

**PUBLIC COMMENT BEFORE THE WATER POLICY INTERIM COMMITTEE**

**By Senator Jim Peterson**

**Montana State Legislature, May 13, 2014**

Chairman Vincent, and members of WIPC, I am here today to call your attention to a recent district court decision that could affect irrigators all across Montana with irrigation ditches and points of diversion located off of their deeded property.

On February 4, 2014, Judge Jon Oldenburg ruled against Bos Terra, a farming and cattle feedlot operation near Hobson, Montana, on a motion of prescriptive rights to require the landowner, Kent and Julie Beers, to grant access to an irrigation ditch, and Bos Terra's point of diversion, to exercise and use a senior water right owned by Bos Terra.

Bos Terra's property, previously owned by the Stevenson and Kolar families in Judith Basin County, was purchased in 2011 and the Beers purchased their property in 1999. In January, 2012, Stevenson's and Kolar's assigned all their rights to the property to Bos Terra. Beers did not grant permission to Bos Terra to access the irrigation ditch and point of diversion and the lawsuit, and subsequent court ruling, referenced here, and threatens irrigator's prescriptive right to utilize their water rights.

Following the court ruling, Beer's denied Bos Terra access to the irrigation ditch and point of diversion. Through negotiation, Bos Terra agreed to pay a \$25,000 access fee to Beers, for the 2014 irrigation season, while Bos Terra pursues an appeal to the Montana Supreme Court.

I am requesting the interim water policy committee to consider legislation clarifying this issue, and many just like this all across Montana, to clarify the prescriptive rights for irrigators, with a senior water right, to access the ditch, pipeline, and point of diversion so they can exercise and use their senior water right.

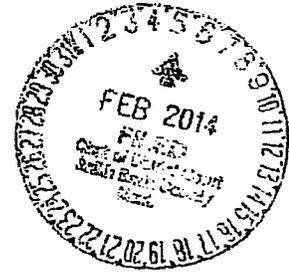
In this case, Beers have also requested that Bos Terra change their point of diversion, moving it off the Beer's property at an estimated cost of approximately \$100,000 and subjects Bos Terra to the "change process" through DNRC, and also allows public comment on the change. Bos Terra has been reluctant to go down this path because they feel the easement agreement protects access to their water right, and plan to appeal to the Montana Supreme Court.

Thank you your time and consideration to this potentially adverse precedent that could impact many other water rights holders access to the ditch and point of diversion associated with their water right.

Senator Jim Peterson, S.D. #15

WATER POLICY INTERIM  
COMMITTEE. 2013-14

May 13, 2014 Exhibit No. 2



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**MONTANA TENTH JUDICIAL DISTRICT COURT, JUDITH BASIN COUNTY**

**BOS TERRA, LP,** )  
 )  
Plaintiff/Counter Defendant, )  
 )  
vs. )  
 )  
**KENT AND JULIE BEERS,** )  
 )  
Defendant/Counter Plaintiffs.)

Cause No. DV-13-01

Hon. Jon A. Oldenburg

**ORDER ON CROSS MOTIONS FOR  
PARTIAL SUMMARY JUDGMENT**

THIS MATTER came before the Court for a hearing on January 27, 2014, on the cross Motions for Partial Summary Judgment filed by both parties. (Dkt. # 25, 27, 31, 32). The Plaintiff was represented by Attorney Thane Johnson. The Defendants were represented by Attorney Jeffrey J. Oven. The Court having previously examined the record herein and the filings of the parties, having heard argument from counsel, having asked questions of counsel, and good cause appearing therefore, hereby finds and orders as follows:

**BACKGROUND**

The underlying facts of this matter are uncontested by the parties. Plaintiff (Bos Terra) is now the owner of real property that was previously owned by Wayne and Marian Stevenson (Stevensons) and Viktor and Lillian J. Kolar (Kolars) in Judith Basin County Montana.

**FEB 07 2014**

1 Defendants (Beers) are the owners of real property previously owned by E. Viola Barrett  
2 (Barrett) in Judith Basin County, Montana.

3 On or about June 20, 1977, the Stevensons, Kolars, and Barrett entered into a written  
4 Agreement entitled Real Estate Easement (Agreement), a copy of which is attached hereto as  
5 Exhibit A and by reference included herein. The Agreement delineates Barrett as "Grantor" and  
6 Stevensons and Kolars as "Grantees." The Agreement provides, in SECTION ONE: RIGHT OF  
7 WAY:

8 grants, sells, and conveys to Grantees and their heirs and successors, a  
9 right of way for the purposes of laying, constructing, operating, inspecting,  
10 maintaining, repairing, replacing, substituting and removing a pipeline  
11 approximately 20 inches in diameter for the transportation of water from  
12 the Judith River at a location and on a route to be selected by Grantees, on,  
13 in, over, and through the following described land, in Judith Basin County,  
State of Montana: SW¼SE¼ of Section 32, Township 15 Range 15, Such  
land is referred to herein as the premises; such right of way is referred to  
herein as the right of way.

14 (Exhibit A, Real Estate Easement, p. 1). A clear and concise drawing or map of the entire right  
15 of way is not contained in the record. There is attached as Exhibit B to the Amended Complaint  
16 (Dkt. # 19) an aerial photograph which depicts the general area concerned herein. (Exhibit B:  
17 Ownership Boundaries). That photo is attached hereto as Exhibit B and by reference included  
18 herein. Exhibit B shows the property now owned by Beers. The western boundary of the  
19 property owned by Bos Terra is also shown on Exhibit B. Exhibit B depicts a ditch that begins  
20 on the Beers' property. The ditch runs east to west through the Beers' property and continues  
21 east through the property of Greg Grove and then through the property of Earl Hargrove. At the  
22 eastern boundary of Earl Hargrove's property, Exhibit B shows where the ditch enters the Bos  
23 Terra property. This ditch is referred to throughout the pleadings of the parties as the "Enterprise  
24 Ditch."  
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1 During the hearing, counsel for the parties informed the Court that pursuant to the  
2 Agreement, a pipeline was built that ran from the Judith River, shown on Exhibit B, in a  
3 southerly direction from the river to the top of a hill. From the top of the hill a new ditch was  
4 dug running to the point on the map which is indicated by an arrow and the phrase "Water put in  
5 ditch here." The water carried by this pipeline and ditch is then diverted through the Enterprise  
6 Ditch to the Bos Terra property. Both parties agreed that at the time of the Agreement, the  
7 Enterprise Ditch was not being used and had not been used for a number of years. Neither  
8 counsel was aware of any easements, documents, ditch agreements, or other writings concerning  
9 the Enterprise Ditch as it goes through the Greg Grove and Earl Hargrove properties.  
10

11 In its Amended Complaint (Dkt. # 19) and in its Motion for Partial Summary Judgment  
12 (Dkt. # 25, 27), Bos Terra seeks a declaration from the Court that the Agreement establishes an  
13 easement appurtenant running with the land and that Bos Terra's property is the dominant estate  
14 and Beers' property is the servient estate. Bos Terra also requests a declaration from the Court  
15 that Beers have the burdens of the servient estate and must permit Bos Terra all rights under the  
16 Agreement. (Dkt. # 27, p. 1-2). In addition, Bos Terra seeks a partial summary judgment  
17 declaring that it has a valid prescriptive easement across the Beers' property, beginning at the  
18 point in SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, Township 15 Range 15 connected to the pipeline. (Dkt. # 27,  
19 p. 2).  
20

21 Beers assert in their cross Motion for Partial Summary Judgment: that the Agreement  
22 creates an easement in gross and not appurtenant; that the Agreement contains a valid consent to  
23 assignment provision (Section Six of Exhibit A); that Bos Terra was required to obtain consent  
24 from the Beers before any rights or interests under the Agreement could be assigned to Bos  
25 Terra; that Bos Terra failed to obtain consent for the assignment; and, that Bos Terra has no  
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1 rights or interests under the Agreement. (Dkt. # 31, p. 1-2). Bos Terra admits that it did not  
2 obtain consent from Beers as to the rights contained in the Agreement, claiming that the Beers  
3 “misconstrue the Easement Agreement[.]” (Dkt. # 35, p. 1).

4 Both parties admit that since 1977, the land irrigated by the pipeline and ditch has  
5 changed on more than one occasion. Bos Terra claims that the changes were done pursuant to  
6 the rules of the water rights adjudication and that Barrett would have received notice and did not  
7 protest. Beers claim that no protest was necessary, or perhaps even appropriate, as the  
8 Agreement established an easement in gross.

9  
10 The Court reduces the arguments into two issues: (1) whether SECTION SIX:  
11 ASSIGNMENTS of the Agreement (Exhibit A) constitutes a valid and enforceable assignment  
12 provision, and; (2) whether the Agreement provides for an easement appurtenant or easement in  
13 gross.

## 14 ANALYSIS & ORDER

### 15 I. Standard of Review.

16 Pursuant to M. R. Civ. P. 56(b), a party against whom relief is sought may move for  
17 summary judgment on all or part of the claim. The judgment sought is rendered if the  
18 “pleadings, the discovery and disclosure materials on file, and any affidavits show that there is  
19 no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of  
20 law.” M. R. Civ. P. 56(c)(3). The moving party must demonstrate the absence of genuine issues  
21 of material fact. *Hajenga v. Schwein*, 2007 MT 80, ¶ 13, 155 P.3d 1241. Once the movant  
22 meets the burden, the burden shifts to the opposing party to establish a genuine issue of material  
23 fact. *Id.* The nonmoving party “must present material and substantial evidence rather than  
24 merely conclusory or speculative statements.” *Id.* Disagreement over fact interpretation does  
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1 statutes of intestate succession to the property of a decedent.” Mont. Code Ann. § 72-1-103(22).  
2 Successors are defined as “persons, other than creditors, who are entitled to property of a  
3 decedent under the decedent’s will[.]” Mont. Code Ann. § 72-1-103(48). Clearly neither Bos  
4 Terra nor Beers are heirs or successors to the Agreement under Montana law.

5 Beers argued that the plain meaning of Section Six requires that Bos Terra obtain  
6 permission from Beers as to the assignment of the rights under the Agreement, that they have not  
7 done so (which is admitted by Bos Terra), and therefore “before entering onto the Beers’ real  
8 property and asserting any rights under the Real Estate Easement, Bos Terra was required to first  
9 obtain permission signed by the Beers.” (Dkt. # 32, p. 5).  
10

11 The Beers purchased their property in approximately 1999 (Dep. of Kent Beers, Dec. 20,  
12 2013, at 15:5-6, attached to Dkt. 36)—while at that time the Kolars and Stevenson still owned  
13 the property now owned by Bos Terr. On or around January 31, 2013, the Kolars and the  
14 Stevensons assigned all right, title and interest in the property to Bos Terra. (Dkt. # 19, ¶ 47b).  
15 Therefore, Bos Terra was an “assign,” not successor or heir. This would dictate that Bos Terra is  
16 an assign to the rights of Stevensons/Kolars and Barretts. Provision Six is very clear that any  
17 assignment must be done with written permission. Section Six appears in the Agreement prior to  
18 Section Thirteen. Section Six and Section Thirteen can be read together to dictate that if a third  
19 party does obtain valid consent as an assignee, then that party is bound by the terms of the  
20 Agreement.  
21

22 This interpretation gives logical effect to all four terms of the Agreement. As argued by  
23 Beers’ counsel at hearing, this Agreement was initially set up to be an agreement between three  
24 ranch neighbors. They worked on an irrigation project that would benefit all parties. So long as  
25 the ranches were in the hands of the families (heirs and successors), the parties agreed the rights  
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1 would transfer without permission. Should any third parties become involved (assigns) then  
2 permission must be obtained. This is much more the custom and usage in ranch country. How  
3 else does the servient estate control to whom and where the water and the rights under the  
4 Agreement are being used? As stated above, Bos Terra has argued that a third party should not  
5 be able to use the easement and the water without permission. The Court finds that Bos Terra is  
6 a third party.

7 Bos Terra has argued that the Affidavit of Viktor Kolar (Dkt. #29) and the Affidavit of  
8 Marian Stevenson (Dkt. # 30) show the intent of the parties that “the successor in interest to the  
9 dominant estate would enjoy the rights and benefits of the Real Estate Easement.” See Aff.  
10 Viktor Kolar, ¶ 5 (Jan. 31, 2013); Aff. Marian Stevenson, ¶ 5 (Jan. 31, 2013). Bos Terra argues  
11 that this intent is the determinative factor.  
12

13 This Court disagrees for three reasons. First the Agreement does not state “successor in  
14 interest”, it states “successor.” As shown above, Successor is a word of art defined in the  
15 Montana Code Annotated. If the Stevensons and the Kolars intended the Agreement to have the  
16 effect they argue, the document should have reflected that. Mr. Christensen, the purported  
17 author of the Agreement, was and is a long-standing attorney with vast experience in drafting  
18 easements and contracts in ranch country. The terms of the Agreement lack any such language  
19 that would dictate that it would “run with the land,” and thereby pass to assigns. Further, the  
20 Agreement lacks any terms, save for the title (“Real Estate Easement”), indicating that it as such.  
21 More specifically, the Agreement contains no mention of the terms “easement appurtenant” and  
22 “in gross.” The Court finds the lack of these terms of art persuasive. Second, the Court finds  
23 that the two affidavits provided are from the same side of the argument and are self-serving.  
24 Third, when a contract is reduced to writing, the intention of the parties is to be ascertained from  
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1 the writing alone if possible. Mont. Code Ann. § 28-3-303. The Court finds that Section Six is  
2 clear and direct, and serves as an assignability clause. Therefore, the Court has no need to resort  
3 to extrinsic evidence to interpret it.

4 Bos Terra admits it did not obtain written permission to use the easement or to succeed to  
5 the rights therein. Although Section Six states “Such permission will not be *unreasonably*  
6 *withheld*[,]” (Exhibit A, p. 2, Emphasis Added) contractual restrictions on assignment must be  
7 met in order to accomplish a valid assignment of the contract. *Hedges*, ¶ 14. Section Six  
8 requires that the third party assigns, Bos Terra, request written permission to use the terms of the  
9 Agreement.  
10

11 Although the Court finds the issue of assignability of the Agreement determinative, the  
12 issue of whether the Agreement constitutes an Easement Appurtenant or Easement In Gross is  
13 discussed below.

14 **B. Easement Appurtenant or Easement In Gross.**

15 The parties also argue regarding the type of easement reserved by the Agreement. Bos  
16 Terra asserts that it acquired a “valid appurtenant easement running with the land as a dominate  
17 estate when they purchased the real property from Kolar and Stevenson.” (Dkt. # 25, p. 1). The  
18 Beers deny that the Agreement created an easement appurtenant, because: (1) the Agreement  
19 fails to describe the dominant tenement; (2) The intended dominant tenement has changed over  
20 time, and; (3) the plain language of the Agreement conveys an easement in gross. (Dkt. # 39, p.  
21 1).  
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23 An easement is a “nonpossessory interest in the land of another.” *Broadwater*  
24 *Development*, ¶ 33. The interest, or easement, may be “appurtenant” or “in gross.” *Id.* An  
25 easement appurtenant is “one that benefits a particular parcel of land,” or in other words, “it  
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1 serves the owner of that land and passes with the title to that land.” *Id.* The benefited parcel is  
2 known as the dominant tenement or estate, and the burdened parcel is termed the servient  
3 tenement or estate—an easement appurtenant must have both a dominant tenement and a servient  
4 tenement. *Id.*, citing *Blazer v. Wall*, 2008 MT 145, ¶ 24, 183 P.3d 84. By contrast, an easement  
5 in gross personally benefits the holder of the easement, and is not connected “with his or her  
6 ownership or use of a particular parcel of land.” *Id.* Thus, with an easement in gross, no  
7 dominant tenement exists and the easement right does not pass with the title to any land. *Id.*  
8 citing *Blazer*, ¶ 24. The Montana Supreme Court has held “the cardinal rule of construction is to  
9 glean the intent of the parties f[ro]m the four corners of the document and not to focus on  
10 isolated tracts, clauses and words.” *Richman v. Gehring Ranch Corp.*, (Mont. 2001), 37 P.3d  
11 732, 735.

12  
13 In the current instance, and as outlined above, the Agreement does not contain any  
14 language expressly granting an easement—either appurtenant or in gross. Nor does it contain  
15 any language describing the dominant tenement. Montana law states that it is critical that the  
16 transaction documents adequately describe the easement “by imparting knowledge of the  
17 easement’s use or its necessity and by identifying with *reasonable certainty* the dominant and  
18 servient tenements.” *Davis v. Hall*, 2012 MT 125, ¶ 25, 280 P.3d 261, citing *Blazer*, ¶¶ 51, 54  
19 (Emphasis added). The Beers assert that Bos Terra does not hold an appurtenant easement  
20 because the dominant tenement “cannot be ascertained with reasonable certainty” from the  
21 Agreement, as required by Montana law. (Dkt. # 40, p. 2). In contrast, Bos Terra states that the  
22 “dominant tenement is self-evident,” as one would only have to “follow the ditch to the point of  
23 irrigation.” (Dkt. # 36, p. 3). In further support of its position, Bos Terra states that the dominant  
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1 tenement “is additionally described in detail in Application for Change of Appropriation Water  
2 Right filed with the DNRC on June 22, 1977.” (Dkt. # 36, p. 3).

3 As detailed above, Bos Terra would have the Court consider documents outside the four  
4 corners of the Agreement—or incorporated by reference—specifically the Application for  
5 Change of Appropriation. The Court is not persuaded by this argument—nor is there any  
6 evidence to support it. Although the Supreme Court of Montana has held that a dominant  
7 tenement can be described by reference, the Court stated that, “an easement created in this  
8 manner—i.e., by reference in an instrument of conveyance to a plat or certificate of survey on  
9 which the easement is adequately described—must arise *expressly, not by implication.*” *Blazer*,  
10 ¶ 41 (Emphasis added). The Agreement does not refer to any plat or certificate of survey—nor  
11 does it reference any Application for Change of Appropriation Water Right filed with the  
12 DNRC. In addition, the land irrigated by the ditch has changed over time, making it difficult to  
13 determine what property is the benefited parcel, thereby supporting a finding of an easement in  
14 gross. Finally, a future assignee must be able to determine the meaning of the Agreement  
15 without performing exhaustive searches of water rights. These facts indicate that the Agreement,  
16 as written, was to grant as an easement in gross, personally benefiting the holder of the easement,  
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19 The only constant, is who was personally benefitting from the use of the Agreement—the  
20 Kolars and the Stevensons. Therefore, the Court concludes that these arguments fail to support  
21 the finding of an easement appurtenant and finds that the Agreement created an easement in  
22 gross. The Court finds that the language used in the Agreement fails to articulate that the  
23 Agreement “run with the land” or is “appurtenant to the land,” that the Agreement does not  
24 pertain to any particular dominant tenement, that the land benefited has changed over time, but  
25 has continued to personally benefit the Grantees. Based upon the above, the Court finds that the  
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1 Agreement creates an easement in gross, and pursuant to the consent to assign provisions  
2 contained in Section Six, can only be transferred with written permission.

3 **C. Prescriptive Easement.**

4 Bos Terra also moves for partial summary judgment declaring that it has acquired a  
5 prescriptive easement in the ditch connected to the pipeline. The Court does not address this, as  
6 it finds that the statutory term of five (5) years, pursuant to Mont. Code § 70-19-404, has not  
7 been met and any previous use of the ditch prior to Bos Terra's assignment would have been  
8 permissive, pursuant to the terms of the Agreement.  
9

10 **II. Conclusion & Order**

11 Based upon the above, the Court finds that SECTION SIX: ASSIGNMENTS clause is  
12 determinative in this action for Partial Summary Judgment. The Court concludes that there is no  
13 genuine issue as to any material fact and the Beers are entitled to judgment as a matter of law  
14 regarding: (1) The Agreement contains a valid consent to assignment provision; (2) Bos Terra  
15 was required to obtain consent from the Beers before any rights or interests under the Agreement  
16 could be assigned to Bos Terra; (3) Bos Terra failed to obtain consent from the Beers for  
17 assignment of rights under the Agreement; (4) Bos Terra therefore has no rights under the  
18 Agreement. (See Dkt. # 31).  
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20 Regarding Beers' requests number 5 and 6, the Court notes that the Agreement specifies  
21 that this written permission "will not be unreasonably held." (Exhibit A, p. 2). The Court does  
22 not have any evidence before it to determine whether permission, if withheld, would be  
23 unreasonable or not. Therefore, the Court determines genuine issues of fact exist regarding  
24 requests number 5 and 6.  
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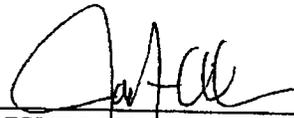
1 THEREFORE, IT IS HEREBY ORDERED AND DECLARED THAT:

- 2 1. Bos Terra's Motion For Partial Summary Judgment is hereby DENIED.
- 3 2. The Beers' Motion For Partial Summary Judgment is hereby GRANTED, in part,
- 4 as outlined above.

5 The Clerk of Court is directed to file this Order On Cross Motions For Partial Summary

6 Judgment and provide copies to counsel of record.

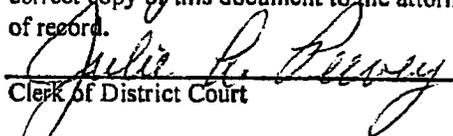
7 DATED this 4<sup>th</sup> day of February, 2014.

8 

9 **DISTRICT COURT JUDGE**  
10 Hon. Jon A. Oldenburg  
11 P. O. Box 1124  
12 Lewistown, Montana 59457  
13 Telephone: (406) 535-8028  
14 Facsimile: (406) 535-6076

15 c: Thane Johnson, Esq.  
16 c: Jeffery J. Oven, Esq.

17 I hereby certify that I did on 5<sup>th</sup> day  
18 February, 2014 mail a true and  
19 correct copy of this document to the attorneys  
20 of record.

21   
Clerk of District Court

22 Deputy

**EXHIBIT A: REAL ESTATE EASEMENT**

REAL ESTATE EASEMENT

1 Agreement made this 20 day of June, 1977, between E. VIOLA  
2 BARRETT, of Hobson, Judith Basin County, Montana, herein referred  
3 to as Grantor, PATRICK B. BARRETT, of Hobson, Judith Basin County,  
4 Montana, herein referred to as Lessee and WAYNE and MARIANN STEVEN-  
5 SON, of Moccasin, Judith Basin County, Montana, VIKTOR and LILLIAN  
6 T. KOLAR, of Hobson, Judith Basin County, Montana, herein referred  
7 to as Grantees.

8 SECTION ONE: RIGHT OF WAY

9 In consideration of the sum of one dollar (\$1.00) and other  
10 good and valuable consideration, receipt of which is acknowledged,  
11 Grantor and Lessee hereby grants, sells, and conveys to Grantees  
12 and their heirs and successors, a right of way for the purposes of  
13 laying, constructing, operating, inspecting, maintaining, repairing,  
14 replacing, substituting and removing a pipeline approximately 20  
15 inches in diameter for the transportation of water from the Judith  
16 River at a location and on a route to be selected by Grantees, on  
17 in, over, and through the following described land, in Judith Basin  
18 County, State of Montana: SW $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 32, Township 15,  
19 Range 15,

20 Such land is referred to herein as the premises, such right of way  
21 is referred to herein as the right of way.

22 SECTION TWO: TERM

23 The rights granted herein shall be possessed and enjoyed by  
24 Grantees, their heirs and successors, so long as the pipeline and  
25 appurtenances constructed pursuant hereto shall be maintained and  
26 operated by Grantees or Successors in compliance with this Real  
27 Estate Easement.

28 SECTION THREE: ADDITIONAL RIGHTS OF GRANTEE

29 Grantees shall have the right of ingress and egress to and from  
30 the premises for any and all purposes necessary or convenient to the  
31 exercise by Grantees of the rights granted herein.

32 SECTION FOUR: RIGHTS OF GRANTOR

Grantor reserves the right to use and enjoy the premises to the



1 fullest possible extent without unreasonable interference with the  
2 exercise by Grantees of the rights granted herein.

3 SECTION FIVE: SURFACE DAMAGE

4 Grantees agree to bury all pipelines to a depth that is suffi-  
5 cient to avoid any interference with farming operations of Grantor.  
6 Grantees further agree to pay any and all damages to growing crops  
7 or fences that may arise from the construction, maintenance, and  
8 operation of such pipeline or pipelines. The amount of such dam-  
9 ages shall be determined by mutual agreement among all the parties.

10 SECTION SIX: ASSIGNMENTS

11 The rights granted herein shall not be assignable together or  
12 separately and in whole or in part without written permission sign-  
13 ed by the Grantor. Such permission will not be unreasonably withheld.

14 SECTION SEVEN: DEFAULT BY GRANTEES

15 This agreement and all rights of Grantees hereunder shall, at  
16 the option of Grantor, terminate on the failure by Grantees to rem-  
17 edy any default in the performance of any term or condition of this  
18 instrument within thirty days after service of written notice of  
19 such breach.

20 SECTION EIGHT: WARRANTY OF TITLE

21 Grantor covenants that she is the owner of the premises and  
22 has the right, title, and capacity to grant the right of way granted  
23 herein.

24 SECTION NINE: WIDTH OF RIGHT OF WAY

25 During construction, cleanup, and restoration operations,  
26 Grantees shall have the right to extend the boundaries of the pipe-  
27 line right of way by six (6) feet on both sides thereof. However,  
28 after the completion of such operations Grantees shall have no  
29 further right to such temporary working space, and Grantee's rights  
30 shall be limited solely to a permanent right of way six (6) feet in  
31 width, and all pipelines constructed pursuant to this instrument  
32 shall be confined to such right of way.

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SECTION TEN: INDEMNIFICATION

Grantees shall indemnify Grantor and Lessee against all liability, cost, and expense for loss of or damage to premises, and for injuries to or deaths of persons arising directly or indirectly from the use of the premises by Grantees.

SECTION ELEVEN: ATTORNEY'S FEES

In the event either Grantor, Lessee or Grantees shall bring suit to compel performance of or to recover for breach of any covenant, agreement, or condition, herein, the prevailing party shall be entitled to recover from the other party costs and reasonable attorney's fees.

SECTION TWELVE: GRANTOR'S USE OF PIPELINE

Grantees agree, that as further consideration for the use of the premises and the right of way, to allow Grantor and Lessee to use the pump and pipeline of the Grantees to irrigate 60 acres of additional premises, and the opportunity of at least to irrigate additional acres. Grantor, Lessee, and Grantees will re-negotiate the acreage allotment that may be irrigated under Grantees pipeline. This provision is contingent upon Grantor and Lessee receiving water from the Judith River for irrigation purposes.

SECTION THIRTEEN: EFFECT OF AGREEMENT

This agreement shall be binding upon the heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this agreement at Hobson, Montana, the day and year first above written.

GRANTOR: E. Viola Barrett  
LESSEE: Patricia Barrett  
GRANTEE: Viola Kolar  
GRANTEE: Lillian Kolar

Marian Stevenson  
GRANTED

Marian Stevenson  
GRANTED

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5 STATE OF MONTANA )  
6 County of Judith Basin) ss.

7 On this 10th day of June, 1977, before me, a notary public  
8 for the State of Montana, appeared, E. VIOLA BARRETT, PATRICK B.  
9 BARRETT, WAYNE and MARIANN STEVENSON, VIKTOR and LILLIAN J. KOLAR,  
10 know to me to be the persons whose names are subscribed to the  
11 within instrument, and acknowledged to me that they executed the  
12 same.

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14 Notary Public for the State of Montana.  
15 Residing At \_\_\_\_\_, Montana  
16 My Commission Expires \_\_\_\_\_

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Notary Public  
State of Montana  
Marian Stevenson

**EXHIBIT B: OWNERSHIP BOUNDARIES**

- Ownership boundaries

