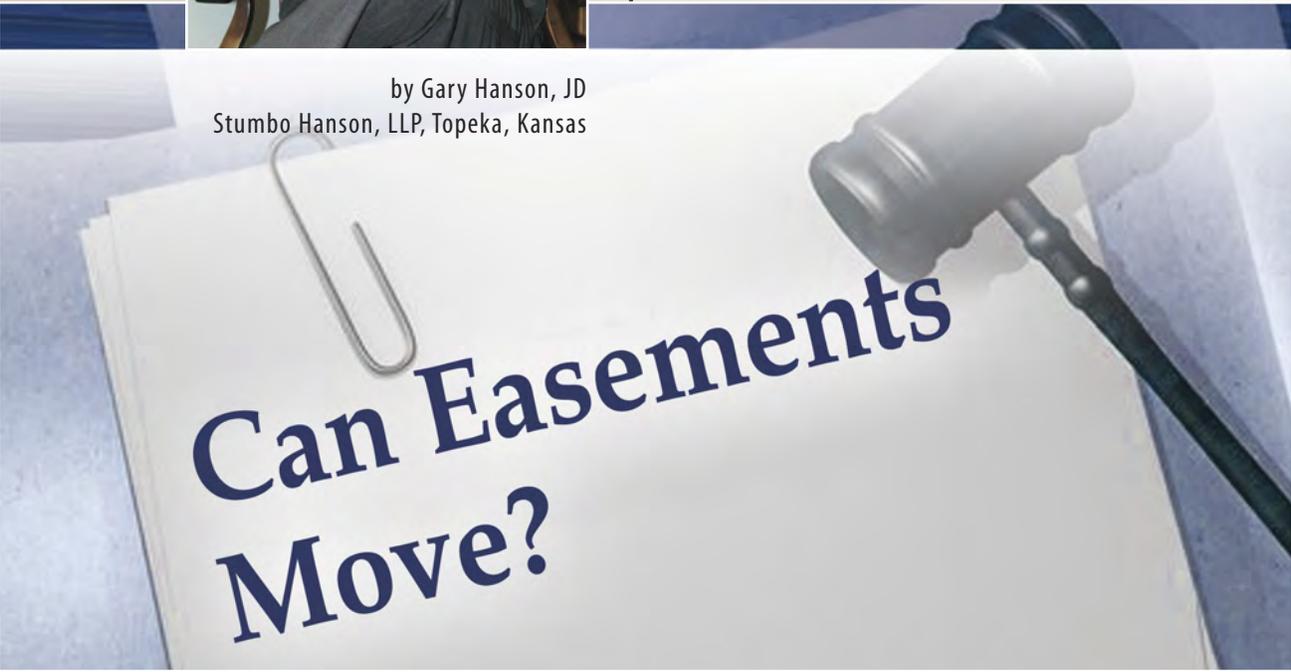


Legally (Relevant



by Gary Hanson, JD
Stumbo Hanson, LLP, Topeka, Kansas



Can Easements Move?

Easements are a vital part of water and wastewater systems. In cities, most of the utility lines, valves, meters and related equipment are located in dedicated public streets (rights-of-way) or utility easements, although even cities frequently have water transmission lines that extend to water supplies or wastewater treatment facilities located outside the city in private easements. For water districts, private easements contain almost all transmission and distribution system lines and equipment.

What is an easement? The Kansas Supreme Court has defined an easement as an interest in land owned by another, which interest entitles the easement holder to make limited use of the land as described in the easement, and entitles the easement holder to protection of that use from interference by others. There are several types of easements, including negative easements (which prohibit the landowner from making certain use of the land, such as storing hazardous chemicals within the area surrounding a water well), and

affirmative easements (allowing the easement holder to do something, such as constructing a water line).

In addition, easements may be separated into those commonly referred to as public easements, including rights-of-way, such as the dedicated utility easements within a city that are for the use of the public as contrasted to those commonly referred to as private easements which are held by one easement holder for that holder's use. The remainder of this article concerns private easements.

Private easements

One important feature of every easement is the definition of land that is subject to the easement. Some easements simply describe the entire tract of the landowner's land as being subject to the easement. This form, called a "blanket" or "floating" easement would seem to allow the utility to build its pipeline anywhere on the landowner's land. These easements are unpopular with landowners, and not in common use as a result, because landowners are understandably reluctant to grant easements that appear to allow the system to construct its pipeline through the middle of a corn field (or the living room). In any case, blanket easements granted to RWDs are more limited than they may seem due to a Kansas Statute, K.S.A. § 82a-619b, which requires the district to advise the landowner prior to construction of the exact location of the proposed pipeline installation.

Most easements are not blanket easements, but instead designate a specific area or strip on the overall tract of land that is subject to the easement. This type of easement description may be a defined

Blanket easements granted to RWDs are more limited than they may seem due to a Kansas Statute, K.S.A. § 82a-619b, which requires the district to advise the landowner prior to construction of the exact location of the proposed pipeline installation.

description easement, an "as installed" easement or one defined in relation to some other legal or physical location.

The best, most clearly defined easement is one that defines the area subject to the easement by a surveyed description. This creates a description that may be readily located on the ground at any time, regardless of changes that may occur over time in landmarks or other physical or legal changes to the land. The disadvantages to this type of description is that it is costly, as it can only be created by a licensed land surveyor, and it is inflexible.

Another commonly used form of description of easement defines the area subject to the easement by the location of the facility (for example, a water line) as actually installed. The standard form USDA Rural Development easement is of this type, and reads as follows:

"The easement shall be _____ feet in width, the center line of which shall be described as follows:

_____,"

Of course, the second blank could be filled in with a surveyed line extending from point A to point B, but more commonly that blank is filled in with words to the effect of "the water line(s) as constructed". This is in common use for two reasons: it allows considerably greater flexibility in construction to allow the water line to avoid a tree, steep ditch or other obstacle (still subject to the requirement of K.S.A. § 82a-619b that the district specify in advance the location of the construction); and it does not require a survey because there is no legal description for the easement. This form of easement is not without disadvantages however, not the least of which is the difficulty third parties may have in trying to figure out where the easement actually is.

The third type of easement description is one that defines the easement in relation to some physical or legal location. One example of this would be a negative easement that prohibits specific forms of potential pollution sources within a one-hundred-foot radius "of the center point of the water well" located on a specific tract of land. A second example is the widely used easement description that defines

a water line as being “the _____ feet adjoining road right-of-way”, or words to that effect. This form shares the advantage of the “as constructed” easement that does not contain a legal description and therefore does require that it be surveyed. It is also more readily acceptable to landowners as it confines the easement (and thus pipeline construction) to the fringe of the land and adjoining the road, often in what is already building set back in zoned counties, and therefore least intrusive to the landowner.

So back to the title of this article, Can Easements Move? This question most often comes up when one of two things happen: either the facility (for example, pipeline) needs to be moved or replaced or the physical or legal location (for example, road right-of-way line) moves.

As for the first type of easement description, the surveyed description, the answer should be obvious. By definition, that easement description is fixed; it’s permanent. If a pipeline needs to be built anywhere but inside the description of that easement a new easement is needed.

The answer for the “as-constructed” easement is not as obvious. The answer is that this type of easement cannot move either. Once that initial construction occurs, the location of that easement is fixed. So, if that easement says that “the easement is twenty feet in width, the center line of which shall be the pipeline as constructed”, the description of that easement is fixed with that initial pipeline construction. If the new pipeline can be squeezed into that specific twenty-foot-wide strip of land, then it may be used for that purpose (assuming the easement otherwise allows for additional or replacement lines). If not, that original easement

It may go without saying, but building facilities without a legal right to do so (such as building outside of the easement) can result in significant legal problems for the utility.

cannot “move” to the new pipeline location, and a new easement will be needed.

The third type of easement description, locating the easement by reference to an existing physical or legal location, can be affected by events such as a change to the road right-of-way line because of the county acquiring a new right-of-way for bridge replacement or road widening. Again, the answer to the

question may not be so obvious, but once an easement defined by the road right-of-way line is granted, it is fixed. In the example above, that translates to a twenty-foot-wide strip of land that adjoins the road right-of-way line as it then exists. If that right-of-way line moves, for any reason, the easement does not move with it. If a new or replacement line is needed, as it cannot be built in that original twenty feet, a new easement will be needed.

It may go without saying, but building facilities without a legal right to do so (such as building outside of the easement) can result in significant legal problems for the utility. This would be a trespass, subjecting the system to legal claims for money damages, the potential for a court order to cease use of the offending facility, and complete inability to legally defend the use of the land and facilities – all problems that utilities need to avoid.

Conclusion

Easements are an essential part of the construction and operation of water and wastewater systems. But as this article demonstrates, there are many kinds of easements and the legal rules surrounding each are not simple. Situations occur that require interpretation of these rules, and when they do systems need to consult with their attorneys to understand what they can and cannot do.

Complete well service for Kansas

- Distributors of Regal Chlorinators
- Sales and distribution of Redi Clean products
- Underwater video camera inspection
- Telemetry
- Extracting and setting pumps and motors
- Well remediation, restoration
- Rebuilding, restoring pumps and motors
- New pump and motor sales
- Variable frequency drive sales and service – Square D, Yaskawa
- Starting panels
- Consulting services with surge blocks with brushes and sand buckets
- Complete parts service



In a well remediation, Alexander Pump's unique truck mounted hydraulic walking beam (above) cycles the surge tank, double surge block and brush (left) up and down through the well. The action forces 'Redi Clean' chemicals into the gravel pack to dissolve iron bacteria, placing it into suspension for removal.

**Alexander Pump
& Service, Inc.**

Phone: (785) 437-6305 Fax: (785) 437-2394

E-mail: aps@kansas.net Web site: www.alexanderpump.com