Texas A&M AgriLife Extension

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Basics of Texas Water Law

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Water law is one of the most contentious and frequent legal issues Texas landowners face. As the adage goes, "Whiskey is for drinkin' and water is for fightin'." Texas property owners need to understand the basics of Texas water law as well as their rights and legal limitations related to the use of water on their property.

Texas water law divides water into two broad categories: groundwater and surface water. Different legal frameworks and regulatory structures apply to each category, making Texas water law more complex than other states that follow a single legal approach for all waters.

Groundwater

The Texas Water Code defines groundwater as "water percolating below the surface of the earth."[1] Nine major aquifers hold much of this groundwater: Cenozoic Pecos Alluvium, Seymour, Gulf Coast, Carrizo-Wilcox, Huaco–Mesilla Bolson, Ogallala, Edwards–Trinity Plateau, Edwards BFZ, and Trinity.

Ownership

Absent an agreement otherwise, Texas landowners own the groundwater beneath their property.[2] Texas courts are clear that a landowner has a vested property right in groundwater. Although a landowner has the right to capture water from beneath his or her property, this right does not ensure the right to capture a specific amount of groundwater.

Like other estates such as minerals, the groundwater estate may be severed from the surface estate of the property. The severed groundwater estate can then be reserved (the seller of the property retains the groundwater ownership and sells his or her remaining interest) or conveyed (a property owner sells or otherwise transfers the groundwater ownership but retains ownership of the rest of the property). If a property owner sells his or her property but retains the groundwater rights, the new purchaser owns the surface estate but not the groundwater. The seller who reserved that interest still owns the groundwater.

In 2016, the Texas Supreme Court ruled that a severed groundwater estate—like a severed mineral estate—is dominant over the surface estate.[3] This ruling is crucial for anyone owning or considering purchasing property with severed groundwater rights. The result of this ruling is that absent an express agreement to the contrary, an owner of a severed groundwater right has the automatic, implied right to use as much of the surface of the land as is reasonably necessary to produce the severed groundwater. This right is limited by the accommodation doctrine, which requires a dominant estate holder to accommodate an existing surface owner if the surface owner can prove

- mineral production substantially interferes with an existing surface use,
- minerals can be produced another way, and
- existing surface use canot be conducted in another way.

[1] Texas Water Code Section 36.001(5).
[2] Texas Water Code Section 36.002.
[3] *Coyote Lake Ranch v. City of Lubbock,* 498 S.W.3d 53 (Tex. 2016).

Applicable law

The Rule of Capture governs groundwater law and provides that a landowner has the right to pump water from beneath his or her property, even at the expense of his or her neighbor. The Texas Supreme Court[4] established this rule in 1904 when it found that a landowner had no legal remedy when a railroad company moved in next door, drilled a bigger, deeper well, and made the landowner's well go dry. The landowner's remedy, explained the Court, was to drill his own bigger, deeper well.

But particular limitations on the Rule of Capture apply—Groundwater Conservation Districts and common law rules. Groundwater Conservation Districts (GCDs) are the "preferred method of groundwater management in Texas."[5] Although the Texas Constitution tasks the Texas Legislature with managing the State's natural resources, the Legislature determined that allowing local control through GCDs would be a better approach to groundwater management. Thus, there are 98 GCDs across the state (see map on page 5). These districts manage groundwater within their bounds by developing plans and implementing rules related to groundwater production. The rules differ by GCD but often include a permitting process for most groundwater wells, some form of reporting requirement, and production rules such as spacing rules, pump size limits, or production limits.

In addition to the rules for each district, a state statute, which is applicable across Texas, makes specified wells exempt from the GCD permitting process. Wells that are exempt under this statute are not requried to obtain a permit to drill from the local GCD, but may need to register and follow other district requirements. Exempt well categories in Texas include

- wells drilled for domestic use or for providing water for livestock or poultry if the well is
  - located on a tract of land 10 acres or larger; and
  - drilled, completed, or equipped to be incapable of producing more than 25,000 gallons per day;

Water ditch between rice fields. *Source: Kathleen Phillips, Texas A&M AgriLife.*

- wells used solely to supply water for a rig actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas; or
- wells authorized by the Railroad Commission of Texas or for production from the well to the extent mining activities require withdrawals.[6]

GCDs may not narrow any of these statutory exceptions but can broaden them. For example, a GCD could have a rule that all domestic and livestock wells are exempt from permitting, regardless of the size of the tract or the pump involved. Each GCD has its own set of rules that address these issues.

Before pumping groundwater, a Texas landowner should determine whether his or her property is located within a GCD and, if so, obtain a copy of the GCD local rules to ensure compliance when drilling a well and producing groundwater.

[4] *Houston & T.C. Ry. V. East,* 81 S.W.279 (1904).
[5] Texas Water Code Section 36.0015(b).
[6] Texas Water Code Section 36.117.

If a landowner is not in the bounds of a GCD, he or she need not worry about these types of regulations.

Some common-law exceptions have developed through court cases. These limitations, which apply state-wide, regardless of whether a GCD is in place in an area, prohibit a landowner from

- maliciously taking water for the sole purpose of injuring his or her neighbor,
- willfully or wantonly wasting groundwater,
- negligently drilling or pumping from a well in a manner that causes subsidence,
- pumping from a contaminated well, or
- trespassing in order to pump groundwater.[7]

Surface Water

Surface water includes all water "under ordinary flow, underflow and tides of every flowing river, stream, lake, bay, arm of the Gulf of Mexico, and stormwater, floodwater or rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state."[8] A subcategory of surface water is diffused surface water, also known as storm runoff or rain or snow.

The key difference between surface water and diffused surface water is whether a "defined watercourse" exists. Under Texas case law, a defined watercourse is made up of three elements: (1) bed and banks, (2) current, and (3) permanent source and supply.[9] The application of this test has been extremely broad, with the Texas Supreme Court holding that a defined watercourse existed where the bed and banks were "slight, imperceptible or absent," the current of water was not "continuous and the stream may be dry for long periods of time."[10] Landowners should carefully consider whether runoff on their property is truly diffused surface water or if it meets the liberal definition of surface water.

Irrigated corn. *Source: Kay Ledbetter, Texas A&M AgriLife.*

Ownership

The State of Texas owns surface water, held in trust for the citizens.[11] The Texas Commission on Environmental Quality (TCEQ) manages it. In most cases, to use surface water, a landowner must obtain a permit from the TCEQ allowing them to use a designated amount of water for a designated purpose. TCEQ will consider a number of issues, including whether there is unappropriated water available in the basin, how the proposed diversion will impact other surface water permit holders, and whether the proposed diversion will be put to beneficial use.

Diffused surface water, however, is the property of the landowner as long as it remains on the landowner's property and may be used how he or she wishes until it reaches the defined watercourse, at which time it becomes state-owned water.[12]

Applicable law

The legal doctrine of prior appropriation governs the use of surface water, following the principle of "first in time, first in right."[13] Essentially, prior appropriation means "first come, first served." When a person obtains a permit from the TCEQ, that permit has a "priority date." The TCEQ maintains a database of all water rights. In times of shortage, senior water users—those with the oldest priority date—receive all of the water to which they are entitled before junior users receive any. A water rights holder concerned that there will not be enough water to allow his or her permitted withdrawal may contact TCEQ and request a priority call, which is an order from TCEQ to junior water rights holders to stop diverting water.

[7] *See Sipriano v. Great Spring Waters of Am., Inc.*, 1 S.W.3d 75 (Tex. 1999).
[8] Texas Water Code Section 11.021.
[9] *Hoefs v. Short*, 273 S.W. 785 (Tex. 1925).
[10] *Hoefs v. Short*, 273 S.W. 785 (Tex. 1925).
[11] Texas Water Code Section 11.021.
[12] *Domel v. City of Georgetown*, 6 S.W.3d 349 (Tex. Ct. App. – Austin 1999).
[13] Texas Water Code Section 11.027.

Cattle resting and eating in the Panhandle after rains left green grass and full ponds. *Source: Kay Ledbetter, Texas A&M AgriLife.*

Certain diversions of water are exempt from the TCEQ permitting process, meaning that landowners may make these diversions of surface water without obtaining a TCEQ permit. These exemptions apply only on a non-navigable stream.[14] For any navigable stream, all diversions require a permit from the TCEQ. Under Texas law, there are two alternative tests for navigability. To be deemed navigable, a watercourse need satisfy only one. First, a watercourse can be "navigable in fact"—it can be used as a "highway for commerce."[15] Courts have stated that waterways capable of floating logs and travel by any boat are "navigable in fact," despite "occasional difficulties in navigation."[16] Second, a watercourse can be "navigable in law"—it maintains an average width of 30 feet from gradient boundary line to gradient boundary line.[17]

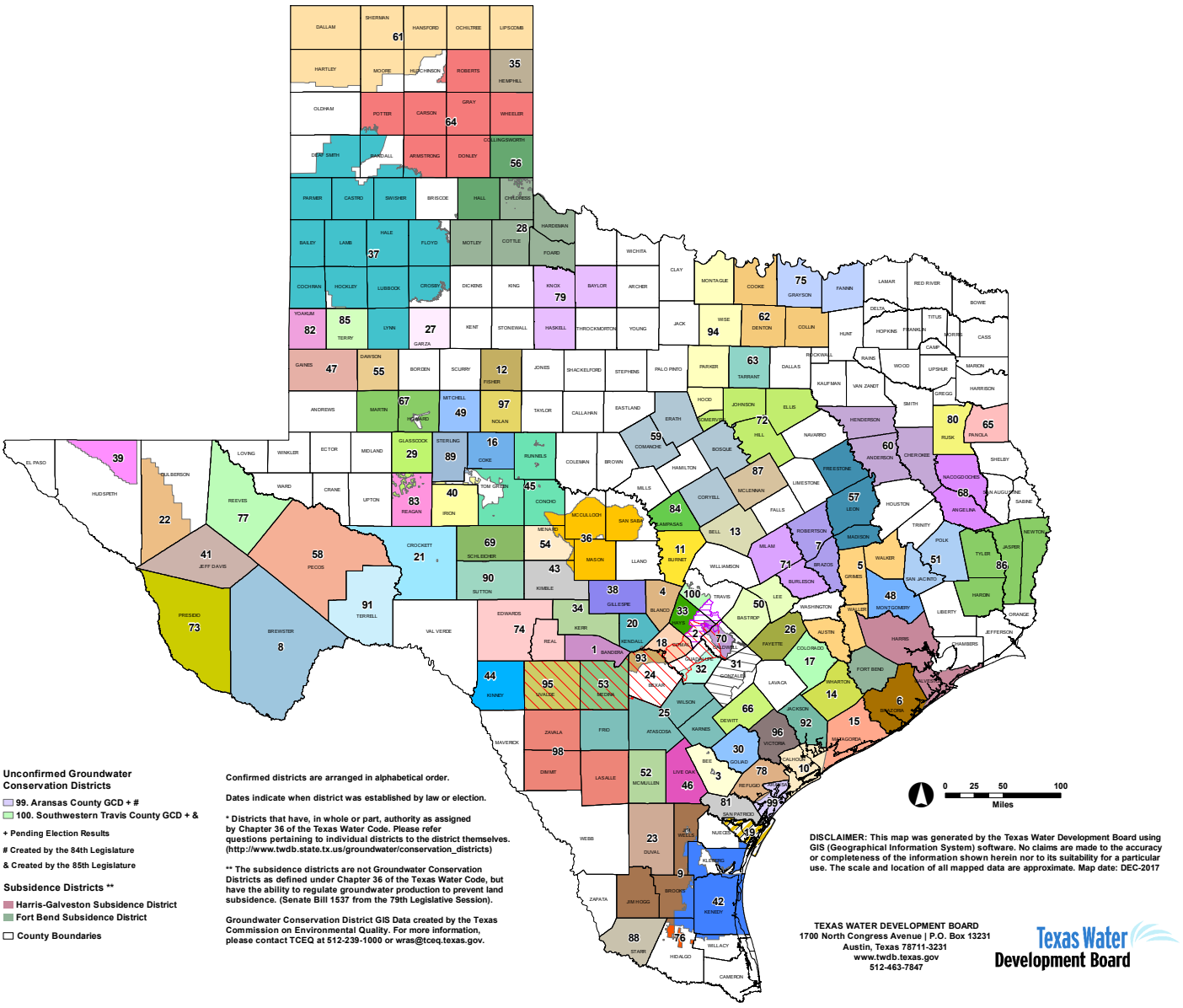
Assuming a stream is non-navigable, the following diversions do not require a permit:

- Domestic or livestock uses can build a tank or reservoir of fewer than 200 acre-feet capacity for a noncommercial purpose.
- Commercial or noncommercial wildlife management, including fishing, is allowed if a tank or reservoir is less than 200 acre-feet in capacity.
- Diversions used for drilling or producing petroleum may take water from the Gulf of Mexico and adjacent bays and arms of the Gulf of Mexico.
- Reservoirs may be constructed as part of a surface coal mining operation if they are used for sediment control and are in compliance with applicable laws related to dust suppression.

Summary

Because legal issues surrounding water will not go away anytime soon, landowners should educate themselves on the laws and their rights related to water use. The first step in analyzing water law issues in Texas is to understand the different categories of water and the legal approaches to each. In Texas, the landowner owns the groundwater, subject in many areas to rules created by Groundwater Conservation Districts. Landowners should determine whether they are in a GCD and, if so, review and understand the rules of that district. When buying or selling property, all Texas landowners should be careful to determine whether groundwater rights have been severed. The State of Texas owns surface water and a permit from the TCEQ is generally required to divert state-owned surface water. Diffused surface water is storm runoff and may be captured and used by a landowner before it reaches a defined watercourse and becomes state-owned water.

[14] 30 Texas Admin. Code 297.21(c).
[15] *Taylor Fishing Club v. Hammett,* 88 S.W.2d 127 (Tex. Ct. App. – Waco 1935).
[16] *Orange Lumber Co. v. Thompson,* 126 S.W. 604 (Tex. Ct. App. – 1910)
[17] *Taylor Fishing Club v. Hammett,* 88 S.W.2d 127 (Tex. Ct. App. – Waco 1935).
[18] Texas Water Code Section 11.142.



Confirmed Groundwater Conservation Districts*

1. Bandera County River Authority
2. Barton Springs/Edwards Aquifer CD - 8/13/1987
3. Bee GCD - 1/20/2001
4. Blanco-Pedernales GCD - 1/23/2001
5. Bluebonnet GCD - 11/5/2002
6. Brazoria County GCD - 11/8/2005
7. Brazos Valley GCD - 11/5/2002
8. Brewster County GCD - 11/6/2001
9. Brush Country GCD - 11/3/2009
10. Calhoun County GCD - 11/4/2014
11. Central Texas GCD - 9/24/2005
12. Clear Fork GCD - 11/5/2002
13. Clearwater UWCD - 8/21/1999
14. Coastal Bend GCD - 11/6/2001
15. Coastal Plains GCD - 11/6/2001
16. Coke County UWCD - 11/4/1986
17. Colorado County GCD - 11/6/2007
18. Comal Trinity GCD - 6/17/2015
19. Corpus Christi ASRCD - 6/17/2005
20. Cow Creek GCD - 11/5/2002
21. Crockett County GCD - 1/26/1991
22. Culberson County GCD - 5/2/1998
23. Duval County GCD - 7/25/2009
24. Edwards Aquifer Authority - 7/28/1996
25. Evergreen UWCD - 8/30/1965
26. Fayette County GCD - 11/6/2001
27. Garza County UWCD - 11/5/1996
28. Gateway GCD - 5/3/2003
29. Glasscock GCD - 8/22/1981
30. Goliad County GCD - 11/6/2001
31. Gonzales County UWCD - 11/2/1994
32. Guadalupe County GCD - 11/14/1999
33. Hays Trinity GCD - 5/3/2003
34. Headwaters GCD - 11/5/1991
35. Hemphill County UWCD - 11/4/1997
36. Hickory UWCD No. 1 - 8/14/1982
37. High Plains UWCD No.1 - 9/29/1951
38. Hill Country UWCD - 8/8/1987
39. Hudspeth County UWCD No. 1 - 10/5/1957
40. Irion County WCD - 8/2/1985
41. Jeff Davis County UWCD - 11/2/1993
42. Kenedy County GCD - 11/2/2004
43. Kimble County GCD - 5/3/2002
44. Kinney County GCD - 1/12/2002
45. Lipan-Kickapoo WCD - 11/3/1987
46. Live Oak UWCD - 11/7/1989
47. Llano Estacado UWCD - 11/3/1998
48. Lone Star GCD - 11/6/2001
49. Lone Wolf GCD - 2/2/2002
50. Lost Pines GCD - 11/5/2002
51. Lower Trinity GCD - 11/7/2006
52. McMullen GCD - 11/6/2001
53. Medina County GCD - 8/26/1991
54. Menard County UWD - 8/14/1999
55. Mesa UWCD - 1/20/1990
56. Mesquite GCD - 11/4/1986
57. Mid-East Texas GCD - 11/5/2002
58. Middle Pecos GCD - 11/5/2002
59. Middle Trinity GCD - 5/4/2002
60. Neches & Trinity Valleys GCD - 11/6/2001
61. North Plains GCD - 1/2/1955
62. North Texas GCD - 12/1/2009
63. Northern Trinity GCD - 5/15/2007
64. Panhandle GCD - 1/21/1956
65. Panola County GCD - 11/6/2007
66. Pecan Valley GCD - 11/6/2001
67. Permian Basin UWCD - 9/21/1985
68. Pineywoods GCD - 11/6/2001
69. Plateau UWC and Supply District - 3/4/1974
70. Plum Creek CD - 5/1/1993
71. Post Oak Savannah GCD - 11/5/2002
72. Prairielands GCD - 9/1/2009
73. Presidio County UWCD - 8/31/1999
74. Real-Edwards C and R District - 5/30/1959
75. Red River GCD - 9/1/2009
76. Red Sands GCD - 11/5/2002
77. Reeves County GCD - 11/3/2015
78. Refugio GCD - 11/6/2001
79. Rolling Plains GCD - 1/26/1999
80. Rusk County GCD - 6/5/2004
81. San Patricio County GCD - 5/12/2007
82. Sandy Land UWCD - 11/7/1989
83. Santa Rita UWCD - 8/19/1989
84. Saratoga UWCD - 11/7/1989
85. South Plains UWCD - 2/8/1992
86. Southeast Texas GCD - 11/2/2004
87. Southern Trinity GCD - 6/19/2009
88. Starr County GCD - 1/6/2007
89. Sterling County UWCD - 11/3/1987
90. Sutton County UWCD - 4/5/1986
91. Terrell County GCD - 11/6/2012
92. Texana GCD - 11/6/2001
93. Trinity Glen Rose GCD - 11/5/2002
94. Upper Trinity GCD - 11/6/2007
95. Uvalde County UWCD - 9/1/1993
96. Victoria County GCD - 8/5/2005
97. Wes-Tex GCD - 11/5/2002
98. Wintergarden GCD - 1/17/1998

Groundwater conservation districts. *Source: Texas Water Development Board*

Cover photo: Sprinkler irrigation. *Source: Kay Ledbetter, Texas A&M AgriLife Research*

SUMMARY OF ESTATE PLANNING DOCUMENTS

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BASIC DOCUMENTS

The core of estate planning generally centers around the following basic documents:

1. Durable power of attorney: this document appoints an agent to make business and property decisions during a person's lifetime, if necessary or simply desired.
2. Medical power of attorney: this document appoints an agent to make medical decisions during a person's lifetime, if necessary.
3. Medical directive: also called a "living will," this document sets forth a person's wishes for end-of-life decisions.
4. Will: a will addresses settlement of an estate upon death. It states how the bills are paid, who gets the property, and who handles the process (the "executor"). Depending on a person's estate and desired outcomes, a will can be extremely simple or can use more complex tools such as estate tax protection or trusts. It can also work in conjunction with advanced tools or instruments created during a person's lifetime.
5. Trust: a trust is an entity that holds property apart for a specific purpose. A trustee holds and manages the property for a beneficiary or beneficiaries, then distributes property to the beneficiary under the trust's terms and conditions. A trust may be simple or complex and may be created during a person's lifetime or in a person's will.

ESTATE TAX CONCERNS

The "estate tax" is more properly described as the unified federal estate and gift tax credit. This credit determines how much property a person can give away during their lifetime, or as part of their estate, without incurring any estate or gift tax. Tax reform in 2017 raised the credit to $10 million per person, meaning that a husband and wife in a community property state like Texas can pass on $20 million without incurring a tax. This number will be adjusted for inflation moving forward from 2018 on. Furthermore, the "portability" of this tax credit means that, with proper filing, any unused portion of the first spouse's credit can be used by the surviving spouse.

Any distribution above the maximum credit is subject to federal estate tax, which is currently set at 40%. In a taxable estate, the estate tax return is due within 9 months of death and payment is due, in cash, within 12 months of death. This can be rather draconian, particularly for estates with limited amounts of cash/liquid assets.

Additionally, each person has an annual gift tax exclusion of $15,000 for 2018 (up from $14,000 in 2017). A person can make individual gifts of up to $15,000 to as many persons as desired, each year, without impacting the lifetime credit.

The goal of estate tax planning is twofold: 1) minimize the value of the estate (to limit the tax owed) and 2) prepare liquidity for the estate tax payment, so that that assets like land, minerals, or businesses do not have to be liquidated to raise the necessary cash.

Minimizing the value

There are several approaches to minimize an estate's value. First, if the assets are community property, then the value can be spread between the spouses. If assets pass to the surviving spouse at death, the deceased spouse can create a trust in their will to hold those assets for the survivor's benefit but apart from the survivor's own estate. If the assets passed outright to the survivor, they would impact the value of the survivor's estate and potentially incur additional estate tax on the survivor's death.

Lifetime gifts can be used to reduce the value of a person's gross estate, by distributing annual gifts under the gift tax exclusion. The natural of these gifts can be flexible. A person can gift cash, securities, or even undivided interests in assets like entities, business assets, and real estate.

Other tools can be used to minimize the value of an estate. The IRS permits certain discounting strategies, to reduce an asset's value below its worth on the open market. Liquid assets like cash and securities are not subject to discounting, but other assets like real estate, minerals, and business assets can be placed into a family-owned entity. This entity's value is subject to a discount for lack of marketability or as a minority interest. The theory is that an asset is worth a certain value on the open market, but when the asset is owned by an entity, the entity itself is worth less on the open market.

Other advanced tools, beyond the scope of this fact sheet, may be used as well. When drafted properly, these tools may provide more complex solutions, such as protecting the value of a person's estate from rapidly-appreciating assets.

Planning the tax payment

Estate tax liability can often be reduced, but outright avoidance is not always feasible for large estates. When tax liability is inevitable, it is important to plan for payment of the tax bill. Short of setting aside liquid assets to be used for the payment, the most helpful tool is the Irrevocable Life Insurance Trust (ILIT). An ILIT is a trust that owns a life insurance policy on a taxpayer's life (or both husband and wife for community estates). On the death of the taxpayer, or the second spouse, whenever the largest estate tax liability will be incurred, the trust will receive the proceeds of the insurance policy and use it to pay the estate tax liability on behalf of the estate. Often, the gift tax exclusion can be used to gift to the trust the annual policy premiums.

These insurance policies, particularly for younger people, can generate enormous "bang for the buck," offering significant liquidity. Moreover, the trust itself has very limited annual maintenance. This can be an affordable tool to prepare for estate tax payments.

Conclusion

Further advanced tools can be used in the estate planning process, but these tools should be handled with care. Ultimately, the goal of an estate plan should be to provide solutions. Limiting estate tax liability becomes less appealing when it creates outrageous legal fees, accounting fees, or administrative headaches. A legal strategy is not a solution when it creates a larger set of difficulties. At all times, flexibility, simplicity, and the ability to actually manage the estate planning tools should be considered.

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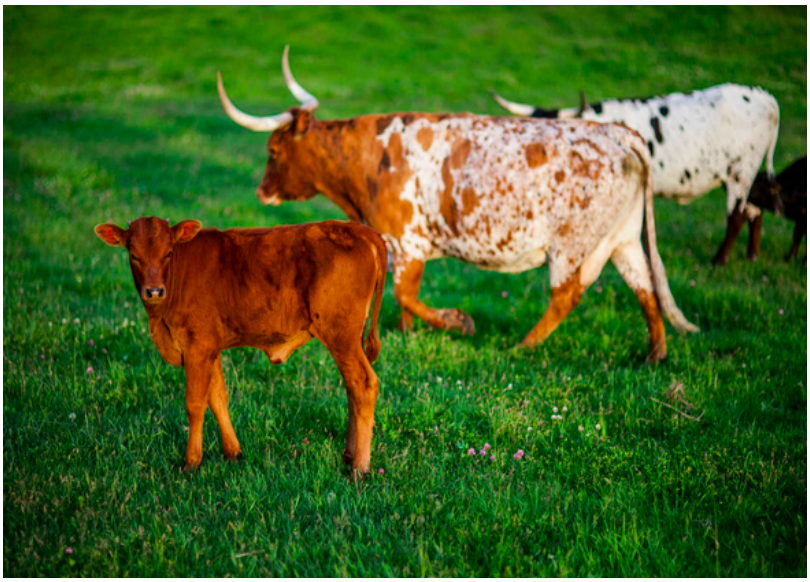
Keeping Liability Outside the Fence

Landowners in Texas today face a myriad of threats concerning liability to third parties on their property. With over eighty percent of Texas privately-owned, landowners are well-advised to know the law and understand their obligations to those on their property. This guide provides a basic overview of Texas law on landowner liability.

Landowner Liability Concerns

Statutory Protections

The primary questions underlying landowner liability are: 1) does the landowner owe a duty to the person on their property; and 2) if so, what is that duty? In Texas there are three primary categories of persons to whom a landowner may owe a duty: trespasser, licensee, and invitee. A trespasser enters property without permission. In the case of a trespasser, a landowner only owes a duty to avoid injuring a trespasser willfully, wantonly, or through gross negligence. Another category of person in landowner liability is a licensee. Licensees enter property for their own benefit. The property may not be open to the general public but a licensee is allowed to enter the property. In this case, a landowner owes a duty to a licensee to avoid intentionally injuring the licensee. Further a landowner must make a licensee aware of or make safe dangerous conditions known to the landowner that would not be known to the licensee. A third category of person in landowner liability is an invitee. An invitee enters property for the mutual benefit with the landowner. An invitee is "invited" onto the land by the owner either as a member of the general public or for some business dealing with the landowner. Landowners owe invitees a duty to avoid intentionally injuring invitees. Further landowners must make invitees aware of or make safe dangerous conditions both known to the landowner or that the landowner *could have known* with a reasonable inspection.



Today in Texas, landowners can look to statutory protections that address the liability of owners, lessees and occupants in certain situations. Many of these statutes specifically apply to agricultural land and address all types of visitors on property from invitees and licensees to trespassers.

Law Enforcement, Peace Officers and Firefighters

Increasingly, Texas landowners are facing risks that may involve law enforcement on private property. Texas law now provides unique liability protection to landowners due to the presence of law enforcement or firefighters on the property. Chapter 75 of the Texas Civil Practice and Remedies Code addresses situations when liability may be caused by certain actions of law enforcement or firefighters on property. Specifically, the statute addresses three situations: 1) damages arising from escaped livestock as a result of law enforcement or firefighter presence on the land; 2) damages arising from law enforcement or peace officers entering the property; and 3) damages arising from other individuals entering the property as a result of law enforcement activity.

Under section 75.006, a landowner is not liable for damages arising from injury caused by livestock of the landowner due to an act or omission by a firefighter or peace officer who entered the property with or without permission. This limitation of liability applies whether the damage occurs on the landowner's property or not. The statute goes further to limit liability for the owner, lessee, or occupant of agricultural land, providing that such persons are not liable for damage to any person or property that arises from the actions of a peace officer or federal law enforcement officer when the officer enters or causes another to enter the agricultural land with or without permission. This limitation of liability for agricultural land also extends to actions of an individual, who because of the actions of a peace officer or federal law enforcement officer, enters or causes someone else to enter agricultural land without the permission of the owner, lessee, or occupant. In these cases, the landowners, lessees, or occupants are only liable for damage that arises by the gross negligence or wilful or wanton conduct of the owner, lessee, or occupant.

Recreational Use

Another specific limitation of liability concerns owners of agricultural land that is used by individuals for certain recreational purposes. Chapter 75 of the Texas Civil Practice and Remedies Code also houses the Recreational Use Statute. This law provides a lower level of responsibility for landowners who let people use their land for recreational purposes. In these cases, a landowner is liable only for intentional acts or gross negligence if three major requirements are met: 1) the land at issue is agricultural land as defined by the statute; 2) the user enters the land for recreational purposes as defined by the statute; and 3) one of three monetary requirements are met (landowner did not charge fee, fee charged did not exceed 20 times the amount of landowner's ad valorem taxes paid during last calendar year, or landowner maintains adequate insurance (at least $500,000 for each person, $1 million for each occurrence, and $100,000 for each occurrence of property damage). If these requirements are met, landowner liability is significantly limited both in terms of trespassers and invitees.

What is "agricultural land" under the statute? The statute defines "agricultural land" as Texas land that meets at least one of three criteria: 1) land used in production of plants and fruits grown for consumption (human or animal) or plants grown for production of fibers, floriculture, viticulture, horticulture, or planting seed; 2) land used for forestry or growing trees for lumber, fiber, or for industrial, commercial, or personal consumption; or 3) land used for domestic or native farm or ranch animals kept for use or for profit. The statute broadly defines "recreation" to include hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving (including off-road driving, motorcycling, or use of all-terrain vehicles), nature study, cave exploration, waterskiing and water sports, bicycling and mountain biking, disc golf, on-leash and off-leash walking of dogs, radio control flying, and any other activity associated with enjoying the outdoors. "Recreation" includes bird-watching and swinging on a swingset, among other activities. Courts, however, have declined to find some activities "recreation" despite their connection with the outdoors. For example, an outdoor wedding is not considered to be "recreation" for purposes of the statute.

In addition to limiting the liability of certain landowners, the statute explains that a landowner who invites or gives permission for others to use agricultural land for recreation does not assure that the premises are safe for that purpose and does not owe a greater duty than that owed to a trespasser under the Act. Landowners do not owe a duty of care to trespassers under the statute and are not liable to injury to trespassers except for wilful or wanton acts or gross negligence by the owner, lessee or occupant of the land. Therefore, a landowner invoking the Recreational Use statute generally limits his liability to acts of gross negligence or wilful or wanton conduct. Further, for landowners who maintain liability insurance in the denominations noted herein, the statute limits the amount of damages that can be assessed against such landowner for acts or omissions of the landowner that damages a person on the premises to the maximum amount of $500,000 for each person and $1 million for each single occurrence of bodily injury or death and $100,000 for each single occurrence of injury to or destruction of property.

Finally, landowners should be cautious concerning children on their property. The Recreational Use statute allows for greater liability where children are concerned. Specifically, an owner, lessee, or occupant of land may be liable for injury to a child caused by a highly dangerous artificial condition when the place where the condition exists is a place where the owner, lessee, or occupant knew or reasonably should have known children were likely to trespass. Further liability may attach if: 1) the artificial condition is one that the

owner, lessee, or occupant knew or should have known existed and knew or should have realized involved a reasonable risk of death or serious injury to children; 2) the injured child, because of the child's youth did not discover the dangerous condition or understand the risk involved; 3) the use of the condition and the burden of eliminating the danger were slight in comparison with the risk to the children involved; and 4) the owner, lessee, or occupant failed to exercise reasonable care to either eliminate the danger or protect the child.

Agritourism

As a further limitation of liability for owners of agricultural land, Chapter 75A of the Texas Civil Practice and Remedies Code is home to the Texas Agritourism Act, which limits liability when certain warnings and signs are present or when a signed agreement is in place releasing the landowner. Agritourism activity is defined under the statute as "an activity on agricultural land for recreational or educational purposes of participants, without regard to compensation." Under the statute, an "agritourism entity" is not liable to an "agritourism participant" for injury or damages if: 1) required signage is posted; or 2) there is a signed, written agreement containing required language. The required language for a posted sign is: "WARNING: UNDER TEXAS LAW (CHAPTER 75A, CIVIL PRACTICE AND REMEDIES CODE), AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY TO OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AN AGRITOURISM ACTIVITY." The required release language for the signed written agreement is: "AGREEMENT AND WARNING: I UNDERSTAND AND ACKNOWLEDGE THAT AN AGRITOURISM ENTITY IS NOT LIABLE FOR ANY INJURY OR DEATH OF AN AGRITOURISM PARTICIPANT RESULTING FROM AGRITOURISM ACTIVITIES. I UNDERSTAND THAT I HAVE ACCEPTED ALL RISK OF INJURY, DEATH, PROPERTY DAMAGE, AND OTHER LOSS THAT MAY RESULT FROM AGRITOURISM ACTIVITIES." The agreement must be in at least 10-point bold type and signed *before* the activity, by the participant or guardian of the participant, and must be separate from any other agreement.

Some exceptions to the Agritourism limitation of liability exist and include the following: 1) employees of an agritourism entity are not covered; 2) injury caused by an entity's negligence evidencing a disregard for the safety of an agritourism participant is not covered; 3) injury caused by a dangerous condition that was either known or should have been known to a landowner is not covered; 4) injury caused by the dangerous propensity of an animal used in the activity that was not disclosed to the participant if the entity knew or should have known of the propensity is not covered; 5) injury caused by an entity's failure to adequately train an employee is

not covered, and 6) intentional injuries are not covered. In these cases, an agritourism entity can be held liable notwithstanding the statute.

Fence Law in Texas

In general, there are two approaches to fence law: open range or closed range. In the open range approach, a landowner has no duty to fence animals or prevent them from running loose on a roadway. In the closed range approach, a landowner has the obligation not to permit animals to run at large. Texas is an open range state. Notwithstanding this fact, there are a few significant exceptions. First, on U.S. or State Highways, the policy is closed range. A landowner cannot knowingly permit animals to run at large in these areas. Additionally, local stock laws can make portions or all of some counties closed range. Landowners are well-advised to check the law of their county to determine whether it is closed or open range.

Keys Points:

- Texas is an open range state with two major exceptions:
  - Local Stock Laws- which change the vast majority of counties to closed range
  - All U.S. and State highways are closed range
- Liability for livestock on neighboring land:
  - Open range: landowner is responsible for "fencing out" and there is no duty on the livestock owner to prohibit animals from running at large
  - Closed range: livestock owner has a duty to prohibit animals from running at large
- Finders Keepers does not apply- if stray livestock are on your property you may not keep or sell them (Estray Laws apply)
- There is no legal obligation in Texas for a landowner to share in building or maintenance costs of boundary fences
- There is no legal obligation for oil and gas companies to place fences around operations
  - Best way for livestock owners to protect their livestock is either through the oil and gas lease or a surface agreement

Landowner Liability After *Boerjan v. Rodriguez*

In the recent case of *Boerjan v. Rodriguez*, the issue of landowner liability to trespassers in Texas came before the Texas Supreme Court. The statutory protections previously discussed were not applicable in the *Boerjan* case because the case predated the effective date of the statutes, but it gave the Court an opportunity to consider the important issue of landowner liability in twenty-first century Texas. In *Boerjan*, a family of illegal immigrants from Mexico hired a "coyote" to transport them from the border into the United States. The coyote illegally transported the family across the Jones Ranch. An employee of the ranch stopped the coyote to inquire why he was on the property. The coyote took off at a high rate of speed and ultimately wrecked his truck, killing several immigrants. The family of the immigrants who were killed brought a wrongful death lawsuit against the ranch and its employee. The case posed an important question of what duty, if any, the landowner owed the immigrant family who were trespassers and illegally on the property. In the case of a trespasser, a landowner only owes a duty to avoid injuring a trespasser willfully, wantonly, or through gross negligence. This standard was reaffirmed and upheld in *Boerjan* when the Texas Supreme Court affirmed a trial court's summary judgment in favor of landowners.

This case was critical to landowners in South Texas and border areas but became very political when the Government of Mexico and human rights organizations filed briefs seeking to broaden a landowner's duty. A collection of Agriculture and Property Rights associations submitted an amicus brief to the Texas Supreme Court laying out the significant burdens and risks to landowners caused by immigration and smuggling activities and urged the Court to reject any broader standard of liability and make clear the limited duty owed to smugglers and trespassers. In its opinion the Court stated "the 'only duty the premises owner or occupier owes a trespasser is not to injure him wilfully, wantonly, or through gross negligence.' The court of appeals' foreseeability analysis ignored this well-established rule, under which the Ranch Petitioners owed the decedents only a duty to avoid injuring them wilfully or wantonly, or through gross negligence. By its plain language, this duty does not support a simple negligence claim." (internal citations omitted) A landowner's duty to a trespasser, therefore, remains limited. Now, in addition to the precedent of the *Boerjan* case, landowners can rely on statutory protections as well as the common law when addressing liability to trespassers.

Environmental Contamination from Oil and Gas Operations

In *Forest Oil Corp. v. El Rucio Land & Cattle Co.*, the Texas Supreme Court held that landowners who have property damages arising from oil and gas operations can bring claims in court against the oil and gas companies, and are not required to rely solely on the Railroad Commission ("RRC") for relief. This is an important ruling as it confirms the legal rights of landowners and provides them with options when their property is injured or contaminated by oil and gas companies.

In this case, the McAllen Ranch in South Texas had leased its mineral interests to the Forest Oil Corporation ("Forest") for the production of natural gas for over 30 years. In 2004, McAllen learned that Forest had contaminated the property with hazardous materials, and he sued them in state court for the environmental damages. Forest and McAllen proceeded to arbitration, where McAllen was awarded over $22 million in damages. Forest then appealed the arbitration award in district court, which denied Forest's motion. The Houston Court of Appeals affirmed, and the Texas Supreme Court then granted review.

The key issue is whether the RRC has *exclusive* or *primary* jurisdiction over contamination actions resulting from oil and gas production. While both parties agreed that the RRC has extensive authority to regulate contamination from oil and gas operations, Forest argued that the RRC had exclusive or primary jurisdiction over these types of claims, which precluded the courts from having the authority to hear them. The Texas Supreme Court rejected Forest's argument, and held that the RRC does not have exclusive or primary jurisdiction over claims for environmental contamination. The Court, in reviewing state law, failed to find a clear indication from the Legislature that the RRC possessed the sole authority over these types of cases. Furthermore, the Court found that McAllen's claims were judicial in nature due to the number of common law claims asserted that were not dependent on regulatory compliance. In sum, Texas landowners are allowed to use the court system for oil and gas contamination lawsuits, and are not required to rely solely on the RRC for relief.

South Texans' Property Rights Association, Texas and Southwestern Cattle Raisers Association, Texas Forestry Association, Texas Land & Mineral Owners Association, The Landowner Coalition of Texas, and the Texas Agricultural Land Trust all submitted amicus briefs in support of the Ranch.

Best Practices

What does this mean for landowners? Certain best practices can help reduce or limit landowner liability.

- For trespassers, landowners have a right to stop, photograph, or follow (not chase) a trespasser on their property. There should be no confrontation or threats.
- Post "No Trespassing" signs in English and Spanish.
- Develop protocol for employees and post it.
- Call authorities upon discovery of trespasser.
- Post-event, have employee prepare exact description of events and times.
- If there are extreme dangers on roads, consider repair.
- Post warning and caution signs as needed.
- Be sure to post appropriate signage if agritourism entity.
- Use extreme caution with weapons.
- Obtain liability insurance coverage in the recommended amounts under the Recreational Use statute.
- Documentation and protocol are key.

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Texas Pipeline Easement Negotiation Checklist

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In response to the oil and gas boom in Texas, pipelines are rapidly being built to ensure line space for the increased production. As of 2012, there were more than 366,000 miles of oil and gas pipelines crisscrossing the state.

Pipelines are usually built across private lands after the pipeline company obtains an easement (the right to use a specified portion of the property of another) from the landowner. Although the monetary compensation is certainly an important factor for a landowner to consider, the nonmonetary terms of the easement may be, in some cases, more important and more valuable. It is critical to include in the written easement agreement any statement or promise made by the company or it likely will not be enforceable.

The following checklist is certainly not exhaustive, and any landowner negotiating an easement agreement should hire an attorney to represent his or her interests. **This list is not a substitute for legal advice.** Each property is unique, and the following considerations may not apply the same way to different properties because of their specific use and characteristics. Although this list is based on a pipeline easement, these terms may also be helpful in negotiating other easements, such as those for electric or transmission lines, water, wastewater, drainage, or related infrastructure easements.

☐ **Determine whether eminent domain power exists.** Before beginning negotiations, determine whether the pipeline company has eminent domain power. An entity holding power of eminent domain has the right to take private property for a public use upon payment of adequate compensation to the landowner, even without the landowner's consent. A landowner dealing with a company that does not have eminent domain power is in a much stronger negotiation position. In that case, if the company does not agree to the landowner's terms, it may not legally acquire the easement. If the company has eminent domain power, however, and an agreement cannot be reached, the company could still obtain the easement through eminent domain by filing a condemnation proceeding in court. To understand the positions of the parties, make this determination at the outset of negotiations.

To get this information:

- Ask the company for a copy of the statute that grants them eminent domain power.
- Find out if the company is validly registered with the State Comptroller's office as having eminent domain power.

- If the pipeline company claims eminent domain power because it is a common carrier pipeline (a pipeline-for-hire), request evidence supporting its common carrier status.
- For transmission lines, obtain a copy of the company's Certificate of Convenience and Necessity from the Public Utility Commission. It explains what condemnation power the company has and may provide additional information about the proposed project.

☐ **Identify the parties.** Include the names and addresses of the landowner and the company acquiring the easement. Require the pipeline company to designate a specific contact person in case any issues arise and to provide the landowner with a notice in a set period (such as 30 days) if the designated contact person changes.

☐ **Determine compensation.** Specify the compensation the company will make for the easement, including when the payment is due. Generally, payment is based per foot, per acre, or per rod (a rod is 16.5 feet) of the pipeline, but may also be a set sum rather than tied to a measurement. Consider seeking payment per square foot rather than per foot or per rod to be adequately compensated for the entire area the company will use. If the company wants a temporary work area on the property in addition to the actual easement area, seek additional compensation for the temporary use of this area.

In addition to a damage payment for the portion of the land used, Texas courts recognize remainder damages (the decreased value of the remainder of the property outside of the easement strip) because of an easement on the property. This is important when the easement agreement limits some or all of the future surface use over the easement area. Consider these types of damages when calculating compensation.

Finally, discuss with an accountant how the payment will be described or structured. The payment description as an easement purchase versus a payment combined with remainder damages may have tax consequences.

- ☐ **See that the easement is specific, not blanket.** Easement agreements often state that a pipeline will be laid "over and across" the landowner's property. This is a blanket easement that allows the company to place the line anywhere on the property, even if the company verbally promised to place the line in a certain location. To avoid this issue, define a specific easement area and have the company survey it and any temporary work areas. Make that survey an exhibit (documented evidence) to the easement. Also consider requiring a specific setback distance from any buildings or structures if this is a potential issue.

- ☐ **Grant a nonexclusive easement.** Reserve the right to grant additional easements to other parties within the easement area. For example, if another pipeline company wants to place a line on the property, the landowner may want the right to have the line placed within the same easement, rather than having two separate easements across the property.

- ☐ **Check restrictive covenants.** The easement may be planned for property that is subject to restrictive covenants, which might specify the required location and depth of any pipelines. Check any restrictive covenants to determine how they might apply.

- ☐ **Limit the easement agreement to only one pipeline.** Many proposed easement agreements seek to allow the company to "lay lines" or "construct pipelines" across the property. Limit the easement agreement to allow only one line on the property. Also, prohibit the company from assigning or granting rights to another party to lay an additional pipeline in the easement. With this term included, the landowner retains the right to negotiate and receive payment for all additional lines to be added to the easement area, rather than receiving just a one-time payment for an easement that could allow additional lines in the future.

- ☐ **Limit the types of products run through the line.** In addition to restricting the easement to a single line, seek to limit that line to carrying a single product. For example, a landowner might grant the right to lay a natural gas pipeline, but if the company later wants to flow carbon dioxide through the line, a second easement would be necessary. At minimum, a landowner should know what products are running through the line.

- ☐ **Determine the permissible pipeline diameter and pressure.** Generally, a landowner wants a smaller, lower-pressure line and a company wants the right to place the largest, highest-pressure line it may ever need. During negotiations, seek an agreement that the line will not exceed a certain diameter and specific pressure to help alleviate safety concerns.

- ☐ **Determine the width of the easement.** Widths are often described in two measurements, a temporary construction easement (generally 50 feet or wider) and a permanent pipeline easement (typically ranging from 20 to 50 feet). Limit both of these measurements to the narrowest width possible to control the amount of land used or damaged by the easement. Also, determine a date by which the temporary pipeline easement will terminate and provide for damages if the company extends this deadline.

- ☐ **Require a specific pipeline depth.** In the past, many easements stated that the pipeline would be "plow depth." Avoid this type

of nonspecific, subjective term. Easements usually stipulate that the line will be buried 36 inches below the ground, the depth that Texas law requires. If a pipeline is buried at 36 inches, erosion will eventually make the line too shallow to comply with state law. In light of this, have the line buried to at least 48 inches deep, or stipulate that the company maintain the 36-inch depth.

☐ **Specify what surface facilities, if any, are permitted.** Even underground pipelines require some surface facilities such as cleaning stations, compressor units, and pump stations at points along the line. Require a pipeline company to either waive all surface facilities on the property or specify exactly how many surface facilities will be allowed, their size, type, and location. If surface facilities will be placed on the property, negotiate additional compensation.

☐ **Reserve surface use.** Retain the right to use as much of the easement area as necessary. For example, once an underground pipeline is in place, the landowner may want to graze his cows on the property, including the surface above the pipeline. Similar consideration applies to the landowner's ability to place roadways, ponds or tanks, and water lines across the easement.

☐ **Provide property access for the landowner.** It is not uncommon to install a pipeline beneath an entry road or driveway to the landowner's property. State in the agreement that the company will provide access to the landowner's property during the pipeline installation, as well as after the construction is completed.

☐ **Limit access to the easement.** A landowner can limit the company's access to the easement in a number of ways:

- Require that notice be given before entry.
- Set certain times or days when entry is not permitted.
- Determine where company employees may enter and exit the property.
- Designate what roads may be used while on the property.
- Prohibit any fishing or hunting on the easement or any of the landowner's property by the company or any of its employees, agents, or contractors without landowner permission.

If there are no limitations in the easement agreement, the company can enter the easement at any time for any purpose.

☐ **Request the use of the double ditch method.** The double ditch method requires the company to dig the pipeline trench so that the topsoil remains separate from the subsurface soil and is placed back on top of the subsoil when the construction is completed and the line buried.

☐ **Include the right to damages for construction, maintenance, repair, replacement, and removal.** Require the company to be responsible for damages caused not only during construction, but also during future maintenance, repair, and replacement activities. Also, include any limitations or notice requirements desired for the company's maintenance schedule. For example, a farmer growing crops near the pipeline may want written notice before any pesticide or herbicide is sprayed on the easement area.

☐ **Set specific restoration standards.** To ensure that the easement area is properly restored, state the company's responsibilities regarding repairs. How will the disturbed area over the pipeline be treated after the pipeline has been installed? Will the operator remedy any changes to the slope of the land or replace the topsoil? Will the reseeding be done with native grass or is a special type of seed required? Address these issues in detail. Consider setting a measurable standard to ensure that repairs are adequate or appoint a neutral third party to inspect the land after the damages have been repaired to determine if the repairs are sufficient.

- ☐ **Request payment for damages.** Because pipeline easements generally last a long time, request an up-front payment for damages or require the company to post a bond so that money is available for future damages. This provides some protection to the landowner in the event the company disappears before making damage repairs. Additionally, require that repairs to the surface of the easement be done when the construction is completed as well as when the easement terminates.

- ☐ **Specify fencing requirements.** Require the pipeline company to fence the easement area according to specifications such as the type of fence to be built, the number and type of H-braces to be installed, and the tinsel strength of the wire.

- ☐ **Include repairs or improvements to existing roadways.** Constructing a pipeline requires significant equipment and vehicle traffic. If the company will use any roads owned by the landowner or will construct roads across the landowner's property, require that it restore or improve the roads when the construction is finished.

- ☐ **Determine maintenance responsibilities.** Define whether the company or the landowner is responsible for surface maintenance over the pipeline, such as mowing or removing weeds and overhanging limbs.

- ☐ **Define when the easement will terminate.** From a landowner's perspective, this is perhaps the most important provision of an easement agreement. There are several circumstances under which an easement might terminate under Texas law, but abandonment is the most common concern for landowners with pipeline easements.

  Under Texas law, an easement is considered abandoned if there is non-use by the company (an objective test) and the company indicates an intent not to use the line in the future (a subjective test). Under this rule, it is difficult for a landowner to prove the subjective test in order to have the easement terminate due to abandonment.

  Instead of relying on the general rule, set a specific, objective standard for when the easement will end. This could be a specific time in the future (for example, the easement will last for 10 years) or may be a statement that if the pipeline company does not flow product through the line for a certain period (for example, 1 year), it is considered abandoned and the easement terminates. Whatever the standard, including it in the agreement prevents easements from lasting into eternity. Further, require that the company provide a release of the easement so it can be recorded in the public record when the easement ends.

- ☐ **State the requirements for removing facilities.** Require the company to remove all lines and structures after termination of the easement or forfeit them to the landowner. Also, state that any damages caused by this removal will be the responsibility of the company.

- ☐ **Determine remedies for violating the easement agreement.** If a company violates the easement agreement, the landowner can file a lawsuit to terminate the agreement, but the court will require that the violation is "material" before granting termination of the agreement. Whether a violation is material is determined on a case-by-case basis on the specific facts at issue. This causes two potential problems: (1) the landowner must go to court, which is expensive and time-consuming, and (2) the violation must be material for termination to be permitted.

To avoid these issues, consider two options:

First, the landowner may be able to define what violations are deemed material and state that in the agreement. For example, the agreement could state that "employees shall be permitted on the easement only and if they leave the easement and enter the landowner's property, this shall constitute a material breach." This material breach would permit the landowner to terminate the agreement without court action.

Second, require conditions in the agreement by stating "or the agreement shall terminate without further action by the landowner." For example, the agreement could say, "employees shall be permitted on the easement only. If they leave the easement and enter the landowner's property, this shall constitute trespass and the agreement shall terminate."

Under either of these scenarios, the landowner knows precisely when he or she may terminate the agreement, rather than having to wait for a judicial determination of material.

☐ **Include liability and indemnification provisions.** Incorporate liability and indemnification responsibility in the easement agreement. Provide that the landowner is not liable for any acts, omissions, or damages caused by the company, its agents, contractors, or employees. Further, stipulate that if any claim is made against the landowner by any party related to the pipeline or surface facilities, any of the company's activities, or any environmental laws, the company will hold the landowner harmless and state that this includes paying any judgment against the landowner and providing a defense to the landowner without charge.

☐ **List the landowner as "additional insured" on the company insurance policy.** Require the pipeline company to list the landowner as an "additional insured" on its insurance policy. This is not usually a major cost to the company and may allow the landowner the protections of the company's insurance policy if he or she is sued based on something related to the pipeline.

☐ **Do not be responsible for warranty of title.** Frequently, standard easement agreements require the landowner to warrant title (the landowner promises that there are no other unknown owners or encumbrances on the property). Because the pipeline company is in a better position to conduct a title search and make sure they are negotiating with all the right parties, the landowner should not take the risk of warranting title. If the company goes through the condemnation process, Texas law does not allow it to obtain a warranty of title, so there should be no reason to require this term in a negotiated agreement.

☐ **Limit the terms of transferability.** Specify whether the company can assign its rights under the agreement to a third party. Request that no assignment be made without prior written consent of the landowner, state that any assignee will be held to the terms of the original agreement between the landowner and the company, and state that the company will remain liable in the event of a breach of the agreement by the assignee. At a minimum, require notification before an assignment occurs.

☐ **Request a most-favored-nations clause.** Although pipeline companies dislike these requests, ask for a most-favored-nations clause. This provides that if any other landowner in the area negotiates a more favorable deal

within a certain timeframe, the landowner is given the benefit of the more favorable deal.

- ☐ **Seek payment for negotiation costs.** Because the landowner may incur significant costs during the negotiation process, including appraiser costs, fees for forestry or agricultural experts, surveyor expenses, and attorney's fees, require the company to pay all or a portion of these costs.
- ☐ **Use a choice-of-law provision.** A choice-of-law provision allows the parties to determine which state's law will govern the agreement in the event of a dispute. For example, a pipeline company headquartered in another state may try to require that the law in their home state apply to any dispute involving the easement agreement. Generally, courts enforce these clauses as long as they are not against public policy and are reasonably related to the contract. Because many laws vary by state and a choice-of-law provision could significantly impact rights under the agreement, consult with an attorney to determine which options are the most advantageous to the landowner.
- ☐ **Include a forum clause.** A forum clause provides that a dispute over the agreement will be heard in a particular location or court. Include a requirement that any lawsuit be filed in the county where the land is located or the landowner lives. This can significantly lower litigation and travel costs and ensures that if a jury trial occurs, the jury will be made up of local citizens.
- ☐ **Understand dispute resolution clauses.** These types of clauses limit the time and expense of a court action in the event of a dispute. There are two primary types of dispute resolution: arbitration and mediation. In arbitration, a third party arbitrator (usually an attorney) hears evidence and delivers a decision. If the arbitration is "binding," that judgment is final, absent evidence of fraud by the arbitrator. Mediation involves a neutral third party who works with the landowner and the company to reach a mutually acceptable resolution. If both parties refuse to agree to settle, the case goes to court. Understanding the difference between these options is important; consult with an attorney to determine which option is best. A dispute resolution clause should identify how the arbitrator or mediator is selected.
- ☐ **Review by a licensed attorney.** A licensed attorney familiar with easement negotiation issues should review all pipeline easement agreements. Although hiring an attorney who specializes in representing landowners in these types of transactions may be an additional cost, it could save money in the long run by preventing a dispute from arising because of an unclear or inadequate easement agreement.
- ☐ **Money-saving tip.** Because most attorneys bill by the hour, a client can save considerable fees by doing as much legwork as possible before going to the attorney's office. For example, a landowner could collect necessary documents such as the legal description or sketch of the property, saving the attorney the time of locating that information. Moreover, a landowner could prepare a first draft of the easement agreement using this checklist. This would save the attorney the effort of starting from scratch and allow him or her to simply edit the draft prepared by the landowner.

Texas A&M AgriLife Extension Service

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New

Should Your Ranch Be Incorporated Or Not?
TSCRA Annual Convention – School for Successful Ranching
March 31, 2017

Note: for our purposes, the term "incorporated" includes creation of any formal legal entity such as a corporation (S or C), limited liability company, or limited liability partnership. General partnerships are not incorporated.

Advantages

- Liability Protection – This term can apply to several contexts.
  - The creation of a formal legal entity will typically serve as a shield for your personal assets that are not held by the entity, in the event valid claims are made against the entity**.**
  - Generally speaking, entity owners are not personally liable for an entity's debts and obligations
  - Individuals serving in management of an entity are generally not personally liable for the entity's debts and obligations, so long as they act pursuant to the law and applicable company regulations.
- Insurance Coverage
  - Practically speaking, an entity's liability protection extends as far as that entity's insurance coverage.
  - Each entity should have appropriate coverage (property, commercial liability, other specific lines); inform your agent periodically of any changes to your operation, to ensure planned activities are covered events
- Taxes
  - In some situations, conveyance of certain assets into an LLC can offer estate tax advantages, by utilizing "discounting" and other rules regarding valuation of assets and assets owned by entities.
  - Expenses that are related to the business are tax deductible.
  - Income from S-corporations, limited liability companies and limited liability partnerships is treated as pass-through income and is only taxed once at the individual level.
- USDA – "Farm Program" Payments
  - This can be an advantage to incorporating in some situations.
  - Each legal entity is deemed to be a "person" and, provided that entity otherwise meets the eligibility determinations that would apply to a natural person, will be eligible to receive farm program payments, up to one "payment limit" for a person in each respective USDA program with a separate payment limit.
    - Dollars received by an entity are "attributed" to entity owners, such that the natural person owners are allocated a proportionate share of the payments of each entity owned, up to payment limit

Disadvantages

- Property Rights Considerations
  - Once real property is conveyed to an LLC, it becomes an asset of the LLC. The prior owner no longer has the right to partition (if it was previously held in cotenancy) or the right to transfer the property via will or other estate planning instrument. Instead, the owner must transfer an interest in the entity.
  - The entity must have separate bank accounts and recordkeeping from personal assets. Mixing entity assets with personal assets (including using entity assets as personal collateral) may void liability protection.
- Liability/Insurance Coverage
  - Without a liability shield in place, personal actions can incur liability and personal assets can be at risk.
  - Umbrella policies must be considered and purchased.
- Taxes
  - Counsel of a CPA should be included in decision-making process to avoid unintended tax problems
  - Certain entities have specific tax requirements that may complicate entity finances. Ex: C-type corporations must pay separate income tax; partnerships and LLCs may not be able to pay a true "salary" to an owner
- USDA – "Farm Program" Payments
  - This can also be a disadvantage to incorporating in some scenarios.
  - Each formal legal entity, otherwise eligible for program payments, can only receive dollars up to one "payment limit." Ex: if entity is owned by husband and wife, or a general partnership, and each party is deemed "actively engaged in farming," then, after attributing entity's farm program dollars to the two owners, husband and wife together receive one payment limit, instead of each potentially receiving one payment limit (two total payments)

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FIVE STRANDS:

A Landowner's Guide to Fence Law in Texas

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can be found at AgriLifeBookstore.org

Preface

This book arose out of a late afternoon call from a rural county in Texas. Two landowners could not agree on a fencing question and called the county for help. The county judge called us, and after a few minutes of discussion regarding the question, we realized that Texas landowners need a field guide for fencing questions. The three of us work with Texas landowners, and we get more questions about fencing than any other topic. And, while there are thousands of miles of barbed wire across the state, we lack an easy-to-use resource to answer the everyday questions that arise between landowners. Another lengthy law book would not fit in the glove box of a pickup, so we kept this short and easy-to-follow. It may not answer every question, but it should cover most. And, remember, the law will never substitute for an understanding between two neighbors over a cup of coffee.

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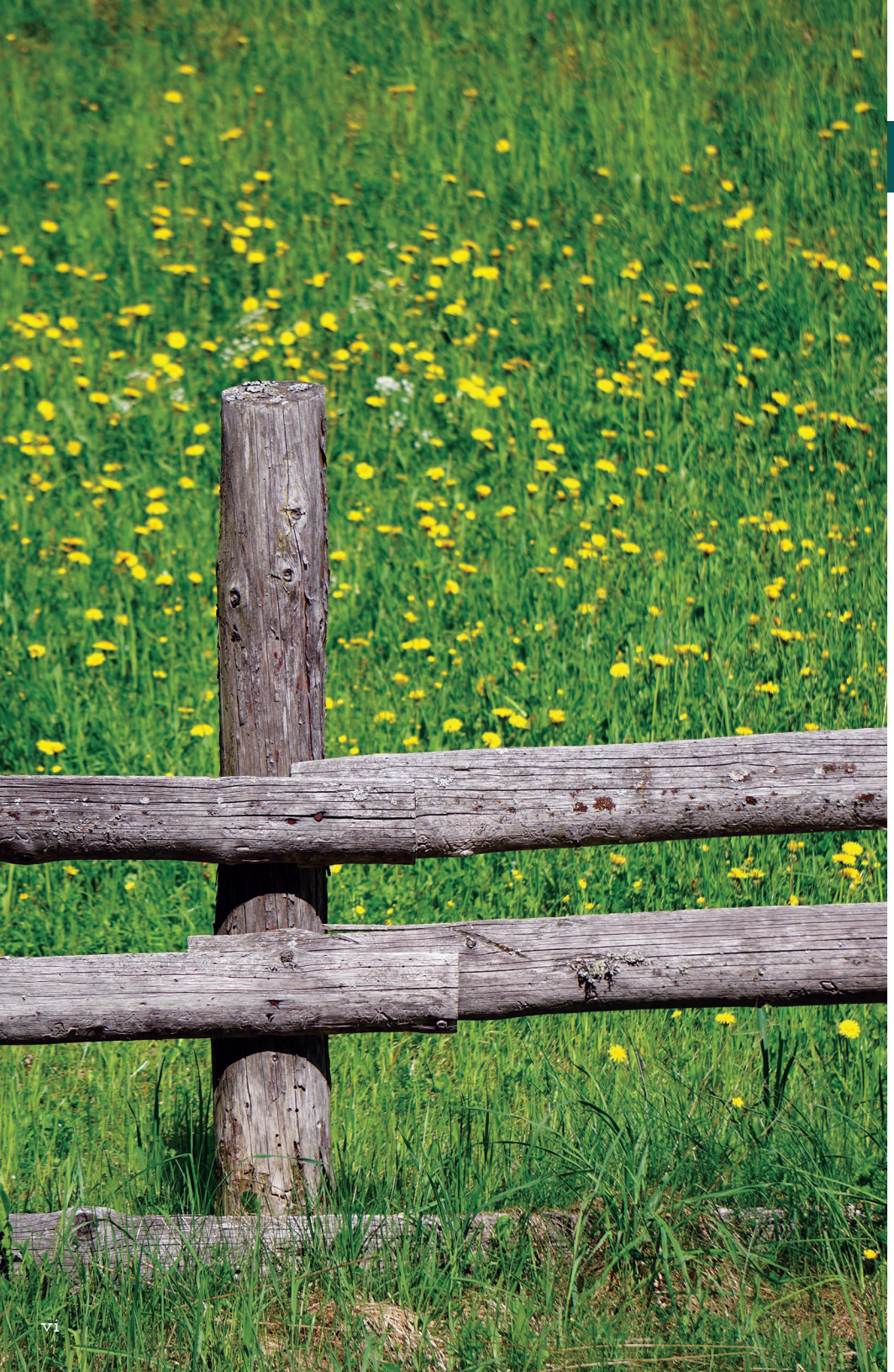
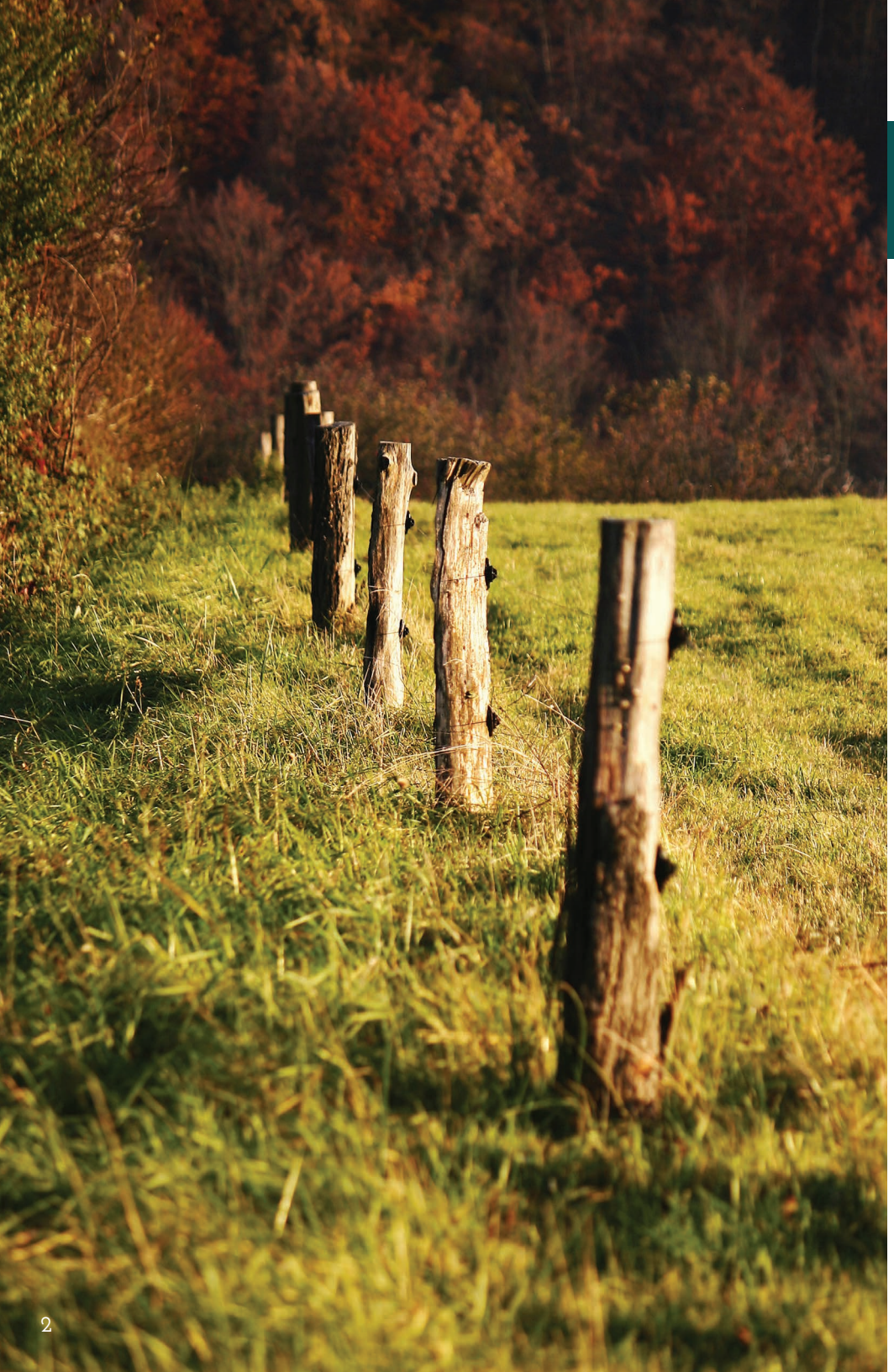


Introduction

The old saying that "good fences make good neighbors" still applies today. Texas has thousands of miles of fences; with the vast majority of them located along boundary lines and roadways, disputes do arise. Unfortunately, there are many misconceptions and dead guesses about fence laws. Who is liable when vehicles on a roadway hit livestock? What are a landowner's rights if another person's livestock are on his or her property? Who is responsible when it comes to building and maintaining fences?

This book gives landowners a background on how Texas fence laws originated, explains the current laws that landowners should know, and details a few common fence dispute scenarios and solutions.



Liability for Livestock on the Roadway

To understand Texas' current approach to fence law as it relates to landowner liability in the event of an accident, you must first understand the concepts of open range versus closed range.

Open Range vs. Closed Range

Texas is an open-range state, tracing its roots back to the trail drives and cattle barons of the 1800s. Open range means exactly that—livestock owners are not required to fence in their livestock to prevent them from roaming at large. The Texas Supreme Court supported the open-range policy more than a century ago when it stated, "if the cattle of one person wander upon the [unenclosed] lands of another…they are not trespassers, and the owner is not liable for any damage that they may inflict."[1] As recently as 1999, the Texas Supreme Court upheld this concept, holding that "[i]t is the right of every owner of domestic animals in this state…to allow them to run at large."[2] While the common law of open range is still in effect, there are two exceptions: 1) the passage of local, county-based ordinances (stock laws), and 2) the development of U.S. and state highways, that have changed large portions of the state from open range to closed range.

Local Stock Laws

As Texas developed, laws changed and counties enacted restrictions on open range. Such closed-range laws make livestock owners responsible for fencing-in their livestock on

their property. The Texas Legislature allows local governments to pass stock laws that modify the law for that location from the common-law rule of open range to closed range.[3] Local voters consider these stock laws, which can apply to all or a portion of a county. The stock laws state that certain species of animals (such as cattle, horses, jacks, jennies, and sheep) may not run at large within the limits of the particular county. When these laws are in place, the common-law rule of closed-range law essentially replaces the common-law rule of open range. As a result, landowners in closed-range areas have a duty to prevent their livestock from running at large, usually by maintaining a fence to keep their livestock on their property.

Because each local stock law is unique, the following questions are crucial when evaluating the law in a particular county:

- Does a stock law exist in the area?
- Which animal species does the law cover?
- Did the landowner meet the required standard outlined in the local stock law?

Does a stock law exist in my county?

Unfortunately, there is not a consolidated list that details which Texas counties are still considered open range or closed range. The best option is to contact the county sheriff's office or ask the county clerk to search the election records to determine if a local stock-option election has been held to close the range. Since many of these stock law elections occurred between 1910 and 1930, it may take extensive research to determine the status of your county.

In 1981, the Texas Legislature exempted some counties from adopting a local stock law regarding running cattle at large, leaving these counties as open range if the land is not adjacent to a highway (see page 8). These counties include Andrews, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, La Salle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, and Yoakum.[4] For examples of stock laws, see pages 26 and 27 in the Appendix.

Which animal species does the law cover?

If a stock law does exist in an area, determine which livestock species it covers. The Texas Agriculture Code allows stock laws that regulate cattle, domestic turkeys, donkeys, goats, hogs, horses, jacks, jennets, mules, or sheep.[5] Based on the particular law, it is possible that the same area may be closed range for horses and donkeys, but open range for cattle. The statute also requires separate stock laws for each livestock species (one for cattle, one for horses, and one for other animals). In an opinion issued by the Texas Attorney General, stock laws that are not separated by species may be regarded as ineffective.[6]

Have I met the standard outlined in the local stock law?

Although they differ by county, most local stock laws establish a standard of care a landowner must meet to avoid liability if his or her livestock roam at large. Some stock laws state that a landowner may not "knowingly permit" an animal to run at large, while others set a stricter standard that animals may not run at large at all.

Many local stock laws prohibit landowners from permitting their animals to run at large. If a third party is injured, a landowner is liable only if he or she permitted the livestock to run free. Texas courts have interpreted "permit" to mean to expressly or "formally consent" or to "give leave," and that merely making it possible for an animal to run at large is insufficient to impose liability on a landowner. In determining a landowner's liability for livestock roaming at large, courts look to the owner's actions, because an animal in the roadway does not always constitute a violation of a stock law.

Landowner actions that might result in liability include

- leaving a gate open,
- authorizing a lessee to allow cattle to run at large,
- having notice that the livestock were out in the roadway and failing to remove the livestock,
- having knowledge that livestock previously escaped from the property, and
- failing to maintain the fences surrounding the pasture.

U.S. and State Highways

Land along U.S. and state highways in Texas is considered to be closed range. State law requires that landowners with property adjacent to U.S. and state highways prevent their livestock from entering these highways. Whether the area is

open or closed range does not matter if it includes a highway. The Texas Agriculture Code states that "[a] person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway."[7] To determine the scope of this statute, it is necessary to define

- what constitutes a highway,
- what "knowingly permit" means, and
- who "owns or has responsibility for the control of" the animal.

What constitutes a highway?

For purposes of this statute, all U.S. and state highways are closed range under Texas law, but farm-to-market roads are open range unless a local stock law modifies the farm-to-market road at issue.[8]

What does "knowingly permit" mean?

For U.S. and state highways, a landowner may not "knowingly permit" his or her animals to run at large. This standard is higher (more favorable to the landowner) than the standard found in many local stock laws. For example, a court ruled that a landowner acted knowingly when

- he was aware that the fences were unable to withstand rainfalls
- he knew that cattle had escaped through the weak fences during rainstorms many times before the accident
- the police had previously informed him that his cattle were on the roadway, and
- he did not inspect the fences before the accident occurred.[9]

Conversely, a livestock owner who keeps his gate locked and chained, and has no prior knowledge of his cattle escaping on a roadway, would not act "knowingly."[10]

Landowners and Emergency Responders

Landowners are not liable "for damages arising from an incident or accident caused by livestock of the landowner due to an act or omission of a firefighter or a peace officer who has entered the landowner's property with or without the permission of the landowner, regardless of whether the damage occurs on the landowner's property."[11] For example, if emergency responders must cut a portion of fence alongside a highway to put out a fire, the landowner will not be liable if any livestock escape onto the highway.

Road/Highway Liability Examples

The law regarding closed and open range comes into play most often when a vehicle strikes livestock on a roadway. In the event of an accident, local stock laws and the statute regarding U.S. and state highways determine whether a livestock owner may be liable to an injured motorist.

The following examples include various scenarios of accidents with livestock on a roadway and the basic rules for determining potential livestock owner liability:

- ***An accident occurs in an open-range county on a U.S. or state highway.*** *The party that controls the livestock or real estate may be liable if the party knowingly permitted the cattle to get on the roadway.*
- ***An accident occurs in a county that has adopted a stock law on a U.S. or state highway.*** *The party that controls the livestock or real estate may be liable if the party knowingly permitted the cattle to get on the roadway.*
- ***An accident occurs in an open-range county on a farm-to-market road or smaller roadway.*** *The party that controls the livestock or real estate has no duty to prevent livestock from entering the roadway by their natural behavior.*
- ***An accident occurs in a county that has adopted a stock law on a farm-to-market road or smaller roadway.*** *The party that controls the livestock or real estate may be liable if the party negligently permitted the cattle to get on the highway.*[12]

Liability for Livestock on Neighboring Land

In addition to disputes between landowners and motorists regarding livestock and fences, questions often arise between neighboring landowners regarding the obligations they owe one another concerning fences and livestock.

My neighbor's cattle are on my land. How do I remove them?

The answer depends on whether this situation occurs in an open-range county or in one that has passed a stock law making it a closed range.

Open Range

In an open-range county, the landowner is responsible for keeping livestock off his or her land by building an adequate fence. According to the Texas Supreme Court, "[i]t follows that one who desires to secure his lands against the encroachments of livestock running at large, either upon the open range or in an adjoining field or pasture, must throw around it an [enclosure] sufficient to prevent the entry of all ordinary animals of the class intended to be excluded. If he does not, the owner of animals that may encroach upon it will not be held liable for any damage that may result from such encroachment."[13] However, the defense that a landowner failed to maintain a suitable fence is likely unavailable in an action for trespass where it appears that the livestock owner intentionally allowed the livestock to enter the property.[14] In an open-range county, if a landowner has built an adequate fence and livestock still get onto his or her property, the

landowner can recover crop or property damages from the animal's owner. On the other hand, if a landowner fails to build an adequate fence in an open-range county, he or she has no recourse against a livestock owner when animals enter his or her property.

Closed Range

In a county that has passed a stock law (making it a closed range), livestock owners must restrain their livestock by fencing them "in" their property. Allowing livestock (that are covered by the stock law) to run at large in a closed-range county is a violation of the law. Nevertheless, the grass does tend to be greener on the other side and livestock may get out on occasion. Understanding this, the Texas Supreme Court explained that sometimes, "animals may often escape without fault on the part of their owners, when the latter will be guilty of no offense against the law...the mere fact that an animal is at large is not necessarily a violation."[15] In most cases, the livestock that have escaped and entered your land are there by accident. Notifying your neighbor and helping him or her retrieve the livestock off your property is the best course of action. But, if the neighboring livestock owner has permitted the livestock to enter your property, depending on what the laws of your county are, he or she could be breaking the law. Because some counties do not have stock laws containing the "knowingly permit" or "permit" language when describing the intent of livestock owners, it is important to understand the law of your county.

In a closed-range county, a landowner may be able to recover damages from a livestock owner whose animals come onto the landowner's property if the livestock owner failed to meet the requirements of the closed-range county. However, if the livestock owner met the requirements, and the livestock still got out, the landowner may be unable to seek recovery under the law.

Lessee Liability

Many Texas livestock producers lease the land they they run their livestock on. This presents a question of who is responsible for fencing the land the livestock run on–the landowner or the lessee? Absent an agreement allocating responsibility between the landowner and the lessee, these laws could apply to both the landowner and the lessee who runs the livestock on a ranch.

Stray livestock are on my land. How do I remove them? (Estray Laws)

Under Chapter 142 of the Texas Agriculture Code, a landowner who finds stray or "estray" livestock on his or her property should "as soon as reasonably possible, report the presence of the estray to the sheriff of the county in which the estray is discovered."[16] Providing the location, number, and a description of the stray livestock helps the sheriff's office find the true owner and remove the livestock from your property. Once stray livestock are reported, the sheriff will attempt to contact the owner. If the owner is found, he or she may recover the livestock in accordance with the procedures set forth by statute. If an owner is not found or fails to redeem the

livestock within 5 days, the sheriff will impound the animal. If the animal is not recovered from impound, the sheriff will sell the animal at public auction.

Just because stray livestock are on one's land does not mean the landowner can automatically claim them or remove them by other methods. Disposing of estrays outside of the procedure in Chapter 142 may be considered livestock theft.

How do the adequate fence standards of the Agriculture Code apply?

The Texas Agriculture Code establishes the requirements for a "sufficient fence;" however, these fencing standards apply only in open-range counties where fences are meant to keep livestock "out" rather than "in."[17] These sufficient fence standards do not apply in a closed-range county, nor can they be used to determine negligence or liability in a roadway accident situation.

In an open-range county, it is the landowner's duty to build fences that keep animals permitted to roam at large off their property. The fence standard in the Ag Code determines if a landowner who built a fence to keep livestock off his or her property can recover property or crop damage from an animal's owner if the animal got onto the landowner's property.

Section 143.028 provides the following guidelines:

(a) A person is not required to fence against animals that are not permitted to run at large. Except as otherwise provided by this section, a fence is sufficient for purposes of this chapter if it is sufficient to keep out ordinary livestock permitted to run at large.

(b) In order to be sufficient, a fence must be at least four feet high and comply with the following requirements:

1. *A barbed wire fence must consist of three wires on posts no more than 30 feet apart, with one or more stays between every two posts;*
2. *A picket fence must consist of pickets that are not more than six inches apart;*
3. *A board fence must consist of three boards not less than five inches wide and one inch thick; and*
4. *A rail fence must consist of four rails.*[18]

Responsibility for Fence Building and Maintenance

Having an accurate survey that shows the correct boundary line is paramount when building boundary fences. Without a survey showing where property lines end and begin, fence building is an inaccurate guess and could lead to future headaches.

Perimeter Fence between a Landowner and a State Highway

In Texas, all interstate and state highways are closed range. The Texas Agriculture Code states "[a] person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway."[19] To keep livestock off of interstates and state highways, it is the landowner's responsibility to build/maintain a fence along an interstate or state highway. However, if a landowner does not intend to have any livestock on his or her property, there is no independent obligation to build a fence.

Building and Maintaining a Boundary Fence between Neighbors

Frequently, questions arise regarding how neighboring landowners must share in the costs of building and maintaining boundary fences.

A landowner in Texas has no legal obligation to share in the costs or future maintenance of a fence built by his or her

neighbor on the dividing property line, unless he or she has agreed to do so. The Texas Supreme Court has held that, "if one proprietor [encloses] his land, putting his fence upon his line, the owner of the adjacent land may avail himself of the advantage thereby afforded him of [enclosing] his own land without incurring any liability to account for the use of his neighbor's fence."[20] Even if a boundary fence is destroyed by natural causes, a neighbor still has no obligation to contribute toward its reconstruction.[21] However, if the neighboring landowner does not participate in the costs of erecting the fence, it is not considered a common fence; rather, it is the exclusive property of the builder.[22] Similarly, if a fence is built not on the property line, but instead on one landowner's property, then the fence is also considered exclusive property of that landowner.

If the neighbors agree that each will maintain a portion of the fence, such agreement is legally binding and can be enforced.[23] These agreements are rare, but may be extremely useful for neighboring landowners to specify their rights and obligations regarding fences before an issue arises. Once neighbors reach a friendly agreement, it should be written down and a copy given to each owner.

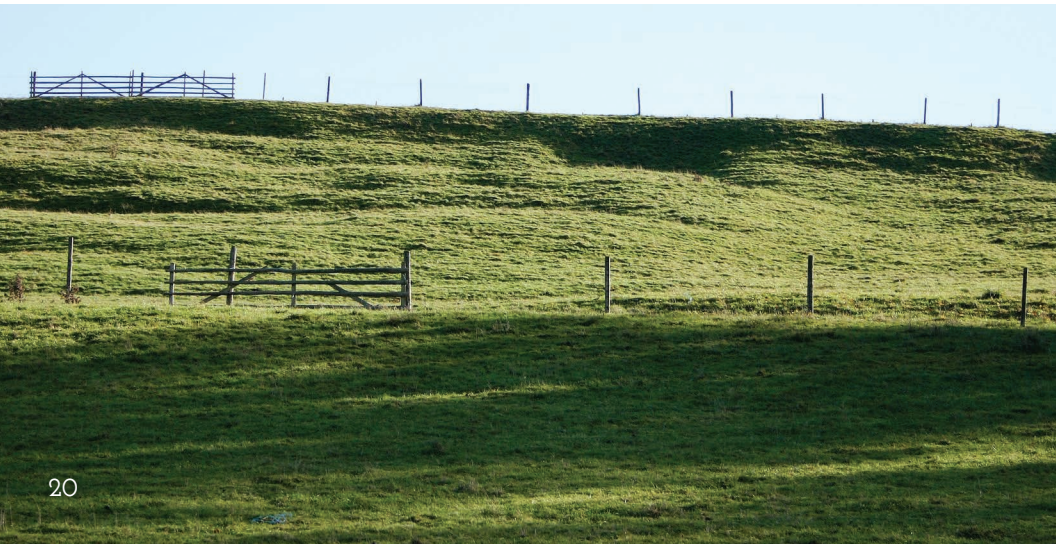
Clearing Brush to Build a Fence on a Boundary Line

Sometimes a landowner building a fence along a boundary line must clear brush on both his or her own property and the neighbor's property. If this is necessary, the landowner should always seek permission from the neighbor before entering his or her property and before clearing any brush. Without such permission, entering a neighbor's property

and removing the brush could be considered trespassing and subject the acting landowner to damages. It is always better to ask for permission ahead of time. If permission is denied, the landowner may have to back the fence up on his or her property.

Cutting Down a Tree Hanging over a Property Line

Assume that a tree grows on the neighbor's property, but the limbs and branches overhang another's land. What rights do the parties have in that situation? In Texas, the location of the trunk of the tree determines who owns it, even if the roots or branches grow onto an adjoining neighbor's land. A landowner has the right to trim or cut off the limbs or branches of boundary trees or shrubbery that reach onto his or her property, as long as no damage to the other adjoining landowner occurs. However, the limbs or branches can be cut back only to the property line. The tree's owner is responsible for any damages caused to the adjacent owner from falling branches or roots. It is in the best interest of the tree's owner to control the growth of the tree so it does not create a source of potential damage to the neighboring landowner.



Adverse Possession

Adverse possession, commonly referred to as squatters' rights, is a legal concept that concerns many Texas landowners. The risk of adverse possession encourages landowners to make regular use of and inspect their property. Otherwise, an adverse possessor (squatter) can claim title to the land if a number of conditions are met. It is very difficult in Texas to take someone's land by adverse possession. Although rare, this situation may arise periodically in the context of fencing.

For example, assume that a landowner's fence is just inside his property line and his neighbor grazes livestock on the few feet of land belonging to the landowner, but not included within the fenced-in area. While that land does not technically belong to the neighbor who is using it, if several factors are met, the neighboring landowner may actually be able to seek title to that property.

In order for someone to lawfully gain possession of land by adverse possession, there must be

- a visible appropriation and possession of the property,
- that is open and notorious,
- peaceable,

- under a claim of right,
- adverse and hostile to the claim of the owner, and
- consistent and continuous for the duration of the statutory period.[24]

Each of these elements requires in-depth legal analysis beyond the scope of this handbook to determine if they exist in a particular case. The key element a neighbor using another's land would have to prove is the "under a claim of right" element. The neighboring landowner needs to "designedly enclose" the property for his or her own use in order to adequately give notice to the record owner of the hostile claim.[25]

Using a boundary fence line example, if Neighbor A builds his fence inside his property line, Neighbor B's cattle occasionally grazing on the land is not going to be enough to gain title. However, if Neighbor B builds his own fence just outside the current fence (and on the property of Neighbor A), that is more likely to be the sort of evidence that could be used to show that Neighbor A had sufficient notice that Neighbor B was staking a hostile claim to that strip of land. Simply grazing livestock on your land is not enough to gain possession by adverse possession.[26]

A good practice if you have to build a fence inside your own boundary is to write your neighbor and let him or her know that you still intend to use your property to the boundary and consider filing a record of this fact in the real property records of your county.

Responsibility for Fencing Around Oil and Gas Operations

In Texas, oil and gas companies have the right to enter private property and locate their production facilities under the "reasonable right to use the surface." Oil and gas companies are under no legal obligation to place a fence around their operations areas in order to protect a surface owner's livestock. The mineral estate is dominant to the surface estate, meaning that a mineral owner or lessee has the implied right to use as much of the surface as is reasonably necessary to produce the minerals, without permission from or payment to the surface owner. "In the absence of a lease provision to the contrary, the only duty owed by the operator of an oil lease to the owner or lessee of the surface, who is pasturing cattle, is not to injure such cattle intentionally, willfully, or wantonly. There is no duty on the part of an operator to put fences around his operations."[27]

If livestock are injured, a landowner may have legal claims if there is evidence that the oil and gas operator

- acted in an intentional, willful, or wanton manner to injure the livestock;
- acted negligently in producing the minerals; or
- used more of the surface than was reasonably necessary.

However, because each of these claims will likely be difficult to prove, the landowner is much better off to include contractual provisions that require the operator to fence off operations to protect livestock (ideally in the oil and gas lease itself). In the absence of a lease provision, communication with the oil and gas operator is key and likely the best course. The operator may be willing to put up a fence around its facilities in order to avoid potential liability.

Appendix

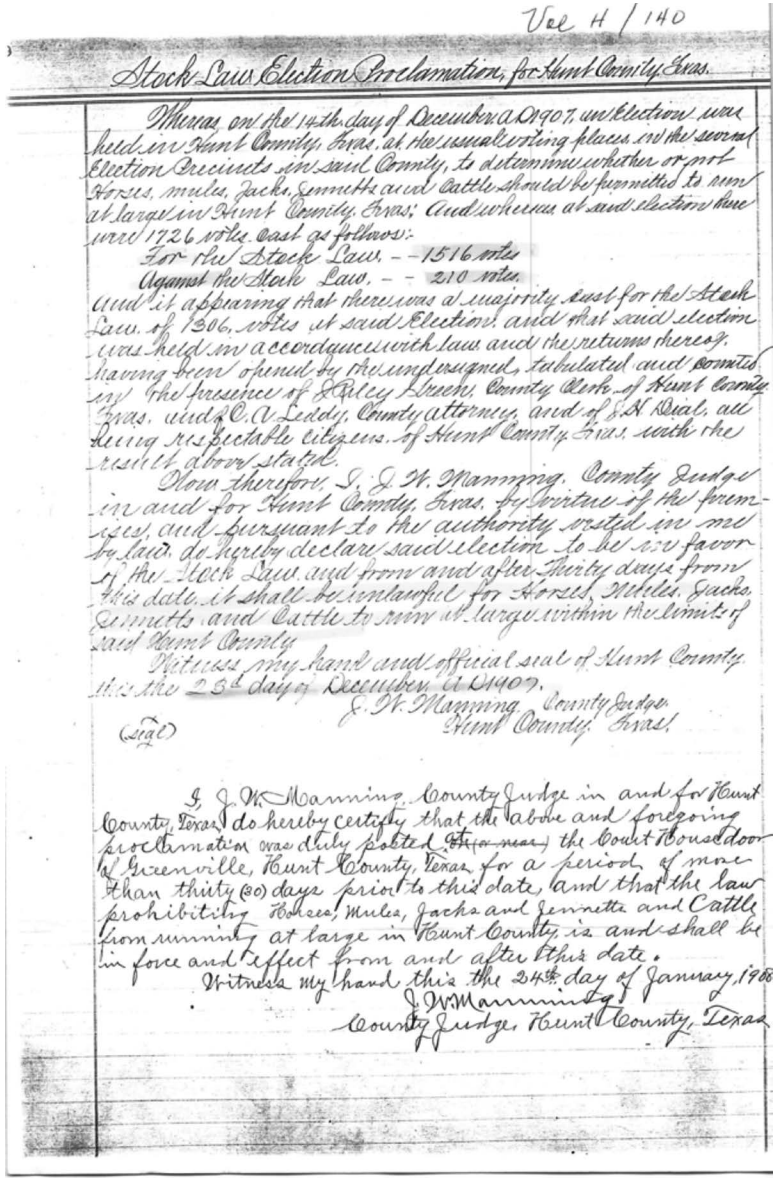
Landowner Maintenance Checklist

- Inspect and repair fences regularly.
- Check livestock frequently to be sure none have escaped.
- Get to know your neighbors.
- In case of emergency, share your contact information with neighbors and county officials (sheriff).

Stock Law Examples

The following examples are local stock laws passed in Hunt County, Texas, in 1907. These laws were often handwritten and included in the minutes of commissioner's court meetings held nearly a century ago. Unfortunately, there is no published compilation or other way to quickly and efficiently look up Texas stock laws.

Hunt County Stock Law



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Stock Law Election Proclamation, for Hunt County Texas.

Whereas on the 14th day of December A.D. 1907, an election was held in Hunt County, Texas, at the usual voting places in the several Election Precincts in said County, to determine whether or not Horses, mules, jacks, jennetts and cattle should be permitted to run at large in Hunt County, Texas; And whereas at said election there were 1726 votes cast as follows:

For the Stock Law. - - 1516 votes

Against the Stock Law. - - 210 votes

And it appearing that there was a majority cast for the Stock Law of 1306 votes at said Election; and that said election was held in accordance with law and the returns thereof having been opened by the undersigned, tabulated and canvassed in the presence of Farley Breeh, County Clerk of Hunt County Texas, and C. A. Leddy, County attorney, and of S. H. Dial, all being respectable citizens of Hunt County, Texas, with the result above stated.

Now therefore, I, J. W. Manning, County Judge in and for Hunt County, Texas, by virtue of the premises, and pursuant to the authority vested in me by law, do hereby declare said election to be in favor of the Stock Law, and from and after thirty days from this date, it shall be unlawful for Horses, Mules, Jacks, Jennetts and Cattle to run at large within the limits of said Hunt County.

Witness my hand and official seal of Hunt County, this the 23d day of December A.D. 1907.

J. W. Manning
County Judge
Hunt County, Texas.

(Seal)

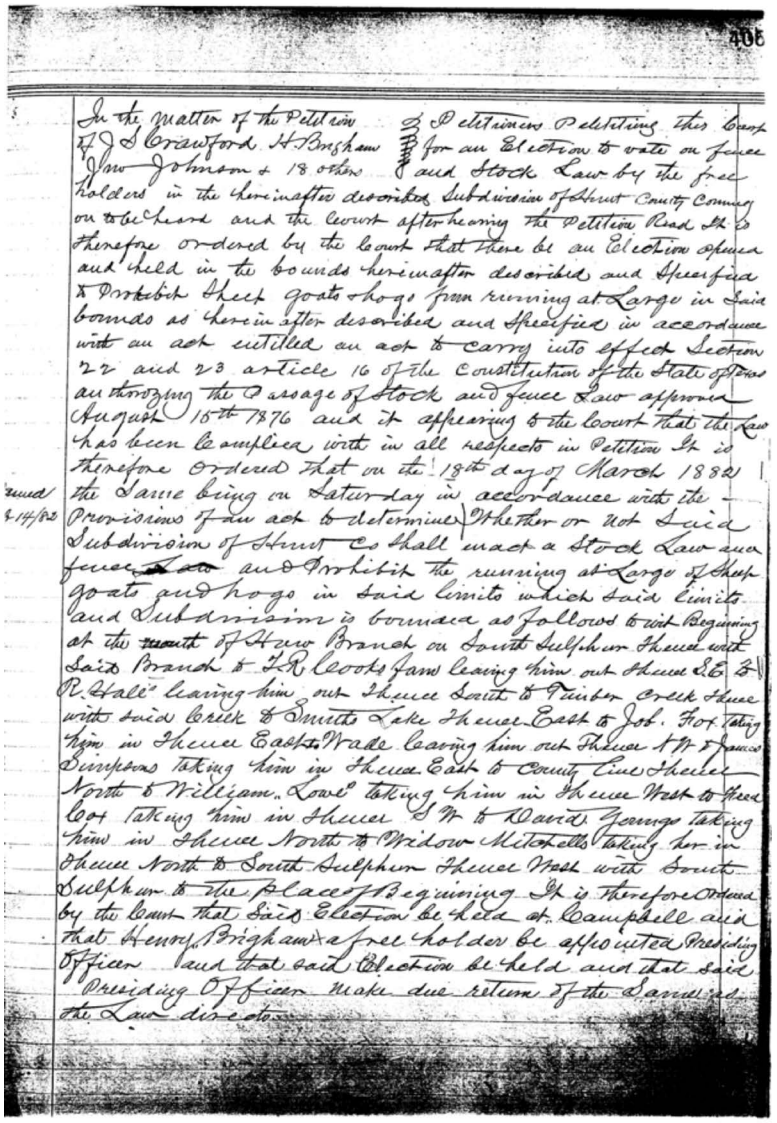
I, J. W. Manning, County Judge in and for Hunt County, Texas, do hereby certify that the above and foregoing proclamation was duly posted at the court house door of Greenville, Hunt County, Texas for a period of more than thirty (30) days prior to this date, and that the law prohibiting Horses, Mules, Jacks and Jennetts and Cattle from running at large in Hunt County, is and shall be in force and effect from and after this date.

Witness my hand this the 24th day of January, 1908

J. W. Manning
County Judge, Hunt County, Texas

Courtesy of Hunt County Courthouse, Greenville, Texas

Hunt County Stock Law of 1882 for Sheep, Goats, and Hogs



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In the matter of the Petition of J. S. Crawford, H. Brigham, Jno. Johnson & 18 others for an Election to vote on fence and Stock Law by the free holders in the hereinafter described Subdivision of Hunt County Coming on to be heard and the Court after hearing the Petition Read &c is therefore ordered by the Court that there be an Election opened and held in the bounds hereinafter described and Specified to Prohibit Sheep goats hogs from running at Large in said bounds as hereinafter described and Specified in accordance with an act entitled an act to carry into effect Sections 22 and 23 article 16 of the Constitution of the State of Texas authorizing the Passage of Stock and fence Law approved August 15th 1876 and it appearing to the Court that the Law has been complied with in all respects in Petition &c is therefore ordered that on the 13th day of March 1882 the same being on Saturday in accordance with the Provisions of an act to determine Whether or not said Subdivision of Hunt Co shall enact a Stock Law and fence Law and Prohibit the running at Large of Sheep goats and hogs in said limits which said limits and Subdivision is bounded as follows to wit Beginning at the mouth of Horse Branch on South Sulphur thence with said Branch to J. R. Cooks farm leaving him out thence E. to R. Hale's leaving him out thence South to Pointer Creek thence with said Creek & South to Lake thence East to Jos. Hot taking him in thence East to Wade leaving him out thence N. to James Simpsons taking him in thence East to County Line thence North to William Lowe taking him in thence West to thence Cot taking him in thence S. W. to David Jennings taking him in thence North to Widow Mitchells taking her in thence North to South Sulphur thence West with South Sulphur to the Place of Beginning It is therefore ordered by the Court that said Election be held at Campbell and that Henry Brigham a free holder be appointed Presiding Officer and that said Election be held and that said Presiding Officer make due return of the same as the Law directs.

Courtesy of Hunt County Courthouse, Greenville, Texas

Notes

[1] *Clarendon Land, Investment & Agency Co. v. McClelland,* 23 S.W. 576, 577 (Tex. 1893).
[2] *Gibbs v. Jackson,* 990 S.W.2d 745, 747 (Tex. 1999).
[3] TEX. AGRIC. CODE ANN. §§ 143.021–082. (West, Westlaw through 2015 Reg. Sess).
[4] TEX. AGRIC. CODE ANN. §§ 143.072.
[5] *Id.*
[6] Texas Att'y General Opinion No. GA-0093 (2003).
[7] TEX. AGRIC. CODE ANN. § 143.102. (West, Westlaw through 2015 Reg. Sess).
[8] TEX. AGRIC. CODE ANN. § 143.101. (West, Westlaw through 2015 Reg. Sess).
[9] *Weaver v. Brink,* 613 S.W.2d 581, 583-84 (Tex. App.—Waco 1981, writ ref'd n.r.e.).
[10] *Evans v. Hendrix,* No. 10-10-00356-CV, 2011 WL 3621337 (Tex. App.—Waco, Aug.17, 2011) (mem. op).
[11] TEX. CIV. PRAC. & REM. CODE ANN. § 75.006(b). (West, Westlaw through 2015 Reg. Sess).
[12] *Lebas, David & Huffaker, John, Agricultural Law: Where's the Beef? Legal Issues in the Texas Cattle Industry,* 73 Tex. B.j. 400 (May 2010).
[13] *Clarendon Land, Investment & Agency Co. v. McClelland,* 23 S.W. 576, 577 (Tex. 1893).
[14] *Posey v. Coleman,* 133 S.W. 937, 939 (Tex. Civ. App. 1911).
[15] *Tex. & Pac. Ry. Co. v. Webb,* 114 S.W. 1171, 1173 (Tex. 1908).
[16] TEX. AGRIC. CODE ANN. § 142.003(a). (West, Westlaw through 2015 Reg. Sess).
[17] TEX. AGRIC. CODE ANN. § 143.028. (West, Westlaw through 2015 Reg. Sess).
[18] *Id.*
[19] TEX. AGRIC. CODE. ANN. §143.102. (West, Westlaw through 2015 Reg. Sess).
[20] *Nolan v. Mendere,* 14 S.W. 167, 168 (Tex. 1890).
[21] *Griffin v. Sansom,* 72 S.W. 864, 864 (Tex. Civ. App. 1903).
[22] *Conner v. Joy,* 150 S.W. 485, 485 (Tex. Civ. App.—Fort Worth 1912, no writ).
[23] *Adair v. Stallings,* 165 S.W. 140, 141-42 (Tex. Civ. App.—Amarillo 1914, writ dism'd).

[24] Statutory periods vary with the claim (anywhere between 10 and 25 years)
[25] *McDonnold v. Weinacht,* 465 S.W.2d 136, 144 (Tex. 1987).
[26] *Perkins v. McGehee,* 133 S.W.3d 287, 292 (Tex. App.—Fort Worth 2004, no pet.).
[27] *Santana Oil Co. v. Henderson,* 855 S.W.2d 888, 889-90 (Tex. App.—El Paso 1993, no pet.).

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