CONSIDERATIONS IN NEGOTIATING AN EASEMENT

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The fact that you are unwilling to sell an easement is not a valid reason to keep this easement from being acquired. Best results are obtained when the utility or transmission company has a courteous and agriculturally informed landman, and a careful and concerned construction foreman. A smart aleck causes more trouble than he is ever worth in savings to the company acquiring the easement. A poorly informed, discourteous, bullish landman causes public relation problems.
So does a construction crew that is disrespectful of the landowner’s rights.

Some of the “do” items to assist you in obtaining a fair and equitable easement agreement are:

Keep Adequate Records

1. Keep a diary of every day involved, such as conversations between yourself and the landman. Keep dates and hours of occurrences; keep a detailed account of construction progress on your farm, the day and hour the crew first entered, and what work they performed; take pictures of what they destroyed before and after, and how they left the surface. Keep dates and hours of work you performed to get the land back into shape. Take pictures of the equipment you used and of it in action. Keep a log of the hour of the day your equipment worked and finished. Keep a log of the labor and labor value involved, and the name of the laborer.

2. Keep yield records of the easement involved and yield records on the remainder of the farm. Harvest and weigh separately the yield on the easement for comparative purposes. This is a great inconvenience in harvesting, but very important that there be some provable records of differences in yield, if any, and in the income.

Have complete and accurate records to back up your claims. If condemnations proceedings are initiated the landowner cannot then recover damages to crops or to the land per se. The market value of the land taken by condemnation is the only litigious issue.

Provisions for Damages

3. Make provisions in the written agreement for the payment of crop losses or differences on the easement versus the undisturbed land for at least three years, payable one year at a time as they occur. Usually the law will be that all present and future damages are to be paid for in one lump sum at one time, unless specified otherwise.

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7. Employ a competent attorney who is an experienced easement specialist to advise you on your agreement before you sign. This will usually not be the local or hometown family lawyer.

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8. Have the contract provide for future damages, infinitum, as well as for the near present damages. Have the exact size of the pipeline, road, telephone, or electric line specified. Mere promissory statements of future intentions by the condemnor are invalid in court. You can agree to a future damage clause in an
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