



# MONTANA PROPERTY RIGHTS LAWS & ISSUES

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# OPEN RANGE IN MONTANA?





# Yes.

- What does open range mean?
  - a. Fences are illegal in Montana.
  - b. Livestock may graze on public land
  - c. Livestock owner does not have to fence animals in.
  - e. All of the above.

# What does open range mean for landowners?

- The Montana Supreme Court looked at this issue in 2002.
  - Landowner sued livestock owner when a its bull escaped onto landowner's property and injured landowner.
- If a landowner wants to keep livestock off of his property, then the landowner has the burden to fence out livestock.

(Madrid v. Zenchiku Land and Livestock, 2002 MT 172).

## Open range (cont'd)

- Does the landowner have a legal fence? If so, landowner can recover damages from livestock owner.
- Montana broadly defines legal fence, such that it can be nearly any sturdy man-made or natural barrier (river, hedge or mountain ridge) which livestock cannot pass through.

(MCA 81-4-215)

# Herd Districts

- A herd district provides an exception to this open range doctrine. In a herd district, the owner of livestock is liable for damages that trespassing livestock cause. (MCA 81-4-307)
- How do you know whether your property is located in a herd district?

Answer: \_\_\_\_\_

# Conservation Easements

- In December, 2010, the federal government renewed enhanced federal tax incentives for conservation easement donations.
  - These tax incentives were set to expire in 2009. Congress made the tax incentives retroactive for 2010
  - The tax incentive is now set to expire at the end of this year.

# Conservation Easements

- IRS defines a conservation easement as being a
  - (1) qualified conservation contribution of
  - (2) an interest in real property to a
  - (3) qualified organization.



# What kind of tax incentive is available?

- Generous tax incentives.
- A landowner can take a tax deduction of up to 50% of the landowner's adjusted gross income (AGI).
- Even better incentives for a farmer or rancher:
  - Farmers and Ranchers can deduct up to 100% of their AGI.

# Conservation Easements

- If the value of the contribution exceeds the 50% (100%) limit. Landowner may take the deduction over 15 years.
- HYPO:
  - Farmer's AGI is \$50,000
  - Farmer makes a qualified conservation contribution of his land (conservation easement). Value of the donated easement is \$1,000,000
  - Farmer can take a deduction of 100% of his AGI.
  - YEAR 1 – deduction is \$50,000
  - Since value of the easement exceeds deduction. Farmer may continue taking deduction for the succeeding 15 years.
  - $\$50,000 \times 15 \text{ years} = \$750,000$

# Conservation Easements

- These enhanced federal tax incentives expire on December 31, 2011.
- Will Congress renew the incentive?
  - Senator Baucus is currently sponsoring two bills that would make these incentives permanent.
  - For more information see [www.landtrustalliance.org](http://www.landtrustalliance.org)

# How does Montana treat conservation easements?

- No state tax credit for donating an easement.
- Property taxes – Montana law prohibits property from receiving a lower tax assessment solely based upon the creation of a conservation easement (MCA 76-6-208)
- Cons of a Conservation Easement
  - Lowers value of property
  - Restricts owners use of property

# Nuisance

Condition that affects the use and enjoyment of land.



# Doyle v. Clark, 2011 MT 117

- A public nuisance affects an entire community. A private nuisance affects persons individually. MCA §27-30-102.
- Facts:  
Doyle and Clark own neighboring properties near Virginia City. Clark keeps numerous rusty and abandoned vehicles, tires, washing machines and dryers on his property

# Doyle v. Clark, 2011 MT 117

Doyle owns several neighboring properties which he plans to develop. He asks Clark to clean up his property. Clark makes a modest attempt to do so, but the effort does not satisfy Doyle. Doyle sues Clark claiming a public and private nuisance.

# Doyle v. Clark, 2011 MT 117

- Who wins?

After trial, the jury came back with a verdict for \_\_\_\_\_.

# STREAM ACCESS



Bitterroot River Protective Ass'n v. Bitterroot Conservation District (2011 MT 51)

- Case relates to ongoing dispute relating to the Mitchell Slough. There have been three appeals to the Montana Supreme Court.

## Bitterroot River Protective Ass'n v. Bitterroot Conservation District (2011 MT 51)

- Montana Supreme Court previously decided that the Mitchell Slough is subject to public stream access and recreation.
- After winning in the lawsuit, the Bitterroot River Protective Ass'n (BRPA) petitioned for attorneys fees.
- Generally, in the United States a party cannot get legal fees, even if they win a case.

## Bitterroot River Protective Ass'n v. Bitterroot Conservation District (2011 MT 51)

- In Montana, Courts have created an exception to that general rule.
  - Courts will allow a winning party to recover their legal fees from the losing party when:
    1. Important public policy is vindicated by the legislation;
    2. Government fails to enforce a public right, and a large burden on a private person (entity) to enforce that right; and
    3. Number of people that benefit from the enforcement of the public right.

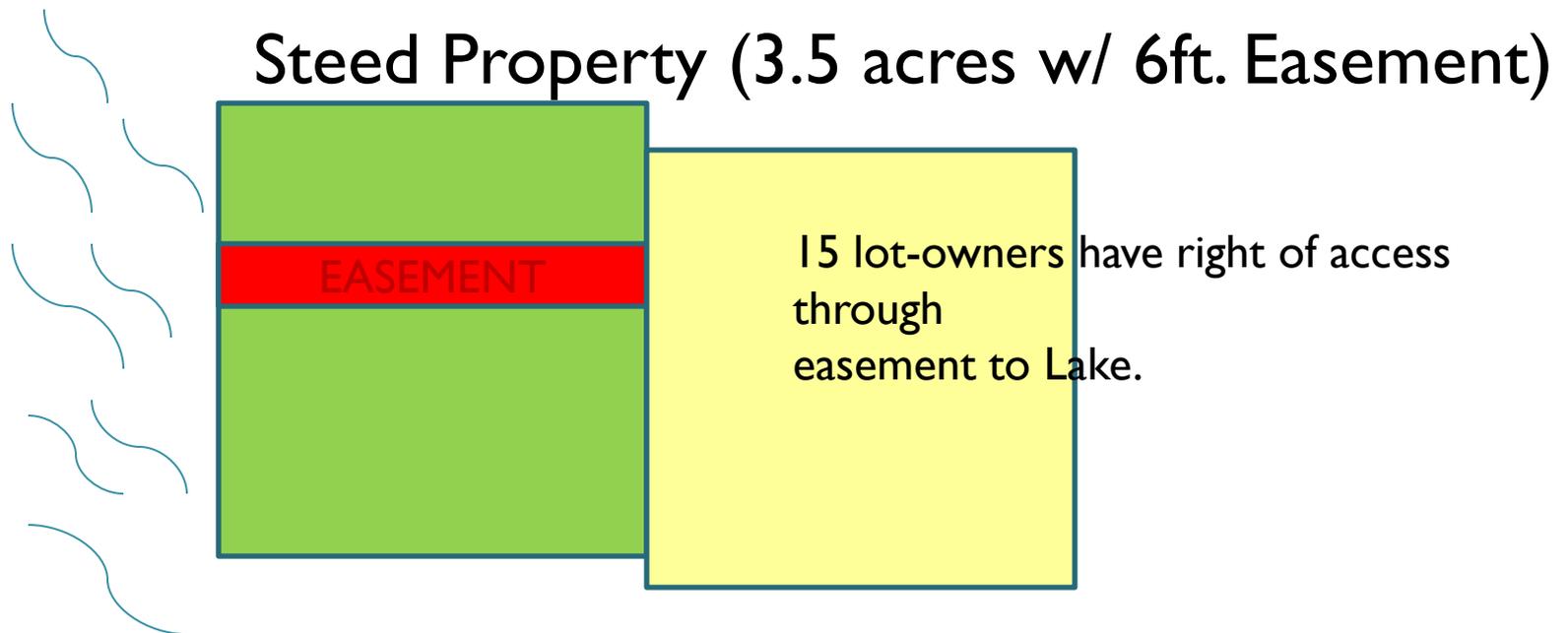
## BRPA (cont'd)

- Did the Court grant BRPA its legal fees?

# Trespass and Easements

Steed v. Casazza, 2010 MT 264

Steed sues Casazza (and others) for trespass and to extinguish their easement rights.



Steed v. Casazza, 2010 MT 264

**“MCA 70-17-111. How servitude extinguished.** (1) Except as provided in subsection (2), a servitude is extinguished:

(a) by the vesting of the right to the servitude and the right to the servient tenement in the same person;

(b) by the destruction of the servient tenement;

(c) by the performance of any act upon either tenement by the owner of the servitude or with the owner's assent that is incompatible with its nature or exercise; or

(d) when the servitude was acquired by enjoyment, by disuse of the servitude by the owner of the servitude for the period prescribed for acquiring title by enjoyment.

(2) A conservation easement may not be extinguished by taking fee title to the land to which the conservation easement is attached.”

## Steed v. Casazza, 2010 MT 264

- Original easement through Steed property provided 2 lots and five families with lake access, and permitted a dock.
- Steeds claimed that the easement was not meant to serve the 15 lots now existing in the subdivision. Steeds claimed that Casazza trespassed.

# Steed v. Casazza, 2010 MT 264

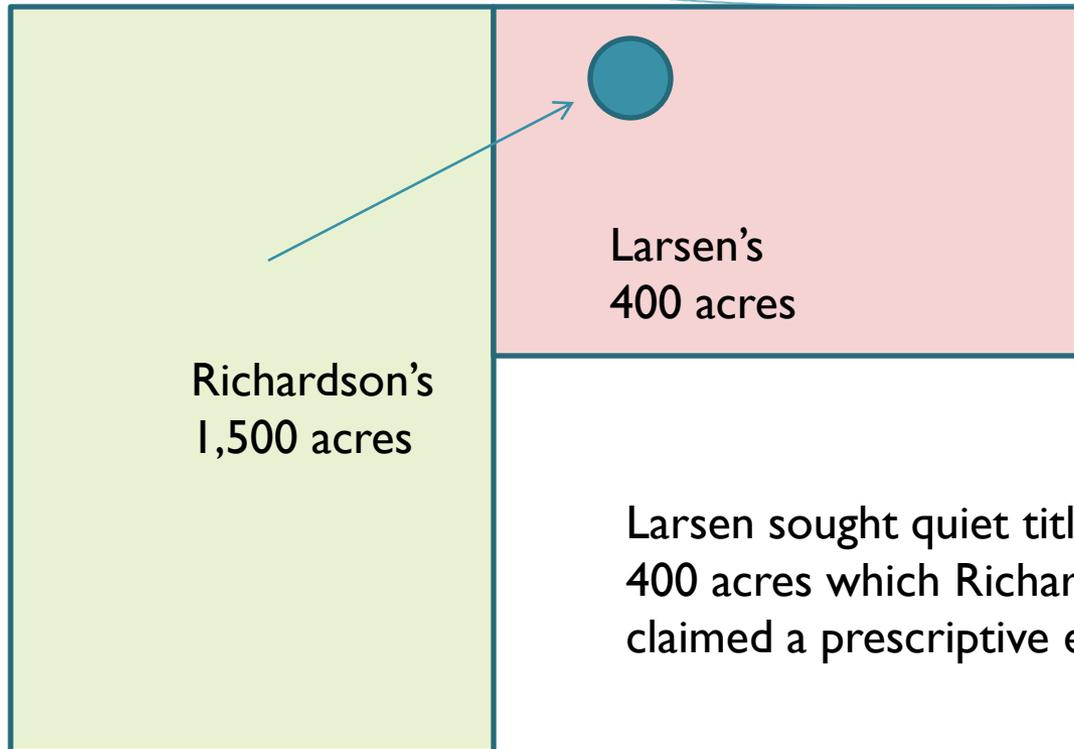
- Casazza claimed that he rightfully held an easement to the lake, and the he could clear the easement of trees and build a dock.
- Court decided in favor of Casazza. It decided that the purchasers of lots in the subdivision had an easement right to the lake through the Steed's property.

# Is it a prescriptive easement or a neighborly accommodation?

- A prescriptive easement occurs when a person gains an easement through non-permissive use of land.
- A neighborly accommodation occurs when a person has the landowner's permission to use land.

# Larsen v. Richardson (2011 MT 195)

Larsen's land contained cattle corrals which Richardson used.



Larsen sought quiet title to a portion of their 400 acres which Richardson used. Richardson claimed a prescriptive easement right.

# Larsen v. Richardson

- Court looked at whether Richardson's had permission to use the Larsen's land.
- Who wins?

# Eminent Domain

- Developments in the law re: the public right for eminent domain and the private right of eminent domain.