

# **Bond Case Briefs**

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## **EMINENT DOMAIN - ALASKA**

### **Kenai Landing, Inc. v. Cook Inlet Natural Gas Storage Alaska, LLC**

**Supreme Court of Alaska - May 24, 2019 - P.3d - 2019 WL 2237956**

Public utility brought condemnation action, seeking land use rights necessary to construct underground natural gas storage facility.

The Superior Court held bench trial and awarded compensation. Landowner appealed.

The Supreme Court held that:

- Landowner was not entitled to compensation for condemnation of easement in native gas which was subject to lease;
- Landowner was not entitled to compensation for native gas discovered on property after date of taking;
- Evidence was sufficient to support finding that change in property's current storage capacity for gas was not reasonably probable in the near future, and thus trial court was not required to apply fullest extent rule to value property based on reservoir with greater storage capacity;
- Trial court permissibly included non-productive buffer zone at same compensation rate as the portion of gas storage land including useable pore space; and
- Trial court permissibly relied on testimony of particular expert in crafting valuation of landowner's property.

Even assuming that landowner had title to native gas in place, subject to lease held by lessee, landowner was not entitled to compensation for public utility's condemnation of easement in that gas for duration of lease, for utility's building of underground natural gas storage facility, where landowner had no current right to extract native gas, to block its production, or to use the native gas in place for any purpose, and utility's use of gas was non-consumptive.

Landowner was not entitled to compensation for native gas discovered on property after date of taking, in condemnation action brought by public utility for land use rights necessary to construct underground natural gas storage facility; gas at issue was not just undiscovered as of date of taking, it was not present under landowner's property at all, since it came into pressure communication with the gas underlying landowner's property only after utility accidentally tapped into reservoir of undiscovered gas while working on project.