

High-speed rail escalates eminent domain legal battles for land

By Tim
Sheehan

- What is eminent domain?

Eminent domain, or condemnation, is a legal process by which a government agency can go to court to acquire property for a public project when the agency and property owner cannot agree on price or terms.

The first step is adoption of a resolution of necessity, and then the agency can file an eminent domain lawsuit in the county where the property is located. A judge first decides whether the agency is entitled to the property; in a second phase of the case, a trial determines the fair market value and other “just compensation” due the owner.

The verdict can be no lower than the agency’s offer and no higher than the owner’s counteroffer. A judge can grant legal possession to the agency well ahead of the trial on the value if the agency deposits the estimated purchase price into a condemnation account.

- *A bill to limit eminent domain for high-speed rail property was killed in the Assembly Transportation Committee on Monday in Sacramento.*
- *Fifty eminent domain lawsuits have been filed in Fresno County over property needed for high-speed train right of way.*
- *Many — but not all — of the condemnation lawsuits are likely to reach negotiated settlements before getting to a judge or jury.*

Under pressure to deliver property to construction contractors, the California High-Speed Rail Authority and the state are increasingly taking off the gloves and going to court under eminent domain law to get the land needed for a bullet-train line through the central San Joaquin Valley.

The [State Public Works Board](#) has adopted 192 resolutions declaring a public need to use eminent domain or condemnation to acquire about 425 acres of land in the Valley. In Fresno County, the state has followed up by filing more than four dozen eminent domain lawsuits against property owners.

A bill that could have slowed, if not halted, the use of eminent domain by the state by changing the rules for condemnation met a partisan end Monday in Sacramento.

Assembly Bill 1138 by [Assembly Member Jim Patterson](#), R-Fresno, proposed to bar the [California High-Speed Rail Authority](#) or the Public Works Board from initiating condemnation actions unless the rail agency identifies where and when it will get the money needed to build a usable segment of the train line and certifies that the segment has received all of the environmental clearances.

The bill was voted down Monday at the state Capitol by the [Assembly’s Transportation Committee](#). Three Republican members of the committee voted for it, but they were outnumbered by six “no” votes from Democrats. Earlier in the day, Patterson acknowledged in an interview that the odds were stacked against the bill.

Patterson, an outspoken opponent of the bullet-train project, said he fears that much of the \$68 billion needed to build the rail line from San Francisco to Los Angeles will never materialize, leaving an incomplete section of track sitting in

the Valley. To date, the state has about \$6 billion available for construction in the Valley, including about \$3 billion in federal stimulus and transportation funds from the Obama administration. Patterson added that lawsuits also continue to confront the rail agency.

“Eminent domain is absolute and irrevocable,” he said. “If the funds fall short or the litigation succeeds, there is a real possibility that all this property won’t be utilized.”

Like Patterson, Chris Mathys is no fan of California’s contentious high-speed rail project. The former Fresno City Council member and avowed tax-fighter is philosophically opposed to the state spending billions in taxpayer money on a 220 mph passenger train through the state by way of the Valley.

But when the California High-Speed Rail Authority and Public Works Board went to court last fall to take a piece of property he owns on G Street in downtown Fresno, Mathys understood it was just part of the state doing business.

Mathys’ land is one of 50 properties for which the state has filed [eminent domain lawsuits in Fresno County Superior Court](#) since last spring. And the pace of those lawsuits is accelerating. Thirty condemnation cases have been filed by the state since March 1, including seven notices of pending legal actions recorded in a single day last week. And that doesn’t count eminent domain lawsuits filed by the state Department of Transportation for its project to relocate Highway 99 between Ashlan and Clinton avenues in west-central Fresno to make way for the high-speed train tracks.

The growing number of lawsuits illustrate the pressure on the state to play catch-up on acquiring the land it needs to build the rail system. As of mid-March, the rail authority had managed to secure ownership of just 164 of the 1,066 parcels of property it needs in the first two construction sections of the rail route between Madera and the Tulare-Kern county line.

A last resort

As recently as three years ago, rail authority CEO Jeff Morales was confident that fruitful negotiations would allow the agency to buy most of the property it needs, using eminent domain only as a last resort. But up and down the line, property owners have complained that the agency’s offers are well below what they believe is fair, slowing the process considerably.

“The number we had in our head was different than the state’s number, and we talked and talked before we eventually reached an impasse,” Mathys said.

That impasse prompted the rail authority to ask the Public Works Board — a three-member panel that includes the heads of the state Transportation, Finance and General Services departments — to declare a public need for the property.

Just because the case makes it into the legal system, however, doesn’t mean the two sides stop talking to one another. Mathys and other property owners told The Bee that their ongoing negotiations with the rail agency resulted in settlements with which they are satisfied and will nullify their lawsuits. “Although I do oppose the project and I oppose using taxpayer money for it, my personal beliefs cannot stop the legal right that taxpayers have to take the property,” Mathys said. “We were pragmatic in our negotiations.”

Mathys said a key for him, and for other property owners, is getting a second appraisal to back up their own arguments on the value of their land.

Susan Martin-Tanielian, a partner in CNI Signmakers, better known as [Commercial Neon Inc.](#) on Golden State Boulevard in northwest Fresno, said her experience was similar to Mathys’.

About a year after the rail authority’s appraisers examined her property, Martin-Tanielian said, the agency finally made its first offer for the two-thirds of an acre needed along the front of the site. “It wasn’t awful, but it wasn’t good,” she said of the offer. “We had already discussed a number in our head that we thought would be fair, knowing our real

estate and what it would take to replace it.”

The company had made a counteroffer, and was about to take advantage of the state’s offer to pay up to \$5,000 for a second appraisal, when the agency made a second offer. “And they hit the number I wanted,” Martin-Tanielian said last week.

Martin-Tanielian said her settlement includes compensation for the cost of renovating their building. Because the rail route will cut off the Golden State frontage, the entrance has to be moved to the opposite side of the building. To make the best of an unusual situation, Martin-Tanielian said she hopes to install the company’s collection of vintage neon signs — many of them from longtime Fresno landmark businesses — on the property facing the rail line so train passengers will be able to admire them.

Long, winding road

Fresno attorney [C. William Brewer](#) has several clients with properties in the path of the rail line in Fresno and Kings counties. One is a warehouse property on Thorne Avenue near downtown Fresno for which a condemnation trial date has been set for May 2016 — nearly two years after the eminent domain lawsuit was filed by the state.

“But that one is probably unlikely to go all the way to trial,” Brewer said last week. “I think there’s a decent chance that we’ll reach an agreement.”

Brewer added that most of his clients have been troubled by the negotiation process. “One of the clients who first came in was pleased with the offer,” he said. “Most of the others are at the other end of the spectrum, that the offers were not fair and were not reasonable. ... There are pretty consistently big gaps” between what the rail authority is offering and what the owner wants for their property.

In Fresno and Madera counties, Brewer added, clients seem more inclined to engage the state in negotiations for their property. “There is more openness, and it’s regarded as inevitable,” he said. “They are not so much focused on the state’s right to take, but on protecting their interest in terms of compensation.”

In neighboring Kings County, where opposition to the rail project has been much more vigorous, “there is more of a propensity to dig in their heels.” The state has adopted 26 resolutions authorizing condemnation against properties in Kings County in the last two months, but it appears that no eminent domain lawsuits have yet been filed in Kings County Superior Court.

Another attorney, Glenn Block of Glendale-based [California Eminent Domain Law Group](#), has almost a dozen clients in the Valley, two of which are being sued and a third one likely to be within days, he said. One is the ownership of land at Fresno and G streets that is home to the Wildcat Adult Superstore. “That is one of my cases that’s farthest along in the litigation process,” Block said. The eminent domain lawsuit was filed last September against the owners, Fresno Property Management LLC and New Wildcat Fresno LLC.

“So far, we certainly have a significant difference in the value of the property,” Block said. “We are in the process of obtaining another appraisal, but we have been able to work cooperatively with the rail authority and their counsel ... and we anticipate that we will be able to make substantial headway early in the case.”

Keep moving forward

In some cases, the rail authority has been trying to work with property owners for several years, said Lisa Marie Alley, the agency’s press secretary.

For the first construction section between Fresno and Madera, Alley said, “we began issuing notices to property owners in May, June and July 2012. For almost three years these property owners have been hearing from us. We’re doing our due diligence and doing what we can to work with them.”

As time passes, however, the schedule grows tighter to provide land to contractors to be able to build something. Earlier this year, Ron Tutor, CEO of contractor Tutor Perini Corp., said he plans to seek compensation from the state for an 18-month delay in the start of construction. That simply adds to the urgency for the rail authority to deliver enough property for contractors to do meaningful work.

“Yes, there are a number of cases where we have started eminent domain, but even in those there are some that have settled,” Alley said. “Just because we start the process doesn’t mean it goes all the way to court.”

Some property owners want to use the eminent domain process “as a way to kill the program,” Alley said. “If the property owner doesn’t want to participate in an appraisal or even entertain the conversation, we still have to move forward in the process, and that’s what we’re doing. That’s the position we’re in with some property owners.”

Contact Tim Sheehan: tsheehan@fresnobee.com, (559) 441-6319 or [@TimSheehanNews](https://twitter.com/TimSheehanNews) on Twitter.