



PRIVATE PROPERTY RIGHTS AT THE RANCH LEVEL

Room 202AB

Speaker:

Zach Brady, Brady and Hamilton, LLP

PROPERTY RIGHTS AT THE RANCH LEVEL

TSCRA School for Successful Ranching
Fort Worth, Texas

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March 22, 2013


PROPERTY RIGHTS AT THE RANCH LEVEL

- Easements
- Condemnation
- Premises Liability
- Oil and Gas Leasing
- Surface Rights and Damages
- Grazing Leases
- Hunting Leases
- Eco-tourism / "Agri-tourism"
- Other Recreational Use
- Water Rights
- Surface Water Issues
- Ground Water Issues



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- Easement Basics
 - The right to go across the land of another
 - Easement vs. License
- Express Easement
 - Drafting and Recording
- Implied Easement
 - Evidence of Existing Use
 - Easement by Necessity
 - Easement by Estoppel
 - Implied Dedication
 - Prescriptive Easement
- Chapter 281, Transportation Code
- Chapter 258, Transportation Code



EASEMENTS

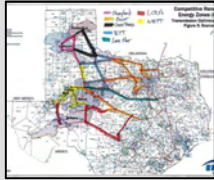
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- Authority
 - U.S. Constitution, Amendment V
 - Texas Constitution, Art. 1, Section 17
 - Texas Property Code Chapter 21
 - Texas Codes – Subject Matter Specific
 - Example: Natural Resources Code Section 111.109; Common Carriers and Pipelines
- Concepts
 - Physical taking vs. Regulatory Taking
 - Condemnation vs. Inverse Condemnation
 - Taking or Permissible Regulation?
 - Highest and Best Use
 - Damages – taking, and to the remainder
- Process
 - Negotiations
 - Special Commissioner Hearing
 - Appeal; General Court Proceeding

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CONDEMNATION

- CREZ and Impact on Texas Ranches
 - CREZ legislative enactment
 - CREZ routing process
 - CREZ condemnation
 - Compare and contrast utility co. offers and strategies
 - Roads, gates, and gravel
 - Temporary Construction Easements
 - Special Commissioner Hearings – County specific
 - Post-easement construction issues



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CONDEMNATION




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- Prevention is Key!
- What's the Difference?
Invitee, Licensee,
Trespasser
- Do Signs Matter?
- Insurance:
 - Coverage and Limitations
 - New activity? Call your Agent.
- Waivers and Releases
 - 4-H Hay Ride
 - Roping Practice
 - Annual Hunt



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PREMISES LIABILITY



- Landowner Goals
- Operator Goals
- Standard Lease Terms
- Mineral Estate vs. Surface Estate
- Shale Plays and Impact of Fracking
- Seismic Test Leasing

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OIL AND GAS LEASING

- Surface Users
 - Grazing Lease
 - Farming Lease
 - Hunting Lease
 - Oil and Gas Lease
 - Wind Lease
- Surface Damages – Who's Responsible?
- Surface Easements


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SURFACE RIGHTS AND DAMAGES

- Lease Terms
 - Price
 - Acres
 - # Head allowed
 - Length and Termination
 - Assignment
 - Other activities allowed
 - Prohibited activities
 - Property Damages and Indemnification
 - Insurance



GRAZING LEASES



- Lease v. License
- Landowner Goals; Hunter Goals
- What to Include?
 - Duration of Lease Term
 - Activities Allowed
 - Describe Lease Tract
 - Access to Leased Portion
 - What Game is Game?
 - Shotguns, Bows, or Muzzle-Loaders
 - Hunting Method
 - Guests
 - Liability and Release
 - Price and Payment
 - Use of Facilities
 - Vehicle Use
 - Cleaning Game
 - Gates and Keys





HUNTING LEASES



"Agritourism": What is it?

- Four basic concepts:
 - (1) Combines the essential elements of the tourism and agriculture industries;
 - (2) attracts members of the public to visit agricultural operations;
 - (3) designed to increase farm income; and
 - (4) provides recreation, entertainment and/or educational experiences to visitors.
- Benefits vs. Increased Liability Risks
- "Nature Tourism" - Texas A&M AgriLife Program
<http://naturetourism.tamu.edu/agritourism/>
- Some Liability Protection via Agritourism Statutes
 - Oklahoma
 - Create agritourism fund
 - Liability limitations for livestock shows and other livestock activities
- Lawsuits Challenging Protection

ECOTOURISM/AGRITOURISM






- ATV Fun
- Fishing Holes and Kids
- Hogs and Helicopters

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OTHER RECREATIONAL USE

- Clean Water Issues
 - TCEQ, Nonpoint Source Program
- Water Supply Issues
 - Drought
 - Production and Use Limits
 - Water Re-use
- Water Use/Ownership Issues
 - Surface Water
 - Ground Water



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WATER RIGHTS

- Surface Water
 - Texas holds title
 - Water Permits for use
 - Exceptions:
 - Domestic and Livestock
 - Wildlife Management
 - Emergency Use
 - Others
 - Types of Water Rights
 - Perpetual Rights
 - Drought Issues - LCRA
 - Limited Term Rights
 - Enforcement:
 - Honor System
 - Watermaster

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SURFACE WATER ISSUES

Groundwater Ownership


- Rule of Capture with Recognized Exceptions
 - Edwards Aquifer Authority
 - Groundwater districts.
 - Underground river exception
 - Underflow of a surface watercourse.
 - Malicious pumping.
 - Subsidence exception.

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GROUND WATER ISSUES

Groundwater Districts


- Chapter 36
- Board Rule-Making Authority
- Registration
- Domestic and Livestock Wells
- Production Permits
- Production Limits
 - Innovative Solutions
- Future of GCDs
- 2013 Legislative Proposals
 - SB 272 and SB 302



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GROUND WATER ISSUES

THANK YOU



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Questions
