

HOUSE BILL NO. 149

INTRODUCED BY P. CONNELL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING RELOCATION OR ALTERATION OF A DITCH OR CANAL WITHOUT OWNER PERMISSION UNDER CERTAIN CONDITIONS; AND AMENDING SECTION 70-17-112, MCA."

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

Section 1. Section 70-17-112, MCA, is amended to read:

"70-17-112. Interference with canal or ditch easements prohibited. (1) A person with a canal or ditch easement has a secondary easement to enter, inspect, repair, and maintain a canal or ditch.

(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.

(3) The provisions of subsection (2) do not apply if:

(a) the holder of the canal or ditch easement consents in writing to the encroachment or impairment; or

(b) an encroachment by the owner of the property upon which the canal or ditch easement lies is a relocation or alteration of a canal or ditch that:

(i) does not occur when the canal or ditch is being used to deliver water; and

(ii) does not create an impoundment of water or affect the delivery of the water, which includes the volume and timing of the delivery.

(4) (a) Upon completion of a relocation or alteration of a canal or ditch under subsection (3)(b), the owner of the property where the relocation or alteration occurred shall:

(i) notify the holder of the canal or ditch easement; and

(ii) record the relocation or alteration of the easement, including a description provided for in subsection (4)(b), with the clerk and recorder in each county where the relocation or alteration occurred.

(b) An exact geographical survey is not required, but the description of the relocated or altered canal or ditch easement must be accompanied by electronic global positioning system data in the Montana coordinate system, by easement location depicted on a topographical map to a scale of 1:24,000, and by easement coordinates.

1 ~~(4)~~(5) Each canal or ditch easement obtained by prescription or conveyance is included within the scope
2 of this section. Nothing in this section establishes a secondary easement where none existed prior to April 14,
3 1981. This section does not affect contracts or agreements concluded prior to April 14, 1981.

4 ~~(5)~~(6) If a legal action is brought to enforce the provisions of this section, the prevailing party is entitled
5 to costs and reasonable attorney's fees."

6

- END -