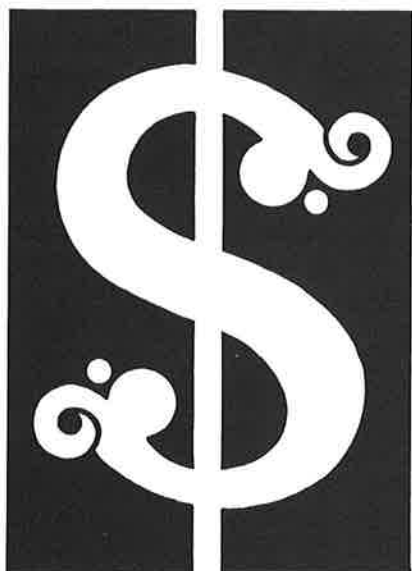


In opposition to the opportunity cost doctrine

by Barry W. Ritchey



The Arabs exploited the whole world by applying the opportunity cost doctrine to the price of oil.

The following article is in response to an article published in the October 1984 issue of RIGHT OF WAY, "Application of the Opportunity Cost Doctrine to Right of Way Valuation."

Barry W. Ritchey is Vice President of Operations for the Trans Quebec and Maritimes organization located in Montreal, Quebec. Mr. Ritchey's reply to this controversial argument seems to reflect the near unanimous position of right of way professionals who took the time to speak with IRWA Director of Publications, Michael E. Powell.

Henry Ford knew that he could build an automobile for the very rich only and make a profit. Fortunately, he knew that an inexpensive auto for everyone with a modest profit for each was a better way.

Dr. Jonas Salk could have charged millions or even billions for his vaccine to prevent poliomyelitis. No one else had a similar substance. Society's alternative was to keep on paying the cost of supporting the stricken people. Fortunately, Dr. Salk gave his vaccine to humanity, for the betterment of all the world. He was not opportunistic.

The world is full of exploiters. Money lenders exploit the poor who have no other good choices but to pay high rates of interest.

The Arabs exploited the whole world by applying the Opportunity Cost doctrine to the price of oil. Now we see that they perhaps went too far and virtual market and price chaos have resulted.

The strength of the North American business society has been founded on the provision of certain basic services at a value as low as possible. We have thus built roads, railways, ships, airlines, communications and yes, pipelines to provide services at reasonable cost. Rates charged by such enterprises are not based on the cost of alternates but on the basis of real cost plus a reasonable profit.

Through the law, society grants pipelines the right of eminent domain or the right to expropriate. Given these rights which are necessary in order to establish a pipeline, the law also provides that such pipelines must be in the public interest or a benefit to the greater society. To protect against exploitation of society that may have few alternatives, the pipeline rates and profits are controlled by a regulated return to investment.

The article "Application of the Opportunity Cost Doctrine to Right of Way Valuation" suggests that "alternative cost" should be applied in the evaluation of rights-of-way. Examples given are those between American Indian Tribes and energy transmission companies.

First, to assume that negotiation of land rights with Indian Tribes is normal and free negotiation is to simply ignore the facts. Rather the large sums paid are really extortion payments made to

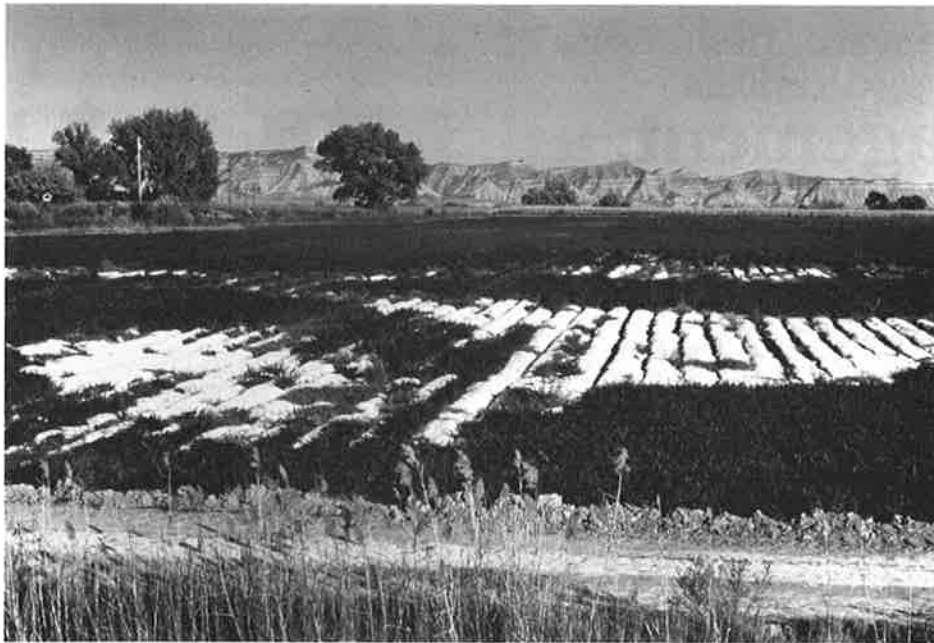
groups who are really exerting their native rights, including special land rights. In those cases it is probable that the notion of eminent domain does not apply.

The cost of relocating a pipeline right-of-way only applies if the remainder of the route is retained. If adjacent sections are also rerouted it may well be that the cost is the same. It is only when the planning process is complete and acquisition of land begins that such local alternative cost of rerouting can be identified. Why should one person or group be granted a huge benefit just because they happen to enter the process when change appears to have such large costs associated. An equitable legal process would suggest that neighbors of such cases be allowed to re-open negotiations on the same basis. Obviously such illogical reasoning cannot be permitted.

Pipelines carry gases and fluids of high value. The use of land is no different than if the commodity is water. To allow individuals to obtain compensation based on the value of goods handled seriously breaches the concept of public convenience and necessity, and the idea of benefit for all.

Highways carry trucks. Some trucks carry heavy sand which utilizes the structure to its capacity. Others carry

(see Opposition, pg. 21)



Salt deposits along the proposed corridor.

struction phases. Preferred corridors and alternatives will be selected based on feedback from further studies and public meetings in the project area.

To date, Reclamation and Aquatrain, Inc., have conducted numerous informal meetings and briefings to identify public and environmental group concerns associated with the project. These concerns have been taken into account in formulating the project, and through this effort, many potential undesirable aspects have been eliminated or minimized. Also, the potential has been reduced for unknown concerns surfacing during preparation and review of the project environmental impact statement which could cause considerable cost increases and time delays. Reclamation and Aquatrain will continue to identify concerns with formal EIS scoping and an active public involvement program through construction. Reclamation will prepare the project EIS, satisfy all National Environmental Policy Act requirements, and obtain Federal and state permits. These activities will be done in parallel and are scheduled to run from January 1985 through December 1986.

Also scheduled to begin in 1985 are design and construction of a demonstration facility to confirm the liquid carbon dioxide transport technology. The feasibility of this technology has been

established by a small pilot test loop, and a commercial-size demonstration system is needed to obtain design, operation, and maintenance data. The facility will be sited at an existing powerplant, and discussions with other groups have been initiated to determine possible cooperation.

Western Resources Transport is a pioneering effort between the public and private sectors, joining the respective talents and resources of each to achieve benefits for the Nation. Incorporation of the diverse needs and desires of government, industry, and the public will lead to a viable project with widespread support.

Enhancements (cont. from pg. 17)

substitution of a hard-surfaced road for a gravel road enhanced land value and is considered special benefits. (Herndon V. Pulaski County). (Ball V. Independence Count 217 S.W. 2d 913) (Bridgman V. Baxter County 148 S.W. 2d 673).

Each jurisdiction within which the appraiser works may be different and it is the appraiser's responsibility to find out what conditions apply to each project being appraised. The best way to find out about these conditions is to discuss with the attorney involved the points of law that affect the appraisal.

Opportunity (cont. from pg. 5)

paper money of very high value but no significant weight. Who should pay the most? Does the landowner share in the potential profit of all highway users? Of course not, and no one would suggest such an idea and be considered legitimate.

Newly coined titles like "opportunity cost doctrine" are catchy. They seem to acquire validity with mere use. Further when men of letters prepare articles for magazines which present only a biased accounting principle with inapplicable examples, we are lulled into the belief that such may be reasonable.

No one likes to lose his land or land rights to expropriation. Due to the development of valid utilities, which are constructed for the good of all, we accept the notion. Our legislators have control, through valid laws, to protect against indiscriminate taking of lands and the gaining of huge profits. We do not need creative accounting techniques to complicate this process.

The market value approach to land value has some problems and limitations. Recently in Canada the government enacted legislation to provide in part for such problems. It too has limitations, however, it does afford the owner of potential pipeline or power line right-of-way with a means to protect against future losses. The notion is one of periodic payment based on market value and renegotiable every 5 years. With a properly applied term of payment and interest rates to reflect average business conditions such an approach would protect the owner who believes his long-term interests have been lost.

Finally, in the process of obtaining right-of-way for a linear project it is conceded by experienced landmen that equitable treatment of adjacent owners is imperative to both obtaining easements and for good ongoing relationships. The "opportunity cost doctrine" absolutely defies the principle of equal treatment. By its name it is "opportunistic" and not realistic.

Experienced and knowledgeable land people should neither condone nor accept such narrow and ill-conceived doctrines. Neither the profession nor the public would be so served.