

VALUING A GAS PIPELINE EASEMENT

A History and Synthesis of Methodology



Originally presented to the Rocky Mountain Mineral Law Foundation Special Institute on Rights of Way, Denver, Colorado May 4 & 5, 1998. The following article is based on an actual natural gas pipeline project for Kern River through Utah. Case studies of potential damages will be found in Part Two, to be published in a future issue of *Right of Way*.

The authors undertook the right-of-way appraisals for a major, primarily new, alignment natural gas pipeline from the Wyoming border through Summit and Davis Counties and the populated part of Salt Lake County in Utah during the early 1990s.

A 36-inch pipeline needed to be installed. Through portions of western Salt Lake County, the alignment was to go along an existing Utah Power & Light (now Pacificorp) electric transmission line corridor.

The project required preparing a study addressing appropriate compensation for the proposed pipeline as well as potential damages. We would use this study in estimates of a value range and the size of damages for more than 400 parcels of

Pipeline Easement Description

To understand the effect of a proposed pipeline easement, we must first understand which rights of the total bundle of rights are to be acquired. The easement to be used is to be an Exclusive Right of Way and Easement. The word exclusive an important one.¹ It carries with it certain restrictions and guarantees.

For example, the restrictions on the fee simple ownership in the Kern River include the following: the right of ingress and egress to and from, on and along the right of way. The Grantee (Kern River) has the option to put in any size pipe they desire. During temporary periods, the Grantee may use portions of the property adjacent to the right of way acquired. The Grantor

Some of the guarantees made in the easement agreement are:

- The Grantee will compensate the Grantor for all damages to real or private property.
- The right of way will be restored and shall include final grading, reseeding and installation of erosion control structures.
- The Grantor reserves the right to use and enjoy the property affected, subject to the restrictions.
- The pipeline will initially be buried at least 30 inches deep.

Compensation

The preferred method for determining the value of an easement would be to find paired sales, with and without similar easements. It is difficult to find a “paired

easement. Chances of finding such a situation from which to derive an appropriate compensation amount are limited.

In lieu of indisputable market data support, we turn to interviews of market participants who often deal with easements, in order to understand the practice and custom of this particular industry’s precedents. This methodology is the subject of an ongoing controversy, which we will address in the conclusion. We made our first interviews in the late 1970s. We interviewed again in the late 1980s and again in the mid-1990s, so this is a historical continuum.

Part of the fee simple interest is lost to the property owner as a result of an easement taken. In an earlier, related study in the 1970s,



land from grazing use to residential and industrial uses. There were 38 orders of occupancy taken (less than 10 percent) condemnations. Only 25 of those that could not be settled after the orders were granted required full “before” and “after” appraisals. Ultimately, all were settled except one that went to a special commission hearing.

(property owner) may not interfere with the Grantee’s surface or subsurface rights or disturb its facilities. No road, reservoir, excavation, change in surface, grade, obstruction or structure may be located within the right of way without the Grantee’s prior written consent.

sales analysis” with similar circumstances to measure the appropriate compensation amount from the market. To do so, we would need to find two sales that are similar in all characteristics, with the exception that one has a 50-foot wide pipeline easement and the other has no such

we had the opportunity to interview several utilities and ask what methodology had been historically used in determining just compensation for easements acquired.

Interviews and Research

Tracy Shepherd, former Acquisition Manager with Mountain Fuel Supply Company, explained that they paid a minimum of 50 percent for easements on any

***By William R. Lang, MAI
and Brett A. Smith***

GAS PIPELINE EASEMENTS

parcel with a significant market value. They paid by the lineal rod for easements in outlying areas.

Rex Johnson, when he was with Northwest Pipeline, mentioned an example in Payette, Idaho, where they paid 50 percent of the fee simple value for commercial and industrial land to be used in conjunction with a new pipeline. They only paid 25 percent of fee value when adding to the width of their existing right of way. Utah Power & Light pays up to 60 percent of fee value.

Max Derbes, Jr., MAI, wrote an article that appeared in *Right of Way* magazine in February of 1973. It explained how his court experience in this type of easement typically showed a compensation from 50 to 75 percent of fee value through croplands for transmission lines.²

Another article in *Right of Way*, dated February 1968, was written by William O. Ewing, Jr., then Vice President and Regional Manager of Right of Way Associates.³ That article mentioned that a major pipeline transmission company in the Pacific Northwest develops a comparable appraisal map prior to establishing the offering price for rights of way. Landowners are offered amounts based on 60 percent of the appraised value. This is for agricultural land and crop damages are additional.

Ewing said that, normally, compensation for easements ranges from 50 to 100 percent of the fee value and consequential damages are paid, if any. Consequential damages arise as a result of a taking, and/or construction on other lands.⁴ For non-agricultural land, consideration is given for the loss of potential for development, as well.

Foster Lamb, formerly of the Bureau of Reclamation, said they paid fee simple value for a half acre area around transmission towers and 25 to 50 percent of fee for the transmission line easement areas.

Dean Brown, of the University of Saskatchewan, BC, in a study published in January of 1976 reported that local electric utilities are paid 30 to 50 percent of fee value for transmission lines.⁵

Consequently, those acquiring

pipeline rights historically paid 50 percent of fee in the 1970s. Some paid 60 percent and compensation reportedly went as high as 100 percent. Transmission line easements were 25 to 75 percent of fee value then. Damages were estimated on an individual parcel basis.

To see if this information was still up to date in late 1989, we interviewed Carl Meyer, who was Chair of the International Right of Way Association's Pipeline Committee and Supervisor of the Land and Right of Way Department for ARCO Pipeline Company in Independence, Kansas by telephone. He explained that compensation for a typical easement was based on a percent of the fee simple market value, or on a cost-per-lineal-rod basis. He explained that if the size of the gas pipeline being put in were small, compensation would be 50 percent of fee value. However, if it is larger, as in this case with a 36-inch line, compensation should be higher or 75 to 100 percent of fee value in his opinion (damages within the right of way included).

We also spoke to Don Zimmerman,

Principal of Z-Land Services in Huntington Beach, California, on October 3, 1989, who was currently working on the UNOCAL pipeline. He had 26 years of experience with right-of-way acquisition and pipeline easements. He said that he was negotiating land on a cost-per-lineal-foot in his current project, but that if the percent of fee value method is used, 50 percent of fee is typically paid for the right of way. Damages outside the right of way would be estimated on an individual parcel basis and would be in addition to the 50 percent of fee amount.

We spoke to Jack McDonald, Chief Appraiser for the Bureau of Land Management for the state of Utah, who told us that at that time there were typically two ways to acquire easements for pipelines: by a percent of fee simple market value or by the lineal rod. The government typically required 40 percent of fee value. Compensation by the rod is typically used for land with market values less than \$1,000 per acre. McDonald said he has heard of compensation for pipeline easements ranging from 40 to 70 percent. This would only

Interviews and Research Summary Chart

Contact	Company/Source	% of Fee Paid for Permanent Easement
Chris Guinn	Alyeska Pipeline Project	50%
Tracy Shepherd/ Tim Blackham/Don Moore	Mountain Fuel Supply/Questar Gas	50%
Joe Rogoiwo	Exxon Pipeline Company	50%
George Adams	Chevron Pipeline Company	50%
Rex Johnson	Northwest Pipeline	50%
Kirk Morgan	Kern River Pipeline	50% to 75%
Foster Lamb	Bureau of Reclamation	25% to 50%
Dean Brown	University of Saskatchewan, BC	30% to 50%
Don Zimmerman	Z-Land Services	50%
Jack McDonald	Bureau of Land Management	Leases based upon 40% of fee value calculation
Carl Meyer	IRWA Pipeline Committee	50% for small diameter, 75% to 100% for large diameter pipelines
Max Derbes, Jr.	IRWA Article	50% to 75%
William O. Ewing	IRWA Article	50% to 100%

be attributable to the right of way put under easement. Damages would be an additional amount to be added to this by the judgement of the appraiser, or by negotiation.

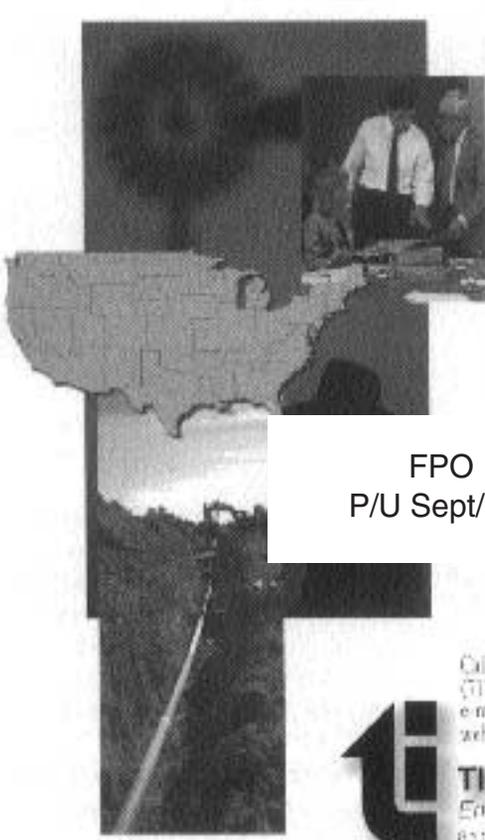
That information adds to and supports the information we had acquired. In our opinion, the appropriate method to estimate the amount of compensation for the right of way is to apply a percent of the fee market value to the easement area. The percent of fee simple value paid should be 50 to 75 percent in the late 1980s, typically 50 percent, in our opinion, plus actual damages caused by construction if not corrected (crop loss, trees, fences, outbuildings, compaction, etc.).

Temporary Construction Easements

Meyer said that if a temporary easement were required, 25 to 50 percent of fee was typically paid. We have made numerous appraisals involving highway construction or widening where temporary construction easements were required. We have generally treated compensation for them as a rent on the land during the period of construction only, and not as a percent of fee value for the land affected. We believe this is a more accurate method of compensation since the land is only temporarily affected.

Kirk Morgan, Manager of Right of Way for the Kern River Gas Transmission Company in 1989, explained that the construction period for the pipeline would typically be from six to eight weeks, maximum.

To pay 25 to 50 percent of fee value for this short amount of time would be excessive in our opinion. To estimate the yearly rent for the land, we estimate the market value of the land and then typically apply a 10 percent of fee value land rent over the construction period, plus any actual damages not corrected. The local long-term land rental in this area is 10 percent. Check for local support in your area. We are not asserting that long-term rental rates are the same as short-term rates as we have not studied that issue. ➤



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Handling Damages

Meyer explained that the best method of handling damages is by what he called “pre-settlement” estimates. That means to estimate them before piping instead of a “wait and see” agreement where claims never quit. He said that if the pipeline is going through industrial or pastureland, damages are minimal or

non-existent. In cropland areas, the total amount of bushels per acre lost should be estimated and paid for up front to avoid future crop loss claims.

Meyer said that no damages are applied to the remainders of affected parcels. Any real or perceived damages to the remainders are considered to be compensated for by paying a percent of

fee value for the land affected within the acquired right of way, or are included in the amount paid per rod. We disagree with this concept and believe that additional compensation may be required if the easement is situated in such a way as to encroach on existing improvements, or if it renders the remainder less usable.

Meyer suggested two factors that could be included as part of the construction engineering and could help reduce possible damages. First, the pipeline should be buried four to five feet deep. We noticed on the easement document to be used in conjunction with the instant project that the Grantee guarantees to bury the pipeline at least 30 inches deep. We suggested that this depth be increased.

Kirk Morgan, with Kern River, explained that they intended to bury the pipeline at least five feet deep in the agricultural areas. This means five feet of fill on top of the three-foot pipe and perhaps an additional one-foot below that, or a potential nine-foot deep trench. This is to avoid conflicts with farming machinery that may dig deep into the soil. They are considering keeping it that deep in areas near transmission lines to avoid potential damage caused by the heavy equipment used to repair and maintain them.

Second, Meyer suggested a “double ditch” method, which allows the topsoil to be separated from subsoil and not mix them together. In this manner, the poor soils can be pushed back first and the topsoil is saved. Morgan explained that Kern River used the double ditch method in agricultural areas to salvage as much topsoil as possible and filled it in last.

Morgan also explained that the pipeline in the Salt Lake area segment would be in a Class 3 location. The pipe in this location has to have x-rays of 100 percent of all welds on the pipe; and it goes through stringent testing requirements. It has extra thick walls. It is operated at a maximum allowable operating pressure of 60 percent of its designed strength, which is a not quite a double design factor.

[RIGHT OF WAY ACQUISITION SHOULD NOT BE]

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It is possible, in our opinion, that the remaining parcel can be damaged by a pipeline crossing a parcel and that compensation may be required beyond that paid for land and uncorrected damages within the right of way. In such a case, a complete "before" and "after" appraisal is indicated.

Utah Power & Light Properties

Utah Power & Light Company has fee simple interest in most all of their parcels affected by the new pipeline that we will be involved with. Compensation for the Utah Power & Light land affected by the pipeline easement imposed upon it should be handled the same as for any other fee simple owner; that is, 50 to 75 percent of fee simple value in our opinion. The fee simple market value of the narrow strips of Utah Power & Light land is considered to be the same as adjoining land values, or "across the fence" values.

Private Owner with Existing Easement

We have been informed that some subject parcels that are privately owned have existing easements for transmission lines that will be additionally impacted by the pipeline easement. This complicates the determination of compensation for such areas. Neither the first utility company, nor the property owner, has total control over all the bundle of rights within the existing easement area.

According to our sources, Utah Power & Light typically pays 60 percent of fee value for their easements so we assume they have 60 percent interest in the affected right of way property. There remains the other interested party, the property owner, who has a 40 percent interest. Who should receive compensation for the right of way to be put under new easement? Who should be paid damages? Should the property owner receive compensation for the right of way to be acquired based on his ownership interest of 40 percent of fee value? Or UP&L, based on their 60 percent interest? Or both?

Jack McDonald of the Bureau of Land

National Joint Use Conference

October 26 & 27, 1998

Conference Check-in,
Vendor Night & Refreshments
7 p.m. to 9 p.m. on October 25

A two-day conference featuring presentations on the influence of new technologies, legislation and changing business environments in the joint use specialization. Topics to be covered will include the Telecommunications, Wireless Communications, and Issues and

Registration thereafter

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National Highway/Utility Conference

October 28, 29 & 30, 1998

Conference Check-in,
Vendor Night & Refreshments
7 p.m. to 9 p.m. on October 27

A three-day conference to promote better understanding, cooperation, coordination and communication among utilities and governmental agencies at all levels. Topics to be covered will include Deregulation of the Power Industry, Desalination Affecting State Rights of Way, NEXTEA, One-Call, Railroad Issues, NAFTA, Subsurface Engineering, Outsourcing, Environmental Issues and New Technology to name a few.

Registration Fee: \$370 until September 24; thereafter \$400

To obtain registration information contact:

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Both conferences will be held at the Galt House Hotel, Fourth Street at River, Louisville, Kentucky 40204. For hotel reservations, call (502) 589-5200. Mention the conferences to receive special room rates.

Management explained that with an easement within an easement situation, or shared corridors, the first utility has typically already gained control over that area within the original easement, unless otherwise stipulated. They often retain the right to put in an additional line. The property owner (or the party with 40 percent interest) may or may not be able to give permission for another utility to use the same easement, if it is an “exclusive” easement. The wording of the easement agreement is critical. (Barnes)

Permission for a second utility to use this same right of way under an existing easement must be gained, either voluntarily or through condemnation, from the first utility company. Therefore, although the property owner still has an interest in the easement area, he does not receive any compensation from the second easement for the acquisition of the right of way according to

Permission for a second utility to use this same right of way under an existing easement must be gained, either voluntarily or through condemnation, from the first utility company.

McDonald. The interest that has been divided, or lessened, is that of the first utility company, so they are the ones to receive compensation. We have other advice to the contrary if it is a “nonexclusive” easement.⁶ Damages may be applicable to both the property owner and the utility company. The company attorneys should be the ultimate arbiters after studying the specific documents recorded.

The question arises, how much is just compensation for an easement within an easement? Based on the information included in this study, compensation should be based on 50 to 75 percent of whatever interest is owned by the existing utility company. If they have a 60 percent interest (or paid 60 percent of the fee value to acquire a non-exclusive easement) compensation should be 50 to 75 percent of 60 percent of the fee value in our opinion. This amount would be compensation for the



right of way for the new gas line easement. Any uncorrected damages within the right of way should be paid in addition. Damages to the remainder of the existing easement

are also possible. These would have to be estimated on an individual basis.

In our opinion, regarding compensation for the shared right of way to be acquired and damages within the new easement, Utah Power & Light should receive 50 to 75 percent of their interest (say 60 percent) in the fee value, or 30 to 45 percent of the fee simple value. The property owner receives 50 to 75 percent compensation for his interest (say 20 to 30 percent) in the right of way acquired, (unless the easement agreement is specifically exclusive). The parties may be entitled to just compensation for a temporary easement during the construction period. This could be determined in the same way as for temporary construction easements in our opinion; or perhaps in the negotiation process.

Damages to any remainders that are not considered to be compensated by

the 50 to 75 percent for the land encumbrance would need to be estimated individually in specific “before” and “after” appraisals on those parcels.

This study was again updated in May 1995. We re-contacted some of the same interview participants where possible, or the appropriate person from the various sources to update our on-going study. Their comments are summarized by source as follows:

IRWA Pipeline Committee

Alan D. Wurtz, SR/WA, was the 1994-95 Pipeline Committee Chair for IRWA. He was cooperative in answering questions about the permanent easement compensation custom for his seven state wide area (including Oklahoma and Missouri). He also offered to pose our questions to the Pipeline Committee members who would be meeting on April 29, 1995 at Durango, Colorado and would give us their responses. The members of the Pipeline Committee represent the 48 mainland United States and would provide us with a feel for national trends.

Wurtz explained that in his experience, compensation for permanent easements typically begin “and hopefully end” at 50 percent for the underlying market value as a starting point. However, after

negotiations it can go as high as 100 percent or more of the underlying fee value in some cases where there is particular need for a certain parcel, or there are other extenuating circumstances. He said that this method is used for both rural and urban areas, but that he has noticed a recent trend where landowners in more urban areas seem to be more knowledgeable of real estate related issues and are requiring compensation amounts toward the upper end of the range.

We spoke again to Wurtz after this meeting in Durango, Colorado with the IRWA Pipeline Committee. He said that the pipeline companies represented at the meeting included Southern California Gas, ARCO, AMOCO, B&P Oil, El Paso Natural Gas, Williams & Williams Gas, ENRON, EXXON (represented by Haskall Rogers who would become the Chair for 1995-96 of the IRWA Pipeline Committee), Pacific Gas Transmission, NAPCO and Shell Pipeline. He said that they discussed the issues we had included in our questionnaire and had collectively agreed that for compensation of permanent easements in urban areas, 50 percent of the underlying fee value is the opening negotiating point and where they try to stay. More may be paid depending upon how resistant the owner is and how much they need the parcel. In rural areas, permanent easements are paid based upon the going rate of the cost per rod in the area. Where there are many pipelines in an area, there is typically a going rate that everyone is using and which the farmers usually agree to.

For temporary easements, compensation is based upon the actual loss to the owner. This is often times an area used for a "fudge factor" in negotiation as a way to give an owner more money to increase chances of settlement. The underlying value of the land is often used as a basis and there are instances where a rent on the land based on yield rates derived from land leases are used over the period of the easement.

Damages inside the permanent easement area are considered in addition to

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the 50 percent of fee paid. Either the construction crew will make restoration efforts to reestablish the area as it was in the before condition, or actual replacement costs are paid to the owner so he can do it himself if he so desires.

Damages to remainders outside of the easement area are also in addition to the compensation paid for the permanent or temporary easement and are estimated on a case by case basis. Consideration is given to potential development before and after the project (lost lots, increased development costs, access).

Questar Pipeline Company

Timothy R. Blackham is the Director of Property and Rights of Way for Questar Pipeline Company based out of Salt Lake City. They manage high-pressure transmission pipelines carrying natural gas. He said that their company uses 50 percent of the underlying land value as a starting point for permanent

easement negotiations for these pipelines. He said that this has been the custom for many years and is used from agricultural type land to more urban type land uses. He is unaware of any situations where any pipeline has caused damages to the remainder in the form of a loss of market value. Blackham also said that for pipelines in very rural areas, he uses a compensation amount per rod for permanent easements).

We found in recent conversations with landmen (land persons) in the Oklahoma area that per-rod payments for pipelines are \$7 to \$20 per rod depending on the size of the pipe. Payments go up to \$40 per rod (this converts to \$4,224 per acre x 50 percent for a 50-foot wide easement).

Blackham mentioned that in his experience, he has found no instances where a property suffered value loss as a result of proximity to a natural gas line. He said that the only cases where damages occurred outside of the easement area were where the pipeline went

through a parcel in such a way as to impede or hinder development.

In such cases, damages usually occurred to the remainder and the larger parcel was often purchased rather than just acquiring an easement on a portion of it.

Mountain Fuel Supply Company

Donald D. Moore, Jr. is a Right of Way Agent for Mountain Fuel Supply Company (now Questar Corp). He has been involved with purchasing rights of way for distribution pipelines for 3 1/2 years. He said that the typical amount of compensation for permanent easements is 50 percent of the underlying land value. Moore explained that in most cases, he is able to cause very little disturbance to properties encumbered by MFS easements because they have a lot of flexibility on where they can put their lines and are usually able to put them along property lines or in setback areas causing only minor disturbances. However, in cases where this is not possible, they have paid up to 100 percent of the underlying fee value, or purchased a parcel outright.

Utah Power

Keith Corry is the property manager for Utah Power (formerly Utah Power & Light, and now a part of PacifiCorp) and is familiar, after seven years experience, with what is paid for permanent easements for transmission line corridors. He said that the amount of compensation for permanent easements for his company depends on the size of transmission line being placed in the easement. He explained that for a 46kv to 138kv line, 60 percent of the underlying fee value is typically paid. Where the line is larger, say up to their largest of 345kv, the percent of the underlying fee value paid increases up to 100 percent. Rather than pay more than 100 percent of fee value for an easement, his company will often purchase the strip in fee value if possible, or even purchase the larger parcel being impacted by the transmission line.

As a side note, Corry said that he did

EASEMENT CORRIDOR FOR SALE

LOCATION: N. E. Pennsylvania extending northward from East Stroudsburg Boro to Blakely Boro near the City of Scranton

LENGTH: Approximately 40 miles

WIDTH: 200 feet & 150 feet (with 50 ft. trim area)

GENERAL: The easement corridor was assembled for an electric transmission line, which was never built. Survey information for the corridor is up-to-date.

CONTACT: For additional information contact:

Kathy Seyler or Tom Clime
GPU Energy Real Estate Dept.
2800 Pottsville Pike
Reading, PA 19640-0001
610-921-6671 (fax 610-939-8579)



his thesis in college on the impact of electromagnetic fields on property values and that he has several such studies on file, which show little to no impact to property values resulting from proximity to power lines or EMF. He did say that in some cases, stigma was evident, but only in the form of longer periods of marketing time. He provided us copies of some of these studies.

Bureau of Land Management

Jack McDonald of the BLM said that they do not grant permanent easements, but now rather give right-of-way grants, Temporary Use Permits (TUPs), or leases to parties requesting rights of way across BLM land. These leases can be renewed without difficulty, but are subject to reappraisal every five years. The methodology used in determining the amount of rent to be paid for rights of way depends on the value of the underlying ground.

Where land is located in more urban locations, and therefore has a higher underlying value, it is appraised and the rent is estimated based upon 40 percent of the fee simple land value. Once that is determined (40 percent of the fee value), a rent is established using an annual return requirement, currently around 8.5 to 9 percent. This calculates the annual rental of the 30-year lease to be paid to the BLM for the right of way.

Where the land is very rural, the value is determined by an amount per rod, usually \$10 to \$20 per rod and then a rent is determined based upon that amount. Congress has developed a schedule for rural land designed to cut down on costs and time for appraisals. Blanket land values are used for specified zone values within large, generalized areas for each particular county in each state. The amounts are tied to a conservative index (The GNP implicit Price Deflator Index, less than the CPI) and updated annually.⁷

Conclusion

There has always been an argument between those who contend that the only true measure of compensation for

easements is "Paired-sales analysis," and practicing right-of-way agents. Gordon Green in his 1992 Appraisal Journal article, "... a common sense approach," says that paired sales are the only measure of fair market value, "as opposed to precedent actions."⁸ He is saying that you can't pay what others pay. You will pay too much that way. You have to prove it in the market by "paired sales."

Max Derbes in his 1973 articles says it both ways. "After measuring the true economic impact (primarily by sales with similar conditions ...) then the law and local jurisprudence must be considered. For instance, in Louisiana jurisprudence, the courts have held ... that 50 to 75 percent of fee value for the same rights through crop lands" is proper. "The application of laws or jurisprudence or even practice is in the realm of custom and only indirectly relates to the value science or art." (Derbes)

After more than 30 years of practice in right-of-way appraising, we think their differences are semantics and not substance. First, the "realm of custom" is the real world in which purchasers of right of way operate. "Precedence" is what just occurred on a nearby or previous pipeline acquisition.

If "custom" and "precedence" in the area is ignored on the pipeline project to follow nobody will be able to purchase any new rights of way. The real common sense is to follow local custom and precedents.

Is this a violation of "fair market value?" we think not for the reason that right-of-way acquisition is a sub-market all its own. There are few sales of 50-foot wide strips of land. If 50 percent of fee simple value is local, or industry, custom and precedent then that is the sub-market value and those easement purchases are the most comparable sales.

Is there really a contradiction between the authors of all the articles in the attached bibliography? If we analyze precedent easement purchases as sales, paired against the "before" fee value, we have specific sub-market transactional data. Yes, it is under the threat of

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It's an Internet mailing list dedicated to right-of-way topics. Anything posted to the list is sent to your e-mail address. It's a free, virtual discussion group created to facilitate the exchange of ideas, news, etc., and it's open to anyone interested in the right-of-way profession.

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condemnation, but all easements are. We have a recent sale of a right of way between two private parties without the power of condemnation that follows custom at 50 percent of fee value.

This is our advice: Pay for rights of way based on custom and precedents. Then, if condemnation is necessary have it appraised on a "paired sale" basis (which will probably be lower) or whatever local courts require and try the case on that basis.

The majority of responses from the local sources indicated that compensation for permanent easements acquired for use in right of way corridors, particularly for underground pipelines, begins around 50 percent of the underlying fee simple land market value in urban or suburban locations across the country, over the years. This is strongly supported by the national information provided by the IRWA Pipeline Committee discussions.

Utah Power paid 60 percent of fee value for permanent easements in their corridors, but transmission lines are more visible and harder to work around. The 40 percent of fee value used for charges by the BLM is not for a permanent easement, but rather is the basis for a 30-year lease rental rate and is not directly comparable (The smaller the interest received the lower the payment?).

The values paid in the late 1930s and early 1940s of \$0.25 per rod increased to \$1 per rod in the late 1940s and early 1950s when most pipeline mileage was constructed. Since the late 1950s the acquisition process became more complex due to increased land prices and urbanized locations. (Ewing)

In recent years the grantor has become more sophisticated (whether public agencies, corporations, or individuals). The price paid tends to continue to rise and is much higher per rod now. It has to be higher to keep up with inflation since it is a fixed payment and not a percentage of fee value.

Pipeline easement compensation has been relatively stable for 30 years at around 50 percent of fee simple value. This keeps up with inflation as fee simple values increase. Since values tend to be in flux, studies should be made for each new project by a qualified right-of-way appraiser. Surveys of current custom and practice should be made.

In our opinion, the appropriate method for determining compensation for a permanent underground pipeline easement and damages within the right of way is a percent of the underlying fee simple land market value. Based upon custom for local utilities of this nature, the appropriate percentage of fee to be paid is 50 percent in our opinion. This is supported by information both locally and nationally and by other types of easement, or lease compensations. ■

Notes

1. Only where the grant conveying the easement specifically characterizes the easement as "exclusive" does the grantor lose the right to use the easement in common with the grantee. *Bergen Ditch & Reservoir Co., W. Barnes*, 683 p. 2d 365 (Colo. App. 1984).
2. Derbes, Max Jr., "Electric Transmission Right of Way Policy," *Right of Way* (Feb. 1973) pp. 20-23.
3. Ewing, William O. Jr., "Offering Prices for Pipeline Rights Evaluated," *Right of Way* (Feb. 1968) pp. 44-47.
4. Byrl Boyce, Ed., *Real Estate Terminology*, AIREA 1987. Quoted in Eaton "Real Estate Value in Litigation" 1995
5. Brown, Dean J.A., "The Effect of Power Line Structures and Easements on Farmland Values," *Right of Way* (Jan. 1976) pp. 33-38.
6. An easement that either expressly permits the use of the land within the easement by others, not only by the holder of the right-of-way but also by the owner of the servient estate (fee simple) and even by others to whom like easements are given, or that is silent on the issue of exclusivity of use results in a non-exclusive easement. *Robt. Jackson Real Est. Co. Inc. v. James* 755 S.W. 2d 343, 346 (Mo. App. 1988).
7. A more specific current analysis of BLM requirements is given in "Access Issues and Public Lands Rights of Way," Mark D. Bingham, *Public Land Law II* (Rocky Mountain Mining Law Foundation 1997) pp. 7-11 to 7-15.
8. Green, Gordon, MAI "Easement to Fee Simple Value Ratios for Electric Transmission Line Easements: A Common Sense Approach," *Appraisal Journal* (July 1992) pp. 399-412.

Other Resources

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Dowell, Carr T., III, "Appraisal of Pipeline Right of Way," *Right of Way* (June 1984).

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