



## NIMBY Battles Rage in Montana

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A group of landowners in Montana have opened a new legal challenge to the recently enacted state law that allows transmission developers to use eminent domain to seize property needed for transmission projects.

On May 21, a group of landowners in Pondera and Teton counties filed suit in Teton County District Court against the state of Montana and Tonbridge Power Inc., the developer of the Montana Alberta Tie line, claiming the state's recently approved eminent domain law is unconstitutional.

Meanwhile, Concerned Citizens Montana, a group of primarily landowners whose properties are in the path of the Northwestern Energy's proposed Mountain States Transmission Intertie (MSTI) project, have started gathering signatures for a ballot initiative aiming to overturn House Bill 198, approved earlier this month, which reaffirms transmission developers' eminent domain rights.

HB 198 became law in early May without Gov. Brian Schweitzer's signature. The controversial bill allows transmission developers, whose projects have been permitted, to use the power of eminent domain to seize private property if they can't reach a deal with landowners.

The genesis for the bill came from MATL's dispute with landowners near Cut Bank, Mont., a town that resisted the project and filed suit in district court to block Tonbridge from declaring eminent domain. The judge ruled the company did not have the power to declare eminent domain. Soon after, the Legislature began debating HB 198.

The case has since gone to the State Supreme Court, where MATL's lawyers asked that the court dismiss the claim in the wake of the new state law. But last week, plaintiffs asked the court continue hearing the challenge.

The 215-mile MATL line would run from Great Falls to Lethbridge, Alberta, across some of the most remote and sparsely populated regions of North America.

Both the MATL and MSTI would carry predominately wind power to markets north and south of Montana, and are seen as potential catalysts to developing more wind in Montana.

The 11 plaintiffs in the latest suit against Tonbridge say the new state law is unconstitutional because it allows a private company to condemn land in violation of property owners' due process rights. They also argue that it creates two separate laws, one for rural residents and one for urban areas, citing a 2007 state law that prohibits condemnation of private land in urban areas for economic development.

"We got a raw deal over at the Legislature" Bruce Maurer, owner of Maurer Farms and lead plaintiff in the case,

told *The Great Falls Tribune*. "It treats an urban guy different from a rural guy, and it's not supposed to be legal to pass a law for one individual."

Montana's local siting skirmishes are just the latest in a long history of NIMBY battles in the Northwest. In 2008, the Washington Supreme Court decided against Kittitas County residents, who complained about visual impacts and setbacks for the Kittitas Valley Wind Project.

- [Steve Ernst](#)