

Selling Northern Michigan Riverlands

The Changing Directions of a Right of Way Department

William L. Reid, SR/WA

Effective and timely disposal of excess property is as significant a part of the right of way function as are acquisition and liaison. Sometimes, for a while, they are more important. Years ago, there was a radio whodunit show featuring a man known only as Mr. Chameleon. Now the chameleon is a lizard-like animal that defends himself by adopting the color of his surroundings. Mr. Chameleon, the private eye, solved all of his cases by going into disguises and changing his color, if you will, to the surroundings of his prey in order to catch the criminal.

Sometimes I think that we, in the right of way profession, have to be chameleons too, because we have to change the "color" of our direction, attitude and emphasis so often. When rapid expansion is occurring, acquisition takes precedence. Util-

ity companies, for example, must acquire new generating plant sites and "put them in the bank" for future use. Rights of way between these sites and major load centers must also be purchased. At other times, emphasis will be on securing of highway, railroad and similar permits. And, then, all of a sudden, economic problems, inflation and the cost of essential construction create a tremendous need for funds. So the effort is to find ways to raise more capital. One good way to do this is through disposal of surplus land and landrights.

This, then, is the story of the sale by Consumers Power Company of about 75,000 acres of land along the Au Sable and Manistee Rivers in Northern Michigan. The situation was unique, the problems were complicated, but the results have been

William Reid, SR/WA, is Manager of Land and Right-of-Way for the Consumers Power Company. Employed by the Company for 35 years, Reid has headed his department for 19 years.

An active supporter of the Association and 28-year member of Chapter 7, Reid has served in numerous committees and offices, culminating as International President during the 1976-77 fiscal year. Currently he serves on the Advisory Council to the International Executive Committee.

very pleasing.

The lands are located along two major trout streams in the northern part of the lower peninsula of Michigan that, by coincidence, rise within about five miles of each other near the town of Grayling, Michigan. The Au Sable flows in an easterly direction and empties into Lake Huron at Oscoda, while the Manistee flows in a westerly and southwesterly direction and empties

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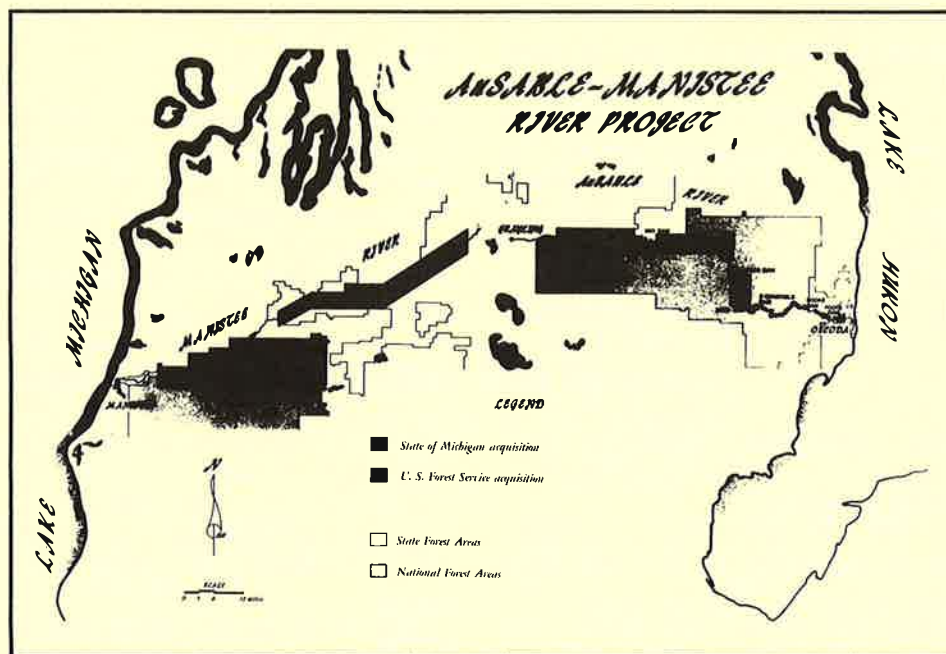
into Lake Michigan at the City of Manistee.

In the early days, before the turn of this century, almost all of the land on these two rivers was bought up by lumbering interests who clear-cut the timber without environmental consideration or restraint. They cut down all the trees, pushed the logs into the river, floated them downstream, took them to sawmills and then walked away. But just about the time they finished the logging operation, hydroelectric power came into prominence and small power companies bought up the then barren lands. Six dams were installed on the Au Sable River, two on the Manistee and there was capacity for at least six more dams. Over the years, Consumers Power Company acquired these smaller power companies plus many others, establishing the company in these areas.

In the succeeding years, we conducted massive reforestation programs, often planting more than a million trees a year and restoring much of the ecological balance which the lumbering effort had destroyed.

But additional dams were never built. As time went along, the Company developed fossil fuel plants in the southern part of the state nearer to the load centers — thus eliminating the need for further hydro development on the rivers. Nonetheless, we continued to own these lands, thinking we might sometime still need them. Besides, neither the investment in the land nor the management costs were very large. We leased out more than 300 sites to individuals for recreation purposes and the lessees built various types of cabins on them. Some are very primitive cabins — tar-paper shacks; some are mobile homes and others are quite expensive cottages. Other lands were leased to public agencies at various levels of government for campgrounds, parks, picnic areas and the like. All the rest of the land, and that's the majority of 75,000 acres, was simply held for the benefit of the public for various day use recreational activities, such as hunting, fishing and hiking.

Everything was beautiful. Our



costs were within reason and the public relations benefits were good! But it didn't stay that way. Taxes began to rise. People pressures began to mount. The interstate highway system, coupled with increasing amounts of leisure and vacation time, put intensive pressure on the lands. People came "up north" and camped wherever they pleased, often leaving litter, garbage and open toilets in their wake. We had trouble complying with Michigan Health Department regulations concerning water and sanitation. We finally had to hire patrolmen to go up and down the river asking people to pack up their trailers and tents and move into the public camping areas. We developed a brochure to distribute to these people, and at tourist information centers around the state, showing the location of public campgrounds and other information. The strong public support we had so long enjoyed began to waiver.

On top of all this came an unparalleled need for capital funds that has beset almost every utility at one time or another, and it hit ours a little more than some because of a nuclear plant that we were building. Accordingly, in the latter part of 1974, we went to our management and suggested that it was time to sell these surplus river lands. After a lot of discussion, we were told

Close up and state maps depicting the areas discussed in this article. Consumers Power Company owned two-thirds of all land along the Manistee and AuSable Rivers in Northern Michigan.

"OK, let's see what we can do." And that's where the real work started.

We put together a program, the objective of which was to find a balance between the need for capital, the commitments written or implied to our lessees which would give them an opportunity to buy their sites, the environmental and ecological concern, and the need for recreation land in that part of the state.

All of the land not currently under lease would be offered either to the State of Michigan Department of Natural Resources (MDNR) or to the United States Forest Service (USFS). Virtually all of the lands were within the boundary of either a National Forest or a state wildlife or forest area. It was also decided that each party holding a recreation lease would be given three options: to purchase the site at its appraised price; to enter into a 30-year unbreakable lease at a much higher rent, with rental adjustments at 5-year intervals; or to continue the existing year-to-year lease. Under the latter two alternatives, we would later sell the underlying fee subject to the lease.

It is an understatement that there were plenty of problems to solve before we could move ahead with the

actual sales. First and probably foremost was the appraisal problem — finding a way to establish a proper fair market value. The basic issue was comparables, because we already owned two-thirds of all the lands on these two rivers and nothing of this magnitude had been sold for over 50 years. Nevertheless, our appraisers were able to develop a comparable book of several hundred sales of similar river properties. This helped a lot on the lease sites but it was even more difficult to find comps for bulk sales to the government agencies.

Next came the problem of negotiation, especially on the very large parcels to be sold to the government. So many policies and regulations cropped up and the government found the funds very hard to come by. Also, there is very little negotiating room once the agency is locked into its own appraisal.

Then there was the matter of reservations. Consumer Power Company is a combination gas and electric company and so we reserved minerals on all of the lands. Easements were required to protect existing transmission and distribution lines. In addition, in several locations we decided to hold back strips of land for future transmission line rights of way so that we would be able to get across the rivers without restrictions when the need arose.

Title commitments were a bit more difficult to acquire than we expected, because at the very time we were seeking them from fairly small Northern Michigan title companies, the oil and gas boom of the late 1970s was in progress and there was a lot of competition for the available title work time and manpower.

An even more serious obstacle was the loss of local tax revenue on the land sold to the state and federal government. These agencies pay very small amounts to the local units in lieu of ad valorem taxes. In one area sold to the USFS, approximately 6,000 acres were in the same school district — a very large geographic, small population, depressed area. The lost tax revenue equated to nearly a two mill increase on the

taxes of every landowner in the district.

Securing release of the lands from our Trust Mortgage provided yet another complication. The government agencies cannot purchase subject to a mortgage and the rules of our indenture are that property cannot be released from it until an irrevocable contract to sell is in effect. The contract cannot be signed until the purchase money is appropriated by the Congress or the State Legislature and the money is available. This, then, became a chicken and egg proposition of the highest order and required carefully planned and timed execution of many documents.

Sale of the private leases created another whole set of issues. One was to avoid conflict with the Michigan Subdivision Control Act. If more than four parcels of less than ten acres in size are sold out of a larger parcel, then the entire property must be formally subdivided. In this case, the entire combination of the two rivers would be regarded as one huge parcel. Therefore, each private lease, regardless of its initial size, had to be increased to ten-plus acres to avoid the complication of this Act.

The Michigan Land Sales Act and the Federal Interstate Land Sales Act were the next obstacles. The only way we could avoid costly and time-consuming registration under these Acts was to make certain that offers were made only to the lessees and then without any sort of "promotional" pressure. Thus, the offering of an alternative to continue leasing rather than buying was very significant and helpful.

Another problem concerned restrictions, so that a lessee could not buy his 10 acres and then divide it up into 50-foot lots, creating the very thing everybody was trying to avoid. This was accomplished by recording prior to the sale to the lessees a Declaration of Restrictions. The restrictions include:

1. Lands shall be used for single family residential and recreational purposes only.
2. Not more than one permanent single family structure per site.

3. No buildings may be erected within 200 feet of the river's edge, although existing closer buildings are grandfathered; they may be remodeled, enlarged, or torn down and replaced.
4. No trees, except those that are dead and dying, can be removed within 100 feet of the river.
5. No billboards or commercial advertising structures or commercial activity of any kind are permitted.

Another stumbling block was road access. There are not very many public roads in this part of Northern Michigan — therefore, most of the people get into their lease sites by following private, two-track sand trails, some more than three miles long and often across private land. The only way that we could offer a site that had public access was to grant, along with the site, an easement for a roadway across land that we owned. Thus it is that many people are using an existing roadway that they've used for years across adjoining private land but they still have a "paper easement" across land that we owned and controlled, upon which they could build a road in the future if any of the owners of the private land and existing roadways should withdraw the privilege of usage.

Surveying was an extremely difficult problem because the sections are not clearly delineated and the cost of survey was unusually great. Nothing is very straightforward, making for very long and laborious descriptions which were often difficult to explain to our purchasers.

But problems are made to be solved and the solutions should lead to the accomplishment of the objective. And here's where we stood at the end of 1982.

Two major sales and one exchange have been completed with the MDNR for \$8,500,000. This includes approximately 17,000 acres. We have completed one major sale of 25,700 acres to the USFS for \$13,500,000. As far as the private leases are concerned, virtually all of them have been offered and approximately 70% of those responding have elected to

purchase. Even in these rather difficult times, we have sold over 220 parcels to lessees for over \$5,200,000. Just under 100 parcels have been leased for an annual rental of about \$35,000. In total, then, the project has raised \$27,200,000 thus far. Additional sales, aggregating about \$5.7 million, are under

negotiation for completion in 1983. This will leave about 20,000 acres to sell in future years — probably to private rather than governmental interests.

Well, why are we so proud of all this? It's because we have returned a substantial sum of money to our company in a time of great need. We

think we have found a good balance between environment, commitment to our lessees and our capital needs, as well as a balance between public and private ownership along the rivers. We've made a lot of new friends, both in government and among our lessees, and we have proved that we can work around formidable problems.

1982-83: Adjustment for the Future

by **Robert L. Art, SR/WA**
International President

As I write this last report to the membership, I am filled with mixed emotions. Although a number of items were accomplished this year, the one item that impacted everyone was the necessary financial adjustments. We had to bite the bullet and make some hard decisions to bring our finances into perspective and balance.

However, despite our financial situation, a number of things occurred which should have a positive influence on the future. New Members joining our Association over the past several months are bringing in new ideas and vitality to IRWA. While, we had only 70 members in the last six months of 1982, we added 430 new members in the first quarter of 1983. The increase in members can be attributed to expanded chapter efforts in recruitment, increased regional chairmen involvement, Membership and Public Relations Committee contacts and guidance, and last but not least, efforts to bring the Association to the member, rather than the member to the Association. Two new affiliates have been formed in Corpus Christi and Austin, Texas, Dakotas Chapter 72 was chartered, and the Tucson, Arizona, affiliate may become a Chapter soon.

Our professional development program is moving forward. Our goal this year is to obtain 350 senior candidates by July 1. At this early April writing, we have 220 candidates processed. Each year the seed will be planted, cultivated, and nurtured to fruition—that complete member participation in professional development with universal employer recognition of the Senior program will be attained.

The education program presented approximately 100 courses this year. Attendance at the various courses were down an average of 3-4 students, creating a negative cash expectation. The regional vice-chairmen are recognized for their work in coordinating courses and encouragement for chapters to present courses. The Education Foundations continue to grow from individual contributions given with the dues statement. I thank all the members who have so donated. The income used from these funds are for the development of educational courses and aids.

This next year will be a new and exciting challenge since it appears we are on the road to economic recovery. Many indicators point towards better times ahead, and I believe that our Association will improve also. I ask that you give your wholehearted support to W.A. Thomasson and the entire Executive Committee this coming year.

In closing, I want to thank all who have so unselfishly contributed time and effort to the IRWA during my tenure. I want to thank all the International Committee members and Regional Officers for

their cooperation and assistance. It has been a difficult period, but with their interest and dedication they performed well by carrying out their responsibilities. It has been a pleasure to work with so many professionals.

I also want to thank my employer, the Ohio Department of Transportation, for supporting me over the years. Also, the staff under the helm of Charles Fornaci must also be complimented for their dedication and hard work. Of all the associations that I am acquainted with, we have the smallest staff to carry out the daily duties of our organization, yet the services performed are fast and efficient.

Most importantly, I want to declare my appreciation for the support and understanding that my wife, Mary Jo, and my family has given me to make my experiences on the Executive Committee possible. It has been personally rewarding and professionally enriching.

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614-466-2279

President-elect-
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801-584-6725

Vice-President-
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