

Right of Way-

Definition

1 : an easement or servitude over another's land conferring a right of passage

2 a : the area over which a right of way exists

b : the strip of land over which is built a public road

c : the land occupied by a railroad esp. for its main line

d : the land used by a public utility (as for a transmission line)

3 a : a precedence in passing accorded to one vehicle over another by custom, decision, or statute

b : the right of traffic to take precedence

<http://research.lawyers.com/glossary/right-of-way.html>

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The Act of July 26, 1866 granted Rights of way (ROWs) for easements of all kinds including the establishment of trails for livestock grazing routes to access water rights and patented inholdings (Curtin v. Benson, 222 U.S. 75, 1911). The same Act also granted ROWs for ditches as well; however, the Act did not specify the width of either ditch or trail ROWs. In Hage v. U.S. (35 Fed. Cl. 147, 180, 1996), the court referencing later ROW statutes held that ditch ROWs would be 50 feet on either side of the marginal limits of the ditch (i.e. a four foot wide ditch would have a ROW 104 foot wide). Using the same logic the later statutes of the Livestock Reservoir Site Act (LRSA) of Jan 13, 1897 and the Stock-Raising Homestead Act (SRHA) of Dec 29, 1916 would help define the limits of stock trails or reservoir site easements as being 160 acres (or .25 mi distant for LRSA) or 1 to 5 miles wide (.5 or 2.5 mi distant for SRHA). No specific case has ruled on these distances, however in McKelvey v. US the Supreme Court ruled that a stock trail 3 miles in width established under local custom was equally as legitimate as a SRHA stock trail. Many other cases have ruled that the Act of 1866 granted stocktrails, but few have actually defined the dimensional limits (width) of the ROW granted. Generally, the courts and Department of Interior regulations have relied on "local law and custom" to determine the width of such ROWs. Based on the defining language of the LRSA and SRHA (sec 10), that a stocktrail or reservoir easement would be at a minimum .25 miles wide and a maximum 2.5 miles wide. Cattle owners or their employees who have such ROWs are the owners of such ROWs and cannot be held guilty of trespass by the use of such ROWs (Curtin v. Benson, 1911). It is only illegal to camp within 1/4 mile of water located on "public land", and LRSA and SRHA defined 1866 Act easements are not PUBLIC LAND (Curtin v. Benson, 1911).

Courtesy of Angus McIntosh