

West's New Mexico Statutes Annotated
Chapter 73. Special Districts
Article 2. Ditches or Acequias (Refs & Annos)

N. M. S. A. 1978, § 73-2-5

§ 73-2-5. Ditch over land of another; easement; right of servient owner; penalty

Currentness

A. Hereafter in all cases where there has been a continuous use of a ditch for the purposes of irrigation for five years, it shall be conclusively presumed as between the parties that a grant has been made by the owners of the land, upon which such ditch is located, for the use of the same and it is unlawful to interfere with that easement or prevent access to the ditch by the owner of the dominant estate as provided by law; provided that nothing herein contained shall be construed to prevent the owner of a servient estate from making any alterations or changes in the location of any ditch upon his land, so long as such alteration or change of location shall not interfere with the use of or access to such ditch by the owner of the dominant estate. For the purposes of this section, the easement created pursuant to this section shall be adequate to allow for reasonable maintenance, use and improvements to the ditch.

B. In the case of a community ditch or acequia, a criminal complaint for a violation of the provisions of Subsection A of this section may be made by the district attorney or the mayor or commission of the ditch or acequia to the magistrate court in the county where the violation occurred. A person convicted of violating the provisions of Subsection A of this section is guilty of a misdemeanor and on conviction, the defendant shall be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000) or sentenced up to ninety days imprisonment in the county jail, or both.

C. In the case of a community ditch or acequia, in addition to criminal prosecution, the district attorney or the mayor or commission of the ditch or acequia may file a civil complaint seeking a civil penalty not to exceed five thousand dollars (\$5,000) for knowingly, intentionally or willfully violating the provisions of Subsection A of this section.

D. The remedies provided for in this section shall not be construed as limiting the right of the party bringing the civil or criminal complaint from seeking damages. In addition to the remedies provided in this section, the district attorney, mayor or commission of the ditch or acequia or owner of the dominant estate may apply to the district court of the county where the violation occurred for an injunction restraining any person from violating or continuing to violate the provisions of Subsection A of this section.

Credits

L. 1933, Ch. 65, § 1; L. 1941, Ch. 155, § 1; L. 2005, Ch. 186, § 1, eff. June 17, 2005.

Formerly 1941 Comp., § 77-1405; 1953 Comp., § 75-14-5.

NMSA 1978, § 73-2-5, NM ST § 73-2-5

Current through the end of the Second Regular Session and First Special Session of the 54th Legislature (2020).

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