

# Easement Basics for NRCS Assisted Watershed Dams



## EASEMENT BASICS

When constructing a flood control dam or related structure, watershed project sponsors must own the land or have a legal right to use the land (easements).

An easement is a legal document granted to the sponsor of the watershed project, which covers the impoundment area and the auxiliary spillway(s) return flow to the waterway downstream from the dam. The actual easement elevation varies with each watershed dam.

Easements can reference the top of dam elevation, the auxiliary spillway control section elevation, or the auxiliary spillway control section elevation plus flow depth. Some easements contain special provisions.

Easements belong to the project sponsor. The sponsor is responsible for proper operation and maintenance of the dam and issuing or denying requests for changes within the impoundment area.

## EASEMENTS ALLOW FOR:

- Construction of a dam or other watershed structure.
- Permanent water storage in the sediment basin.
- Temporary water storage in designated flood pool areas.
- Sponsors access to the dam for operation and maintenance, inspections and repairs.
- Easements may also be obtained for areas downstream to restrict development.

## LANDOWNER RESTRICTIONS IN EASEMENTS:

- Can't deny the sponsor access to the dam for operation and maintenance and inspections
- Can't under take activities that would impair the purpose of the dam or structure
- Can't under take activities that would damage the dam including its appurtenances (principal or auxiliary spillway).
- Can't allow or convey to others the ability to do any of the above.

## LANDOWNERS MAY:

- Impose reasonable restrictions on the sponsors points of access to the dam.
- Utilize the area around the structure in a manner that won't impair the project (grazing, recreation, etc.)
- Utilize the dam in a reasonable manner and in ways that the sponsor and landowner agree upon.

## KEY COMPONENTS OF ENFORCEMENT OF EASEMENTS

- Preventing violations in the first place
- Having good relationships with landowners so issues can be easily resolved
- Having the ability to deal with a proposal to change an easements restriction.
- Having the means to enforce the restrictions of the easement with a violation occurs.

## EASEMENTS CAN HELP AVOID ISSUES WITH LANDOWNERS

- Carefully thought out easements can prevent many future issues – Sponsors should think long-term and about issues that might come up even 50-100 years after construction of the dam and landowner changes (for example the need to rehabilitate the dam in the future).
- Easements should be complete with all needed components and signatures. They should have the landowner's correct names and it should be checked to make sure they are the legal landowners.
- Easements should be recorded at the county clerk's office so that it will become a part of the land deed.
- Copies of easements should be in the sponsors office in a location where they can easily be accessed.
- Access to the dam should be agreed on and spelled out in the easement (location, condition and notice).
- Acceptable and unacceptable uses should be spelled out.
- Sponsors should review the easements with new landowners to ensure they are aware of restrictions and of the rights of the sponsors to access the dam for operation and maintenance and inspections.

## CHANGES AND AMENDMENTS TO EASEMENTS

- Proposals to change or amend easements usually come from subsequent property owners,
- Easement holders should be wary of changing restrictions in an easement. This may encourage others to request changes also.
- Requests to change the amount of area easements cover could have future consequences (development, rehabilitation of dam, etc).
- NRCS should be consulted when requests for changes to easements are made to ensure those changes won't affect the dam's performance.

## RELEASE OF EASEMENTS

- A release of an easement is a surrender of the rights or interest in the property by the holder of the easement.
- Only the person holding the right can release it such as a sponsor of a dam.
- The release must be signed by the person releasing it.

## WATERSHED PROJECT SPONSORS MAY NEED LEGAL ASSISTANCE

- Property law can be complex.
- Disputes between sponsors and landowners over easement issues may require legal assistance.
- Sponsors should avoid providing legal advice to landowners.
- Sponsors should avoid getting into disputes between landowners (property lines, water rights, fences, etc).

## SPONSORS SHOULD NOT ASSUME

- That they know what is an easement without reviewing it (Not all easements are the same).
- That the landowner(s) know what it is in an easement, especially if they are not the original landowners that signed the easement.
- That the easement was actually recorded in the court house.

More detail information about easements for dams is available in a YouTube video:

Easement Basics for Watersheds

<https://www.youtube.com/watch?v=ON2vbC1y2uU>

This fact sheet is meant only to highlight the basics and importance of easements and should not be utilized as a substitute for an attorney consultation.



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