

HOUSE BILL NO. 596

INTRODUCED BY WILLIAMS, ASAY, McLANE, ROTH, BURNETT,
ZABROCKI, BENGTON, ELLISON, CONROY, DONALDSON, GOULD,
CURTISS, THOPT, SIVERTSEN, NEUMAN

IN THE HOUSE

January 31, 1981	Introduced and referred to Committee on Water.
February 18, 1981	Committee recommend bill do pass. Report adopted.
February 19, 1981	Bill printed and placed on members' desks.
February 21, 1981	Second reading, do pass.
February 23, 1981	Considered correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 98; Noes, 0. Transmitted to Senate.

IN THE SENATE

March 2, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 14, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 16, 1981	Motion pass consideration.
March 17, 1981	On motion, consideration be passed for the day.
March 18, 1981	Second reading, concurred in as amended.
March 20, 1981	Third reading, concurred in as amended. Ayes, 46; Noes, 2.

IN THE HOUSE

March 21, 1981

Returned from Senate with amendments.

April 7, 1981

Second reading, amendments concurred in.

On motion rules suspended and bill placed on third reading this day.

Third reading, amendments concurred in. Ayes, 96; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 596

INTRODUCED BY

Williams, Coay, McDaniel, Jantsen, Bengtson, N. Johnson, Courroy, Rota, Luster, Hoff

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECOGNIZE A SECONDARY EASEMENT FOR ENTRY TO AND MAINTENANCE OF A CANAL; TO PROHIBIT ENCROACHMENTS UPON OR IMPAIRMENT OF EASEMENTS FOR CANALS OR DITCHES USED FOR IRRIGATION OR ANY OTHER LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, INCLUDING CARRYING RETURN WATER; AND TO PROVIDE FOR THE PAYMENT OF COSTS AND ATTORNEY'S FEES TO THE PREVAILING PARTY IN ACTIONS UNDER THIS ACT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Interference with canal or ditch easements prohibited. (1) A person with a canal or ditch easement has a secondary easement to enter and inspect, repair, maintain, or otherwise use the easement.

(2) No person may encroach upon or otherwise impair any easement for a canal or ditch used for irrigation or any other lawful domestic or commercial purpose, including carrying return water, or any secondary easement necessary for entry to inspect, repair, maintain, or otherwise use the canal or ditch easement.

(3) The provisions of subsection (2) do not apply if the holder of the canal or ditch easement consents in

writing to the encroachment or impairment.

(4) Each canal or ditch easement obtained by prescription or conveyance is included within the scope of this section.

(5) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled to costs and reasonable attorney's fees.

-End-

INTRODUCED BILL
-2- HB 596

Approved by the Select
Committee on Water

HOUSE BILL NO. 596

Benjamin
Roberts
Williams
Conroy
McDermott
Johnson
Callison
Neuman
Rota
Curtis
Thoft

1 INTRODUCED BY

2 A BILL FOR AN ACT ENTITLED: "AN ACT TO RECOGNIZE A

3 SECONDARY EASEMENT FOR ENTRY TO AND MAINTENANCE OF A CANAL;
4 TO PROHIBIT ENCROACHMENTS UPON OR IMPAIRMENT OF EASEMENTS
5 FOR CANALS OR DITCHES USED FOR IRRIGATION OR ANY OTHER
6 LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, INCLUDING CARRYING
7 RETURN WATER; AND TO PROVIDE FOR THE PAYMENT OF COSTS AND
8 ATTORNEY'S FEES TO THE PREVAILING PARTY IN ACTIONS UNDER
9 THIS ACT."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Interference with canal or ditch easements
12 prohibited. (1) A person with a canal or ditch easement has
13 a secondary easement to enter and inspect, repair, maintain,
14 or otherwise use the easement.

15 (2) No person may encroach upon or otherwise impair
16 any easement for a canal or ditch used for irrigation or any
17 other lawful domestic or commercial purpose, including
18 carrying return water, or any secondary easement necessary
19 for entry to inspect, repair, maintain, or otherwise use the
20 canal or ditch easement.

21 (3) The provisions of subsection (2) do not apply if
22 the holder of the canal or ditch easement consents in
23

1 writing to the encroachment or impairment.

2 (4) Each canal or ditch easement obtained by
3 prescription or conveyance is included within the scope of
4 this section.

5 (5) If a legal action is brought to enforce the
6 provisions of this section, the prevailing party is entitled
7 to costs and reasonable attorney's fees.

-End-

HOUSE BILL NO. 596

Bennett
Benjamin
Williams
Conroy
McLain
Roberts
Callison
Neuman
Rota
Curtis
Hoff

1
2 INTRODUCED BY
3 A BILL FOR AN ACT ENTITLED: "AN ACT TO RECOGNIZE A
4 SECONDARY EASEMENT FOR ENTRY TO AND MAINTENANCE OF A CANAL;
5 TO PROHIBIT ENCROACHMENTS UPON OR IMPAIRMENT OF EASEMENTS
6 FOR CANALS OR DITCHES USED FOR IRRIGATION OR ANY OTHER
7 LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, INCLUDING CARRYING
8 RETURN WATER; AND TO PROVIDE FOR THE PAYMENT OF COSTS AND
9 ATTORNEY'S FEES TO THE PREVAILING PARTY IN ACTIONS UNDER
10 THIS ACT."

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12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 prohibited. (1) A person with a canal or ditch easement has
16 a secondary easement to enter and inspect, repair, maintain,
17 or otherwise use the easement.

18 (2) No person may encroach upon or otherwise impair
19 any easement for a canal or ditch used for irrigation or any
20 other lawful domestic or commercial purpose, including
21 carrying return water, or any secondary easement necessary
22 for entry to inspect, repair, maintain, or otherwise use the
23 canal or ditch easement.

24 (3) The provisions of subsection (2) do not apply if
25 the holder of the canal or ditch easement consents in

1 writing to the encroachment or impairment.

2 (4) Each canal or ditch easement obtained by
3 prescription or conveyance is included within the scope of
4 this section.

5 (5) If a legal action is brought to enforce the
6 provisions of this section, the prevailing party is entitled
7 to costs and reasonable attorney's fees.

-End-

1 HOUSE BILL NO. 596

2 INTRODUCED BY WILLIAMS, ASAY, McLANE, ROTH,

3 BURNETT, ZABROCKI, BENGTON, ELLISON, CONROY,

4 DONALDSON, GOULD, CURTISS, THOFT, SIVERTSEN, NEUMAN

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO RECOGNIZE A
7 SECONDARY EASEMENT FOR ENTRY TO AND MAINTENANCE OF A CANAL
8 OR DITCH; TO PROHIBIT ENCROACHMENTS UPON OR IMPAIRMENT OF
9 EASEMENTS FOR CANALS OR DITCHES USED FOR IRRIGATION OR ANY
10 OTHER LAWFUL DOMESTIC OR COMMERCIAL PURPOSE, INCLUDING
11 CARRYING RETURN WATER; AND TO PROVIDE FOR THE PAYMENT OF
12 COSTS AND ATTORNEY'S FEES TO THE PREVAILING PARTY IN ACTIONS
13 UNDER THIS ACT; AND PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Interference with canal or ditch easements
17 prohibited. (1) A person with a canal or ditch easement has
18 a secondary easement to enter, and inspect, repair, AND
19 ~~maintain or otherwise use the easement~~ A CANAL OR DITCH.

20 (2) No person may encroach upon or otherwise impair
21 any easement for a canal or ditch used for irrigation or any
22 other lawful domestic or commercial purpose, including
23 carrying return water, ~~or any secondary easement necessary~~
24 ~~for entry to inspect, repair, maintain or otherwise use the~~
25 ~~canal or ditch easement.~~

1 (3) The provisions of subsection (2) do not apply if
2 the holder of the canal or ditch easement consents in
3 writing to the encroachment or impairment.

4 (4) Each canal or ditch easement obtained by
5 prescription or conveyance is included within the scope of
6 this section. NOTHING IN THIS SECTION ESTABLISHES A
7 SECONDARY EASEMENT WHERE NONE EXISTED PRIOR TO [THE
8 EFFECTIVE DATE OF THIS ACT]. THIS SECTION DOES NOT AFFECT
9 CONTRACTS OR AGREEMENTS CONCLUDED PRIOR TO [THE EFFECTIVE
10 DATE OF THIS ACT].

11 (5) If a legal action is brought to enforce the
12 provisions of this section, the prevailing party is entitled
13 to costs and reasonable attorney's fees.

14 SECTION 2. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
15 PASSAGE AND APPROVAL.

-End-

March 14, 1981

SENATE STANDING COMMITTEE REPORT
(Agriculture, Livestock & Irrigation)

That House Bill No. 596 be amended as follows:

1. Title, line 9.

Following: "WATER;"

Strike: "AND"

2. Title, line 11.

Following: "ACT"

Insert: "AND PROVIDING AN EFFECTIVE DATE"

3. Page 2.

Following: line 7.

Insert: "Section 2. Effective date. This act is effective on passage
and approval."

March 18, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 596, third reading copy,
as follows:

1. Title, line 5.
Following: "CANAL"
Insert: "OR DITCH"
2. Page 1, line 16.
Following: "enter"
Strike: "and"
Insert: ", "
Following: "repair,"
Insert: "and"
3. Page 1, lines 16 and 17.
Following: "maintain"
Strike: ", or otherwise use the easement"
Insert: "a canal or ditch"
4. Page 1, lines 21 through 23.
Following: "water"
Strike: the remainder of lines 21 through 23.
5. Page 2, line 4.
Following: "section."
Insert: "Nothing in this section establishes a
secondary easement where none existed prior to
[the effective date of this act]. This section
does not affect contracts or agreements con-
cluded prior to [the effective date of this act]."