

- (6) The time of condemnation may not be advanced, negotiations or condemnation and the deposit of funds in court for the use of the owner may not be deferred, and any other action coercive in nature may not be taken to compel an agreement on the price to be paid for the property.
- (7) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings must be instituted as provided in Title 70, chapter 30. The acquiring agency may not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of the owner's real property.
- (8) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the uneconomic remnant must be made.
- (9) A person whose real property is being acquired may, after being fully informed of the person's right to receive just compensation, donate to an agency the property, any interest in the property, or any compensation received for the property.

Mont. Code Ann. § 70-31-301.

C. MATL Must Prove the Following Facts by a Preponderance of the Evidence.

Based on the governing statute and case law, in order to condemn, MATL would have to prove the following facts by a preponderance of the evidence:

- That MATL's use is a public use. Mont. Code Ann. § 70-30-111; *Montana Power Co. v. Bokma*, 153 Mont. 390, 393, 457 P.2d 769 (1969).
- That MATL's use is not a private use. *Vaniman I*, 264 Mont. 76, 79, 869 P.2d 790, 792 (1994); *City of Bozeman v. Vaniman (Vaniman II)*, 271 Mont. 514, 522-523, 898 P. 2d 1208, 1214 (1995); *Bokma*, 153 Mont. at 393, 457 P.2d at 772-773; *Park County ex. rel. Paradise and Shields Valley TV Districts v. Adams*, 2004 MT 295,

¶16, 323 Mont. 370, 100 P. 3d 640; *Landowners Consideration Assoc. v. Montana Power Co.*, 300 F. Supp. 54, 59, n. 12 (D. Mont. 1969).

- That the public interest requires MATL's condemnation of private property. Mont. Code Ann. § 70-30-111; *Lincoln/Lewis & Clark Sewer Dist. at Lincoln v. Bossing*, 215 Mont. 235, 240, 696 P.2d 998, 991-992 (1985).
- That MATL's condemnation of the private property is necessary to the public use. Mont. Code Ann. § 70-30-111; *Lincoln/Lewis & Clark Sewer Dist. at Lincoln v. Bossing*, 215 Mont. 235, 240, 696 P.2d 998, 991-992 (1985); *State by and Through State Highway Commission v. Yost Farm Co.*, 142 Mont. 239, 242, 384 P. 2d 277, 279 (1963); *Cenex Pipeline LLC v. Fly Creek Angus, Inc.*, 1998 MT 334, ¶¶ 25-26, 292 Mont. 300, 971 P.2d 781; *Adams*, ¶¶ 20-22; *Bokma*, 153 Mont. at 393, 457 P. 2d at 772-773.
- That MATL's condemnation is the least amount of damages for the greatest good. Mont. Code Ann. § 70-30- 110; *Bokma*, 153 Mont. at 399, 457 P.2d at 744; *State Highway Commission v. Danielson*, 146 Mont. 539, 544, 409 P.2d 443, 446 (1965); *Adams*, ¶¶20-22.
- That MATL offered fair market compensation. Mont. Code Ann. § 70-30-111.
- That MATL has complied with the Fair Treatment of Landowners Act. Mont. Code Ann. § 70-31-101, *et seq.*
- That MATL's easement is the most limited interest in real property necessary for the project. Mont. Code Ann. § 70-30-206.