

Mining may have edge on landowners

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Counterpoint

The Star Tribune editorial on the recent state Executive Council decision to approve mineral leases beneath private property suggested that landowners were seeking special treatment ("[State was fair, firm on copper mining](#)," June 9). On the contrary, it is the mining industry that may receive special privileges to gain control of private property across northern Minnesota.

Most Minnesotans assume that anyone who wants to take our homes or businesses will have to come to us and negotiate a purchase. We assume that the government can't take our property to benefit another private business, even if that business promises more jobs or tax base.

The good news: In general, we're right. The bad news? We may be wrong if a mining company wants our land.

Both the federal and Minnesota constitutions only allow land to be condemned -- that is, taken by government -- for a "public purpose." For decades, that public purpose was interpreted to mean that government could take private property for roads, parks and schools, but it could not choose one private owner over another.

As the 21st century dawned, courts kept broadening the definition of "public purpose." In Minnesota, the definition became extremely broad in 2001, when the Court of Appeals ruled that the city of Richfield could condemn Walser's automobile sales business to make way for a Best Buy headquarters.

In the federal courts, the controversial 2005 case of *Kelo v. New London* allowed New London, Conn., to condemn private property to make way for a waterfront development promising new revenues.

After the *Kelo* case, more than 35 states -- including Minnesota -- passed laws limiting government condemnation power.

A 2006 Minnesota law forbids the government from taking a person's property to benefit another private business. The law states that "eminent domain may only be used for a public use or public purpose." According to this law, "public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose."

What does this mean for mineral lease claims across Minnesota?

Without special treatment, owning mineral rights would not entitle a company to take surface land it doesn't own. The company could mine by tunneling from adjacent land or it could do what the rest of us do -- negotiate and buy land or easements without coercing the owner.

Companies, however, point to a 100-year-old statute that appears to give mining interests special privileges. If a company with a minerals lease fails to make a deal with the property owner, the company could tell the state attorney general to condemn property rights for the benefit of the mining interest.

But this law (Minnesota Statute 93.05) has never been tested in court, as landowners learned at the Executive Council meeting this month. The attorney general has never condemned homes and businesses to make way for the mining



Ron Brodigan and his son Steve Brodigan posed on a dock in Sand Lake, which is full of wild rice. They are among those who have raised concerns about copper mining in northern Minnesota because of its threat to private property rights and its potential environmental impacts, including on wild rice.

Renee Jones Schneider, Star Tribune

industry.

Why should Minnesotans care if the mining industry gets special treatment in eminent domain?

During the 2006 debate on eminent domain, senior staff at the Minneapolis Federal Reserve explained that government intervention to provide companies with cheap, condemned land does not improve economic outcomes.

Sometimes, development would have occurred without eminent domain, so the only economic result is a net gain for the developer and a net loss for the landowner. Sometimes the project for which existing land uses are condemned and demolished is never completed.

Special privileges for the mining industry have the potential to cause enormous harm to Minnesota's economy. The Minnesota Department of Natural Resources controls mineral leases below 13.5 million acres in Minnesota -- nearly one-fourth of the state. Imagine the effect on Minnesota's economy if any land with a mineral lease could be condemned out from under its owners.

Across Minnesota's Lake Country, homeowners, cabin owners and businesspeople have already reported that prospecting has reduced the value of their property. If mining companies are allowed to condemn land or easements, private property rights of Minnesotans could be devastated.

Courts, not politicians, will decide whether the 2006 law protecting property rights must be respected by the mining industry. We trust that they will require mining companies to play by the rules.

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