Bonneville Power Administration
Section 1813
April 19, 2006

Land Assessment Process
Marian Wolcott
Acting Realty Officer

Negotiation Process
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Land Assessment Process

Land Assessment Process used by the Bonneville Power Administration:

Marian Wolcott

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Overview – Land Assessment Process

- Bonneville Power Administration (BPA) Appraisal Standards and Requirements
- Appraisal Definitions and Criteria
- Appraisal Requirements
- Comments to Section 1813 of the Energy Policy Act of 2005

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BPA Appraisal Standards and Requirements

- Appraisals are prepared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (49 CFR Part 24) as well as being consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

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Appraisal Definitions and Criteria

- The Uniform Appraisal Standards for Federal Land Acquisitions (Yellow Book) are used by BPA to provide the definition and criteria for:

- Market Value
- Highest and Best Use
- Economic Use – Not a Special Use
- USPAP's Jurisdictional Exception Rule
- Exposure Time
- Sales Requiring Extraordinary Verification

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Appraisal Standards and Requirements

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, revised March 2005 (Uniform Act)
  http://www.fhwa.dot.gov/realestate/ua/index.htm
  (49 CFR Part 24.103 – Criteria for Appraisals)

- Uniform Appraisal Standards for Federal Land Acquisitions
  http://www.usdoj.gov/enrd/land-ack/yb2001.pdf
  (Yellow Book)

- Uniform Standards of Professional Appraisal Practices
  http://commerce.appraisalfoundation.org/html/USPAP2005/toc.htm
  (USPAP)

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Appraisal Definitions and Criteria

- **Market value:**

  Market value is the amount in cash or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of appraisal.

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Appraisal Definitions and Criteria

Highest and Best Use:

The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonable near future.

A proposed highest and best use requires a showing of reasonable probability that the land is both physically adaptable for such use and that there is a need or demand for such use in the near future; physical adaptability alone is insufficient.

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Appraisal Definitions and Criteria

- **Economic Use:**

The appraiser's estimate of highest and best use must be an economic use. A non-economic highest and best use, such as conservation, natural lands, preservation, or any use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value.

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Appraisal Definitions and Criteria

- **USPAP's Jurisdictional Exception Rule:**

  USPAP's Jurisdictional rule simply provides that if any part of the USPAP Standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction.

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Appraisal Definitions and Criteria

- **Exposure Time:**

The appraiser's estimate of market value shall not be linked to a specific exposure time when conducting appraisals for federal land acquisition purposes under these standards.

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Appraisal Definitions

- **Comparable sales requiring extraordinary verification and treatment:**

The federal courts have traditionally held that, in general, sales to a government entity were inadmissible, but the recent trend has been to admit them with the view that such evidence goes to its weight, not its admissibility.

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Criteria For Appraisals

- The Agency has the responsibility to assure that the appraisals it obtains are relevant to its program needs.

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Appraisal Criteria

- **49 CFR Part 24.102**

The owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

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Appraisal Criteria

- Clearly and accurately set forth the appraisal in a manner that will not be misleading;
- Contain sufficient information to enable the intended users of the appraisal to understand the report properly; and
- Clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the assignment.

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Appraisal Requirements
49 CFR Part 24.103, (a)

- **1.** An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), including items identified as personal property.

- **2.** All relevant and reliable approaches to value are consistent with established Federal and federally-assisted program appraisal practices. If the appraiser uses more than one approach, there shall be an analysis and reconciliation of approaches to value used that is sufficient to support the appraiser's opinion of value.

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Appraisal Requirements
49 CFR Part 24.103, (a)

- **3.** A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

- **4.** A statement of the value of the real property to be acquired and for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property, where appropriate.

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Appraisal Requirements
49 CFR Part 24.103, (a)

- **5.** A statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

- **6.** The effective date of valuation, the date of appraisal, appraiser's signature, and certification of the appraiser.

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BPA Section 1813 Comments regarding Market Value

- BPA favors a market value approach for valuing land rights.
- BPA would want criteria developed that allowed for the flexibility to negotiate for other than monetary consideration, equivalent to the value of the right-of-way identified as a result of this study.
- Although BPA's preference is to have perpetual easements, we understand that many tribal governments are unwilling or unable to commit beyond 20 years, so consideration relative to the term of the easement will need to be addressed.

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Negotiations

Examples of negotiation experiences by the Bonneville Power Administration:

Sonya M. Tetnowski

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Overview – Negotiation Process

- Improving Communications
- Historical Trends In Negotiations
- Comments To Section 1813 Of The Energy Policy Act of 2005

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Negotiation Process
Improving Communication

- Create opportunities to build relationships as well as continue ongoing education between the tribes and the agency.

- The agency needs to be educated on the tribe's history, political makeup, community issues and goals.

- The agency needs to make itself available and provide forums such as: public meetings, one-on-one meetings, solicitation of written comments, and formal consultation. It's important that the tribe, tribal members, and allottees have an opportunity to have their questions answered.

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Negotiation Process
Improving Communication

- Demonstrate a willingness to listen, make efforts to understand the underlying needs of the tribe or landowner.

- Work cooperatively towards solutions that are beneficial to all parties. Multiple issues are likely to be involved.

- Flexibility is the key to carrying discussions forward.

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Negotiation Process
Improving Communication

- Solutions should be respectful to both parties, clearly thought out, and inclusive of tribal thinking.

- Recognize that every Tribe is different.

- BPA's actions and decisions need to reflect "Trustworthy Stewardship", that BPA is worthy of our stakeholders trust and confidence.

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Negotiation Process
Historical Trends in Negotiations

- **Cursory review of easements granted approximately 50 years ago:**

- **Consideration:** Easements were sold for at least market value, some sold at higher than market value.

- **Term:** Out of 897 Tribal Tracts, 224 have 50 year easements, the remaining 673 tracts are perpetual easements.

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Negotiation Process
Historical Trends in Negotiations

- **Confederated Tribes of Warm Springs Reservation Agreement 1978**
- **Consideration:** Documentation indicates that BPA's consideration for additional width right-of-way was at least five times Market Value. Among other terms and conditions; BPA agreed to pay estimated loss of future mean annual increment of forest growth, paid at five-year intervals. BPA also agreed to move a transmission line from its south to north corridor across tribal lands, if requested by the tribe.
- **Term:** Perpetual easement.

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Negotiation Process
Historical Trends in Negotiations

- **Nisqually Tribe 2003 MOA.**

- **TRANSMISSION LINES RELOCATED:** This reservation is very small and BPA's transmission lines ran directly through the reservation, next to the only road that would provide for economic development.

- BPA agreed to move two miles of transmission lines off tribal property (one line with perpetual rights, and one line with 50 year easements that expired) onto Dept. of the Army property. The Tribe provided cash payment to help pay for the removal as well as mitigation lands for environmental purposes. The Tribe and BPA agree that there is an opportunity for additional transmission line relocation if the Tribe is able to secure funds to cover the costs.

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Negotiation Process
Historical Trends in Negotiations

- **Confederated Tribes of Umatilla Indian Reservation 2003 MOA**

- **Consideration:** A combination of monetary compensation as well as goods and services. The Tribe negotiated for long term benefits for economic development opportunity, while the allottees were paid direct monetary compensation.

- **Term:** 20-years, with an option to extend for an additional 20 years unless the Tribes, or BIA, acting as trustee for the allottees, request that compensation or other conditions of the agreement be renegotiated. (Agreement signed in 2003 but the term of the 20-year easement went back to 2001, when the easements expired).

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BPA Section 1813 Comments regarding Negotiation Process

- BPA has had the opportunity to work with many tribes and landowners to provide some services in-lieu of or in addition to financial compensation. This option has allowed BPA to successfully complete negotiations, maintain critical relationships and continue business operations.

- BPA will be providing historical data regarding the 899 tracts across tribal properties. A cursory review of our data indicates that over time the consideration paid is an increasing factor of market value and that the term easements have gone from 50 to as low as 20 years.

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Questions??

Questions or Comments Please Contact:

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Or

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