Jack County Ag Newsletter

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DOES IMPLANT STATUS AFFECT PRICE IN A VIDEO AUCTION?

Data from one video auction service were analyzed from 2.75 million head sold in 27,746 lots (average of 99 hd/lot) through 92 auctions conducted from 2010 to 2013. The analysis adjusted for 18 variables (such as sale weight, vaccination protocol, age/source verification, number of days to planned delivery) other than implant status, which might influence price. Findings were:

- % of lots implanted was very consistent, ranging across years from 28.4 to 30.5;
- implanting was lower (18.2% to 27.9%) in lots from the West Coast, Rocky Mountain, North Central, and South Central regions;
- implanting was 64.9% in lots from the South East region;
- across all regions, 33% of steers and 25% of heifers were implanted;
- being implanted or not did not statistically ($P<0.05$) affect sale price in any year;
- in one year, implanting very slightly reduced price (by $0.40/cwt);
- in three years, not implanting very slight increased price (by avg. of $0.13/cwt).

According to the most recent survey by the National Animal Health Monitoring System, only 14.3% of herds utilized growth implants for suckling calves. And this has declined over the at least 40 years that implants have been available. NOTE: Across many research and field trials, implanting suckling calves averages increasing weaning weight by about 20 lb, for a product cost of only ± $1.50/head. For most producers, there's money being left on the table.

(Prof. Anim Sci. 31:443; Kansas St. Univ., Ohio St. Univ., Grassy Ridge Consulting, Merck Anim. Health)

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NEW TRICHOMONIASIS REGULATION

The Texas Animal Health Commission made some changes to the Trich control program regulations that will be implemented starting January 1, 2016. The regulations now state:

"The maximum
age for bulls to be sold as 'virgins' in Texas was **lowered fro m 24 to 18 months**. Bulls may
still be sold as 'virgins' up to 30 months of age if a veterinarian will co-sign a statement along with the owner, stating that the bull has not been in contact with female cattle. Virgin bulls are not required to be tested upon change of ownership. A separate Trichomoniasis rule passed which requires the testing of bulls on adjacent pastures to where an infected bull was disclosed."

(http://www.tahc.state.tx.us/news/pr/2015/2015-10-21_CommissionMeetingRelease.pdf)

Posted on August 26, 2015 by tiffany.dowell

San Antonio Court of Appeals Rules on Case Involving Trespass of the Mineral Estate

You may remember the case of *Lightning Oil Co. v. Anadarko E&P Onshore LLC* from this prior blog. The case raised an interesting question of who–the surface owner or the mineral owner–must grant permission for the third-party to drill a horizontal well through the property to access an adjacent parcel of land. Last week, the San Antonio Court of Appeals answered this question.

Texas A&M University Agrilife Extension photo by Steve Byrns

Background

The Briscoe Ranch sits just north of the Chaparral Wildlife Management Area (CWMA) in Dimmit County, Texas. The Ranch includes the 3,250 acres just north of the CWMA, for which Lightning Oil Company holds the mineral rights. The surface of these 3,250 acres is owned by Briscoe Ranch.

Anadarko holds a lease for the mineral estate underlying the CWMA. The surface of the CWMA is owned by the Texas Parks and Wildlife Department. The lease between Anadarko and Texas Parks and Wildlife Department prohibits Anadarko from using the surface of the CWMA for oil and gas wells without consent, requiring Anadarko to

CWMA for oil and gas wells without consent, requiring Anadarko to user off-site drilling locations when "prudent and feasible."

In order to access the minerals beneath the CWMA, Anadarko entered into a Surface Use and Subsurface Easement Agreement with Briscoe Ranch. This agreement gave permission for Anadarko to build several well pads and drill numerous wells on the Briscoe ranch, that would then horizontally cross property lines and actually produce oil from beneath the CWMA. Importantly, there were to be no "take points" along the horizontal well on Lightning's lease.

The Lawsuit

Lightning sued Anadarko seeking to prevent them from drilling a well through Lightning's mineral estate in order to reach Anadarko's mineral estate. They argued that as mineral estate holder, Lightning had the right to exclude others from drilling and to determine who could drill through the earth within the boundaries of their lease. Specifically, Lightning claimed trespass of the mineral estate and tortious interference with business relations.

In response, Andadarko argued that it was not trespassing at all as it had obtained permission from the surface owner to drill through to reach its own mineral lease. It was the surface owner, reasoned Anadarko, who holds rights to the surface underground, not the mineral owner.

The trial court found in favor of Anadarko. Lightning appealed the case.

Court of Appeals Opinion

The Court of Appeals affirmed the trial court. "Because the surface owner controls the matrix of the underlying earth, and the summary judgment evidence conclusively proves the surface owner gave Anadarko permission to site and drill, we affirm the trial court's order."

The court explained that the central question in this case is the nature of a mineral owner's interest. "Having reviewed the applicable law, we conclude that the surface owner controls the earth beneath the surface estate." On the other hand, the "mineral owner is entitled to a fair chance to recover the oil and gas in or under the surface estate, but absent the right to control the subterranean structures in which the oil and gas molecules are held, the mineral estate owner does not control the mass that undergirds the surface of the conveyed land."

In light of this, the court found that Lightning did not own or control the earth surrounding the hydrocarbon molecules beneath the Briscoe Ranch. Instead, as surface owner, the Ranch controls this land and may grant Anadarko permission to drill through the boundaries. Of course, Anadarko may not produce oil or gas from the Lightning lease without Lightning's permission, but it may drill a well through the land on which Lightning holds a mineral lease.

Thus, Anadarko committed no trespass or tortious interference as it obtained the required permission from the Ranch to cross through the surface estate with its horizontal well.

Why Should We Care?

This case clarifies the precise scope of the surface and mineral interests when considering the earth beneath the surface estate. Clearly–unless the parties agree otherwise–the surface owner controls the land beneath his property, giving him the right to grant permission to third parties to make use of that surface. Here, the case involved an oil and gas well, but one could see how this holding could easily apply to other cases involving groundwater wells or pipelines as well. This case makes clear that it is the surface owner, not the mineral estate holder, who will be permitted to make decisions when these type of opportunities arise.

Texas Fence Law: Open Range….or Not? (Part 1)

Posted on May 19, 2014 by tiffany.dowell

This article is not a substitute for the advice of an attorney.

Most Texans are quick to note that Texas is an "open range" or a "fence out" state, meaning that a livestock owner does not have a legal duty to prevent animals from getting onto the roadway. Technically, this is a true statement of the common law in Texas. There are, however, two major exceptions to this rule that are extremely important for livestock owners to be aware of.

Today, we will review the general fence law in Texas and the two major exceptions that modify that rule. In Part 2 of this series, we will look at several Texas cases that illustrate how these rules work in real life situations.

Common Law

Under the common law (common law is the judge-made law that comes out of courts rather than statutes that are enacted by the legislature), it is true that Texas is an open range state. The Texas Supreme Court made this clear over a century ago when it stated the following, "It is the right of every owner of domestic animals in this state…to allow them to run large." *See Clarendon Land,*

Investment & Agency Co. v. McClelland, 23 S.W. 576 (1893). This approach was reaffirmed more recently in 1999 when the Texas Supreme Court refused to adopt a common law duty that required a livestock owner to keep livestock off of the roadways. *See Gibbs v. Jackson*, 990 S.W.2d 745 (1999). In that case, the Court held that the owner of a horse had no duty to prevent the horse from roaming onto a farm-to-market road. Without such a duty, a livestock owner may not be held liable for injuries to a motorist who collides with the livestock on the roadway.

This common law, however, is not the end of the story. Although this law may be applicable in portions of the state, it is certainly not the law for all areas or all roadways in Texas. Two exceptions modify this common law rule for certain areas: stock laws and a statute pertaining to federal and state highways.

Stock Laws

Since 1876, the Texas Legislature has allowed for local stock laws to be passed that modify the common law rule of open range. *See* Texas Agriculture Code Section 143.021 – 143.082. Stock laws are considered by local voters and can apply to all or a portion of a county. If these laws are in place, the open range common law is modified and landowners have a duty to prevent animals from entering the highway pursuant to the stock law. Many stock laws were enacted across Texas during by the 1930's. The stock laws generally state that certain species of animals (i.e. horses, jacks, jennies, cattle, sheep, etc.) may not be permitted to run at large within the limits of the particular county. Essentially, a stock law changes the area from open range to

closed range.

Because each stock law is different, it is critical to determine the following information: (1) Does a stock law exist in the area; (2) What animals are covered by the law; and (3) Did the landowner "permit" the animals to run at large.

Does a stock law exist?

Unfortunately, there is no official compilation of stock laws in Texas. Instead, the laws are often contained in the minutes of county commissioners courts. Persons seeking to find out if their area is covered or seeking to obtain a copy of the laws may request information from their local county officials as often county attorneys or county sheriffs may be able to provide this information. Additionally, Ft. Worth based equine attorney, Alison Rowe, has compiled nearly all of the stock laws across the state and will provide this information for a small copying fee upon request. To contact Ms. Rowe or to view a list of counties that have a stock law in at least some portion of the county, click here.

What animals are covered by the law?

If a stock law does exist in an area, it is critical to determine what species of animals are covered by the law. It is possible, for example, that the stock law would apply to horses and donkeys, but might not apply to cattle in a particular area. The Texas Agriculture Code allow stock laws to be enacted that regulate cattle or domestic turkeys (Section 143.071 – 143.082), hogs (143.051 – 143.056), horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats (143.021 – 143.034). Importantly, the requirements for passing laws differ under each of the subsections and the Texas Attorney General has opined that laws previously passed that did not follow separate procedures under the subsection applicable to the specific animals at issue may be invalid. *See* Texas Att'y General Opinion No. GA-0093 (2003) (available here). 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.

Were the animals "permitted" to run at large?

Most local stock laws prohibit a person from "permitting" the animal to run at large and only if a person "permits" a animal to run free may that person be liable if a third party is injured. Therefore, it is important to determine how Texas courts interpret the meaning of "permit" under these rules. The Beaumont Court of Appeals addressed this question in *Rose v. Herbert Heirs*, 305 S.W.3d 874 (Tex. App. Beaumont 2010) and held that "permit" meant to expressly or formally consent or to give leave. Conversely, merely making it possible for an animal to run large was insufficient to impose liability on a landowner. Similarly, the Amarillo Court of Appeals determined earlier this year that the mere fact that animals escape, alone, is no evidence of misconduct on the part of their owner. *See Rodriguez v. Sandhill Cattle Co., L.P.*, No. 07-13-00043-CV. Instead the court looked to the owners actions to determine whether they were reasonable under the circumstances and if any evidence of negligence existed including whether the owners left the gate open, the landowners of the property authorized the lessees to allow cattle to run at large, the livestock owner or landowner had notice that the livestock was out on the roadway, there was evidence that livestock had previously escaped from the property, or if the fences surrounding the pasture were not fit for ordinary use.

State and Federal Highways

The Texas Legislature has also enacted an exception to the open range rule for U.S. and state highways. Pursuant to state statute, "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." *See* Texas Agric. Code Section 143.102. In order to determine the scope of this statute, it is important to determine (1) what constitutes a "highway"; (2) what is meant by "knowingly permit"; and (3) who "owns or has responsibility for the control of" the animal.

What constitutes a highway?

Under this statutory provision, a "highway" is defined as "a U.S. highway or a state highway in this state, but does not include a numbered farm-to-market road. *See* Texas Agric. Code Section 143.101. Thus, all U.S. and state highways are

considered to be closed range under Texas law, while farm-to-market roads are considered to be open range unless a local stock law modifies this rule. The result of this rule is that it may well be in a single county that one roadway is closed range while another nearby roadway is open range.

Did the owner or responsible person "knowingly permit" the animals to run at large?

Although both stock laws and the federal and state highway statute have this similar "permit" requirement, the federal and state highway statute's standard is higher, requiring that the owner *knowingly* permit an animal to run large. One appellate court found that an owner acted knowingly when he was aware the fences were unable to withstand rainfalls, the cattle had escaped many times during rainstorms prior to the accident, that the police informed the owner that his cattle were on the roadway, and that the owner did not inspect the fences prior to the accident occurring. *See Weaver v. Brink*, 613 S.W.2d 581 (Tex. App. Waco 1981). Conversely, where a livestock owner kept his gate locked and chained and no prior knowledge of his cattle escaping on a roadway, there was insufficient evidence to prove that he acted "knowingly." *See Evans v. Hendrix,* 2011 Tex. App. LEXIS 6579 (Tex. App. Waco Aug. 17, 2011).

Who owns or has responsibility for the animals at issue?

This statute imposes liability on a person who owns or has responsibility for the control of certain animals. Texas appellate courts have found that where a landowner leases his land to a third party and does not reserve the right to inspect the property is neither the owner, nor responsible for the control of, the animals and, therefore, cannot be liable under this statute. *See Levesque v. Wilkens,* 57 S.W.3d 499 (Tex. App. Houston 2001).

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From the entire staff at the extension office here in Jacksboro we want to wish you & yours the happiest of holiday seasons. We truly appreciate the support you extend to our office & we look forward to serving you in the upcoming year. If we can be of assistance to you please let us know.

Sincerely

Charlie Martin

Jack CEA AG/NR