



Rights of Way and Land Valuations on Tribal Lands March 2006



Council Of Energy Resource Tribes



ROW Presentation Overview

- Background on ROW
- Definitions
- Valuation Methods and Influencing Factors
- Case Studies
- Opportunities for Tribes
- Lessons Learned
- Trust Responsibilities and Federal Policies
- Section 1813: Right of Way Study



Background on ROW

- In 1949, Congress passed a general right-of-way statute, *Indian Right of Way Act*
- Written consent from Tribe required prior to the Secretary of the Interior granting a ROW
- Some ROW under Act of 1949 may not have duration term limitation; others not to exceed 50 yrs
- All ROW are granted as easements, or permits for stated periods



Background on ROW

- 55.7 million acres of Tribal trust land in 32 states
- Easements across thousands of miles of Tribal trust lands provide rights-of-way for:
 - highways*
 - railroads*
 - electric transmission lines*
 - communication facilities*
 - oil and gas pipelines*



Definitions

Right Of Way

1. A legal right of passage over another person's land.
2. The public or Federal land authorized to be used or occupied pursuant to a right-of-way grant.
3. A document authorizing the use of public or Federal lands for the construction, operation, maintenance, and termination of a project.

Source: BLM Manual Section 2800, Release 2-224, May 15, 1985.



Valuation Methods

Income/Through-Put

Income derived from use of the ROW

Sales Comparison

Comparison of actual leases for similar tracts of land and for similar uses

Cost/Alternative Route

Total cost of locating, appraising, negotiating for, and preparing the ROW corridor

Across the Fence plus "Enhancement Factor"

Value of land adjacent to the corridor, plus subjective multiplier



Factors influencing value of Tribal ROW

- User of the ROW
- Product or service
- Alternatives to user
- New ROW vs. contract renewal
- Location/topography
- Duration of ROW lease
- Current economic situation



Case Studies

Blackfeet Tribe

Use various valuation methods to negotiate expiring leases

Fort Mojave Indian Tribe

Local utility lines, natural gas pipelines, state highway

Jicarilla Apache Nation

Variety of valuation techniques/factors to maximize ROW values

Yakama Nation

Determine Tribal property and determine legal status of all parcels



Lessons Learned

Consider a variety of valuation techniques and factors in negotiations to maximize return for ROW

- *Land: amount consumed, local value, damage*
- *Commodity transported: volume, market price/value*
- *Importance of ROW to lessee*
- *Comparison with similar agreements*



Lessons Learned

Do your homework; hire the right experts; enter negotiations prepared

- *Knowledge of industry*
- *Know how much leverage Tribe has with lessee*
- *Know the right economic concessions to push*



Lessons Learned

ROW terms, conditions, and payments

- *Granting longer lease terms is leverage in negotiations*
- *20% of lessee's revenue*
- *More payments up front to avoid uncertainties*



Trust Responsibilities

- The Intercourse Act (1790) requires approval of US Congress for any alienation of Indian land: Congress delegated authority to DOI to lease Indian lands for ROW under various acts.
- Section 16 of the Indian Reorganization Act (IRA) empowers a Tribe that chooses to organize under the Act “to prevent the sale, disposition, lease, or encumbrance of Tribal lands, interest in lands, or other Tribal assets without the consent of the Tribe”



Trust Responsibilities

- U.S. Code Title 25: *the Secretary of the Interior is empowered to grant rights-of-way for all purposes over any lands held by the United States and set aside for the benefit and use of American Indians*
- Section 325 of U.S. Code 25 states that “No grant of a right-of-way shall be made without the payment of such compensation as the Secretary of the Interior shall determine to be just. The compensation received on behalf of the Indian owners shall be disposed of under rules and regulations to be prescribed by the Secretary of the Interior.”



Section 1813: Right of Way Study

- Secretary of Energy and Secretary of the Interior to conduct a joint study on energy ROW on Indian land.
- The Secretaries must consult with Tribes, energy industry, appropriate governmental entities, and affected businesses and consumers.
- Analysis of historic rates of compensation for Indian energy ROW, recommendations for standards and procedures for fair and appropriate compensation for ROW, assessment of tribal self-determination and sovereignty interests, analysis of ‘national energy transportation policies’ related to Indian ROW.



Contact Information

Tweedie Doe

Research Associate

www.CertRedEarth.com

tdoe@CertRedEarth.com

303-282-7576

695 South Colorado Blvd., Suite 10

Denver, CO 80246