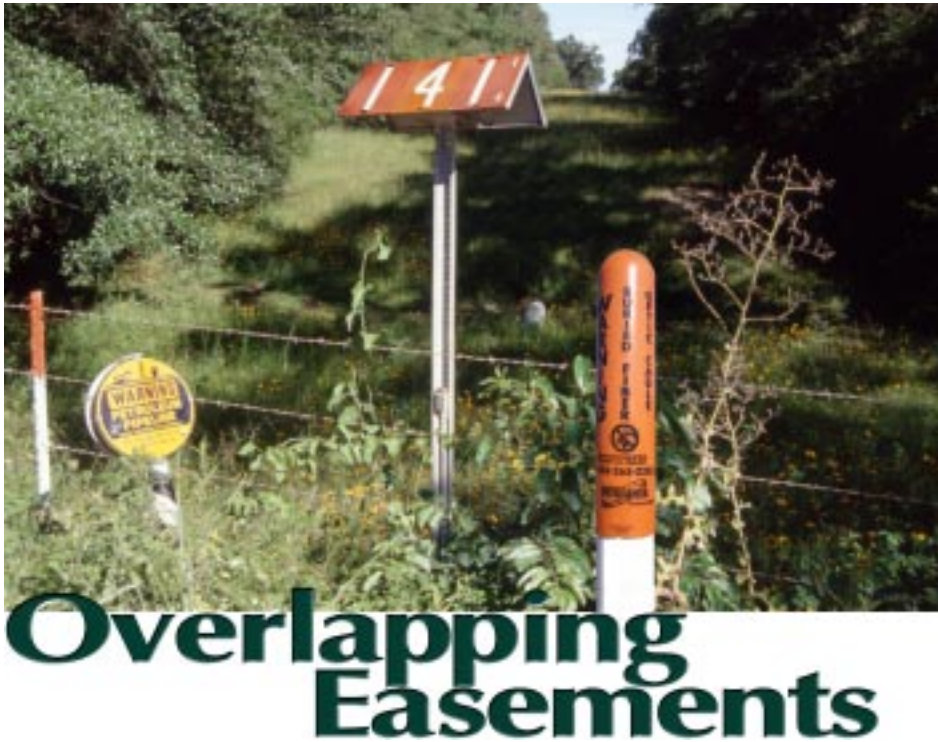


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Overlapping Easements

By Judon Fambrough

The *Zwahr* case (see Pipeline Corridors, Economic Units and Condemnation) has implications regarding the amount of land condemned for easements. Exxon could have avoided the high award in that case by laying its pipeline parallel to and not overlapping the Koch easement. In the future, instead of having three lines laid in one easement, three lines will be laid in three separate parallel easements, thereby using more land.

What landowners may not realize, though, is that Texas legislators foresaw the problem occurring with public utilities and statutorily allowed overlapping or stacking of easements. This was brought to light in the case of *Grimes v. Corpus Christi Transmission Co.*, 829 S.W.2d 335, reported in Vol. 7, No. 1 of *Letter of the Law* in 1992.

In this case, the Grimeses purchased land subject to an easement granted to the state "for the purpose of opening, constructing and maintaining a permanent road." In 1989, the Corpus Christi Transmission Co. laid a 16-inch gas pipeline beneath the highway after obtaining consent from the Texas Highway Dept. as permitted by Article 1436b of the Texas Civil Statutes.

The Grimeses sued for an unlawful "taking" without just compensation because the gas pipeline exceeded the scope of the

original easement. The Grimeses lost the case. Article 1435b grants "Any person, firm or corporation . . . engaged in the business of transporting or distributing gas for public consumption . . . the power to lay and maintain pipes, . . . used for conducting gas through, under, along, across and over all public highways, . . . within this state . . ."

The court ruled that the statutory grant of power to overlap the easements trumped the landowner's attempt to limit the purpose and scope of the easement.

What many landowners do not know is that Texas statutes grant a host of different utilities the right to overlap their easements without obtaining independent permission from the landowners. Examples include the following:

- Texas Natural Resource Code Section 11.020 grants common carrier pipeline companies the right to lay, maintain, operate along or under public streams and highways their pipelines, along with telephone and telegraph lines incidental to the operation of the pipelines.
- Texas Utilities Code Section 181.082 allows telephone or telegraph corporations to install lines along, on or across public roads, public streets or public waterways.
- Texas Utility Code Section 181.042 permits electric utility companies to construct, maintain and operate lines over, under, across, on or along

a state highway, county road, municipal street, alley or other public property in a municipality.

- Texas Utility Code Section 181.102 permits companies providing community antenna or cable television service to the public in unincorporated areas to install and maintain lines, wires, cables, conduits, conductors, poles, etc. through, under, along, across or over a utility easement, public road, alley or body of public water.

In each of these instances, the company laying the lines or installing the equipment must first secure permission from some state agency. While installing the lines or equipment, the companies must not make it inconvenient to use the public roadways, streets, alleys or waterways. The recent case of *Krohn v. Marcus Cable Association*, No. 10-99-244-CV, 3/14/2001 exemplified the last requirement.

The Krohns owned land in Ellis County, Texas. The property was burdened by an easement granted to the Hill Country Electric Cooperative. The defendant cable company secured permission from the electric co-op to attach its cable television lines to the cooperative's electrical poles. The cable company did not secure the Krohns' permission, and the Krohns sued to have the cable lines removed.

The trial court ruled in favor of the cable company because the defendant's actions were permitted under the Texas Utility Code Section 181.102 noted earlier. The Krohns appealed.

The appellate court reversed the ruling, stating that the easement granted to the Hill Country Electric Cooperative was limited to the transmission of electricity. The court also noted the distinction between granting an easement to a utility company and granting a utility easement. The court held that the statute applies only when there is a general grant of a utility easement, not in cases in which an easement is granted to a utility company for a specific purpose.

According to the court, "While the legislature has granted certain rights to cable television companies for the purpose of this statute, it has not, even if it could, granted cable television companies the right to use every easement granted to any utility in this state."

This opinion appears to contradict the ruling in the *Grimes* case discussed earlier. ♦

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