



Position Statement on Eminent Domain and Condemnation

The Texas Wildlife Association (TWA) was established in 1985 by a group of ranchers, wildlife managers, and hunters dedicated to the conservation, management, and enhancement of wildlife and wildlife habitat on private lands. TWA is committed to representing private land stewards from across the state of Texas, while supporting efforts to uphold established private property rights of Texas landowners.

TWA believes that open space adds significant value to private lands. Further, TWA is supportive of keeping our State competitive in the development of energy sources and energy distribution, while also ensuring that private landowners are treated and compensated fairly during a condemnation process. With almost 96% of Texas being privately owned, landowners contribute significantly to the progress and economic prosperity of the State of Texas. Strong and fair private property rights help ensure a sustainable healthy Texas, and TWA feels that eminent domain laws in Texas (primarily, but not solely pertaining to pipelines and electrical transmission lines) should protect landowners' interests, by including the following protections and provisions:

- Not allowing the taking of private property unless it is for a legitimate public use;
- Allowing compensation to be based on free market transactions of the same or similar type of property interests, while also recognizing that the property owner should be in a position to negotiate betterment in compensation should such property owner feel as though a fair written offer is not made by the condemning entity. Comparable sales information from free market right-of-way sales between a willing buyer and willing seller should be admissible by rule of law if there is no confidentiality agreement in place between the parties, allowing greater transparency in the marketplace. Further, condemned property owners should be compensated for diminished values of property that is adjacent to condemned property and owned by the same property owner;
- Requiring the use of a promulgated contract offering typical landowner protections found in standard agreements between willing buyers and sellers in the marketplace. Such promulgated contracts should include best practice standards which, among other things, should include specific surface reclaiming practices which are conservation friendly with the existing landscapes and habitats;

- Requiring the condemning entity to reimburse the owner of the condemned property for all legal, appraisal, and litigation-related expenses that said property owner may incur, should said property owner be awarded betterment (by Special Commissioner’s Court, County Court, or District Court) above the final written offer that was made by the condemning entity;
- Requiring the condemning entity to provide the condemned property owner with reasonable indemnification, including proof of appropriate insurance coverages, sound risk management practice policies, hold harmless agreements, and other provisions that provide the property owner with reasonable liability protection from any and all possible claims associated with the condemnation process;
- Requiring sufficient notice and disclosure statements by the condemning entity;
- Requiring compensation for impaired access of the property owner to any remaining property owned by the same property owner;
- Requiring relocation assistance for displaced property owners;
- Condemned property owners should have the right to use a condemned easement, so long as it does not interfere with the stated use of condemning entity;
- The maximum acceptable width of permanent easements, resulting from condemnation, should be regulated by law;
- The condemning entity should be held liable for all damages and losses caused by or arising out of construction, maintenance, replacement, or operations such as, but not limited to loss of livestock, wildlife, exotic game, crops, fences, gates, trees, buildings, and other improvements;
- Any ingress or egress by the condemning entity, outside of the actual easement, must be agreed upon by both parties, and if property other than the easement is condemned for access purposes, said entity must pay fair market value for such access along with remainder damages and must, if requested by the property owner, improve and maintain such access road surface as is common in the oil and gas industry in Texas;
- A condemning entity with common-carrier status cannot front for a third party who does not have common-carrier status. Currently, there is no meaningful review of a pipeline’s eminent domain authority under any existing or proposed rules from the Railroad Commission. Merely registering as a common-carrier does not conclusively convey the extraordinary power of eminent domain or bar landowners from contesting in court whether a planned pipeline meets statutory common-carrier requirements;
- The condemning entity will be subject to signing a non-interference clause with regard to other operations on property, such as grazing, farming, hunting, oil and gas operations, and other normal activities found on private properties in Texas;
- Requiring the condemning entity to disclose what products will be transported through constructed facilities. In the event that products, other than those identified through the disclosure, are transported, additional compensation should be paid to the property owner;
- Requiring a timetable for completion of construction, with penalties for not finishing within those timelines;
- Any future change or increase in the nature of the infrastructure such as, but not limited to, pipe size, transmission tower or pole size, number, or height, must

require additional compensation be paid to the landowner, subject to current values and subject to negotiated fee consideration.;

- Requiring a defined termination and abandonment date of the easement as a consequence of transport nonuse or abandonment, together with the responsibility of the condemning entity to remove the infrastructure within a defined timeline at condemning entity's expense. Nonuse needs to be clearly defined as, "product no longer being transported through the line." Pressure testing or running a "pig" through the line should not constitute usage;
- And provide property owners the option to buy back the condemned property at the condemned price if the condemned property is not used for its public purpose within a ten year period of time.

TWA believes that timely reviews should be mandatory in evaluating eminent domain and condemnation statutes to ensure that such statutes are reflective of the current state of affairs. TWA believes statutory changes in Texas' eminent domain laws in recent years still fall well short of protecting private property rights and private property interests for landowners in Texas, which ultimately compromises the values associated with private property ownership and the values associated with Texas' open spaces.