



Texas and Southwestern Cattle Raisers Association

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The
Cattleman



CATTLE RAISERS
INSURANCE™

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To the Honorable Chairman Tom Craddick and Members of the House Committee on Land and Resource Management:

The Texas and Southwestern Cattle Raisers Association (TSCRA) greatly appreciates the opportunity to provide comments on the House Land and Resource Management Committee interim charge to:

Study property owner's rights in eminent domain to examine and make recommendations on what should and should not constitute an actual progress to ensure the right of property owners to repurchase property seized through eminent domain by a condemning entity.

The Texas and Southwestern Cattle Raisers Association was founded in 1877 to combat cattle rustling and other issues facing ranchers at the time. Today, the Association continues its mission of protecting the stewards of land and livestock in the Southwest by advocating for sound public policy on issues that impact cattle producers and landowners.

TSCRA boasts more than 17,500 beef cattle operations, ranching families and businesses as members. These members represent approximately 55,000 individuals directly involved in ranching and beef production who manage 76 million acres of range and pastureland, primarily in Texas, Oklahoma and throughout the Southwest.

Nowhere is TSCRA's advocacy more critical than in the realm of private property rights. These rights are fundamental to the freedom and independence of all Texans and essential to cattle production.

Texas ranchers depend on the use of their private property throughout the state to not only feed their families but feed the nation. Their work and the productivity of their land contributes \$12 billion in sales to the state's economy every year, making cattle the largest contributor to the Texas agriculture economy.

When land is removed from agricultural production through eminent domain, it is detrimental both to the landowner and the nation's food supply. As such, it is imperative that eminent domain be utilized only when absolutely necessary and only at such a time when the condemning entity is prepared to make

use of the land they are seizing. Further, any acquisition for public use must have a precisely defined end procedure to return the property to the landowner if the project is not timely completed.

Large infrastructure projects often require extensive planning and lengthy completion timelines, with land acquisition usually occurring early within the process. Such projects can also face unforeseen pitfalls that result in interminable delays or even total abandonment. While we recognize the necessity and value of such a thorough planning process and the potential for unanticipated challenges, every effort should be undertaken by the condemnor and the State to ensure land is not taken prematurely or on a speculative basis.

When once productive land is seized too hastily or a project abandoned, the land frequently sits vacant, becoming overgrown and a nuisance to the community and adjacent landowners. While vacant, the land does not fulfill its promised role of serving a public use. It also no longer contributes to the state's robust agricultural economy, provides food for consumers, or benefits its former owner.

To help mitigate these issues, the Texas Legislature enacted Section 21.101 of the Property Code, which provides landowners with the right to repurchase their property from a condemning entity if certain progress is not made within ten years of the condemnation.

The right to repurchase is necessary to ensure that property is either used for the public good for which it was condemned or returned to the previous owner for their use and economic benefit. As currently written in statute, the right to repurchase likely encourages to some extent responsible and timely condemnation; however, it is rarely utilized in practice.

The extensive period granted to condemnors and overly broad definition of "actual progress" within the current statute provides the opportunity for condemnors to unduly prolong their control of the property without providing the public good for which it was intended.

Texas property owners would benefit greatly from revisions to Section 21.101 of the Property Code to strengthen the right to repurchase, making its use more realistic.

To do so, we recommend that the definition of actual progress include not two, but three of the provisions listed in Section 21.101 subsection (b).

Further, the action currently numbered in subsection (b) as (6)—acquiring adjacent lands for use in the same project—should be removed in its entirety. If a condemning entity has failed to make meaningful progress on a project, the condemnation of adjacent tracts only exacerbates the concerns outlined above and draws other landowners into the same scenario.

The Committee should also strongly consider removing subcategories (3), (4) and (5), as they represent items that should have been completed prior to acquisition of the property, and (7), which provides governmental entities an opportunity to ignore the bulk of subsection (b).

We also recommend adding a provision to address agricultural and open-space valuation on a repurchased tract. Land used for agricultural purposes is often accompanied by agricultural or open-space valuation provided for under Section 1-d or 1-d-1 of Article VIII of the Texas Constitution.

If property is condemned, it is very possible that the special valuation will lapse before the owner has the right to repurchase the property and return it agricultural use. If this occurs, the associated increase in the property tax rate may effectively prohibit the reacquisition of the property for agricultural use. To reacquire special valuation is lengthy and costly. The land must be used primarily for agricultural or timber use for three of the five preceding years to qualify for open-space valuation or the immediate three years preceding qualification for agricultural valuation.

We ask that the Committee consider language within Section 21.101 to ensure that if condemned property is repurchased that it immediately qualifies for any special valuation that it received prior to the condemnation.

In addition, the price of repurchase should be discounted by sum equal to the lost productivity of the land over the time it was condemned and any expenses incurred by the landowner as a result of the condemnation. Though it does not always occur in practice, the statute assumes that when land is condemned, the compensation includes loss of productivity. The landowner loses that productivity during the years the land is condemned regardless of their right or ability to repurchase the land. As such, they should be compensated accordingly.

Further, a successful bid to repurchase previously condemned land would indicate that the original condemnation was unnecessary to serve a public good. If unnecessary, the condemnation is an overreach of governmental authority for which the original property owner should not bear any expense.

Lastly, the current 10-year period offered to condemnors to demonstrate actual progress is excessive. It is a travesty to see land condemned, only to sit idle for a decade when it could have contributed untold economic and agricultural benefit to the state and its previous owner.

Texas citizens must be able to hold condemnors accountable when land is seized under the pretense of public use but fails to meet that expectation in a timely manner. We urge the Committee to collect additional data on the frequency of use and consider reducing the time available to condemnors to demonstrate actual progress to five years, a more appropriate level that balances the need for infrastructure planning with Texas property owners' rights.

Again, we thank Chairman Craddick and Members of the House Committee on Land and Resource Management for your attention to these critical issues.

The Texas and Southwestern Cattle Raisers Association is committed to bettering the private property rights of our members and stands ready to assist in any way possible as the Committee explores improvements to Texas' eminent domain process.

Sincerely,

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Texas and Southwestern Cattle Raisers Association