Rural Water System Easements

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**Rural Water System Easements**

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### What It Is

An **easement** is a perpetual, non-profitable right granted by a landowner to another party for a specific limited use of a particular piece of property.

An easement must be obtained on all land where a waterline is to be installed; if not, the water system could be held liable for damages to the land and crops. Furthermore, the system would not have the right to enter and maintain the waterlines and could be forced to remove them.

The lands needed for wells, pumping stations, water towers, and underground storage reservoirs are usually purchased outright.

### Obtaining an Easement

It would involve less work if all easements could be obtained at the same time that hookup fees are collected and water users agreements signed. This is not always practical from a timing standpoint; hookup fees and signed water-user agreements must be secured prior to the final engineering design, and the exact location needed for the easement is not known until the final design is completed.

Some systems have secured a large number of easement signatures at the same time that members paid their hookup fees. Everything except the legal description of the land was filled in ahead of time and each landowner was advised that this description would be added later. **The landowner would need to consent, in advance, to this “blanket type” easement.** It is important that this be understood.

Another alternative used is incorporating a blanket easement as a part of the Application for Service (membership) document. However, this alternative could, and no doubt would, add to the cost of recording the easement and subsequent abstracting because of additional words in the recorded document.

Both alternatives eliminate time and work by combining operations. However, in both cases, waterline easements are still needed from landowners who are not members of a rural water system.

### Major Steps in Securing an Easement

1. **Searching the records to determine ownership**—The owner(s) of a particular piece of property where an easement is desired is normally determined by searching the records at the County Register of Deeds Office. Abstractors and attorneys have the skill and experience necessary to make a proper search, although others with sufficient training have researched land records properly.

The tremendous amount of time involved in determining land ownership accurately for a large number of land parcels is not appreciated until it's been done. It should be noted that Farmers Home Administration, the primary lender thus far, has been willing to accept a less sophisticated and less costly title search than would be required in a transfer of land ownership.

Several things must be checked carefully. For example, a man or wife may be a sole owner or they may be joint owners, and this legal ownership may vary within separate parcels of property they own. During probate, estates may not have been settled requiring the signature of the guardian, administrator or executor, while after settlement the property may have numerous owners with an interest, thus requiring many signatures.

When property is being sold through a Contract for Deed, both the seller and purchaser are considered owners. Contracts for Deed are recorded along with the main property deed records or under real estate mortagages. When the Contract for Deed has not been recorded the purchaser does not show in the records as the legal owner.
2. Preparing a proper easement

Suitable easement forms can be obtained through an attorney or from the Farmers Home Administration, if FHA is the lender. The names of the grantors (owners) should be listed exactly as obtained in the title search. The parcel of land over, across and through which the easement is granted must be described in detail unless a “blanket-type” easement is obtained. Some landowners may demand that the land described be only that strip of their land parcel along the pipeline route; that is, specifying the S½S½SW¼ of Section 16 rather than just the SW¼ of Section 16 if they owned the entire quarter section.

Next the easement width and location must be described. A twenty to thirty foot width appears to be sufficient to allow for the proper installation, inspection, repair, replacement and/or the removal of an underground water pipeline. Provisions should be made in the easement for the right of ingress and egress over adjacent lands to get to the easement.

A **double** description of the easement location as follows can avoid some problems: “Fifteen (15) feet either side of the centerline of the pipeline **as constructed**. Also described: as thirty (30) foot easement with the centerline being approximately fifteen (15) feet inside the fence line where physically practical.”

By describing the easement as fifteen feet either side of the pipeline **as constructed**, the contractor can move around major physical obstacles such as large boulders, deep gullies or sloughs. By describing the location as 30 feet inside the fence line **where practical**, the landowner’s reluctance to sign the easement because of fear that the pipeline could meander through his land (and crops) is minimized. In the description above the term “public right-of-way line” would be a good substitute for “fence line” where applicable because it is more easily established and more permanent.

3. Obtaining the grantor’s (owner’s) signature

The signatures obtained should correspond exactly with the owners’ names listed on the easement form. These signatures must be dated and notarized. An easement that isn’t notarized cannot be recorded, and it would not be effective when the owner died or sold the land.

There will be problems obtaining signatures from some landowners. Easements will be needed from some uninterested landowners who are not members of the system. Signatures of absentee landlords will need to be obtained by mail. There may be cases where a tenant paid the hookup fee and signed the water users agreement but the landlord will need to sign the easement.

In developing the best means of obtaining the needed signatures so as not to delay project construction, proper educational work and the experience gained in securing hookup fees and water users agreement signatures are valuable. A well-publicized group meeting or series of localized meetings for explaining the easements and obtaining signatures is a good starting point.

For signatures not obtained at group meetings, a personal contact should be made. It is better for a director or another member who knows the landowner to make this contact. Many persons who are unwilling to sign for someone, such as an attorney they don’t know, will readily sign for a neighbor they know and respect. Even for absentee landlords, contact from someone who knows them is helpful. Tenants who are members can assist in getting their landlords signatures.

Provision must be made for getting the signatures properly notarized. Legally, the signature is supposed to be notarized at the time of execution. If the person getting the signature is not a notary he should have one along or become one himself. Qualifying as a notary takes about three weeks and costs about $30.

4. Recording the easement

Once the easements are recorded they become a permanent part of the land record.

It may be wise, however, for the system’s officials to hold the signed easements until the project installation is completed. During construction, it may turn out that a particular easement is not necessary or the described location of the easement may need to be altered because of unforeseen construction difficulties or last-minute changes in the final plans. By delaying the
recording of the easements at the County
Register of Deeds these alterations can be
taken care of. The recording of easements
should not be delayed, however, for lands
undergoing transfer of ownership.

Other Common Questions

What consideration must be paid for the
easements? Although landowners are
asked to provide free easements, a one-
dollar consideration is usually paid to make
them binding. If the burden of paying for
right-of-way easements and for crop dam-
ages was added to rural water system costs,
many systems would not be as
feasible. The governing body may face
the question of payment for crop damages
that occur to driveways, lawns and shrubs
in the installation of service lines. These
problems can be minimized by proper tim-
ing, judicious selection of crops planted in
the easement area and by utilization of
proper construction techniques both dur-
ing and after installation of the water lines.

How should service line easements be
handled? For most earlier rural water sys-
tems, each member was responsible for in-
stalling and maintaining his own service
line. Many systems developing in South
Dakota have elected to install the service
lines as a part of the project cost and re-
 sponsibility and thus, service line ease-
ments should be secured.

In these systems service line easements
can be included as a part of the water users
agreement. However unless water users
agreements are recorded, they do not be-
come a part of the land record. Some of
these agreements are with tenants, rather
than the landowners. By specifically includ-
ing an easement for service lines as a part
of the main water pipeline easement, these
problems would be avoided.

What misconceptions develop and how
can they be stopped? Sometimes
landowners develop the misconception
that granting an easement places a major
encumbrance on their entire tract of land
and could result in heavy damages to their
land. An important thing to remember is
that by conducting an aggressive informa-
tional program, most rumors can be coun-
tered before they start.

Several facts, for example, would
counter the misconceptions noted
above: (1) an easement grants only one
entity (the rural water system board) the
right to do one limited thing (install and
maintain an underground water pipeline), (2) most properties already
have a similar easement for an electrical or
gas line, 3) the board members are local
landowners and would not jeopardize
property values in their area, (4) the
 easement defines a specific location where
the pipeline will be installed, if physically
possible, and (5) it would be impractical
to run a water line indiscriminately through
a property.

What can be done in locations where the
landowner's will not sign a waterline
easement? When rural water systems are
organized as non-profit corporations, they
have no power of eminent domain (the right
of government to take with just compensa-
tion). If members refuse to grant an ease-
ment, water system officials can elect to
return their memberships. When ease-
ments can't be obtained from landowners,
the waterlines can be installed in the road
ditches if proper easements have been
secured from local governing bodies in ad-

There may be a few areas, however,
where road ditches are not suitable be-
cause they are too wet or too narrow for the
contractor's pipe installation equipment.
This forces the contractor to use another
more costly installation method and some
extra cost will be involved.

Water User Districts have the power of
eminent domain.

How should road and railroad ease-
ments be obtained? It is wise for water
system organizers to approach township
boards and county commissioners early in
the project development and ask for per-
mission to install water lines in the road
ditches when necessary. Before construc-
tion begins on a system, these boards need
to take official action granting an easement
for the system to install water lines in road-
dway ditches and to cross roadways under
their jurisdiction when necessary, and each
of these boards needs to sign one "blanket
easement" to that effect.

For state highway and railroad crossings,
similar official action and signed ease-
ments are needed. The engineers and at-
torneys may need to assist in obtaining
these easements.

What is involved in crossing a prior
easement? In locations where waterlines
will cross electric, gas or other utility easement areas, a working arrangement will need to be developed so that the "senior" easement facility is not damaged during construction. The project engineer normally assumes responsibility for those arrangements.

The form shown here is a type commonly used; however, it does not have the notary statement as a part of the form. Since easements must be notarized before they can be recorded, adding the notary statement, signature and seal is extremely important.

RIGHT-OF-WAY EASEMENT

KNOW ALL M En BY THESE PRESENTS:

That in consideration of One Dollar ($1.00) and other good and valuable consideration paid to

John R. Doe and Mary Doe

hereinafter referred to as GRANTOR, by 

Y Rural Water System, Inc.

hereinafter referred to as GRANTEE, the receipt of which is hereby acknowledged, the GRANTOR does hereby grant, bargain, sell, transfer, and convey unto the GRANTEE, its successors and assigns, a perpetual easement with the right to erect, construct, install, and lay, and thenceforth use, operate, inspect, repair, maintain, replace, and remove

An underground pipeline, service lines, connections, valves and all other devices used in connection with the operation of a rural water system

over, across, and through the land of the GRANTOR situate in South Dakota, County, State of South Dakota, said land being described as follows:

The east half of the southeast quarter (ESE1/2) of Section 16, Township 50, Range 50

together with the right of ingress and egress over the adjacent lands of the GRANTOR, his successors and assigns, for the purposes of this easement.

The easement shall be thirty (30) feet in width, the center line of which is described as follows:

Fifteen (15) feet either side of the centerline of the pipeline as constructed;

also described as a thirty (30) foot easement with the centerline being approximately fifteen (15) feet inside the fence line where physically practical.

The consideration hereinabove recited shall constitute payment in full for any damages to the land of the GRANTOR, his successors and assigns, by reason of the installation, operation, and maintenance of the structures or improvements referred to herein. The GRANTEE covenants to maintain the easement in good repair so that no unreasonable damage will result from its use to the adjacent land of the GRANTOR, his successors and assigns.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the GRANTEE, its successors and assigns.

IN WITNESS WHEREOF, the GRANTORS have executed this instrument this 3rd day of December 1973.

(SEAL)

(SEAL)