


**OIL AND WATER:
EMINENT DOMAIN,
CITIZENS' RIGHTS,
MOBILE'S WATER SUPPLY,
AND
PLAINS SOUTHCAP LLC**

**AUGUST 6, 2013
FOR THE SIERRA CLUB
BY THAYER DODD AND BRENDA BOLTON**



***WITH special THANKS TO THE TEAM OF
PRIVATE CITIZENS WHO ARE GIVING THEIR TIME TO PROVIDE
CONTINUED RESEARCH INTO THIS ISSUE:***

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robert collier

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Tom Hutchings

AND OTHERS TOO NUMEROUS TO LIST

**PLAINS HAS PROCEEDED BY THE
POWER OF EMINENT DOMAIN.**

WHAT IS EMINENT DOMAIN?

**THE POWER TO TAKE PRIVATE PROPERTY FOR PUBLIC
USE BY A STATE, MUNICIPALITY OR PRIVATE PERSON
OR CORPORATION AUTHORIZED TO EXERCISE
FUNCTIONS OF PUBLIC CHARACTER, WITH OR
WITHOUT THE PERMISSION OF THE OWNER,
FOLLOWING THE PAYMENT OF JUST COMPENSATION
TO THE OWNER OF THAT PROPERTY.**



OIL PIPELINES IN ALABAMA ARE

COVERED BY STATE

EMINENT DOMAIN LAW.

THIS IS TRUE OF MOST STATES.



Therefore, Eminent Domain

for oil pipelines

“is subject to a patchwork

quilt of differing state laws”

OIL PIPELINES

FEDERAL ROLE – REGULATIONS/LAWS

STANDARDS

MONITORING

ASSESSING FINES

***doj/EPA legal (suits, consent decree settlements)**

***DEPT OF TRANSPORTATION (DOT)**

***PIPELINE AND HAZARDOUS
MATERIALS SAFETY ADMIN.**

(PHMSA)

**Clean water act, safe drinking water act,
pipeline safety act of 2011**

**MONITORING OCCURS AFTER THE
PIPELINE IS IN OPERATION**

PIPELINE ROUTING/SITING:

**FEDERAL LEVEL: NO AUTHORITY TO
ROUTE THE PIPELINE**

**ALABAMA: NO STATE LAWS TO
DETERMINE PIPELINE ROUTE.**

**MOBILE: NO LOCAL LAWS TO
DETERMINE PIPELINE ROUTE.**

Modern HISTORY OF EMINENT DOMAIN:

2005: SUPREME COURT KELO CASE

2005: ALABAMA LAW RESPONDS TO

KELO- SB68 *bi-partison sponsors: Biddle, Roberts, Myers, Butler, Lindsey, Smitherman, Mitchell, Barron, Smith, Marsh, Dial, and Mitchem*

2006: ALABAMA LAW RESPONDS TO

KELO – SB654 *By representative mcclammy*

Source: Alabama ALISON public website

2013: ALABAMA LAW SB96

sponsors: Orr, Sanford, Holtzclaw, McGill and Scofield

2013: ALABAMA LAW HB455 TO REMOVE EMINENT DOMAIN

**phrase FROM SB96, SIGNALS INTENT
OF LEGISLATORS TO PROTECT ALABAMA
LAND OWNERS.**

*Sponsored rep. Davis, Ball, Hammon, McMillan, Merrill,
Jones, Boothe, Shiver, Baker, Jackson, Faust, Mask, Williams
and McClendon*

Source: Alabama ALISON public website



**ALABAMA HAS A HISTORY OF
STRONG LAND OWNER
PROTECTIONS
AGAINST
EMINENT DOMAIN
LAND “TAKINGS”**

**source: The castle coalition anti- eminent domain advocacy
group**



PUBLIC SERVICE COMMISSION

responsibilities :

**RAILROADS, UTILITIES, GAS PIPELINES
(LIMITED/SHARE W/ FEDERAL LEVEL),
transportation common carriers
trucking and air carriers,
OIL PIPELINES.**

Source: PSC website

SOURCE: PSC WEBSITE

Twinkle Andress Cavanaugh President	Jeremy H. Oden Place 1	Terry Dunn Place 2
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Energy Division

The Energy Division oversees the regulation of investor-owned natural gas and water utilities and wastewater management entities under the Commission's regulatory authority. This responsibility includes monitoring rates and quality of service for 28 companies as well as enforcing safety rules for all natural gas and hazardous liquid pipeline systems in Alabama. The division is organized into three functional sections, consisting of:

- **Natural Gas** - responsible for the regulation of all investor-owned natural gas distribution, transportation, storage and intrastate natural gas pipelines in Alabama in addition to monitoring the RSE ratemaking mechanism and related programs for Alabama Gas Corporation and Mobile Gas Service Corporation.
- **Gas Pipeline Safety** - inspects all gas and hazardous liquid pipeline systems operating in Alabama, including offshore in state waters, for safety purposes under the U.S. Department of Transportation's gas pipeline safety rules.
- **Water & Wastewater** - oversees the regulation of investor-owned and out-of-state water and decentralized wastewater systems with authority to operate in Alabama.

PLAINS SOUTHCAP, LLC - PSC TIMELINE

OCTOBER 2011: APPLIED TO PSC FOR CERTIFICATE OF EMINENT DOMAIN

OCTOBER-NOVEMBER 2011: NOTICES WERE RUN IN PAPER 4 TIMES BUT WERE NOT INFORMATIVE

NO MAP, NO IDENTIFICATION OF PIPELINE AS OIL, NO MENTION OF WATERSHED OR ROUTING

NOVEMBER 28, 2011: A HEARING WAS HELD IN MONTGOMERY

PSC INTERVIEW AND INVESTIGATION TOOK 15 MINUTES

JANUARY , 2012: PSC ISSUED A CERTIFICATE TO PLAINS GIVING THEM EMINENT DOMAIN

SOURCES: PSC RECORDS, MOBILE PRESS REGISTER, PSC PUBLIC HEARING TRANSCRIPT, PSC CERTIFICATE ORDER TO PLAINS

PSC AWARDED CERTIFICATE BASED ON “ECONOMIC DEVELOPMENT” ...BUT

- *ONLY 50 TEMPORARY JOBS**

- *PSC DID NOT ASSESS RISKS AGAINST
BENEFITS TO DETERMINE ECONOMIC
ADVANTAGES**

- *THE ONLY “EVIDENCE” PRESENTED TO
THE PSC WAS FROM ONE WITNESS, A PLAINS
ATTORNEY, WHO STATED THE PROJECT
WOULD PROVIDE ECONOMIC ADVANTAGE TO
ALABAMA.**

Source: Plains Southcap application to PSC; PSC hearing transcript

FROM THE HEARING TRANSCRIPT:

QUESTION: will this new pipeline ensure continued flow of oil to companies and businesses located throughout Alabama and also tied into the Plains' network of pipelines?

ANSWER: yes.

THAT WAS THE EVIDENCE PRESENTED!

AND IT IS NOT TRUE!

***FOREIGN COMPANY**

***FOREIGN OIL**

***PIPED OUT OF STATE FOR PROCESSING**

***EXPORTED TO FOREIGN COUNTRIES**

***TEMPORARY JOBS**

ALL THE RISK – NONE OF THE BENEFITS!

**SOURCE: SEC FILINGS, INVESTOR REPORTS, PSC
APPLICATION BY PLAINS**

**“WHAT WE HAVE HERE IS A FAILURE
TO COMMUNICATE...”**

**A FAILURE BY THE PSC AND PLAINS
TO ENGAGE THOSE WITH THE
MOST TO LOSE.**

A FLAWED PROCESS:

**LEADERS STATE THEY WERE NOT
ENGAGED**

NO PUBLIC INPUT

NO ENVIRONMENTAL IMPACT

**STUDY REQUIRED BY COE OR
THE PSC**

**JUNE 2012, SIERRA CLUB FILES SUIT
AGAINST THE CORPS OF ENGINEERS'
NATIONWIDE PERMITTING IN
OKLAHOMA.**

NATIONWIDE PERMITTING WAS ENACTED TO “CUT FEDERAL RED TAPE” FOR INSIGNIFICANT PROJECTS WITH LITTLE POTENTIAL FOR ENVIRONMENTAL IMPACT.

THE CORPS OF ENGINEERS PERMITTED PLAINS UNDER A NATIONWIDE PERMIT.

**PLAINS APPLIED AND WAS CERTIFIED
UNDER 10A-21-2.04 FROM THE CODE
OF ALABAMA:**

**CONDEMNATION FOR RIGHTS OF WAY
OR EASEMENTS BY MINING
MANUFACTURING, INDUSTRIAL,
POWER AND QUARRYING COMPANIES.**

10A-21-2.04 TEXT, CODE OF ALABAMA:

a. Every mining, manufacturing, industrial, power, and quarrying corporation or company may acquire by condemnation rights of way or easements over or across the lands or easements of others for way and rights of way on or under which it may erect or construct and operate railways, tramways, pipelines....

“c. THE RIGHT TO CONDEMN GIVEN IN THIS SECTION SHALL NOT INCLUDE THE RIGHT TO CONDEMN ANY PRIVATE RESIDENCE, NOR THE outhouses, GARDEN, OR ORCHARD WITHIN THE CURTILAGE OF ANY PRIVATE RESIDENCE.”

SOURCE: CODE OF ALABAMA

“d. the acquisition of rights-of-way for mining, manufacturing, industrial power, and quarrying purposes as provided in this section is hereby declared to be a public use and necessary to the development of the state....” SOURCE:

CODE OF ALABAMA

“.... every corporation acquiring a right of way by ...condemnation ...shall have the right ...to cross public roads...lands...navigable rivers and streams ...SUBJECT TO SUCH REASONABLE CONDITIONS AS TO THE EXERCISE OF THE RIGHT AS MAY BE PRESCRIBED BY ANY PUBLIC AUTHORITY HAVING JURISDICTION OVER SAME. “ (MAWSS!!)

SOURCE: CODE OF ALABAMA

**TITLE 18
IN THE CODE OF ALABAMA
IS THE EMINENT DOMAIN LAW**

**18-3-2: NO R-O-W shall be
established through any person's
yard, garden, stable, orchard,
curtilage, without the consent of
the owner...**

**HOW HAS PLAINS SOUTHCAP LLC
TREATED LANDOWNERS IN OUR
AREA?**

***ACCORDING TO SOME LAND OWNERS WHO
ARE TALKING:***

- *THREAT OF EMINENT DOMAIN***
- *“PULL THE TRIGGER” LANGUAGE***
- *NOT PAYING FAIR MARKET VALUE***
- *WILDLY VARYING PAYMENTS***
- *REFUSAL TO ANSWER QUESTIONS***
- *ARBITRARILY ADVANCING TIMELINE TO
COURT ACTION IF QUESTIONED***
- *non-disclosure agreements***

18-1A-26 CODE OF ALABAMA:

“COERCIVE ACTION FORBIDDEN.

In order to compel an agreement on the price to be paid for the property, a condemnor may NOT arbitrarily advance the time of condemnation, arbitrarily defer negotiations or condemnation, nor TAKE ANY OTHER ACTION COERCIVE IN NATURE.”

THE MAWSS RESPONSE TO PLAINS:

“We do not think it is in the best interest of our customers or our efforts to protect the water supply for Mobile to support a petroleum products pipeline route within the J. B. Converse watershed. “

***SOURCE: LETTER TO PLAINS SOUTHCAP FROM MAWSS,
UPON BEING CONTACTED BY PLAINS FOR R-O-W***

2012:MAWSS ORDERS SAFETY STUDY

JULY 3, 2013: PLAINS AGREES TO WAIT FOR SAFETY STUDY BEFORE FILING

JULY 24, 2013: PLAINS FILES FOR CONDEMNATION BEFORE SAFETY STUDY IS COMPLETED.

THIS CONSISTENT BAD FAITH ACTION HAS BEEN TYPICAL OF PLAINS SOUTHCAP.

“18-1A-72(b)

If the property sought to be condemned ...has already been devoted to a public use...land ... shall not be taken for another and different character of public use...and proven that such other and different character of public use will not materially interfere with the public use to which such property is already subjected or devoted. “

Code of alabama

**“10A-21-2.07 (a) waterworks supplying municipalities
...inhabitants with water shall have the power in order to
obtain a supply of water for their...reservoir, to take over
and use, after condemning same, water of any river,
stream, spring, or other water source which may be
necessary for that purpose. They may also acquire by
condemnation ...streams or water sources as shall be
necessary to protect and preserve the purity of such
supply.”**

source: Code of alabama

**“(f) no corporation shall have the right to
condemn the water of any stream, spring, or
other water source which is the property of
another water company supplying with water a
municipal corporation or the inhabitants
thereof.”**

Code of alabama

WHO IS PLAINS SOUTHCAP AND WHAT IS THEIR OPERATIONAL PROFILE?

TOP 5 EXECUTIVES PAID A COMBINED TOTAL OF SALARY AND BONUS \$24,236,969.

IN 2010 THESE 5 INDIVIDUALS WERE PAID A COMBINED TOTAL IN SALARY, BONUS AND STOCK AWARDS \$29,666,843.

SOURCE: SEC FILINGS, COMPANY INVESTOR PROFILES ONLINE

IN THE LAST FIVE YEARS, PLAINS HAS HAD SPILLS TOTALLING \$16,903.406 in property damage resulting from 13,184 gross barrels spilled.

Three of those were in Eight Mile:

5/3/2012 natural force damage caused by heavy rain/floods

2/23/2011 equipment failure

11/30/2009 corrosion

SOURCE: EPA PUBLIC RECORDS

Plains has already spoiled the drinking water supply for a town in Calgary, Canada.

Reuters reported on June 8, 2012:

“Plains brings in drinking water for local residents” after a spill.

this company has an abysmal safety record!

SOURCE: REUTERS NEWS



UPDATE 4-Plains shuts Alberta oil pipeline after leak

Fri Jun 8, 2012 8:02pm EDT

* Estimated 1,000-3,000 bbls of crude spills into river system

* Plains shuts down 10 km (6 miles) of pipeline system

* Plains brings in drinking water for local residents

By Jeffrey Jones

EPA COMPLAINT AGAINST PLAINS SETTLED
IN 2010:

“...alleges that on 10 occasions between June 2004 and Sept 2007 approx...273,420 gallons...[OF] crude oil were discharged from various pipelines owned and operated by Plains into navigable waters or shorelines in states of TX, LA, OK, KS in violation of Clean Water Act. “

SOURCE: EPA PUBLIC RECORDS

**Feb 5, 2013 -THIS YEAR –
in Bay Springs, MS**

120 BBL crude oil (4x the company's original estimate) spilled into Piney Branch Creek and polluted wetlands and waterways.

**It is MISSISSIPPI'S costliest spill in decades.
Cleanup is ongoing.**

SOURCE: NEWS REPORTS

Bay Springs oil spill state's costliest in decade

Amount leaked four times more than original company estimate

11:41 PM Jun 11, 2013



Workers from several clean-up companies remove oil from Piney Branch Creek just outside Bay Springs earlier this year.

The Bay Springs oil leak that polluted wetlands and waterways four months ago was the state's costliest pipeline accident in a decade at more than \$5.2 million, according to a federal agency that tracks such incidents.

Some 122 barrels of crude oil had drained from the Plains All American pipeline before officials noticed the leak on Feb. 5 and shut down operations, according to a company report filed with the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration.

The spill amount is four times higher than the company's earlier official estimate of 30 ...

IN PLAINS' OWN WORDS:

Plains states “although we believe that our efforts to enhance our leak prevention and detection capabilities have produced positive results, we have experienced (*and likely will experience future*) releases of hydrocarbon products into the environment from oUr pipeline and storage operations. “ SOURCE: SEC FILINGS

PLAIN WORDS FROM PLAINS:

“A natural disaster or catastrophe, terrorist attack or other event could interrupt our operations and result in...property damage and environmental damage, which could have a material adverse effect on our financial position, results of operations and cash flows.”

SOURCE: PLAINS SEC FILINGS

PLAIN WORDS from Plains:

“ Some of our operations involve risks of ...environmental damage. The location of our assets and our customers assets in the US Gulf Coast region makes them particularly vulnerable to hurricane or tropical storm risk. “


YET PLAINS HAS DROPPED THEIR HURRICANE INSURANCE...HOW

WILL THEY PAY WHEN IT HAPPENS HERE???

(SOURCE: PLAINS SEC FILINGS)

**LET PLAINS TELL YOU WHAT MATTERS TO THEM:
FROM THE PLAINS 10K ANNUAL REPORT**

“Any such event that interrupts the revenues generated by our operations or which causes us to make significant expenditures not covered by insurance, could reduce our cash available for paying distributions and adversely affect our financial condition and the market price of our securities. “



**REVENUES...EXPENDITURES...
PAYING...CASH...FINANCIAL...P
RICE...**

**IT'S OUR HOME, OUR LIFE,
BUT TO PLAINS,
IT'S JUST ABOUT THE MONEY**



WHAT CAN WE DO?

WHAT CAN YOU DO?



**WRITE TO: YOUR ALABAMA
LEGISLATOR**

THE GOVERNOR


YOUR COUNTY


COMMISSIONER

THE MAWSS BOARD

YOUR CITY COMMISSIONER


**SEE THE
TARSANDSOILMOBILE
FACEBOOK PAGE FOR
CONTACT INFORMATION**





**CALL YOUR LOCAL
OFFICIALS THIS WEEK
AND TELL THEM
“NO PIPELINE “**

**THEN FOLLOW UP
BY MAIL
AND EMAIL**





**SIGN THE PETITION HERE
TONIGHT**



**ENCOURAGE YOUR FRIENDS
TO GO TO
TARSANDSMOBILE
FACEBOOK AND SIGN THE
PETITION, THEN SHARE IT
ON FACEBOOK**



**VISIT TARSANDSMOBILE ON
FACEBOOK TO STAY
INFORMED OF NEWS AND
UPCOMING EVENTS**

STAY INFORMED





**ATTEND MAWSS BOARD
MEETINGS, SIGN IN AND
WRITE “NO PIPELINE” AS
YOUR REASON FOR
ATTENDING**



**ATTEND CITY AND COUNTY
COUNCIL/COMMISSION
MEETINGS**

**ATTEND ALL TAR SANDS
EVENTS SO MEDIA CAN
REPORT A GROWING
CONCERN**



**REMEMBER,
YOUR VOICE IS OUR
STRONGEST DEFENSE**