



## Administrative Office of the Courts

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Supreme Court resolves dispute over road across private land for access to solar energy farm

SANTA FE – The state Supreme Court today ruled the public may cross a rancher’s private property on a road in Quay County under a “prescriptive easement” established by decades of uninterrupted travel on the roadway.

The Court’s unanimous opinion resolved a dispute over the right to use a 6-mile-long road – known as Quay Road AI – to access land owned by the state and several other ranchers, including property leased for a solar energy farm near Tucumcari.

The dispute arose after McFarland Land & Cattle Company sought to stop a solar energy developer, Caprock Solar 1, LLC, from using a “low water crossing” over an arroyo on its property to reach land the company leased from a neighboring rancher to build and operate a solar array.

The road was rerouted to the low water crossing after a flood in 1954 washed out a nearby bridge. The arroyo crossing must be used to travel on the southern three miles of the road to access the state land and portions of other ranches, including the location of the solar array and an electrical substation. McFarland filed a lawsuit in 2016 after the energy company declined to pay for the right to use the crossing.

In today’s opinion, the state’s highest court clarified what is required to prove a claim for a “public prescriptive easement” allowing people to cross a portion of private property without obtaining the landowner’s permission.

“The law of public prescriptive easements in New Mexico does not require a showing of a minimum amount of use or number of users, as it is the public character of the road that guides a fact finder’s determination of a public prescriptive easement,” the Court wrote in an opinion by Justice David K. Thomson.

In 2018, a district court determined that Quay County, Caprock Solar and a construction company it hired to build the solar energy farm had proven their claim of a “public prescriptive easement” by showing that the road and the low water crossing had been used without interruption for more than a decade. The bottom of the low water crossing was lined with concrete by a utility company nearly two decades ago to accommodate heavy construction vehicles when an electrical substation was built on neighboring property.

The state Court of Appeals reversed the district court, finding that there was not enough evidence of general public use of the road and that travel by neighboring ranchers and those granted permission to cross the land did not constitute use by the general public.

The Supreme Court overturned the Court of Appeals decision and affirmed the district court’s original judgment in the case.

The justices concluded that the “Court of Appeals erred in requiring the County and Defendants to prove a minimum amount of use by the public in establishing their public prescriptive easement claim and erred in holding that evidence of neighbor or invitee use can never be considered to prove public use.”

The Court determined there was sufficient evidence to support the district court’s finding of a prescriptive easement for public use of the roadway. The evidence, the justices explained, established that the road had a “public character,” including that the road appeared on Quay County road maps since 1956, the county performed maintenance on it and the arroyo crossing, and a local title company identified it as a public road.

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To read the decision in *McFarland Land & Cattle Inc. v. Caprock Solar*, No. S-1-SC-38934, please visit the New Mexico Compilation Commission's website using the following link: <https://nmonesource.com/nmos/nmsc/en/item/521909/index.do>