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Otay Mesa Properties versus the United States

In this installment of *Footsteps* we'll consider a court case from Southern California, along the US-Mexico border. This case has some important lessons about the ability of the United States Federal Government to take and use private property for the public good. Before we examine the legal issues being considered and talk about the appeal's court decision in this case, let's get some background on the case and take a look at the timeline of events.

Background

A group of land owners, including Otay Mesa Property Limited Partnership, owned 11 contiguous parcels of undeveloped land in San Diego County, California. The properties are immediately adjacent to the international border. For the purposes of this article we will refer to all of the land owners in this case as "Otay Mesa Properties".

Timeline

1992: An easement for a 20 foot strip of land adjacent to the US-Mexico border is granted by Otay Mesa Properties to the United States Border Patrol.

1999: The first underground sensors are placed on the Otay Mesa Properties lands by the United States Border Patrol.

Fall of 2011: The United States Border Patrol greatly increases its operations on the Otay Mesa Properties lands after the terrorist attacks on September 11, 2011. This included the

TIMELINE	
1992	An easement for a 20 strip on the Otay Mesa Properties is granted to the Border Patrol.
1999	First underground sensors are placed.
Fall 2011	Additional underground sensor easements are placed.
2006	Otay Mesa Properties sues the Border Patrol for exceeding the use of its easement.
August 28, 2008	A stipulation of parital liability is filed by the Border Patrol.
????	The Court of Federal Claims awards Otay Mesa Properties \$3,000,000.

placement of underground sensors on the property.

2006: Otay Mesa Properties files suit in the Court of Federal Claims, arguing the border patrol exceeded the use of its easement and owes damages.

8/28/2008: A "stipulation of partial liability" is filed by the United States Border Patrol for underground sensors placed on the Otay Mesa Properties.

????: The Court of Federal Claims awards Otay Mesa \$3,000,000 for the United States Border Patrol's placement of the underground sensors on its lands.

The Focus of the Case

Although Otay Mesa Properties sued for damages related to all of the United States Border Patrol activities on its land, the trial court decided that because of the statute of limitations, only the damages related to the placement and use of the underground sensors could be considered in its decision. The appeals court stuck to this aspect of the trial court's decision. The rest of our article will therefore focus on the damages related to the underground sensors.

Now that we have some important background, and we understand the focus of the court's decision, let's

examine the legal questions that were raised in this case.

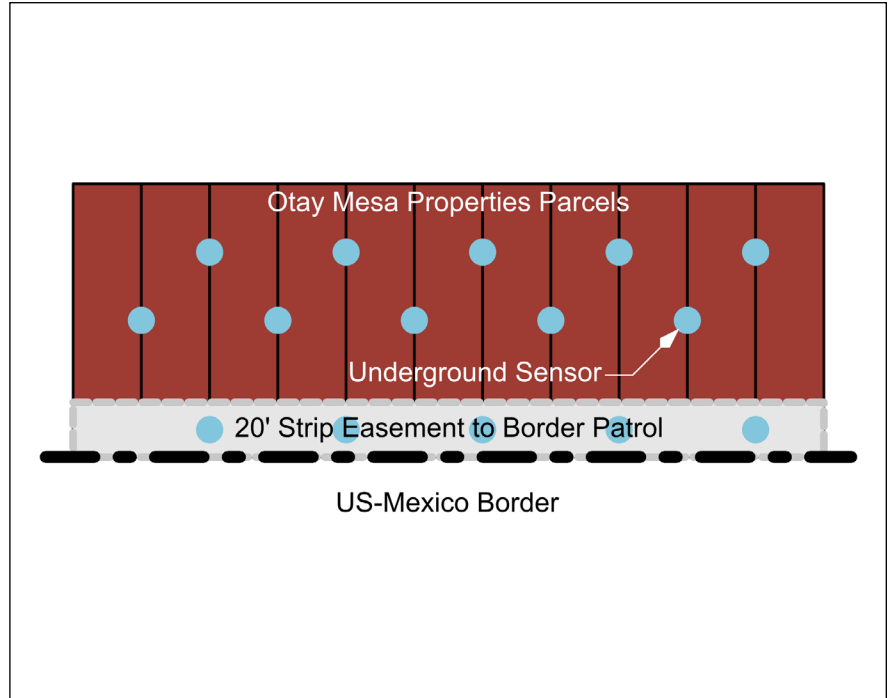
Legal Questions

1. Was the easement used by the United States Border Patrol for the placement of the underground sensors a temporary easement or a permanent easement?
2. Was the underground sensor easement exclusive or non-exclusive?
3. Was the easement a blanket easement that encumbered all of the subject parcels?
4. What was the value of the underground sensor easement for which Otay Mesa Properties should be compensated?

Let's examine the appeals court answer to each of these questions.

The Court's Decision

The trial court decided the underground sensor easement was a blanket easement, because it allowed the United States Border Patrol to place, and to relocate, underground sensors anywhere on the lands of Otay Mesa Properties. The trial court also decided the



terminated by either party. When the sensors were no longer needed, they could be removed by the border patrol. When Otay Mesa Properties developed

thought this would lead to a lesser value for compensation. They claimed the easement was permanent because it was perpetual, with no specific end date. The government also argued the ability to relocate the sensors made the easement permanent.

Otay Mesa properties argued the easement was temporary, because it could be terminated by actions of either party, even though a specific termination date wasn't given ahead of time.

The appeal's court noted the intent of the Border Patrol was to take a permanent, not temporary easement. They also noted the easement was still in effect at the time of the trial.

Once the appeal's court concluded the easement was permanent, it needed to decide the proper compensation. Because the trial court had concluded that the easement was temporary, it had used an estimated rental value of the property impacted by the sensors to determine the value of the compensation to be paid.

However, the appeals court indicated this was not a proper valuation, because the easement was temporary. It also indicated the valuation method of the trial court over estimated the rental value of the property because it didn't properly consider what the easement was being used for.

In addition, the appeals court chided the Border Patrol for arguing the

“The homes and property of private citizens far away from federal policy makers will have to bear the burden of the government’s policies.”

easement was non-exclusive, since the placement of additional underground sensors didn't preclude other use and enjoyment of the land. (The easement language even required the border patrol to relocate underground sensors at its expense if a portion of the Otay Mesa Properties land was developed.) The appeals court in this case upheld these decisions of the trial court and didn't discuss them in great detail.

The appeal's court then turned its decision to the question related to the length of the underground sensor easement. The trial court had decided that the easement was temporary, not permanent, because it could be

its lands, the sensors could be removed or relocated.

The appeal's court disagreed with the trial court in this aspect of the decision. Although it admitted the courts could recognize either a temporary or permanent easement, in this case it decided the easement was permanent, not temporary.

Why was this an important issue? The appeals court explained the duration of the sensor placement would determine, not if compensation was owed by the Border Patrol to Otay Mesa Properties, but how much compensation.

The Border Patrol argued that the easement was permanent, because they

compensation for a permanent easement should be less than the valuation of a permanent easement. In its decision the appeals court ordered the trial court to select another method of valuation and reconsider the amount of compensation owed to Otay Mesa Properties.

Lessons

What lessons can we learn from this court decision?

1. Easement holders (especially public agencies) need to keep their use of private property within the bounds of their easement. This includes the geographic bounds and the bounds that limit the easement use. When easement holders exceed these bounds, the owner property that carries the burden of the easement is entitled to litigation. This process is very messy.
2. There are wildly different ways a court may determine the value of


land use that exceeds the bounds of an easement. This poses a large risk to the easement holder that has exceeded the bounds. It would be much better for the easement holder to negotiate a fee with the owner of the property burdened by the easement ahead of time. This process is much more certain for the easement holder and carries less risk.

3. The duration of an easement can have an important impact on its value. The duration of an easement should always be specified in the easement agreement or deed.

The Costs of Federal Policies

I wanted to conclude this article with a short note in the costs and impacts of our federal government's policies. Most of my readers would agree that border security and the fight against terrorism are important issues. How important it is for us to remember, however, that

the steps our federal government takes to address these issues have real costs and impacts. The homes and property of private citizens far away from federal policy makers will have to bear the burden of the government's policies. It is important for all citizens to consider the full cost of these policies. It is also extremely important for the government to carefully exercise its authority to take and use private land for the public good. It is a sacred power that can be easily abused. In this particular case, the United States Border Patrol certainly exceeded the limits of its original 20' wide strip easement. This caused harm to private property and wasted taxpayer dollars on the ensuing legal battle and compensation.

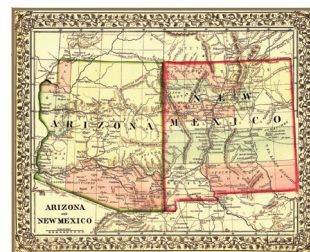
Note: You can visit the *Footsteps Boundary Surveying* blog to read an introduction to the Court of Federal Claims: www.redefinedhorizons.com/footsteps/the-court-of-federal-claims/ 

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