

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

NORTHERN NATURAL GAS COMPANY, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 80 ACRES OF LAND IN THURSTON )  
 COUNTY, NEBRASKA; UNITED STATES )  
 OF AMERICA; PATRICIA E. )  
 ABATANGELO, aka PATRICIA PETTIT )  
 SOLOMON; CORA N. SOLOMON; )  
 MARIANNE SOLOMON WIGGANS; )  
 CHRISTINE MARIE SOLOMON; )  
 KATHERINE SOLOMON; WILBUR )  
 SOLOMON; MICHAEL ANDREW )  
 SOLOMON; NOLAN J. SOLOMON; AND )  
 UNKNOWN OWNERS, )  
 )  
 Defendant.

CASE NO. 8:17-CV-328

**PLAINTIFF’S REPLY BRIEF IN  
SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT**

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Plaintiff Northern Natural Gas Company (“Northern”) hereby submits this Reply Brief in Support of its Motion for Summary Judgment. (Filing No. 52).

**I. INTRODUCTION**

Pro se defendant Nolan Solomon (“Solomon”) filed a document entitled “Pro Se Defendant Response and Motion to Strike Plaintiff’s Motion for Summary Judgment (DOC #52)” (Filing No. 55) and Pro Se Defendant’s Reply Brief in Support (Filing No. 55-1). In the filing he also seems to move to dismiss Northern’s Amended Complaint entirely. To the extent it can be characterized as a “Motion to Dismiss” it should be denied as untimely and improper because the Court has already ruled that a motion to dismiss is not permitted under Fed. C. Civ. P. 71.1(e)(2) (Filing No. 33).

To the extent it is intended to be a Motion to Strike under Rule 12(f) it should be denied. The Motion for Summary Judgment is clearly authorized by Fed. R. Civ. P. 56 and Solomon

does not cite to any statements or allegations in any pleading that could be considered “redundant, immaterial, impertinent, or scandalous.” Accordingly, Northern will respond to Filing Nos. 55 and 55-1 as Solomon’s Brief in Opposition to Northern’s Motion for Summary Judgment.

## II. ARGUMENT

### ***1. There is No Question of Fact Regarding Northern’s Right to Condemn Solomon’s Property Interests.***

Solomon argues in Paragraph 7 of his Response that Northern has not complied with the requirements of 25 CFR § 169.101 *et seq.* which precludes entry of summary judgment. Setting aside the fact that Northern has already acquired any and all interests and permissions it needs from both the BIA and the Omaha Tribe, this issue is not before the Court. Northern’s rights to condemn the Northern ROW have been established by the Court and all that remains is for the Court to determine the value of those rights-of-way. (Filing No. 49).

### ***2. Solomon Offers No Evidence and Does Not Raise Any Issues of Material Fact that Would Prevent Entry of Summary Judgment Establishing the Value of the Northern ROW.***

Importantly, Solomon offers no evidence or opinion about the value of the Northern ROW. As such, the evidence submitted by Northern is undisputed and summary judgment is appropriate.

Solomon’s only argument against entry of summary judgment on value is that Northern’s appraisal evidence is from a private appraiser hired by Northern and was not approved by the BIA. (Filing No. 55, ¶¶ 3-4) This is unpersuasive for two reasons. First, Solomon cites to no requirement that BIA approve the valuation in a condemnation proceeding such as this. The type of evidence offered by Northern in this case is the type of evidence relied on by state and federal

Courts in similar proceedings. *See Liberty Development Corp. v. Metropolitan Utilities Dist. Of Omaha*, 751 N.W.2d 608, 616 (Neb. 2008) (concerning MUD's condemnation of property for permanent and temporary construction of water distribution system); *Wolfe v. State, Dept. of Roads*, 127 N.W.2d 721, 723 (Neb. 1965); *U.S. v. 1,129.75 Acres of Land*, 473 F.2d 996, 998 (8th Cir. 1973) (concerning the taking of a flowage easement for a flood control project).

Second, Solomon ignores the fact that the record actually contains appraisals from Pat McGlamery, a Staff Appraiser for the Eastern Oklahoma Region of the BIA. *See Solomon Dep. Exs. 8-9* (Filing No. 54-4, pgs. 46-202) and United States' Responses to Requests for Admissions (Filing No. 54-3, pgs. 122-123). These appraisals were reviewed and certified by Eric Paul Griffin, MAI, Review Appraiser Quality Assurance for the U.S. Department of Interior. In his deposition, Solomon testified that he does not have any basis to challenge the accuracy of these BIA's appraisals. (Solomon Dep. 48:5-17).

In sum, there is no evidence to contradict the expert testimony on the issue of the value of the Northern ROW. Solomon concedes that the methodology used by Baker and McGlamery is correct so there are no issues of fact.

#### **IV. CONCLUSION**

For the foregoing reasons, Northern requests that the Court grant its Motion for Summary Judgment (Filing No. 52).

Dated this 27th day of September, 2018.

NORTHERN NATURAL GAS COMPANY

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CERTIFICATE OF SERVICE

I certify that on the 27<sup>th</sup> day of September, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record who participate in the CM/ECF system and by US Mail, postage prepaid to the attorneys and interested parties who do not participate in the CM/ECF system.

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