



## National Association of Conservation Districts

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April 11, 2017

The Honorable Ryan Zinke  
Secretary  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Dear Secretary:

The National Association of Conservation Districts (NACD) represents America's 3,000 locally-led conservation districts working with millions of landowners and operators to help them manage and protect land and water resources on private and public lands. Established under state law, conservation districts share a single mission: to work cooperatively with federal, state and other local resource management agencies, and private sector interest groups to provide technical, financial, and other assistance to help landowners and operators apply conservation to the landscape at the local level.

Landowners are continually being asked to conserve and do more with less. This is especially true when the natural resource being discussed is water. Local conservation districts and NACD continue to play key roles in mitigating the far-reaching impacts of drought by developing, vetting, and supporting the best in water conservation practices at the local and federal levels. Part of this process is adapting and embracing new technologies that advance water conservation.

As improvements are made to water conveyance systems, sometimes a partial relocation of the conveyance is necessary or advisable. While this may not seem like a problem, the problem becomes apparent when such improvements take place on public lands. Currently any water conveyance improvement that requires or advises a partial relocation on public land could jeopardize the stakeholder's historic perpetual easement or prescriptive right-of-way. These historic perpetual easements or prescriptive rights-of-way are protected under the Federal Land Policy Management Act of 1976 (FLPMA) (43 USC 1701-1785), but contingent on their continual use. While older conveyance systems may have required piping to snake back and forth across the land, new piping systems may be able to forge a more direct route. This change, however would require a new right-of-way.

FLPMA authorizes the Secretary of the Interior to grant of rights-of-way over, under, or through federal public lands by the Secretary of the Interior "for reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water." Under FLPMA, the initial term of a right-of-way grant is primarily dependent upon a reasonable period needed to accomplish the purpose of authorization. Additionally, the Mineral Leasing Act (MLA) as amended, states that any new



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right-of-way grant can only be issued for a maximum term of 30 years, although federal agencies are given some flexibility. For instance, the Bureau of Land Management (BLM) has determined that exceptions can be made for up to 50 years for major right-of-way systems.

A new perpetual right-of-way easement can only be issued when: “1) the public land involved is being conveyed out of Federal ownership; 2) the holder is willing to provide reciprocal access to the United States in the form of an easement; or 3) the grant is for State and Local Government highways and roads.” The ability to only receive a temporary right-of-way provides very little incentive for a stakeholder to conduct water conveyance improvements.

Therefore, NACD requests that you instruct the departments under your purview to conduct a review of their policies in order to provide the necessary incentive so stakeholders can make the beneficial water conveyance improvements on public lands our rural communities need.

Thank you for your consideration of these requests. We look forward to continuing to work together to conserve our nation’s natural resources. If you or your staff would like more information or would like to discuss this issue further, please do not hesitate to reach out to our Director of Government Affairs Coleman Garrison ([coleman-garrison@nacdnet.org](mailto:coleman-garrison@nacdnet.org)).

Sincerely,

Brent Van Dyke  
President