

Right of Way
Across Indian
Allotments.

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN SERVICE

Heno, Nevada, Oct. 21, 1912

Commissioner of Indian Affairs,
Washington, D. C.

Sir:

I enclose herewith a blue print of the map filed with the State Engineer's Office here by some parties who have taken up land just below the number of Indian Allotments. I have indicated the land allotted to Indians and withdrawn for their use by a red line. Proposed ditches are shown on this map, and as will be seen they cross nearly all of the Indian allotments. I have told the parties who have this project in hand that it will be necessary for them to secure a right of way across their land, and they have sent me a copy of this map to show just where their ditches will run.

I submit these to the Office at this time for instruction as to the manner of preparing this application for a right of way. Should this be handled in the same manner as a right of way for a railroad or power line, etc.? The Indians have an old ditch from this same creek from which they have used water for many years, and these parties seem willing to concede to them such water right and have permitted them to use water on some new land. The Office will note that this includes the land withdrawn from entry by Executive Order 1608 of September 18, 1912, the rest being individual allotments made within the past year or two.

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Right of Way Across Indian Allotments.

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I will appreciate prompt instruction or suggestions touching this case, and the parties will probably want to proceed with construction work in a short time.

Very respectfully,

C. H. Asbury
SPECIAL INDIAN AGENT.

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Nov 6, 1913

Right of way across
Indian allotments.

Mr. C. H. Asbury,
Special Indian Agent.

REC-6-113

FOR FILE

Sir:

The Office has received your letter dated October 21, 1913, enclosing a blue print copy of map filed in the office of the State Engineer by persons who have taken up land just below a number of Indian allotments showing the location of ditches which they propose to construct across the allotments mentioned. You say that you have informed the persons interested in the project that it will be necessary for them to procure a right of way across the Indian allotments, and you ask to be informed of the procedure necessary to be followed in connection therewith.

In response you are informed that there is no specific authority of law for the granting of rights of way for irrigation canals or ditches across Indian allotments, but the Department has in a number of cases permitted such rights of way to be purchased under the inherited and non-competent land sale Act of May 27, 1902 (32 Stat. L., 245) and the Act of March 1, 1907 (34 Stat. L., 1016-18), as modified by the Act of June 26, 1910

Blue Print also ret.

FILED BY J. G.

(36 Stat. L., 855); or by business lease under the Act of June 7, 1897 (30 Stat. L., 85). You should inform the prospective applicants that it will be necessary for them to file a map drawn on tracing linen, showing the definite location of the desired rights of way accompanied by field notes and other papers required in connection with applications for rights of way for canals and ditches across tribal lands under the Act of March 3, 1891 (26 Stat. L., 1095). For your information a copy of the regulations promulgated under the Act last cited is enclosed herewith. When the application shall have been filed, you should take up the matter of damages with each allottee or his heirs, and if agreeable have them execute deeds or leases covering the desired right of way, whichever course is decided to be followed by the applicants.

If there is any further information desired in connection with this matter, the Office will be glad to furnish it upon request.

Respectfully,

(Signed) C. F. Hauke.

Second Assistant Commissioner.

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Right of way
across Indian
Land.

DEPARTMENT OF THE INTERIOR

UNITED STATES INDIAN SERVICE

Ruby Valley

Reno, Nevada.

May 11th, 1914.



Commissioner of Indian Affairs,
Washington, D. C.

Sir:-

Upon receipt of the above letter of November 6, 1913, I sent a copy of it to the parties applying for this right-of-way, on November 11th, and am just now in receipt of an application with maps. I submit herewith a copy of their maps, showing a definite location of their ditch, copy of field notes, certificate of the engineer and owner, and a letter applying for a right -of-way.

I am submitting these to the Office for such further instruction as the Office may desire to give, touching the contract covering this concession, as it will be impossible for me to visit this land for several weeks, by which time further instruction could be received here, possibly avoiding delay after we have visited the land and appraised the damage.

The applicant submits also evidence of his having applied to the State for the privilege of having appropriated the water of this particular creek, which seems to be in regular order and approved by the State engineer. This I will hold in my office for the present unless it is necessary to forward it.

Very respectfully,
O. H. Asbury
Special Indian Agent.

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Mr. O. H. Asbury,
 Special Indian Agent,
 Reno, Nevada.

MAY 29 1914

Sir:

The Office has received your letter dated May 11, 1914, submitting one part of tracing and other papers filed by B. G. McBride, of Eiko, Nevada, as an application for right of way for an irrigation ditch across certain lands in Section 25, T. 30 N., R. 58 E., and Section 30, T. 30 N., R. 59 E., M.D.M., Nevada, in order that the Office may give you any further instructions in the matter which may be deemed necessary.

In response you are informed that an examination of the records of this Office has failed to disclose anything to indicate that the land crossed by the proposed ditch has been filed on by Indians, and informal inquiry of the General Land Office discloses that with the exception of the W/2 of the NW/4 of said Section 30, no such entries as are indicated on the maps submitted with your letter are of record. The W/2 of the NW/4 of said Section 30 appears to be

PARTIALING COPY - FOR FILE

By reference from 4/11/13

covered by the entry of Machatah Tomoque, Indian allotment application No. 06401, but patent therefor has not yet been issued.

In view of the status of the land as it appears from the foregoing, the Acts of June 7, 1897, May 27, 1902, March 1, 1907, and June 25, 1910, cited in Office letter to you of November 6, 1913, would not be applicable, and application for the desired right of way should be filed in the local Land Office. However, if the lands have been filed on by Indians, even though their applications have not been approved, and patents issued to them for the lands in question, they would be entitled by virtue of their filings to receive whatever damages might be caused to the land by the location of the proposed ditch.

In view of the foregoing, the papers and map submitted with your letter of May 11 are returned herewith, and you are requested to return them, together with any other papers which may have been filed with you, to the applicant with advice that they should be filed in the local Land Office in accordance with the foregoing. If it is desired to expedite final action in the matter, you should retain a copy of the map,

and proceed to appraise the damages in question, in conjunction with a representative of the applicant, in accordance with instructions given in Office circular letter dated June 30, 1913.

As it appears from your reports in the matter that the Indians have been using some of the water in Overland Creek, from which the proposed ditch is to take its supply, you should call upon the applicant to execute a stipulation acknowledging the water rights of the Indians, and containing such other terms, conditions, and covenants as in your opinion are necessary for the protection of their interests. The stipulation duly executed by the applicant in duplicate should be forwarded by you with schedule of damages, accompanied by your report giving the information called for in Office Circular No. 485.

If this course is followed it seems likely that the Office will be able to make report to the General Land Office as to whether there are any objections to the approval of the application by the time that said application shall have been received by that Office ^{from the} local Land Office.

Respectfully,

(Signed) E. B. Meritt

Assistant Commissioner.

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JUN -9 1914

The Commissioner
of the General Land Office.

Sir:

Under date of May 29, 1914, the Office returned to Special Indian Agent, C. H. Asbury, at Reno, Nevada, all the papers filed by B. G. McBride, of Elko, Nevada, in connection with his application for right-of-way for an irrigation ditch across certain lands in Sec. 25, T. 50 N., R. 56 E., and Sec. 30, T. 30 N., R. 59 E., M. D. N., Nevada, with instructions to return them to the applicant to be filed in the local land office.

The map submitted by Mr. McBride indicated that several Indian homestead entries were involved; but upon telephonic inquiry of your office, this Office was advised that the entries in question were not of record with the exception of Application No. 6401, covering the W/2 of the NW/4 of said Sec. 30, patent for which had not yet been issued.

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In view of the foregoing, if Mr. McBride files the application in question in the local land office upon

ORIGINALS COPY - FOR FILE

its receipt in your office it is requested that the copy of the map of definite location be referred to this office for report as to the interests of the Indians who may have filed on the lands involved.

Respectfully,

(*Signed*) *E. B. Meritt*
Assistant Commissioner.

6-MON-6

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DEPARTMENT OF THE INTERIOR

Land-Contracts

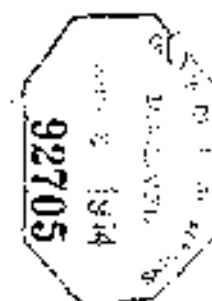
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UNITED STATES INDIAN SERVICE

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File
CHC
Ditch Right of way.
Ruby Valley, Nev.

Reno, Nevada.

Aug. 22, 1914.

The Commissioner of Indian Affairs,

Washington, D.C.

Sir;- Further action on this case has been delayed by press of other work and because I have hoped to get into the locality of this land to attempt to arrive at an agreement with the applicant.

I am returning the papers as directed with suggestion that the application be filed with the Land Office at Elko, Nevada.

That applications for the Indian allotments have been filed with the General Land Office is evidenced by the inquiries that were sent out with Office letter of April 3^d 1914 for special report as to the eligibility of the applicants to take land all of which were called from this office on May 6th 1914 .

I hope to visit the land within the next few weeks and secure an agreement with the applicant covering such right of way that will be just and agreeable to the Indian.

Very Respectfully,

A. H. Stenberg
Special Indian Agent.

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