

Legally (Relevant



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There's a Waterline on Land with No Easement – Now What?

You discover that a waterline that is part of the district's transmission/distribution system is on privately owned land with no easement. The current owner of that land is new to the area, having bought the land in just the past few months. He says that no easement was disclosed when he purchased it, and when a district employee drives along the route of the line looking for a leak, he orders the employee off, threatening trespass.

The situation is depicted by the map on the opposite page.

How does this happen?

It happens more often than you might think, and can be the result of any number of things. An easement could have been obtained but was never recorded; the easement could contain the wrong legal description; or most likely, in the press of business, the easement was simply overlooked.

First things first – why is this a problem?

It is important that for all systems' facilities located on privately owned land that the district have a legally enforceable right for those facilities to be located there and that the system have the right to install, inspect, repair and replace those facilities. This legal right can be in the form of district ownership, lease or easement.

Why is it important?

Because lack of that legal right means that use of that land for any of these activities is an unlawful trespass, which can be legally stopped and subject the district to damages for the trespass. There are few things worse than having a transmission line serving multiple customers suffer a line break and have no ability to repair the break.



The blue line represents a water line that provides service to nine homes (meter locations indicated by yellow dots). The blue line is all located in recorded easements on private land. The red line represents that portion of the water line that transports water to the single customer (blue line) and is located on a separate tract of land with no easement (Tract 1).

The first step then is to absolutely, positively determine if an easement exists on the property. Order a title report and have the district’s attorney review it. Search the system’s files for a signed but unrecorded easement. If one is discovered, consult with the attorney about the effect of an unrecorded easement.

What are the options?

Assuming that no easement exists, the next step should be to have a new, proper easement prepared and submitted to the landowner for signature. The district needs to decide the terms to offer, considering the alternatives. These alternatives are described below.

One option to consider is to claim that an easement exists on Tract I by prescription. This type of easement is based on the premise that land that has been used as if there was an easement for at

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least fifteen years, then an easement is established as a matter of law. The exact requirements that must be met for an easement by prescription are defined by statute, KSA 60-503, and court cases applying that statute. In general, the party claiming easement by prescription must demonstrate that the use has been open, exclusive and continuous, either knowingly adverse or by belief of legal right to do so for a period of fifteen years.

Satisfaction of all of these elements is not always easy when the use is only by an underground pipeline not apparent from the surface. It is also uncertain what the scope of that easement should be (for example its width, the number and size of lines that can be there, etc. – terms that should be covered by a written easement). Most importantly, a prescriptive easement only exists after determination by order of a court. This



Registration of Water System Vehicles

Registration of vehicles has often been a frustrating process. Inconsistency in the way different water systems' vehicles were handled even inconsistency from one county to the next coupled with what can seem like unreasonable administrative burdens and delays, have been the source of frequent complaints. KRWA successfully worked for legislative changes made in 2012 that put vehicles used by RWDs and city and county water departments on the same footing. While this certainly helped, it didn't entirely resolve the problems concerning tags, sales and property taxes on newly registered vehicles.

There is little wonder why there can be confusion. County treasurers can scarcely be blamed, given the extraordinarily complex statutory and regulatory provisions governing these registrations. KRWA sought clarification, and as a result, additional written guidance was recently provided to county treasurers by the Secretary of Revenue, including the following:

1. Vehicles owned by RWDs and those used by city and county water departments are to be registered for five years (that is, not subject to annual renewal);
2. Vehicles owned by RWDs and those used by city and county water departments are to be treated as property tax-exempt government vehicles; and
3. The license plate to be issued is to be the standard Ad Astra plate with the five-year registration sticker.

requires the filing of a lawsuit in district court, with the corresponding cost and expense. The suit will name the landowners and other interested parties (for example, other easement holders, mortgagors, etc.), and the defendants will have the opportunity to defend by refuting the district's claims. Expect this case to run over several months, perhaps much longer. The cost of this process is impossible to estimate with any certainty. A minimum of \$10,000 is likely, but the actual cost could considerably exceed that number – and success is not assured.

Another option to consider is the acquisition of the easement through eminent domain. This also

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involves the filing of an action in the district court under the very specific and somewhat complicated procedures prescribed by state statute, namely KSA 26-501 et seq. The benefit to this option is that it is relatively fast compared to other court actions, and the district will obtain a carefully described easement as a result. The biggest disadvantage is cost, as the district will not only incur its attorney's fees, but also administrative costs, including the fees for three independent court-appointed appraisers who will be responsible for appraising the value of the land being taken and the amount of the cash award that the district must pay to the landowner. These costs and awards vary widely around the state, but expect that the total cost for a simple eminent domain action for the acquisition of an easement like this will be a minimum of \$10,000.

Finally, the district should consider the option of abandoning the existing line and constructing a new one along the county frontage road. There are

a number of factors to consider, including the time to construct, the value of a new line compared to a 20-year-old line, etc.

This brings us back to the first option – presenting a new easement to the owner of Tract I for signature and filing. It would be nice if that owner would donate the easement, but under the circumstances, that seems unlikely. Should the district offer payment? Many districts take the position that “we don’t pay for easements”. That was a viable position when districts were first being developed, bringing water service to country where there was none. But years later, with many new landowners who take water service for granted, perhaps lacking that sense of neighborhood that motivated predecessors to defer their personal interests in favor of the general good, this rule may not be viable. Refusing to offer payment to the

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owner of Tract I, which results in the owner refusing to consider signing an easement, forces the district into bringing an action in district court with the attendant costs and uncertainty, or building a new line, thereby abandoning a perfectly good line that may have decades of useful life

remaining. We are aware of one case where the owner stubbornly refused to sign an easement, and construction of a new line was not an option so that court action was the district’s only option. At the last moment, when this very expensive and lengthy court action was about to begin, the owner accepted payment of \$5,000.

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WHATEVER IT TAKES!

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