

34-1-158. Prescriptive easement for water conveyance.

(a) A prescriptive easement for a water conveyance may be established if a water user has used and maintained a water conveyance under a claim of right for a period of ten (10) years during which the use has been:

(i) Continuous and uninterrupted consistent with the historical and traditional use by the water user of the water conveyance system. A temporary change of use under W.S. 41-3-110 or a cessation of use, so long as the water rights are not abandoned under W.S. 41-3-401, shall not be deemed an interruption under this paragraph;

(ii) Open and notorious; and

(iii) Adverse.

(b) If a water user establishes paragraphs (a)(i) and (ii) of this section, there is a rebuttable presumption that the use has been adverse under paragraph (a)(iii).

(c) The holder of a prescriptive easement for a water conveyance established as provided in subsections (a) and (b) may:

(i) File a notice describing the prescriptive easement consistent with the requirements of W.S. 34-1-141 in the office of the county clerk in which the prescriptive easement or a portion of the easement is located;

(ii) Access, use, maintain and repair the water conveyance located within the easement in accordance with law. Maintenance, as used in this section, shall include the right of the holder of the prescriptive easement to temporarily remove infrastructure in or spanning the water conveyance system provided that:

(A) Before the temporary removal for maintenance purposes of infrastructure that a landowner uses for ingress or egress, the holder of the prescriptive easement shall provide reasonable written notice given the extent and estimated time for maintenance but in no case shall notice be provided less than seventy-two (72) hours before any temporary removal;

(B) Any temporary removal of a landowner's infrastructure for the purpose of water conveyance system maintenance shall be reasonable and minimize any burden on the landowner. The holder of the prescriptive easement for a water conveyance shall replace the landowner's infrastructure in a timely manner in consultation with the landowner.

(d) As used in this section:

(i) "Water conveyance" means a man-made canal, ditch, drain ditch or pipeline that conveys water for agricultural purposes including any appurtenant headgates and diversion structures;

(ii) "Water user" means a water user or the water user's predecessor who owns an adjudicated or valid unadjudicated water right being conveyed in a water conveyance.

(e) The width of a prescriptive easement for a water conveyance shall be based on the size of the water conveyance and the volume of water in the water conveyance system and shall:

(i) Be of a reasonable width sufficient to utilize equipment suitable for the operation and maintenance of the water conveyance;

(ii) Be from the center line of the water conveyance system but may vary from each side of the center line to reasonably facilitate the size of equipment, placement of dredge material and the topography that the water conveyance system traverses.

(f) The state engineer's office shall post to its website an informational document regarding legal aspects related to water conveyance easements. This document shall not constitute legal advice. **All real estate transactions involving property through which a water conveyance passes through shall include notice of this document.**