

The Value of Experience

In a court of law, just how much data is enough?



BY CRAIG BENNETT, SR/WA

“How do you determine crop damage?”

That was the question posed to me by the opposing counsel in a hearing to determine whether the political entity had correctly followed the law in its decision to condemn. I had testified several times prior in this type of case, and the question had never arisen, mainly because the plaintiff had never been proactive in prepaying crop damages.

My right of way career began in 1985 as a Claims and Right of Way Agent with the ARCO Pipe Line Company. Since there was very little new construction occurring at the time, my main duty was settling crop damage claims following maintenance operations or the installation of cathodic protection devices. Over the years, I had developed my own method for determining crop damages. It had proven to be effective, as I rarely encountered an argument from the property owner regarding the fairness of the method.

My process was fairly straightforward. I first determined the type of crop, which may have included corn, soybeans, wheat or a variety of other options. Next I would ask the owner what their crop yielded in an average year, although I usually had a general idea as to the yields for each

of the various crops in that area. Then I offered market price for that particular commodity multiplied by the acreage impacted. With this value established, I calculated the total loss for the first growing season and half that loss for the two successive years.

Now using this methodical calculation has been acceptable in many hundreds of crop damage claims that I worked on over a period of nine years. But this time was different. During my questioning in court, I was asked what authority or publication I had gleaned this process from. When I answered, “experience,” I was informed that this was not a sufficient response for the courtroom. When the case was continued, it gave me some extra time to seek out information from other sources. First, I searched the archives of the Right of Way Magazine and was not able to find a formula or any articles relating to crop damages. So I asked other members of IRWA, but their answers quoted the same source as mine—experience.

Fortunately, the acquiring agency in this case settled with the property owner before the hearing could be rescheduled. But I’m still curious to know if any other negotiators have had a similar experience. ✪



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