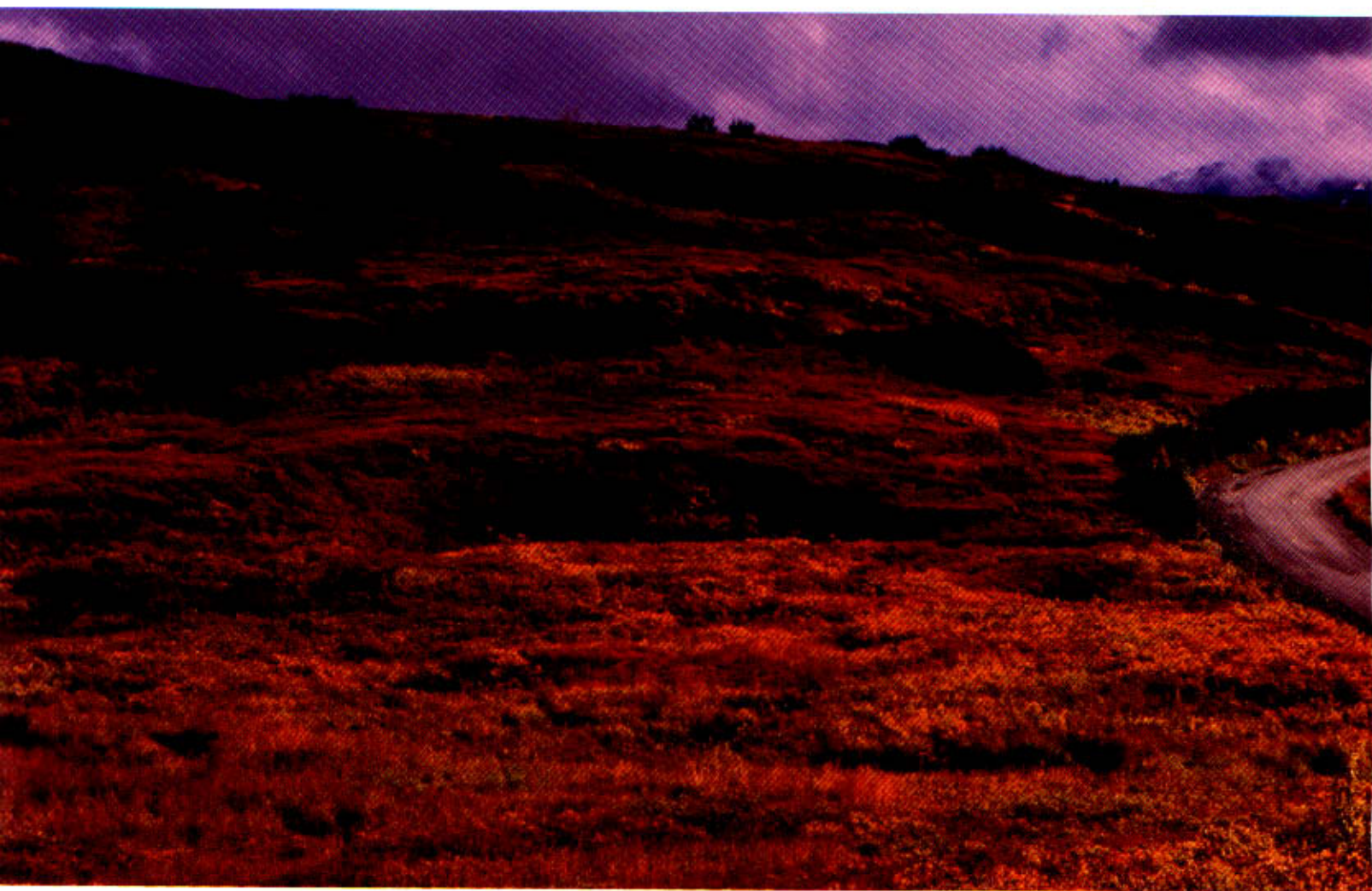


# PROCURING OF WAY ON RESERVATION



*Reservation = Geographically designated areas, established by treaty, for the specific use of an Indian tribe.*

Trust responsibility for managing lands within the boundaries of each reservation resides with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA). Trust land is divided into two general categories:

**1. Tribal land.** Tribal land is land or any interest therein, title to which is held by the United States in trust for a tribe, subject to federal restrictions against alienation or encumbrance.

**2. Individually owned land.** Individually owned land is land or any interest therein held in trust by the United States for the benefit of individual Indians and is also subject to federal restrictions against alienation or encumbrance.

Title 25 of the Code of Federal Regulations (CFR), Part 169, defines procedures to be used in the procurement of rights of way on these trust lands. The first step to determining ownership, as in any case, begins with a courthouse check. Trust lands within any particular county will most generally not have any recorded documents, which indicate probable trust ownership. All documents

# RIGHTS EASEMENTS LANDS

By Paul E. Sansaver



affecting trust property will be recorded with the agency of the BIA located on the subject reservation and also in the area office overseeing that particular reservation.

Once the determination is made that the property is a trust land, you can request an ownership report, such as a Title Status Report (TSR), from the local BIA agency. The TSR will inform you if the land is a tribal or allotted tract. Occasionally there will be dual ownership with both the tribe and allotted individuals having an interest in a particular tract. If there is individual ownership, the report will list the number of individuals with an interest in the

subject tract and their addresses. The Indian Lands Consolidation Act (ILCA) in Section 219 defines the percentage of owners' approval needed before a right of way will be granted. These percentages are currently set as follows, for five or fewer owners, 100 percent of the trust or restricted estate; six to 10 owners, 80 percent of the trust or restricted estate; 11 to 19 owners, 60 percent of the trust or restricted estate; 20 or more owners, 50 percent of the trust or restricted estate.

A Consent of Owners to Grant of Right of Way, Billings Area Office (BAO) form 413, is the form used for the signature and approval of the rights of way for each individually owned interest. For

tribal tracts, the governing body of the tribe must accept or approve the request for the right of way before the BIA will issue a grant of right of way.

A certified mailing of the consent to any non-resident ownership is required. Along with the approval of the tribe and/or required percentage of individual ownership signed, you will submit a staking sheet/map with an application, BAO 319, to the local BIA agency for processing. This application details the conditions and stipulations required with the granting of the right of way. The grant of the right of way from the local BIA agency will include an Affidavit of Completion, which states that the person signing the document built the facility as stated on the previously submitted staking sheet/map.

The Superintendent of Indian Affairs for the land reservation acts on behalf of the Secretary of the Interior, and will sign the interests if:

- There is a minor interest (an interest still in probate)



A sculpture by Don LaRoque, a member of the Fort Peck Reservation, stands in front of Titoka Tibi, which means "the visiting place," and is dedicated to the Assiniboine and Sioux artists and craftsmen of the Fort Peck Reservation.



The Tribal Headquarters Building for the Fort Peck Reservation, where elected officials on the tribal executive board conduct business of the Assiniboine and Sioux tribes.

- A person non compos mentis (an interest the whereabouts of the owner therein are unknown), or
- The owners of interest in the land are so numerous that the secretary finds it would be impractical to obtain their consent, and also finds that the grant will cause no substantial injury to the land or any owner thereof.

Even if you stay within the guidelines of the CFR, there will still be nuances associated with each reservation. Anyone intending to operate on an Indian reservation obtaining rights of way thereon must read the CFR Title 25, Part 169. It is important to remember that what would normally apply on fee land transactions, does not apply to rights of way on reservation/trusts lands. It is a different ball game and you are playing with their ball on their court. Be patient, it can be done.

Copies of the CFR can be obtained from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. To order by phone, please call (202) 512-1800. The current version (April 2001) is \$57.



Sansaver grew up about a half mile from this site on land he inherited from his mother. Both the old and new bridge spans the Missouri River which is the southern boundary of the reservation.