products at pressures far in excess of the original pipeline design. The pipeline crosses Collin County, where there are rare and endangered species, across the Trinity and Carrizo-Wilcox Aquifers, and other environmentally-sensitive areas. The new twin pipeline is also to cross Lake Lavon and Richland-Chambers, which are major drinking water supplies for Dallas and Collin Counties, among others. The federal government must determine the environmental consequences of these actions before the existing pipeline is re-purposed and before construction of the new twin line is complete and the project begins operation. One leak of the highly toxic material it will be transporting across Texas could destroy large reservoirs of vital underground water, surface water, entire species, the local economy, and even the lives of thousands. The pipeline has already had at least two leaks already.

Defendant brings this suit on his own behalf as a party who is affected by the planned construction and operation of the re-purposed pipeline and the new twin pipeline and whose land and resources in Collin County also is so affected. He owns land that is crossed by the re-purposed pipeline and will be crossed by the new twin interstate pipeline project that is the subject of this action; each uses water from one or more of the water sources threatened by the use of these pipelines to transport environmentally hazardous products; and each has livestock,

wildlife, and other natural resources that are subject to destruction should the pipeline project begin operation as currently planned.

Despite Seaway Crude Pipeline Company's statements that the pipelines at issue are *intrastate*, in formal filings with the federal government, Seaway Crude Pipeline Company sets forth its intention to operate in *interstate* commerce, subject to tariffs filed with the Federal Energy Regulatory Commission.

The pipelines at issue starting at the Texas-Oklahoma border, will traverse the Red River, the Trinity and Carrizo-Wilcox Aquifers, the Post Oak Wildlife District, Lake Lavon, Richland-Chambers Lake, among other sensitive areas. As it crosses these areas, the pipeline will be cutting through numerous environmentally sensitive areas, which contain significant irreplaceable natural resources, flora, and fauna, including many rare or endangered species.

Numerous federal actions are indispensable prerequisites to completion and operation of the pipeline project, including the following:

a. The pipeline crosses the Red River, a navigable waterway, and possibly other navigable waterways, which requires federal action by the Army Corps of Engineers under § 404 of the Clean Water Act, as does repair and construction activity on the old re-purposed segment of the pipeline.

b. The United States Environmental Protection Agency ("EPA"), must consider the issuance and subsequent enforcement of permits to the pipeline project for construction and operation activities, pursuant to the Clean Water Act's National Pollutant Discharge Elimination System.

c. Pursuant to the Rivers and Harbors Act, the Army Corps of Engineers must issue a permit to Seaway for it to tunnel across or under Lake Lavon or Richland-Chambers Reservoir for the pipeline.

d. Seaway has sought permission from FERC to include some of the alleged value or acquisition cost of the pipeline in the calculation of its cost-of-service or for other use in its charges to its customers and is seeking other approvals from FERC that will determine the viability of the project.

e. Seaway is also required to comply with 49 U.S.C. § 60101 *et seq.* (“Hazardous Liquids Pipeline Safety Act”), and related regulations, 49 C.F.R. § 195.0 *et seq.*, which are triggered by any replacement, relocation, or other change made to existing pipelines after October 9, 1994. Operation of an interstate pipeline requires approval prior to the commencement of operations of the pipeline, which further constitutes a major federal action that can significantly affect the human environment, and which triggers the application of NEPA. The pipeline’s operations appear to be *interstate* and are thereby ***under federal control.***

f. The Federal Communications Commission, an arm of the United States, is in charge of permitting and licensing the system’s that Seaway is believed to intend to establish for remote, satellite-directed control of its automatic shut-off valve system, that is putatively an integral part of the planned pipeline project.

g. The wastes generated by Seaway’s activities associated with re-

regulatory scheme established under the federal Resource Conservation and Recovery Act (“RCRA”).

These federal actions, singly, in combination, or *in toto*, constitute major federal action and, consequently, trigger a requirement under NEPA that one or more of these federal agencies prepare an environmental impact statement (“EIS”) for the project consistent with, among other things, regulations promulgated by the Council on Environmental Quality (“CEQ Regulations”), found at 40 C.F.R. Parts 1500-1508. Until these steps are taken, the federal agencies have no authority to conclude action upon the necessary federal permits, licenses, and/or authorizations that Seaway must obtain.

Environmental review of this massive project has been so woefully inadequate to date as to be virtually non-existent. No agency, state or federal, has conducted any kind of environmental review of the Seaway pipeline project, notwithstanding its potential for massive environmental impacts across a wide swath of Texas.

Seaway has been involved in a concerted effort to avoid full-fledged review of the environmental consequences of its project, and its use of the outdated Gulf Coast to Cushing pipeline segment is critical to this effort.

None of these federal agencies has prepared an EIS, as required by NEPA, for the pipeline as a whole, nor for any segment of the proposed pipeline. There has been no environmental assessment; no finding of “no significant impact”; no EIS; and no record of decision as to any segment.

Further, no EIS (or any other NEPA-required document) has been prepared for either the entire pipeline project or for the Texas.

Documents filed with various state and federal agencies reveal a concerted scheme by Seaway to avoid, circumvent, or otherwise manipulate the various state and federal agencies into providing piecemeal approval and authority for the proposed pipeline operation. This subterfuge has resulted in an avoidance of requirements under NEPA that an EIS be prepared for the project as a whole, evaluating the impact of the pipeline from at least the Texas Gulf Coast to the Red River. As a result, right of way acquisition, construction, and state and federal authorization procedures have proceeded, notwithstanding the fact that a full and final EIS has never been required or prepared on this project.

Upon information and belief, the pipeline necessitates further federal agency action for river crossings, north of Collin County to the Red River. Seaway has failed to obtain necessary authorizations and requirements under NEPA, which themselves will further a project that will significantly affect the environment and without which the Texas segments, and its effects on Defendants, would not occur.

Because the pipeline project is one continuous project from the Gulf Coast of Texas to the Red River North of Collin County, Texas (and further to the Cushing, Oklahoma area) the granting of rights of way permits by the federal government, and the other federal action required (*e.g.*, FERC and the Army Corps of Engineers) for the pipeline to cross federal public lands, rivers, and other waterways, the project requires major federal action that may significantly affect the quality of the human environment. The potential adverse effects of the pipeline project to the people and natural resources of the people of the State of Texas include, but are not limited to, irreparable damage to Lake Lavon, Richland Chambers Reservoir, the Trinity and Carrizo-Wilcox Aquifers, the Post Oak Wildlife District. Further, without the required EIS, there is the potential for irreparable harm to a number of endangered species in these areas.

DEFENDANT'S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 14

If right of way acquisition, ratemaking, and similar FERC activities, as well as other federal approval processes continue, thus allowing the Longhorn pipeline project to finalize construction and begin operation without the preparation of an adequate and final EIS for the entire project, the Defendants will suffer immediate and irreparable harm for which they lack an adequate remedy at law. Plaintiff has indicated an intention to start placing products in the new pipeline as early as 2014. It has on information and belief already reversed the re-purposed portion of the pipeline. Defendants seek to stop this until full NEPA compliance has been achieved with respect to the new pipeline as well as the re-purposed portion of the pipeline.

C. Threatened and Endangered Species and Waterways

There are a number of threatened or endangered species in Collin County generally and near the pipeline project specifically that may be impacted by the pipeline construction. These are protected under both federal and state law, and include plants, birds, mammals, crustaceans, and reptiles. The Endangered Species Act of 1973, the Bald and Golden Eagle Protection Act of 1940 and similar provisions in the Texas Administrative Code are implicated. In addition, the Texas Parks and Wildlife Department Code, Chapters 68 and 88 contain regulations for protected plants and animals. Under these laws, the organism itself is protected from “direct taking.” Known species in the area include American Kestrel, Kildeer, Red-Tailed Hawk, Greater Roadrunner, House Sparrow, Turkey Vulture, Fox Squirrel, Timber/Canebrake Rattlesnake, and Texas Heelsplitter. Several other species are likely in the area given the existing habitat. In addition, certain migratory birds are found in the area, nesting between the months of March through October each year. Both the waterfowl and the eggs are protected.

The proposed construction of the new pipeline segment also calls for the pipeline to be placed across the side of a hill, resulting in erosion, and displacement of soil and debris toward a

DEFENDANT’S OBJECTIONS TO THE FINDINGS OF THE SPECIAL COMMISSIONERS, SPECIAL APPEARANCE AND PLEA TO THE JURISDICTION, MOTION TO DISMISS, MOTION FOR TEMPORARY AND PERMANENT INJUNCTION, MOTION FOR DECLARATORY JUDGMENT, AND ORIGINAL ANSWER – Page 15

stream that is part of the Trinity East Fork Watershed that provides drinking water to local communities. Because more than one acre of land will be disturbed, both the Clean Water Act and the Water Quality Act of 1987 must be complied with. Plaintiff is not in compliance.

None of the required pre-construction assessments have been made under the relevant federal and state laws related to endangered species or water quality described above. Plaintiff's activities must be enjoined until full compliance has been accomplished.

VII.

VIOLATIONS OF THE LAW

NEPA establishes a national policy that the federal government use all practicable means and measures to create and maintain conditions in which people and nature can exist in productive harmony, 42 U.S.C. § 4331(a). To achieve this goal, § 102 of NEPA contains “action-forcing” provisions to insure that federal agencies act according to the letter and spirit of the Act. Despite NEPA and the CEQ Regulations, the Army, FERC, have not prepared a full and final EIS for the pipeline project and Plaintiff has failed to request or assure that an EIS is prepared. The result is that Seaway has thus far avoided an EIS for its entire pipeline project. This is unreasonable, and is contrary to applicable federal law, specifically including:

- a. the requirement in 40 C.F.R. § 1502.4 that related proposals affecting a “single course of action” shall be evaluated in a single EIS;
- b. the requirement in 40 C.F.R. § 1508.25 that an EIS must address reasonably foreseeable cumulative impacts;
- c. the requirement in 40 C.F.R. § 1508.25 that an EIS must address reasonably foreseeable indirect impacts; and

d. the requirement in 40 C.F.R. § 1502.16 that an EIS adequately address environmental consequences.

VIII.

PRELIMINARY INJUNCTION

This Court must enter a preliminary injunction to preserve the status quo during the pendency of this case. It must prohibit the reverse-flow of crude oil products in general and bitumen in particular through the re-purposed portion of the pipeline on Defendant's land because 1) it has not been shown to be safe, 2) it is contrary to the original design of the pipeline, 3) it is being done under greater pressure than originally designed or that is safe, 4) Plaintiff has no easement or permission to pump anything through the re-purposed segment of the pipeline on Defendant's land other than crude oil in a northbound direction as defined by the Texas Natural Resources Commission. Thus, if it is in fact pumping bitumen through the re-purposed portion of the pipeline then it is trespassing. This Court must prohibit construction or use of the new twin pipeline until a final Environmental Impact Statement is prepared by the United States Environmental Protection Agency.

If the defendants take the major federal action that would allow the pipeline to be constructed prior to this Court entering a final judgment in this case, the Defendant may be deprived of an effective remedy under NEPA. *See, e.g.*, CEQ Regulations, 40 C.F.R. § 1506.1(a) (federal agency to take no action on a proposal which would either have an adverse environmental impact or "[l]imit the choice of reasonable alternatives"). The Defendant is likely to prevail on the merits, and, on balance, the greater harm from disturbance of the status quo is on the Defendant.

IX.

ORIGINAL ANSWER

Without waiving his special appearance or complaint about jurisdiction, Defendant denies all and singular the allegations made in Plaintiff's statement and petition.

VIII.

JURY DEMAND

Defendant demands a trial by jury.

FOR THESE REASONS, Plaintiffs lawsuit should be dismissed with prejudice to refiling of same as this Court has no jurisdiction for the reasons stated above. Defendant further prays that this Court:

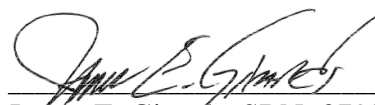
- a. issue a preliminary injunction to preserve the status quo until the case is determined on the merits;
- b. grant Defendant Leave of Court in order to bring the relevant and necessary federal agencies into this case so that an Environmental Impact Study described above can be performed prior to any further construction efforts or re-purposing efforts are made of the pipeline at issue;
- c. issue a declaratory judgment declaring that NEPA has been violated by any federal approvals and other actions that have permitted and enabled the interstate Seaway pipeline project to proceed without the preparation of an EIS;
- d. issue an injunction prohibiting any further construction or construction-related activities from being undertaken with regard to the interstate Seaway pipeline project until an EIS has been prepared and the requirements of NEPA have been fully satisfied;
- f. allow the Defendant to recover the costs of this action, including attorney fees pursuant to 28 U.S.C. § 2412; and
- g. issue an injunction preventing Plaintiff from entering Defendant's land for any reason until this case has been resolved;
- h. issue an injunction preventing 1) the north-to-south flow of petroleum products through the 37-year old pipeline at issue, 2) prohibiting altogether the transport of any

product that does not meet the definition of “crude oil” as defined by the Texas Natural Resources Code through either pipeline, and 3) prohibit operation of the old pipeline segment in any manner that is not described in its original design and engineering documents as well as the original easement documents;

- i. issue a Declaratory Judgment that all easements obtained by Seaway Crude Pipeline Company in Texas after August 26, 2011 without full disclosure of the Texas Supreme Court’s opinion in *TEXAS RICE LAND PARTNERS v. DENBURY GREEN*, 09-0901 (Tex. 8-26-2011) are void or voidable at the option of the landowner;
- j. in the alternative, enter Judgment that the parcel of land in question is harmed in excess of \$36,900 per unimproved acre for the entire 42 acre tract, which value is the highest proven value of unimproved land within a 1 mile radius of the parcel at issue; and
- k. for all further relief to which Defendant is justly entitled.

Respectfully Submitted,

THE GIRARDS LAW FIRM



James E. Girards, SBN: 07980500

J. Michael Ramey, SBN: 24010330

10,000 N. Central Expressway, Suite 750

Dallas, Texas 75231

214/346-9529 *telephone*

214/346-9532 *facsimile*

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

A true and complete copy of the foregoing document was faxed, mailed or served to all counsel of record on July 15, 2013.



James E. Girards

EXHIBIT A

Form 304**(Revised 05/11)**

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$750



**Application for
Registration
of a Foreign Limited
Liability Company**

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas

APR 05 2012**Corporations Section**

1. The entity is a foreign limited liability company. The name of the entity is:
Seaway Crude Pipeline Company LLC

Provide the full legal name of the entity as stated in the entity's formation document in its jurisdiction of formation.

- 2A. The name of the entity in its jurisdiction of formation does not contain the word "limited liability company" or "limited company" (or an abbreviation thereof). The name of the entity with the word or abbreviation that it elects to add for use in Texas is:
N/A

- 2B. The entity name is not available in Texas. The assumed name under which the entity will qualify and transact business in Texas is:
N/A

The assumed name must include an acceptable organizational identifier or an accepted abbreviation of one of these terms.

3. Its federal employer identification number is:

☒ Federal employer identification number information is not available at this time.

4. It is organized under the laws of: (set forth state or foreign country) Delaware
and the date of its formation in that jurisdiction is: March 26, 2012

mm/dd/yyyy

5. As of the date of filing, the undersigned certifies that the foreign limited liability company currently exists as a valid limited liability company under the laws of the jurisdiction of its formation.

6. The purpose or purposes of the limited liability company that it proposes to pursue in the transaction of business in Texas are set forth below.

To engage in (i) the planning, design, construction, acquisition, ownership, operation, modification and maintenance of pipelines and related facilities and assets (and any enhancements thereto), (ii) the marketing of the services of such assets, (iii) the transportation of crude oil, and (iv) any other lawful act that may be necessary, convenient, incidental or advisable to accomplish the foregoing purposes.

The entity also certifies that it is authorized to pursue such stated purpose or purposes in the state or country under which it is organized.

7. The date on which the foreign entity intends to transact business in Texas, or the date on which the foreign entity first transacted business in Texas March 26, 2012
is:

mm/dd/yyyy

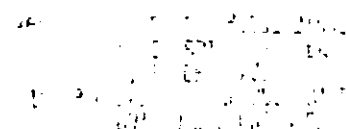
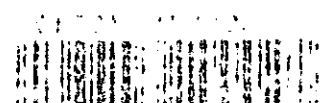
Late fees may apply (see instructions).

8. The principal office address of the limited liability company is:

Form 304

6

RECEIVED
APR 05 2012
Secretary of State



| | | | | |
|-----------------------|-------------|--------------|----------------|------------------------|
| 1100 Louisiana Street | Houston | TX | USA | 77002 |
| <i>Address</i> | <i>City</i> | <i>State</i> | <i>Country</i> | <i>Zip/Postal Code</i> |

Complete item 9A or 9B, but not both. Complete item 9C.

☐ 9A. The registered agent is an organization (cannot be entity named above) by the name of:

C T Corporation System

OR

☐ 9B. The registered agent is an individual resident of the state whose name is:

| First Name | M.I. | Last Name | Suffix |
|------------|------|-----------|--------|
|------------|------|-----------|--------|

9C. The business address of the registered agent and the registered office address is:

| | | | |
|-----------------------------------|--------|----|------------|
| 350 N. St. Paul Street Suite 2900 | Dallas | TX | 75201-4234 |
|-----------------------------------|--------|----|------------|

| Street Address | City | State | Zip Code |
|----------------|------|-------|----------|
|----------------|------|-------|----------|

10. The entity hereby appoints the Secretary of State of Texas as its agent for service of process under the circumstances set forth in section 5.251 of the Texas Business Organizations Code.

11. The name and address of each governing person is:

| Name and Address of Governing Person (Enter the name of either an individual or an organization, but not both.) | | | | | |
|---|---------|-----------|--------|---------|----------|
| If Individual | | | | | |
| First Name | M.I. | Last Name | Suffix | | |
| OR | | | | | |
| If Organization | | | | | |
| Enbridge Holdings (Seaway) L.L.C. | | | | | |
| Organization Name | | | | | |
| 1100 Louisiana Street, Suite 3300 | Houston | TX | USA | 77002 | |
| Street or Mailing Address | | City | State | Country | Zip Code |

| Name and Address of Governing Person (Enter the name of either an individual or an organization, but not both.) | | | | | |
|---|---------|-----------|--------|---------|----------|
| If Individual | | | | | |
| First Name | M.I. | Last Name | Suffix | | |
| OR | | | | | |
| If Organization | | | | | |
| Enterprise Seaway L.P., by Enterprise Crude GP LLC, its general partner | | | | | |
| Organization Name | | | | | |
| 1100 Louisiana Street, Suite 16.000 | Houston | TX | USA | 77002 | |
| Street or Mailing Address | | City | State | Country | Zip Code |

| Name and Address of Governing Person (Enter the name of either an individual or an organization, but not both.) | | | | | |
|---|------|-----------|--------|---------|----------|
| If Individual | | | | | |
| First Name | M.I. | Last Name | Suffix | | |
| OR | | | | | |
| If Organization | | | | | |
| Organization Name | | | | | |
| Street or Mailing Address | | City | State | Country | Zip Code |

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Effectiveness of Filing (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: March 26, 2012



Signature of authorized person (see instructions)

D. BARRY MOORE JR., PRESIDENT

Printed or typed name of authorized person.

EXHIBIT B

RAILROAD COMMISSION OF TEXAS
SAFETY DIVISION
PIPELINE PERMIT SECTION

RECEIVED
RRC OF TEXAS

APR 18 2011

Form T-4C

(1/09)

SAFETY DIVISION
AUSTIN, TEXAS

PIPELINE AND GATHERING SYSTEM CERTIFICATION RENEWAL FORM

| COMPANY / ADDRESS ENTERPRISE CRUDE PIPELINE LLC ATTN NEAL BURRELL 1100 LOUISIANA ST SUITE 1375 HOUSTON TX 77002 | | PERMIT NO. 05161 | P-5 NO. 253136 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|-------------------------------------|---|------------------------------|--|-----------------------|-------------------|-------|-------------------------------------|-------------------------|------------|--------------------------|-------|-------|--------------------------|-------|------------|--------------------------|-------|----------------------|--------------------------|-------|----------------------|--------------------------|-------|---------|--------------------------|-------|---------------|--|--|--|--|--|--|--|--|
| <p>PIPELINE CLASSIFICATION</p> <p>Common Carrier <input checked="" type="checkbox"/> Interstate <input checked="" type="checkbox"/></p> <p>Gas Utility <input type="checkbox"/> Intrastate <input type="checkbox"/></p> <p>Private <input type="checkbox"/></p> <p>Issuance Date of Last Permit <u>05/13/2010</u></p> <p>Location of Line(s) by County(s) _____</p> <p><u>BRAZORIA</u> <u>COLLIN</u> <u>FORT BEND</u> <u>FREESTONE</u></p> <p><u>GRAYSON</u> <u>Grimes</u> <u>Harris</u> <u>Henderson</u> <u>Kaufman</u> <u>Leon</u> <u>Madison</u> <u>Nacogdoches</u> <u>Walker</u></p> | | <p>PLEASE ANSWER (A) & (B)</p> <table><thead><tr><th></th><th>(A) Fluid Transported</th><th>(B) Miles of Pipe</th></tr></thead><tbody><tr><td>Crude</td><td><input checked="" type="checkbox"/></td><td><u>371.742 370.6 Bm</u></td></tr><tr><td>Condensate</td><td><input type="checkbox"/></td><td>_____</td></tr><tr><td>Gas *</td><td><input type="checkbox"/></td><td>_____</td></tr><tr><td>Products *</td><td><input type="checkbox"/></td><td>_____</td></tr><tr><td>Full Oil Well Stream</td><td><input type="checkbox"/></td><td>_____</td></tr><tr><td>Full Gas Well Stream</td><td><input type="checkbox"/></td><td>_____</td></tr><tr><td>Other *</td><td><input type="checkbox"/></td><td>_____</td></tr><tr><td colspan="3">Specify _____</td></tr><tr><td colspan="2">Does fluid contain H₂S? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td><td></td></tr><tr><td colspan="3">If yes, at what concentration? <u><70</u> ppm</td></tr></tbody></table> | | | (A) Fluid Transported | (B) Miles of Pipe | Crude | <input checked="" type="checkbox"/> | <u>371.742 370.6 Bm</u> | Condensate | <input type="checkbox"/> | _____ | Gas * | <input type="checkbox"/> | _____ | Products * | <input type="checkbox"/> | _____ | Full Oil Well Stream | <input type="checkbox"/> | _____ | Full Gas Well Stream | <input type="checkbox"/> | _____ | Other * | <input type="checkbox"/> | _____ | Specify _____ | | | Does fluid contain H ₂ S? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | If yes, at what concentration? <u><70</u> ppm | | |
| | (A) Fluid Transported | (B) Miles of Pipe | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Crude | <input checked="" type="checkbox"/> | <u>371.742 370.6 Bm</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Condensate | <input type="checkbox"/> | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Gas * | <input type="checkbox"/> | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Products * | <input type="checkbox"/> | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Full Oil Well Stream | <input type="checkbox"/> | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Full Gas Well Stream | <input type="checkbox"/> | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Other * | <input type="checkbox"/> | _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Specify _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Does fluid contain H ₂ S? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If yes, at what concentration? <u><70</u> ppm | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

This will certify that the installations described above have not been subject to any modifications, extensions or abandonments since the issuance date of last permit.

REMARKS: _____

CERTIFICATE

I declare under penalties prescribed in Sec. 91.143, Texas Natural Resources Code, that I am authorized to make this report, that this report was prepared by me or under my supervision and direction, and that data and facts stated therein are true, correct, and complete, to the best of my knowledge.

Neal Burrell
Signature

Neal Burrell
Name of Person (type or print)

04/04/2011 Sr. Pipeline Compliance Specialist
Date Title

Telephone Number 713 381-3536
Area Code Number

E-mail wnburrell@eprod.com

Fax (713) 803-1354

Please mail **completed** Form T-4C to Railroad Commission of Texas, Safety Division / Pipeline Permits, P. O. Box 12967, Austin, TX 78711-2967.

If you have any questions call (512) 463-7194 (operators A-L) or (512) 463-7211 (operator M-Z)

The Railroad Commission does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision of services. TDD/TDY (512) 463-7284

EXHIBIT C

CAUSE NO. 002-335-2013

SEAWAY CRUDE PIPELINE COMPANY §
LLC, §

Plaintiff, §

VS. §

FREDDY J. DAVENPORT, §

Defendant. §

EMINENT DOMAIN
PROCEEDING IN

THE COUNTY COURT
AT LAW NO. 2

COLLIN COUNTY, TEXAS

AWARD OF SPECIAL COMMISSIONERS

TO THE HONORABLE JUDGE OF SAID COURT:

On June 21, 2013, at 8:30 a.m., at the Holiday Inn McKinney, 3220 Craig Drive, McKinney, Texas 75070, in Collin County, Texas, the above-styled and numbered eminent domain proceeding came to be heard before the undersigned Special Commissioners.

I.

On February 13, 2013, Plaintiff Seaway Crude Pipeline Company LLC filed its Original Statement and Petition for Condemnation with the County Court at Law No. 2 of Collin County, Texas, wherein, upon the facts alleged, Plaintiff Seaway Crude Pipeline Company LLC sought condemnation of a right-of-way and easement upon certain land more particularly described in Plaintiff's Original Statement and Petition for Condemnation (the "Petition") and in Exhibit 1 attached hereto.

II.

Upon consideration of such Petition and forthwith upon filing, the Court appointed the undersigned three disinterested real property owners of Collin County as Special Commissioners to

assess the damages, if any, occasioned by the condemnation of such property interest for the purposes of a common carrier pipeline, as more fully set out in said Petition.

III.

The undersigned Commissioners so appointed and duly qualified as such, each taking the Oath as prescribed by law, set the 21st day of June 2013, at 8:30 a.m., at the Holiday Inn McKinney, 3220 Craig Drive, McKinney, Texas 75070, in Collin County, Texas, as the time and place for hearing the Parties; such day being the earliest practicable date and such place being in the county in which said property in controversy is situated; of which time and place of hearing the undersigned Commissioners issued a notice in writing to Defendant; and Notice of Hearing and Plaintiff's Original Statement and Petition for Condemnation were duly served upon Defendant.

IV.

By Notice of Hearing (signed on May 14, 2013 by Commissioners O'Hagan and Wilson and signed on May 22, 2013 by Commissioner Shaw), the undersigned Commissioners set the hearing of this matter for the 21st day of June, at 8:30 a.m., at the Holiday Inn McKinney, 3220 Craig Drive, McKinney, Texas 75070, in Collin County, Texas, which is a place that is as near as practical to the property being condemned. On the day and at the place and time so appointed for such hearing, the undersigned Commissioners appeared for said hearing, and Plaintiff, Seaway Crude Pipeline Company LLC duly appeared by its representatives and attorneys. Defendant Freddy J. Davenport [did] ~~[did not]~~ appear ^{through his son, Dale R. Davenport,} and participate in the hearing. Whereupon, the undersigned Commissioners proceeded to hear evidence as to the value of the property sought to be condemned and as to the damages which will be sustained by the owner of said property by reason of such condemnation of those certain easements described in the

Petition, and said undersigned Commissioners have assessed the injuries sustained and the benefits received by the Defendant by reason of such condemnation.

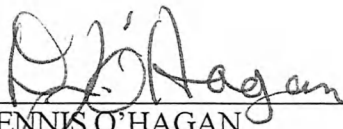
V.

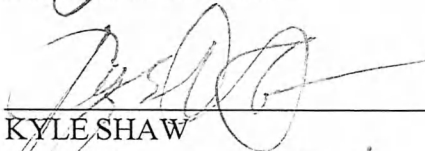
Accordingly, on June 21, 2013, we the undersigned Commissioners do hereby state, decide, assess and ORDER that the total amount of damages payable to Defendant is \$ 8,060.⁰⁰, and adjudge all costs of this proceeding against Plaintiff Seaway Crude Pipeline Company LLC.

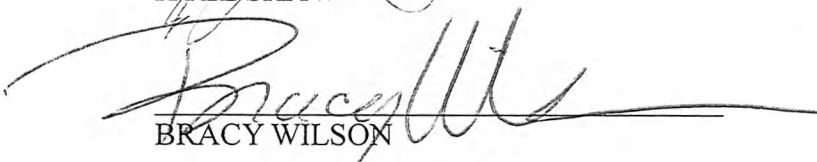
VI.

Our decision is hereby reduced to writing, and it and all other papers connected with this proceeding are herewith returned to the Honorable Judge of the County Court at Law No. 2 of Collin County, Texas.

SIGNED and DATED this 21 day of June, 2013.


DENNIS O'HAGAN


KYLE SHAW


BRACY WILSON

SPECIAL COMMISSIONERS

The above Award of the Special Commissioners is filed with me on this the ____ day
of _____ 2013.

Presiding Judge

County Court at Law No. 2
COLLIN COUNTY, TEXAS