

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CONSTITUTION PIPELINE,

Plaintiff

v.

CIVIL ACTION NO: 3:14-2458

A PERMANENT EASEMENT FOR 1.84 ACRES AND TEMPORARY EASEMENTS FOR 3.33 ACRES IN NEW MILFORD TOWNSHIP, SUSQUEHANNA COUNTY, PENNSYLVANIA, TAX PARCEL NUMBER 127.00-1,603.00,000

Defendants.

**Declaration of Catherine Holleran Under 28 U.S.C. §1746 In Support of Motion to Dissolve
Injunction and Set for Hearing the Question of Damages**

My name is Catherine Holleran and I am above the age of 18, competent to testify and have personal knowledge of the matters set forth in this Declaration. Under penalty of perjury, I state the following:

1. I reside in New Milford, Pennsylvania. The property that is the subject of this condemnation action is located at 2131 Three Lakes Road, New Milford Pennsylvania. I am one of the owners of the property that is the subject of this case, along with my siblings Michael Zeffer and Patricia Glover and our nephew Dustin Webster. Our sister Maryann Zeffer is a Life Tenant who lives on the property but is not an owner listed on the deed.

Description of the Property

2. The property has been in our family for over 60 years. My parents purchased the property around 1950 and moved here to raise a family. My siblings and I all grew up here. In their later years, our parents deeded the property to me and my siblings. Maryann signed over her share to me and currently lives on the property, and our nephew Dustin acquired his share from his mother who was also one of our siblings.

3. The parcel is approximately 23 acres in size. The property is split from north to south by Three Lakes Road. Before the pipeline came through, we used the woods for recreational purposes. We had a trail for four-wheelers and walking. The fields have all been used for haying by my brother, but are excellent potential building sites for any of our children or heirs. My husband and family and I also do a small Maple Syrup business, mostly as a hobby, but it had potential. The subject woods are mostly ash trees and sugar maples, about half and half, with some cherry and occasional hickory or beech.

4. All the property on the EAST side of the dirt road, (the east half of the parcel) is located in close proximity to Upper Lake. Upper Lake is a private, natural spring-fed lake with no motors, and the property has 210 feet of lake frontage. One of the lake's main inlet streams winds through this portion and is quite picturesque.

5. We also have two small cottages on the property; our father built them both. One is mainly used for storage now, but the larger is used steadily from spring through late fall for ourselves and family, and for occasional rental. There is an additional cottage road (Blue Gill Lane) that accesses our cottages, and continues on along the west shore of the lake to other private cottages. Blue Gill Lane is partially in our parcel. On the east side of road (across from house) is a large old barn which was on the property when purchased in 1950. The lakeside

piece also has a natural spring, an additional small but steady inlet to the lake. There are several early American stone walls that cross through the west side of property, around the homestead and fields.

The FERC Certificate and Hearing for Immediate Possession

6. My husband and I first learned that the pipeline would cross our property in the summer of 2012 when our daughter, who is an archaeologist, learned from colleagues who were members of a crew working for Constitution, that shovel tests were scheduled in front of our house.. After that, we received requests for surveys and initially agreed to one, but realized that allowing Constitution continued access to our property was not in our best interest. The proposed route would run through the property through the fields that we farm and along the western border where it cut through heavily wooded areas. Because of this proposed damage, we filed comments at FERC opposing the pipeline and asking FERC to revise the route.

7. In May 2013, we received a compensation offer from Constitution that was far too low and would not compensate us for the extensive damage that the pipeline would cause to our property.

8. In December 2014, FERC granted a certificate to Constitution Pipeline to construct and operate its project. Shortly after that, Constitution filed a complaint for eminent domain and immediate possession and we retained an attorney to represent us.

9. On February 13, 2015, there was a hearing in Scranton on Constitution's motion for immediate possession. Constitution put on witnesses testifying that the company could lose up to \$60,000/day if they could not access our property immediately to begin construction.

10. Constitution also claimed that they had an urgent need to gain entry due to a

claimed limited time frame in which to cut trees under the Migratory Bird Treaty Act. Constitution's witness explained that the Act prohibited them from tree cutting between April 1 and October 31 to avoid disrupting migratory bird habitat. Constitution's witness testified that immediate possession was imperative so that the work could be completed within that time frame.

11. The court granted Constitution immediate possession on March 17, 2015. However, they were unable to reach our property before the March 31 cut off date for felling trees.

12. On April 3, 2015, I received a letter from Constitution's lawyer stating that a survey crew had been out to the property on March 31, 2015 to stake the route to survey and that the next day, all the stakes had been removed and stolen. Neither I nor anyone in my family know what happened to the stakes. Once the property was re-staked there was no activity of note for the rest of 2015.

Hearing on Contempt Motion and Tree Clearing

13. In January 2016, my daughter Megan had an encounter with a Constitution crew member on our property within the easement area. Constitution's crew asked Megan if she would prefer that they left, and she said yes, so they did. There were no demands. It was all very peaceful and we thought little of the encounter. But on February 1, 2016, Constitution sent a letter to our then-attorney which referenced the encounter and inaccurately stated that Megan had denied Constitution's crews access. There may have been some other conversations between my family and the crew at this time, I cannot recall any specific conversations or the details.

14. We then heard from Constitution formally (as opposed to conversations with crew members) through a letter dated January 30, 2016. The letter stated that Constitution planned to

begin limited tree felling activities as early as February 5, 2016 as soon as its contractors and crews could be trained and deployed and that it would finish before March 31st.

15. My family and I opposed the tree clearing. I sent a letter to FERC on Feb. 10, 2016 to stay tree felling, actually asking them to “cease and desist” but the request was either ignored or rejected. Constitution also contacted our then-attorney directly expressing concern about the letter.

16. To support our opposition to the project, we allowed other project opponents to congregate peacefully on our property well outside the established right-of-way. On February 10, 2015 an encounter between a family member and Constitution’s crew again took place, and state police were called in. However, the police did not intervene because they concluded that nothing unlawful had occurred.

17. Even though no one ever blocked access to the right of way in February 2016, Constitution brought a contempt action against us before the same federal court that had granted possession. Constitution argued that it was unable to access the easement which was, and would continue to delay construction. Again, Constitution presented witnesses claiming that the pipeline had to be built quickly to meet the in-service deadlines.

18. The court found that we were not in contempt of the order and Constitution was allowed to proceed.

19. As best I can recall, the tree cutting began on March 1, 2016. Constitution’s crew assaulted our property surrounded by armed U.S. marshals and Pennsylvania police, the U.S. Marshals brandishing their weapons. We had seen Constitution crews clearing trees within the vicinity of our property but had never seen armed guards on any other properties. I felt as if we

were targeted merely because we exercised our First Amendment rights to oppose the pipeline.

20. Constitution finished the tree clearing within a four-day period. All told, Constitution took down just over 550 trees of significant size, not including countless saplings.

21. The damage was so devastating that I was not even able to look at it for several days. However, a few weeks after the trees were cleared, my husband was checking one of the sap lines on the remaining trees and encountered a woman in the right of way. She explained something about checking the environmental water runoff prevention since they were done with the work. This occurred just after the New York Department of Environmental Conservation had denied Constitution's Section 401 application. By that time, Constitution's crews were gone, and the woman explained that Constitution had discontinued work, everyone was laid off and only she and her boss remained.

22. Meanwhile, Constitution simply left the felled trees lying on the property. Finally, we all received a letter dated May 9, 2016 that stated that we could remove the trees on our own which we started to do because the property was such a mess.

23. On October 13, 2016, FERC authorized Constitution to process, stack and haul previously felled trees which at this point were tangled, and rotting on landowners' properties.

Damages

24. It is difficult to begin to assess the damages that we have suffered as a result of Constitution's occupation and destruction of our property. But as I attempt to briefly summarize, the damage - both physical, financial and emotional has been extensive - and to add insult to injury, Constitution has not paid us anything at this point.

25. I will start with the lost trees which are the most obvious loss - though far from

the only loss. I counted a total of 558 trees removed. Only the largest trees, 7-8" in diameter were stacked; this number does not include the hundreds of countless saplings, all potential mature hardwoods, which were also clearcut. My brother and I determined that the tree species were roughly half ash and half sugar maples. Some of the trees were easily 1.5 to 2 feet in diameter which would make them about 200 years old. These trees are irreplaceable.

26. As mentioned, we ran a small maple syrup business from some of the trees that we had tapped. We had started to expand in 2015, adding more mainlines and taps, but we stopped when Constitution told us that the trees would be cut in 2015. We continued to expand a bit in 2016 since nothing had ever developed with the tree cutting thus far, and it was an early sap run that year. We did not ever get to the potential at this location of tapping all the usable trees, all because of the proposed pipeline threatening to come through. We have not done any further tapping at this location, as it is no longer economical since the loss of all the trees coming down the steep slopes destroyed the gravity feed of the sap down tubing.

27. Constitution did not remove any of the cut trees from the right of way at first. Two family members spent weeks with their own equipment dragging the trees down into the fields, and stacking or lining them together. We even had to build a second entry/driveway crossing from the road into one of the fields to access it with the equipment. The clean up task was both time consuming and costly for us and should have been done by Constitution but we had no idea when Constitution would return to clean up the mess.

28. Constitution finally sent word that they would be starting to clean up sometime in October 2016. In actuality, Constitution crews did not come until spring of 2017 - a full year

after the trees had been removed. Constitution stacked the trees for us and chipped the tops that were useless. Constitution put in “stockings” to prevent runoff, sawed off the tree stumps to ground level, and seeded the area so that it wasn’t just dirt surface. Even with this effort, the entire corridor still has all the root systems/tree stumps under the ground surface, as Constitution did not dig them out. As a result, we are stuck - removing the stumps would be prohibitively expensive, yet with the stumps in the ground, we are limited in what we can do in the easement.

29. Constitution made a flattened-out “roadway” for their equipment to proceed through for their work, which still remains. The area used to be one continuous steep slope, except for the narrow area where we had our walking path through the woods, and they have not returned the site to its original slope. The tree canopy is gone, and instead of the shady, leaf-covered forest floor, with our serene walking path, it is completely open and exposed. The entire area is different from how it was before.

30. The entire ordeal has had an enormous emotional toll. The court proceedings followed by the armed guards on the property created immeasurable stress. I also believe that we were treated more harshly than other landowners because we spoke out against the pipeline. After the trees came down, I experienced a terrible period of despair. Finally, we have been in a state of limbo for over three years with no compensation from Constitution and lingering uncertainty about whether or not the pipeline would be built. It is only now that Constitution has lost on all of its appeals of the permits in New York that it is clear that the pipeline will not go forward - which is why we are taking action to have our property returned to us with payment of

damages for our property and business destruction, emotional distress and violation of our constitutional rights.

Under penalty of perjury, I declare that the foregoing statement is true and accurate to the best of my knowledge.

/s/ Catherine Holleran

Catherine Holleran July 10, 2018