

The Power of Article 97 of the MA Constitution

The fight for our land and our state's rights

What is Article 97 of the Massachusetts Constitution?

Article 97 of the Articles of the Amendment to the Massachusetts Constitution provides that "the people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, historic, and esthetic qualities of their environment." "Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court." These public lands include both state-owned lands and municipal lands acquired for conservation or recreation purposes.

Why is Article 97 important to the fight against new gas pipeline infrastructure?

Kinder Morgan wants to build a pipeline right-of-way path through our protected lands. This includes the building of pipe yards, access roads, and forest segmentation, and would pave the way for invasive species. In short, pipeline projects disrupt and permanently alter the land.

Kinder Morgan's CT expansion project would impact nearly 60 acres, 30 of which is state parkland, in Spectacle Pond Farm / Otis State Forest requiring a permanent easement on 6.19 acres through Article 97 disposition. Kinder Morgan's Northeast Energy Direct would impact over 80 Article 97 parcels from the Berkshires to the North Shore, including State Parks and Forests, Wildlife Management Areas, Public Water Supply Protection Areas, and conserved farms.



We have the power, if we take it.

FERC's authority to preempt an Article 97 "no" vote is question of law that we should take to the courts if necessary. However, if and when the Federal Energy Regulatory Commission (FERC) issues a certificate that grants Kinder Morgan eminent domain authority, FERC often makes compliance with certain state or local laws and regulations a condition of the certificate. FERC could, and must be convinced to, require Article 97 compliance as part of the Certificate irrespective of its preemptive authority. FERC will only choose to honor state and local laws that it could preempt if the municipalities and state actors stand up for themselves.

A recent letter from the Department of Fish and Wildlife Chairman Darey to the FERC also asked that "Your analysis should also address the long-term effects on the Division's (and other similar public and private entities') future ability to acquire and hold land in trust. The reputational cost to those entities charged with protecting public lands is significant and needs to be understood and evaluated."

FERC will only honor our stand on Article 97 if we make them. What should legislators do?

1. Pledge to vote no against taking public land for private profit.
 - a. Bradley H.3690 bill to release Article 97 land in beautiful Spectacle Pond Farm / Otis State Forest for the Kinder Morgan Connecticut Expansion
2. Write to FERC requesting that compliance with our State Constitution must be made a condition of any certificate impacting Massachusetts.
3. Encourage their colleagues to pledge to do the same.