

## FEDERAL LAND POLICY AND MANAGEMENT ACT REGULATIONS

by John W. Arlidge

Under the Federal Land Policy and Management Act land rights may be acquired by individuals under Title II, Title III and Title V. Regulations have been established under these Titles for management of rights-of-way, leases, permits and easements and land exchanges. For the most part, these regulations are similar to regulations under previous Acts for land right acquisitions on federal lands. However, the regulations now in effect under the Federal Land Policy and Management Act have in many ways been expanded from the previous regulations. This expansion has hindered and, in many cases, prevented individuals from obtaining the necessary land rights from the federal government and has placed the land users and the federal government in adversary positions. In particular, it has hindered the continuation of commerce and business within the western United States more than any other land regulation previously issued by the federal government.

The most onerous component is the length of term allowed for leases and grants. The Federal Land Policy and Management Act, Title V, states "The Secretary should take into consideration the cost of its facilities, its useful life and any public purposes it serves in determining duration of rights-of-way . . ." The Congressional Record regarding this matter indicates that Congress fully intended to provide for obtaining the necessary land rights for the full term of need and use insofar as it would be consistent with public purposes. But the regulations as written specify leases shall be issued for a term not to exceed thirty years (43 C.F.R., Section 2920.1). Certainly this does not fulfill the requirements of the Act for facilities such as electric generating plants, coal gasification plants, etc., with useful lives of fifty years and more.

Lease regulations further state that the



rental fee and terms and conditions of the lease may be adjusted every five years or earlier to reflect "current fair market value" (40 C.F.R., Section 29.20.7). A lease that is adjusted every five years at the sole discretion of the federal government is in fact only a five year lease; creating uncertain market conditions for an individual planning investments on such lands.

To further complicate this issue, the terms of the lease call for termination and suspension of the lease should the "authorized officer" determine there is noncompliance in the "terms and conditions of land use" (40 C.F.R., Section 2920.8-3). In large projects such as major electric power generating plants serving large sections of the general public an "authorized officer's" determination of non-compliance could result in "a worst-case" a shutdown of a generating station with a resultant lack of electric power to a community. Such a situation could result in damages totalling several million dollars, plus impact on public safety.

The length of lease or grant should be consistent with the Act and for the useful

(see Act, pg. 23)

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