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EMINENT DOMAIN MODIFICATIONS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Bridger Bolinder
Senate Sponsor: Scott D. Sandall

LONG TITLE

General Description:

This bill addresses eminent domain.

Highlighted Provisions:

This bill:

- defines terms;
- addresses when eminent domain related to mining is prohibited; and
- makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 78B-6-501**, as last amended by Laws of Utah 2023, Chapter 34
- 78B-6-502**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-6-503**, as renumbered and amended by Laws of Utah 2008, Chapter 3

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-6-501** is amended to read:

78B-6-501 . Eminent domain -- Uses for which right may be exercised --

Limitations on eminent domain.

(1) As used in this section[~~,-~~"century"] :

(a) "Century farm" means real property that is:

- ~~[(a)]~~ (i) assessed under Title 59, Chapter 2, Part 5, Farmland Assessment Act; and
- ~~[(b)]~~ (ii) owned or held by the same family for a continuous period of 100 years or

29 more.

30 (b) (i) "Mining use" means:

31 (A) the full range of permitted or active activities, from prospecting and
32 exploration to reclamation and closure, associated with the exploitation of a
33 mineral deposit; and

34 (B) the use of the surface, subsurface, groundwater, and surface water of an area
35 in connection with the activities described in Subsection (1)(b)(i)(A) that have
36 been, are being, or will be conducted.

37 (ii) "Mining use" includes, whether conducted on-site or off-site:

38 (A) sampling, staking, surveying, exploration, or development activity;

39 (B) drilling, blasting, excavating, or tunneling;

40 (C) the removal, transport, treatment, deposition, and reclamation of overburden,
41 development rock, tailings, and other waste material;

42 (D) the recovery of sand and gravel;

43 (E) removal, transportation, extraction, beneficiation, or processing of ore;

44 (F) use of solar evaporation ponds and other facilities for the recovery of minerals
45 in solution;

46 (G) smelting, refining, autoclaving, or other primary or secondary processing
47 operation;

48 (H) the recovery of any mineral left in residue from a previous extraction or
49 processing operation;

50 (I) a mining activity that is identified in a work plan or permitting document;

51 (J) the use, operation, maintenance, repair, replacement, construction, or alteration
52 of a building, structure, facility, equipment, machine, tool, or other material or
53 property that results from or is used in a surface or subsurface mining operation
54 or activity;

55 (K) an accessory, incidental, or ancillary activity or use, both active and passive,
56 including a utility, private way or road, pipeline, land excavation, working,
57 embankment, pond, gravel excavation, mining waste, conveyor, power line,
58 trackage, storage, reserve, passive use area, buffer zone, and power production
59 facility;

60 (L) the construction of a storage, factory, processing, or maintenance facility; and

61 (M) an activity described in Subsection 40-8-4(17)(a).

62 (2) Except as provided in Subsections (3)~~and~~, (4), and (5) and subject to the provisions

- 63 of this part, the right of eminent domain may be exercised on behalf of the following
64 public uses:
- 65 (a) all public uses authorized by the federal government;
 - 66 (b) public buildings and grounds for the use of the state, and all other public uses
67 authorized by the Legislature;
 - 68 (c) (i) public buildings and grounds for the use of any county, city, town, or board of
69 education;
 - 70 (ii) reservoirs, canals, aqueducts, flumes, ditches, or pipes for conducting water or
71 sewage, including to or from a development, for the use of the inhabitants of any
72 county, city, or town, or for the draining of any county, city, or town;
 - 73 (iii) the raising of the banks of streams, removing obstructions from streams, and
74 widening, deepening, or straightening their channels;
 - 75 (iv) bicycle paths and sidewalks adjacent to paved roads;
 - 76 (v) roads, byroads, streets, and alleys for public vehicular use, including for access to
77 a development; and
 - 78 (vi) all other public uses for the benefit of any county, city, or town, or its inhabitants;
 - 79 (d) wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and
80 turnpike roads, roads for transportation by traction engines or road locomotives,
81 roads for logging or lumbering purposes, and railroads and street railways for public
82 transportation;
 - 83 (e) reservoirs, dams, watergates, canals, ditches, flumes, tunnels, aqueducts and pipes for
84 the supplying of persons, mines, mills, smelters or other works for the reduction of
85 ores, with water for domestic or other uses, or for irrigation purposes, or for the
86 draining and reclaiming of lands, or for solar evaporation ponds and other facilities
87 for the recovery of minerals in solution;
 - 88 (f) (i) roads, railroads, tramways, tunnels, ditches, flumes, pipes, and dumping places
89 to access or facilitate the milling, smelting, or other reduction of ores, or the
90 working of mines, quarries, coal mines, or mineral deposits including oil, gas, and
91 minerals in solution;
 - 92 (ii) outlets, natural or otherwise, for the deposit or conduct of tailings, refuse or water
93 from mills, smelters or other works for the reduction of ores, or from mines,
94 quarries, coal mines or mineral deposits including minerals in solution;
 - 95 (iii) mill dams;
 - 96 (iv) gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or

- 97 formation in any land for the underground storage of natural gas, and in
98 connection with that, any other interests in property which may be required to
99 adequately examine, prepare, maintain, and operate underground natural gas
100 storage facilities;
- 101 (v) solar evaporation ponds and other facilities for the recovery of minerals in
102 solution; and
- 103 (vi) any occupancy in common by the owners or possessors of different mines,
104 quarries, coal mines, mineral deposits, mills, smelters, or other places for the
105 reduction of ores, or any place for the flow, deposit or conduct of tailings or refuse
106 matter;
- 107 (g) byroads leading from a highway to:
- 108 (i) a residence; or
109 (ii) a farm;
- 110 (h) telecommunications, electric light and electric power lines, sites for electric light and
111 power plants, or sites for the transmission of broadcast signals from a station licensed
112 by the Federal Communications Commission in accordance with 47 C.F.R. Part 73
113 and that provides emergency broadcast services;
- 114 (i) sewage service for:
- 115 (i) a city, a town, or any settlement of not fewer than 10 families;
116 (ii) a public building belonging to the state; or
117 (iii) a college or university;
- 118 (j) canals, reservoirs, dams, ditches, flumes, aqueducts, and pipes for supplying and
119 storing water for the operation of machinery for the purpose of generating and
120 transmitting electricity for power, light or heat;
- 121 (k) cemeteries and public parks; and
- 122 (l) sites for mills, smelters or other works for the reduction of ores and necessary to their
123 successful operation, including the right to take lands for the discharge and natural
124 distribution of smoke, fumes, and dust, produced by the operation of works, provided
125 that the powers granted by this section may not be exercised in any county where the
126 population exceeds 20,000, or within one mile of the limits of any city or
127 incorporated town nor unless the proposed condemner has the right to operate by
128 purchase, option to purchase or easement, at least 75% in value of land acreage
129 owned by persons or corporations situated within a radius of four miles from the mill,
130 smelter or other works for the reduction of ores; nor beyond the limits of the

- 131 four-mile radius; nor as to lands covered by contracts, easements, or agreements
132 existing between the condemner and the owner of land within the limit and providing
133 for the operation of such mill, smelter, or other works for the reduction of ores; nor
134 until an action shall have been commenced to restrain the operation of such mill,
135 smelter, or other works for the reduction of ores.
- 136 (3) The right of eminent domain may not be exercised on behalf of the following uses:
- 137 (a) except as provided in Subsection (2)(c)(iv), trails, paths, or other ways for walking,
138 hiking, bicycling, equestrian use, or other recreational uses, or whose primary
139 purpose is as a foot path, equestrian trail, bicycle path, or walkway;
- 140 (b) (i) a public park whose primary purpose is:
- 141 (A) as a trail, path, or other way for walking, hiking, bicycling, or equestrian use;
142 or
143 (B) to connect other trails, paths, or other ways for walking, hiking, bicycling, or
144 equestrian use; or
- 145 (ii) a public park established on real property that is:
- 146 (A) a century farm; and
147 (B) located in a county of the first class.
- 148 (4) (a) The right of eminent domain may not be exercised within a migratory bird
149 production area created on or before December 31, 2020, under Title 23A, Chapter
150 13, Migratory Bird Production Area, except as follows:
- 151 (i) subject to Subsection (4)(b), an electric utility may condemn land within a
152 migratory bird production area located in a county of the first class only for the
153 purpose of installing buried power lines;
- 154 (ii) an electric utility may condemn land within a migratory bird production area in a
155 county other than a county of the first class to install:
- 156 (A) buried power lines; or
157 (B) a new overhead transmission line that is parallel to and abutting an existing
158 overhead transmission line or collocated within an existing overhead
159 transmission line right of way; or
- 160 (iii) the Department of Transportation may exercise eminent domain for the purpose
161 of the construction of the West Davis Highway.
- 162 (b) Before exercising the right of eminent domain under Subsection (4)(a)(i), the electric
163 utility shall demonstrate that:
- 164 (i) the proposed condemnation would not have an unreasonable adverse effect on the

165 preservation, use, and enhancement of the migratory bird production area; and
 166 (ii) there is no reasonable alternative to constructing the power line within the
 167 boundaries of a migratory bird production area.

168 (5) If the intended public purpose is for a mining use, a private person may not exercise the
 169 power of eminent domain over property, or an interest in property, that is already used
 170 for a mining use within the boundary of:

171 (a) a permit area, as defined in Section 40-8-4;

172 (b) an area for which a permit has been issued by the Division of Water Quality, as part
 173 of the underground injection control program, under rules made by the Water Quality
 174 Board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

175 (c) private property; or

176 (d) an area under a state or federal lease.

177 Section 2. Section **78B-6-502** is amended to read:

178 **78B-6-502 . Estates and rights that may be taken.**

179 [The] Except as provided in Subsection 78B-6-501(3), (4), or (5), the following
 180 estates and rights in lands are subject to being taken for public use:

181 (1) a fee simple, when taken for:

182 (a) public buildings or grounds;

183 (b) permanent buildings;

184 (c) reservoirs and dams, and permanent flooding occasioned by them;

185 (d) any permanent flood control structure affixed to the land;

186 (e) an outlet for a flow, a place for the deposit of debris or tailings of a mine, mill,
 187 smelter, or other place for the reduction of ores; and

188 (f) solar evaporation ponds and other facilities for the recovery of minerals in solution,
 189 except when the surface ground is underlaid with minerals, coal, or other deposits
 190 sufficiently valuable to justify extraction, only a perpetual easement may be taken
 191 over the surface ground over the deposits;

192 (2) an easement, when taken for any other use; and

193 (3) the right of entry upon and occupation of lands, with the right to take from those lands
 194 earth, gravel, stones, trees, and timber as necessary for a public use.

195 Section 3. Section **78B-6-503** is amended to read:

196 **78B-6-503 . Private property which may be taken.**

197 [~~Private property which~~] Except as provided in Subsection 78B-6-501(3), (4), or
 198 (5), private property that may be taken under this part includes:

- 199 (1) all real property belonging to any person;
- 200 (2) lands belonging to the state, or to any county, city or incorporated town, not
201 appropriated to some public use;
- 202 (3) property appropriated to public use~~[; provided]~~ , except that the property may not be
203 taken unless for a more necessary public use than that to which ~~[it]~~ the property has
204 already been appropriated;
- 205 (4) franchises for toll roads, toll bridges, ferries, and all other franchises~~[; provided]~~ , except
206 that the franchises may not be taken unless for free highways, railroads, or other more
207 necessary public use;
- 208 (5) all rights of way for any and all purposes mentioned in Section 78B-6-501 ~~[hereof]~~, and
209 any and all structures and improvements on the property, and the lands held or used in
210 connection with the property, ~~[shall be]~~ except that:
- 211 (a) the property is subject to be connected with, crossed, or intersected by any other right
212 of way or improvement or structure; ~~[they shall also be]~~
- 213 (b) the property is subject to a limited use in common with the owners, when necessary; [
214 ~~but]~~ and
- 215 (c) uses of crossings, intersections, and connections shall be made in the manner most
216 compatible with the greatest public benefit and the least private injury; and
- 217 (6) all classes of private property not enumerated if the taking is authorized by law.

218 Section 4. **Effective date.**

219 This bill takes effect on May 1, 2024.