


United States District Court  
Southern District of Texas  
ENTERED

APR 10 2008

Michael N. Milby, Clerk of Court  
By Deputy Clerk 

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

THE UNITED STATES OF AMERICA, §  
Plaintiff, §  
v. §  
1.04 ACRES OF LAND, more or less, situate in §  
CAMERON COUNTY, STATE OF TEXAS; and §  
ELOISA G. TAMEZ, ET AL., §  
Defendants. §

CIVIL ACTION NO. B-08-044

**ORDER**

On April 3 and April 4, 2008, Plaintiff filed an amended eminent domain complaint and a declaration of taking in this action. Plaintiff seeks the surrender from the Defendant of an estate defined as: a temporary, assignable easement beginning on the date this Court grants possession to the Plaintiff and ending 180 days later. The easement being claimed consists of the right of the United States, its agents, contractors and assigns to enter in, on, over and across a certain tract of land described with more certainty in the attachment to this order.

The easement sought would give the United States the right to survey, make borings, and conduct other investigations on the tract of land described in the attachment for the public purpose of conducting surveys, tests, and other investigatory work needed to plan the proposed construction of roads, fencing, vehicle barriers, security lighting, and related structures designed to help secure the United States/Mexico border within the State of Texas. The Government also seeks a right of access from adjacent lands. Unlike some of the prior requests to this Court, the current request only pertains to adjacent land to which the Government already has "a right of entry or other property interest." As part of the easement, the United States also wants the right to trim or remove any

vegetative or structural obstacles on the property that interferes with the aforementioned purpose and work.

The easement claimed reserves to the landowner, her successors and assigns all rights, title and privileges as may be used and enjoyed without interfering with or abridging the rights hereby acquired by the United States, subject to minerals and rights appurtenant and to existing easements for public roads and highways, public utilities, railroads and pipelines.

Now, having considered the Plaintiff's amended complaint, declaration of taking, the deposit of estimated compensation and the concerns of the Defendant, this Court finds the following support for Plaintiff's motion:

Plaintiff filed a proper amended complaint for the condemnation (and for a taking) of the Defendant's property for a temporary easement and a declaration of taking of that property in accordance with 40 U.S.C. § 3114. Plaintiff deposited the sum of \$100.00 as the estimated just compensation into the Registry of this Court on February 6, 2008. Defendants filed objections to Plaintiff's motion and this Court received oral arguments and numerous briefs on those issues. The objections were overruled in an order issued earlier today. This Court, therefore, **ORDERS** that the Defendant and all persons who own or claim ownership, possession and/or control of the property described in the attachment to this order must allow Plaintiff access to the property for an easement subject to the following terms:

The Government is hereby granted the right to survey, make borings, and conduct other related investigations on the tract of land described in the attachment for the public purpose of conducting surveys, tests, and other investigatory work needed to plan the proposed construction of roads, fencing, vehicle barriers, security lighting, and related structures designed to help secure the United States/Mexico border within the State of Texas. Additionally, the United States is granted

the right to trim or remove any vegetative or structural obstacles on the property that interfere with the aforementioned purpose and work. The Government is also granted an easement to access property to which it already has an easement, right of entry or other property interest. Since Plaintiff has already made a deposit in this action, Plaintiff's easement will begin as of the date of this order and end October 7, 2008.

The Government shall use contractors that have appropriate liability insurance. The Court orders this, in part, relying upon the understanding of the Government's lawyers as communicated to this Court. If this provision proves problematic, the Court will entertain a motion to reconsider with specific objections. Any questions concerning just compensation for damages, if any, incurred by the Defendant that have not been resolved will be addressed by this Court at a later date if and when raised by the Defendant.

Plaintiff is hereby **ORDERED** to consult with the landowner and/or occupiers of the property in question prior to the Government exercising the rights given in this order and, if needed, during the exercise of these rights, to resolve: (1) when and how the United States will access the property; (2) the steps necessary to ensure that the landowner's or occupiers' property will not be unreasonably damaged or that the unavoidable damage is minimized; and (3) the steps Plaintiff will take to minimize the impact on the environment, culture, commerce and quality of life for the lands and the Defendant. This Court will make itself available, if needed, for the resolution of any disputes, but it expects all parties to act cooperatively and with due concern for the rights and needs of the other parties in the implementation of this order.

It is further **ORDERED** that a copy of this order shall be served by the Plaintiff upon all owners, all persons claiming ownership, and all persons in possession or control of the property to the extent these are known.

Signed, this 10th day of April, 2008.

A handwritten signature in black ink, appearing to read 'A. S. Hanen', written over a horizontal line.

Andrew S. Hanen  
United States District Judge