



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
MONTANA STATE OFFICE
MANUAL TRANSMITTAL SHEET

| |
|---------|
| Release |
| 2-10 |
| Date |
| 4/1/88 |

Subject

2805 - FEDERAL AGENCIES

1. Explanation of Material Transmitted: This supplemental Manual release is to supplement the Bureau Manual on the use of the ditches and canals reservation existing in most patents.
2. Reports Required: None.
3. Material Superseded: None.
4. Filing Instructions: File as directed below.

REMOVE:

None

INSERT:

2805

(Total: 4 Sheets)

Maurice LeNore
State Director

Distribution

SD/ASD - 1
EEO - 1
PA - 1
MR - 1
L&RR - 1
OPR - 1
ADM - 1
RAHs - 18
DMs - 8
WO (330) - 1
SCD (D-470) - 1
S.O. - 10

2805 - FEDERAL AGENCIES

Table of Contents

- .01 Purpose (See BLM Manual)
- .02 Objectives (See BLM Manual)
- .03 Authority (See BLM Manual)
- .04 Responsibility (See BLM Manual)

- .4 Legal Principles
 - .41 Affected Lands Located in Montana, North and South Dakota
 - .42 Use of the Reservation
 - A. Right-of-Way Notice
 - B. BLM Record Notation

Illustrations

- 1. Sample Letter to Landowner
- 2. Example of Right-of-Way Notice

2805 - FEDERAL AGENCIES

.4 Legal Principles. The Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945) requires that all patents to lands lying west of the 100th Meridian, taken up under any land laws of the United States after the date of the Act, shall contain an expressed reservation for a right-of-way thereon for ditches and canals constructed by the authority of the United States. This reservation includes the right of the BLM to construct water carrying pipelines across nonfederal lands, the original patents for which contain this reservation.

.41 Affected Lands Located in Montana, North and South Dakota. Most all of the nonfederal lands in Montana and west of the 100th Meridian in North and South Dakota are affected by the reservation. Some notable exceptions include state lands which were surveyed prior to August 30, 1890, and Northern Pacific Railroad grant lands within the primary corridor. (Lands selected by the Railroad outside of the corridor in lieu of lands not received within it are subject to the reservation.) The MT plats indicate whenever the patent included the ditches and canals reservation by the symbol D/C, usually located under the patent number.

.42 Use of the Reservation. When it is determined that a proposed water carrying pipeline must cross nonfederal land, the title of which is encumbered by the reservation for ditches and canals, the nonfederal owner is to be contacted and advised of the proposed project and the existence of the right-of-way reservation. The sample letter shown in Illustration 1 may be used for this purpose. If it is at all possible, this initial contact with the landowner should be done in person rather than by mail.

A. Right-of-Way Notice. A Right-of-Way Notice along with a plat showing the location of the pipeline is to be filed in the county records (see Illustration 2). A copy of the recorded documents should be given to the landowner.

B. BLM Record Notation. BLM land records should be noted using case type 287500.

2805 - FEDERAL AGENCIES

Sample Letter to Landowner

(Name)
(Address)

Dear

According to the official records of the Bureau of Land Management the lands which you own, more specifically described as:

(Description)

were originally patented by the United States on the basis of an entry made after August 30, 1890.

As required by the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), all patents issued for such lands entered after that date specified a reservation for a right-of-way for ditches and canals constructed by the authority of the United States. The term "ditches and canals" has subsequently been interpreted to include pipelines constructed for the purpose of transporting water.

As a result of this patent reservation, a right-of-way for all such water transportation projects already exists and compensation to the landowner at the time of construction is prohibited.

The purpose of this letter is to inform you that such a pipeline is now in the planning stage by the Bureau of Land Management. Preliminary plans indicate that in order to accomplish its intended function, it will be necessary that the pipeline cross your land as described above.

This project entails . . . (Describe the project in some detail.)

The pipeline will be installed in such a manner so as to keep surface disturbance to an absolute minimum, all such disturbance will be rehabilitated, and any disturbance to existing facilities, such as fences, will be returned to same or better condition in which they were found just prior to such disturbance. If, in your opinion, the Bureau fails to meet this commitment, and you are damaged by its actions, you may have a possible claim, pursuant to the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).

A notice of the existence of this pipeline right-of-way along with a plat showing its exact location will be recorded in the County Records. A copy will also be provided for your information.

If you desire, we will be glad to answer any questions or provide any other information concerning this project and the location of the proposed right-of-way.

Sincerely,

2805 - FEDERAL AGENCIES

Example of Right-of-Way Notice

RIGHT-OF-WAY NOTICE

Notice is hereby given that the United States will utilize its right-of-way as provided by the reservation for ditches and canals in the patent(s) issued by the United States on the following described real property located in the County of _____, State of _____:

(DESCRIPTION)

The said right-of-way was reserved as required by the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945), and is for the purpose of locating, constructing, maintaining, improving, and repairing a water transmission pipeline. Together with all rights of ingress and egress necessary for the implementation of said right-of-way.

The said right-of-way shall be _____ feet in width, being _____ feet on each side of the centerline as shown on Exhibit "A" attached hereto and made a part hereof.

Dated this _____ day of _____, 19 _____

TITLE

(Acknowledgment on back)

2805 - FEDERAL AGENCIES

ACKNOWLEDGMENT

STATE OF)
) ss:
COUNTY OF)

On this ___ day of _____, 19___, before me personally appeared _____, who, being duly sworn, did say that _____ is an employee of the U.S. Department of the Interior, Bureau of Land Management, and that ___ executed the foregoing instrument by the authority of and in behalf of the United States of America; and ___ acknowledged said instrument to be the act and deed of the United States of America.

SEAL

Notary Public in and for the
State of
Residing at
My commission expires: