

RECLAMATION

Managing Water in the West

Rights-of-Way

Canals and

Ditches



U.S. Department of the Interior
Bureau of Reclamation

Three types of Reclamation right-of-way interests

- Easements Reserved Under the 1890 Canal Act
- Fee Title – Full Ownership
- Easement Acquired



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Rights Reserved under the 1890 Canal Act

- In all patents for lands taken up after August 30, 1890, under any of the land laws of the United States or on entries or claims validated by this Act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States.

Rights Reserved under the 1890 Canal Act

- Lands patented before 1890-we acquire an easement from landowner.
- Lands patented after 1890-reserved a right-of-way for ditches and canals.
- Was amended in 1964 to require Bureau of Reclamation to pay for new construction after that date.

Fee Title Lands

- Many of the main Canals in the United States have fee title (ownership) to the land.
- The Districts are authorized to use the land any way necessary for the O&M of the canal.



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Easement Acquired

- Have defined boundaries with limited activities.
- Are recorded in the County records.
- The easement document specifies what is allowed.
- Every easement is unique with different limitations to each parcel.

MONT CODE ANN § 70-17-112:

Interference with Canal or Ditch easements prohibited

- A person with an easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.
- No person may encroach upon or otherwise impair any easement.
 - Doesn't apply if the holder of easement consents in writing.

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Use of Ditch Easement

- Owner of easement is not required to obtain permission of landowner
- Property owner can maintain locked gates across road used for secondary easement, but only if it doesn't interfere with the use of the easement.

Abandonment of Ditch Easements

- Abandonment of ditch rights are separate and distinct from abandonment of water rights.
- Montana law on the abandonment of ditch easements is less than clear.
- Express easement (written)
vs. Prescriptive easement



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Abandonment of Ditch Easements (cont.)

Express easements:

- Case law – non-use of an express easement is not enough to establish abandonment.
- Montana Code Annotated § 70-17-111 describes extinguishment of express easements.
- Some action or conduct on the part of the easement owner or their predecessors that indicates an intent to abandon is needed.

Abandonment of Ditch Easements (cont.)

Prescriptive easements:

➤ MCA § 70-17-111(4): The statute states:

A servitude (easement) is extinguished:....

(4) when the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

➤ MT Supreme Court cases hold that non-use standing alone is insufficient to establish abandonment.

How to Handle Conflict along Canals and Ditches

- Know your easement document
- Know your history of use
- Meet and educate new neighbors
- Learn your neighbors concerns
- Document the startup and planned operation



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QUESTIONS and ANSWERS



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