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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

KERN RIVER GAS TRANSMISSION
COMPANY,)

Plaintiff,)

vs.)

4.6 ACRES OF PROPERTY LOCATED IN)
CLARK COUNTY, NEVADA, MORE OR)
LESS; SUMMERLIN NORTH)
COMMUNITY ASSOCIATION, AND)
UNKNOWN OTHERS.)

Defendants.)

COMPLAINT

Case No. 2:09-cv-1680

Kern River Gas Transmission Company (“Kern River”) alleges as follows:

I. PARTIES

1. Kern River Gas Transmission Company is a Texas general partnership with its principal place of business in Salt Lake City, Utah.

2. Upon information and belief, Summerlin North Community Association (“Summerlin North”) is a Nevada homeowners association existing under the laws of the State of

Nevada. Summerlin North is the record owner of the real property described in Paragraph 39 of this Complaint.

3. There may be others who have or may claim some interest in the subject real property, whose names are unknown to Kern River and on diligent inquiry have not been ascertained and are referred to as “Unknown Others.”

II. JURISDICTION AND VENUE

4. An actual controversy exists between Kern River and Summerlin North as to the Easement Agreement which burdens Summerlin North’s property, as described herein.

5. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(1) because Kern River and Summerlin North are citizens of different states and the value to Kern River of ensuring its ability to operate the pipeline at a higher MAOP exceeds \$75,000.00.

6. This Court has jurisdiction of Kern River’s alternative eminent domain action pursuant to 28 U.S.C. §1331 and 15 U.S.C. § 717f(h).

7. Venue is proper pursuant to 28 U.S.C. § 1391(a)(2) and (b).

III. GENERAL ALLEGATIONS

A. The 1990 FERC Certificate

8. The Federal Energy Regulatory Commission (“FERC”) issued an optional Certificate of Public Convenience and Necessity to Kern River on January 24, 1990 in Docket No. CP89-2048 (50 FERC ¶ 61,109 (the “1990 Certificate”), authorizing the construction, operation, and maintenance of a natural gas pipeline transportation system to be used for the interstate transportation of natural gas from producing areas in the State of Wyoming, through Utah, Southern Nevada, and into areas of Southern California.

9. The 1990 Certificate authorized Kern River to construct, operate and maintain a 36 inch diameter interstate underground natural gas transmission pipeline at a maximum allowable operating pressure of 1200 pounds per square inch gauge (“psig”). The term “maximum allowable operating pressure” is defined by 49 CFR 192.3 as “the maximum pressure at which a pipeline or segment of a pipeline may be operated under this part” (“MAOP”).

10. The Kern River interstate pipeline system was originally designed to provide up to 700 mmcf/d of year-round, firm transportation service from Wyoming receipt points to delivery points in Utah, Nevada and California.

11. The Kern River pipeline system was placed into service in February 1992.

B. Subsequent Expansion Projects Approved by FERC

12. Kern River has expanded its system from the original design by constructing the 2002 Expansion (Docket No. CP01-31), the California Action Project (Docket No. CP01-106), and the 2003 Expansion Project (Docket No. CP01-422).

13. The expansions were approved by the FERC.

14. The expansions were necessary to serve the demands of the western energy markets and more than doubled Kern River’s design capacity, increasing it to approximately 1,731,126 Dth/d.

15. Kern River’s firm capacity from Wyoming to California is fully subscribed.

16. Based on the market demand for more transmission capacity on the Kern River interstate pipeline system, Kern River held an open season and offered additional pipeline capacity to Kern River’s existing shippers and third parties (“2010 Expansion Project”).

17. As a result of the open season, Kern River executed 11 transportation service agreements, for a total of 145,000 Dth/d of expansion capacity.

C. Special Permit Application and Approval from DOT

18. In August 2007, Kern River filed an application with the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (the “DOT”) to obtain a special permit to increase the MAOP on the Kern River pipeline system.

19. On January 4, 2008, the DOT posted a public notice of Kern River’s special permit request in the Federal Register (72 FR 6042).

20. The DOT issued the special permit on November 6, 2008.

21. The special permit contains a finding by the DOT that granting a special permit to allow Kern River to increase the MAOP from 1200 psig to 1333 psig is not inconsistent with pipeline safety and will have no significant impact on the environment.

22. In a notice of proposed rulemaking of March 12, 2008, in which the DOT announced its intention to permit the nation’s interstate natural gas pipelines to operate at a higher MAOP than previously permitted, the DOT concluded that advances in pipeline assessment tools and maintenance practices have “significantly reduced the risk of failure in steel pipeline[s].” 73 Fed. Reg. 13167 (March 12, 2008). The MAOP regulations in effect in 1993 had “their origin in engineering standards developed in the 1950s, when industry had relatively limited information about the material properties of pipe and limited ability to evaluate a pipeline’s integrity during its operating lifetime.” *Id.*

D. The 2009 FERC Certificate of Public Convenience & Necessity

23. On June 20, 2008, Kern River applied for a certificate of public convenience and necessity from the FERC.

24. The FERC issued the Certificate on June 4, 2009, a copy of which is attached as Exhibit A. Kern River Gas Transmission Company, 127 FERC ¶ 61,223 (2009). The Certificate authorizes Kern River to increase the existing pipeline MAOP from 1,200 psig to 1,333 psig, consistent with the special permit issued by the DOT.

25. The FERC issued a Notice to Proceed with the 2010 Expansion Project on July 17, 2009.

E. Good Faith Negotiation Between Summerlin North and Kern River

26. Kern River sent a written request to Summerlin North on or about December 17, 2007, regarding the MAOP increase.

27. The December 17, 2007, correspondence requested that Summerlin North amend the existing easement by removing the reference “of 1,200 psig” and replacing it with “as determined pursuant to regulations of the United States Department of Transportation.”

28. Summerlin North did not respond to the December 17, 2007, correspondence.

29. Summerlin North directed Kern River to discuss any proposed amendment with Howard Hughes Properties, Inc.

30. Kern River contacted Howard Hughes Properties, Inc. in March 2009, and confirmed that Summerlin North owns real property encumbered by Kern River’s existing easement.

31. On April 22, 2009, Kern River representatives attended a Summerlin North board of directors meeting (“Summerlin North Board”) and discussed the MAOP increase.

32. Kern River requested that Summerlin North amend the Kern River easement during the April 22, 2009 meeting.

33. The board refused to amend the easement and requested that Kern River submit any regulatory approval to increase the MAOP.

34. Kern River provided the DOT Special Permit and the FERC Certificate to the Summerlin North board on June 9, 2009.

35. The Summerlin North board held a board meeting in June of 2009, which was attended by a Kern River representative.

36. Through its letter of June 25, 2009, the Summerlin North board acknowledged the approval of the FERC Certificate and the DOT Special Permit as the appropriate regulatory approval for the MAOP increase but again rejected Kern River’s offer to amend the easement. A copy of the June 25, 2009, letter is attached hereto as Exhibit B.

37. Kern River sent the Summerlin North board a letter on August 19, 2009, requesting that the Summerlin North board acknowledge that it would not seek trespass or any other related claims against Kern River for increasing the maximum allowable operating pressure from 1200 psig to 1333 psig.

38. The Summerlin North board responded on August 27, 2009, and rejected Kern River’s offer to amend the easement, stating that the 1993 easement prohibits an increase in the MAOP.

F. The Property Owned by Summerlin North Community Association

39. Summerlin North owns the following real property located in Clark County, Nevada, and described in Table 1:

TABLE 1

Parcel	Assessor's Parcel Number
1	137-13-897-011
2	137-24-597-003
3	137-24-597-008
4	137-24-597-013
5	137-24-697-003
6	137-24-697-009
7	137-24-713-005
8	137-24-713-006
9	137-24-797-002
10	137-24-897-006
11	137-24-897-007
12	137-24-897-008
13	137-24-897-013
14	137-25-597-004
15	137-25-597-026
16	137-25-597-027
17	137-25-697-004
18	137-25-697-006
19	137-25-797-001
20	137-25-797-040
21	137-25-797-042
22	137-25-797-043
23	137-25-897-018
24	137-25-897-021
25	137-25-897-023
26	137-36-597-009
27	137-36-597-010
28	137-36-697-004
29	137-36-697-009
30	137-36-697-013
31	137-36-797-006

32	137-36-897-004
33	137-36-897-005

40. The Summerlin North parcels identified in Paragraph 39 of this Complaint were deeded to Summerlin North by Howard Hughes Properties, Inc.'s predecessors in title in connection with the original Summerlin Community plan for development.

41. Kern River has an existing easement on portions of the property described in Paragraph 39 by virtue of the 1993 easement.

**IV. FIRST CAUSE OF ACTION
(Declaratory Relief, 28 U.S.C. §§2201,2202)**

42. Kern River hereby re-alleges and incorporates by reference the allegations and facts in the preceding paragraphs.

43. There is a real and actual controversy between Summerlin North and Kern River as to whether the 1993 easement allows Kern River to increase the pipeline's MAOP.

44. Kern River maintains the 1993 easement allows Kern River to increase the MAOP above 1200 p.s.i.g. Summerlin North maintains the 1993 easement does not allow Kern River to increase the MAOP above 1200 p.s.i.g.

45. Kern River therefore requests that the Court determine and adjudge that Kern River has the right to increase the MAOP on that part of Kern River's interstate pipeline system that encumbers Summerlin North's property by virtue of the 1993 easement.

**V. SECOND CAUSE OF ACTION
(Eminent Domain, 15 U.S.C. §717f(h))**

46. Kern River hereby re-alleges and incorporates by reference the allegations and facts in the preceding paragraphs.

47. In the event Kern River is not successful on its First Cause of Action, Kern River files this claim under 15 U.S.C. § 717f(h) for the appropriation to the public use of any property right or interest necessary to increase the MAOP within the existing easement on Summerlin North's property as set forth in Table 1.

48. Despite multiple attempts, Kern River has been unable to obtain an easement amendment by way of negotiation and contract with Summerlin North, and has been unable to agree with Summerlin North as to the compensation to be paid, if any, for the easement amendment.

49. Kern River contends the increase in MAOP will have no financial impact on the real property at issue and therefore the just compensation due the defendants is nominal, if any.

50. The instant action is necessary to serve the public interest by increasing the MAOP to the level currently or hereafter authorized by the DOT and the FERC, or any successor agency having jurisdiction over Kern River's interstate natural gas pipeline system.

51. The condemned property will continue to be used by Kern River for the interstate transportation of natural gas as authorized and regulated by the FERC and the DOT.

**VI. THIRD CAUSE OF ACTION
(Permanent Injunctive Relief)**

52. Kern River hereby re-alleges and incorporates by reference the allegations and facts in the preceding paragraphs.

53. Kern River requests that this Court enter a permanent injunction granting Kern River immediate occupancy to increase the existing Kern River pipeline system's MAOP as authorized by the FERC and the DOT.

54. Kern River has a substantial likelihood of succeeding on the merits because Kern River has obtained the requisite regulatory approval to increase the MAOP on Kern River's interstate pipeline system. The 1993 easement set no restrictions or limitations on the MAOP of Kern River's pipeline system, nor does it prohibit Kern River from obtaining regulatory approval to increase the MAOP. Under applicable case law, because Kern River has the right to choose a specific route within the FERC-approved corridor, the Court may not consider the appropriateness of Kern River's chosen route or MAOP as long as it falls within the FERC-approved order. The sole role of the Court is to enforce the FERC order, and Kern River's Certificate is prima facie evidence of Kern River's condemnation authority needed for immediate occupancy.

55. Kern River will suffer irreparable harm if the MAOP is not increased. As a result of the public demand for the increased transportation of natural gas from sources in the Rocky Mountain region, Kern River is increasing the MAOP to transport an additional 145,000 Dth/day of natural gas without adding additional pipeline. Kern River has entered into construction contracts for the addition of compression facilities in Wyoming and commercial contracts that require Kern River to deliver the natural gas, consistent with Kern River's tariff and certificate authority, to customers in Nevada and California. Any delays in the implementation of the MAOP increase will significantly impact the contractors and customers who have received contractual commitments from Kern River.

56. The threatened injury to Kern River from not increasing the MAOP far outweighs any harm to Summerlin North caused by increasing the MAOP. Kern River already occupies the easement and currently operates a single 36-inch interstate natural gas pipeline. Increasing the

MAOP will not change the current operation of the pipeline. Summerlin North will not suffer any harm from the increased MAOP, but Kern River, and particularly its customers and end users of the natural gas it transports, will suffer tremendous harm from any delays. In addition, the contractors and customers of Kern River, who have entered into contractual commitments, will suffer harm if the MAOP is not increased as authorized by the FERC and the DOT.

57. The public interest will be served by granting Kern River immediate occupancy to increase the MAOP. The order granting the FERC Certificate states that “consistent with the Certificate Policy Statement and section 7(c) of the NGA, [that] the public convenience and necessity requires approval of Kern River’s proposal.” FERC’s determination of public need and necessity is established as a matter of law and is not subject to collateral attack in this action. Therefore, the permanent injunctive relief should be granted.

WHEREFORE, Kern River prays for relief as follows:

1. On its FIRST CAUSE OF ACTION, judgment declaring that Kern River has the right to increase the MAOP on that part of Kern River’s interstate pipeline system that encumbers Summerlin North’s property by virtue of the 1993 easement;

2. On its SECOND CAUSE OF ACTION, an order from the Court awarding Kern River the right to increase the MAOP as now or hereafter approved by the FERC and the DOT, or any successor regulatory agencies having jurisdiction over the interstate transportation of natural gas, and awarding Summerlin North and Unknown Owners just compensation as their interests and the facts may appear:

3. On its THIRD CAUSE OF ACTION, an injunction awarding Kern River immediate occupancy of the property described herein for the public use of providing vital interstate natural gas transportation services;

4. Kern River's costs and expenses as allowed by law; and

5. Such other relief and further relief as the Court may deem just and proper.

Dated: August 28, 2009

VAN COTT, BAGLEY, CORNWALL & MCCARTHY, P.C.

By: /s/ Stephen K. Christiansen

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