

Special-Use Authorizations on National Forest System Lands

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Update on fees, communication site policies, responsibilities for environmental studies, and terms and conditions for special-use authorizations.

At the last meeting of the IRWA Liaison Committee, in Canada, Bill Wakefield of the Forest Service gave an update on the status of several proposed policy changes involving special-use authorizations for rights of way on National Forest System lands. This report discusses where we are with those proposed changes and some actions we are taking to accomplish our work with a reduction in dollars and manpower.

Fees for Linear Rights of Way

For some time, the committee has been providing updates on the proposed linear rights of way fee schedule that we have been working on with the Bureau of Land Management. The Forest Service published its final linear rights of way fee schedule in the Federal Register on December 5, 1986. We already are beginning to implement the schedule for new special-use authorizations for linear rights of way and for those permits that were scheduled for fee review and adjustment in 1987. We will adjust the fee for other authorizations when the permits

are scheduled for a fee review. (Most permits are on a 5-year review schedule.) For example, a permit that had a fee adjustment in 1985 would be adjusted again in 1990. In the meantime, the current fees for the permit would remain unchanged.

Elements of the Fee:

a. *Zone values.* We used the value paid for lands rather than the value paid for rights of way.

b. *Differential adjustment.* We used a factor of 80% for energy pipeline, ditches and canals, and roads and 70% for other rights of way.

c. *Amortization rate.* One-year treasury securities "constant maturity" rate as of June 30. It was 6.41 as of June 30, 1986.

d. *Annual index factor.* The fee schedule will be adjusted annually by the cumulative change in the Implicit Price Deflator-Gross National Product (IPD-GNP) index.

When we implement the fee schedule, we will be amending the permits to provide for annual adjustment of the fees. In most cases, we also will remove the clause requiring the holder to relocate the facilities at their expense if the lands are needed for public purposes. We will retain a relocation clause when we are planning to reconstruct a road that will require relocation of utilities located on the right of way.

Implementation:

Phase-in of fee increases. We are phasing in fee increases under the following conditions:

- a. The fee would have to be over \$100.
- b. The increase in the rental fee would have to be in excess of 100%.
- c. Only the excess over the 100% increase would be phased in over a 3-year period.
- d. Payments would be made in three equal increments plus the annual adjustment.

Special appraisal. A fee may be based on an individual appraisal when the appraised value is 10 times higher than the fee schedule. Some individual appraisals are already being made, especially of roads to subdivisions.

Fee formula updating. We can review the fee schedule when the amortization rate changes by $\pm 50\%$ or when the cumulative change in the IPD-GNP index reaches $\pm 30\%$.

Communication Site Policy and Fees

We published the final policy on communications sites in the Federal Register on October 4, 1985. The regions are now in the process of implementing the policy. These are the main features of policy changes:

Communication site designation. Approval of communication sites will be made through land management planning and will be designated by the Regional Forester. Once a site is designated for electronic uses, permits can be approved for communication uses. Users who want to place facilities on a site that has not been designated for electronic use will have to wait until the study and analysis can be completed. We have had a similar policy for several years, but it is now formalized.

Fees. For over 35 years our fees for electronic uses have been based on the percentage of investment in the facilities and equipment permitted on the site. The fee we charged was two tenths of 1% of the investment plus 5% of income from rental of building space and equipment. We also had a very nominal minimal fee schedule that would apply when there was a low level of investment on the site (less than \$50,000). Most of the fees for the two-way radio equipment are at the minimal level of \$50 or \$100. While this system was very easy to administer, it did not result in a fair

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market rent or fee. In most cases, the fees charged by the Forest Service under this system are significantly less than rents being paid for the use of comparable sites on private lands.

The new policy requires that the fees for existing communication sites based on fair market value as determined by appraisal or sound business management practice. The fees will generally be based on a schedule developed from an appraisal that applies to all communications sites within broad market areas within a state. Heavy use communication sites that serve major communities or cities will normally have fees established for the specific site. Fees will be redetermined over 5 years, and fee schedules will normally provide for annual adjustment. Fees for new communication sites will be based on competitive bid where there is competitive interest in developing the site.

We are now in the process of determining fair market value for communication sites in most Forest Service Regions. Four regions have published proposed fee schedules this year; Regions 3, 4, and 5 will publish fee schedules later this year. Most of the regions will be able to implement the new fees in 1988. Region 6 completed the fee schedule in 1986 and is implementing it.

We expect the rental fees to increase significantly for most communication uses as we convert the rental charges from percentage of investment to market rent.

Site developer-manager. In the past, we have required each person owning or op-

erating communication equipment or facilities on the National Forest to obtain a special use permit from the Forest Service. The result is that we have many permits in some buildings for small two-way radio equipment. All of these permits add to our administrative costs of just keeping account of the permits and the billings. Because of the permitting activity we were often called upon to help resolve frequency interference problems between permittees in the same building. Often, we have had good utilization of the communication site, as we frequently let applicants do their own thing, that is, put up their own tower and building.

Our new policy provides for the issuance of a special use permit to a site manager or developer who will develop and manage a communication site and rent space and equipment to others. The site developer-manager may be an individual, or it can be an association of users already on the site. We will no longer issue permits for individual user, except in rare situations. The site manager will also have responsibility for developing the site to meet the communication needs and for correcting interference problems on the site and within the building.

We plan to consolidate existing permits as opportunities arise for granting a permit to a site developer or an association of users.

Again, we expect these changes in communication policy to reduce our administrative costs, to result in better utilization and management of the site, and to reduce

the time and paperwork requirements for persons who want to place communication equipment on National Forest lands.

Terms and Conditions for Special-Use Authorizations

We reviewed our terms and conditions for special-use authorizations in December, 1985. Many of these clauses were outdated, and we readily recognize that more revisions are needed to move away from some of the how-to requirements and toward stipulations that measure results. We expect to make some changes to the special-use authorization forms in the next year. Our objective will be to streamline the authorizations and emphasize the use of operating plans and construction stipulations. This will help both the Forest Service and the holders.

Applicant Responsibility for Environmental Studies and Analysis

The Forest Service is continuing its practice of requiring applicants for the special use of National Forest Lands to provide the environmental studies, and in many cases, the environmental analysis that is needed to reach a decision on whether to approve a special-use application and the conditions that will be required if it is approved. We are proposing changes to the special-use regulations at 36 CFR 251.54 that will add more specific policy and direction to accomplish this goal. Applicants



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who provide complete reports, studies, and information can expect action on their applications within a reasonable time period. In many cases, we will continue to ask applicants to enter into a collection agreement to pay Forest Service costs of reviewing the application and administering the special-use authorization during the construction period. It seems clear that the Congress wants the applicants to pay the costs of reviewing applications and administering special-use authorizations rather than funding these costs through tax dollars.

Irrigation Ditch Legislation

The Congress passed a bill in October, 1986, Public Law 99-545 (H.R. 2921), which exempts owners of irrigation ditches constructed and in operation before the passage of the Federal Land Policy and Management Act (FLMPA) in October, 1976, from the payment of land use fees. Upon application, the owners of the ditch or irrigation facility used for irrigation at

the time of application will be granted a permanent conditional easement for the ditches as long as they are used for irrigation purposes and are operated in accordance with the provision of FLPMA. We will begin to offer easements for owners of irrigation ditches within the near future.

Other Provisions of the Act:

Multiple-year payment of fees. FLMPA gave the Forest Service and the Bureau of Land Management the authority to accept payment for more than 1 year (a one-time payment, if you will) for certain rights of way grants rather than charging annual payments previously required by FLPMA. Many of the holders of rights of way on the National Forest have told us that they prefer a one-time payment rather than annual rental charges. A change in Forest Service regulations is required before we begin implementation.

Administration of rights of way grants by the Secretary of the Interior. The Forest Service now has the authority to administer rights of way granted by the Department of the Interior for irrigation ditches, canals, etc. that are located on National Forest System lands.

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Revision of the Special-Use Regulations

The Forest Service will soon submit proposed changes to the special-use regulations to the Office of Management and Budget for approval and clearance to publish in the Federal Register for public review and comment. The proposed changes are needed to better clarify applicant responsibilities, to make changes that are required as result of legislation (the Act that granted free use for facilities that were constructed with a Rural Electrification Act loan), and to provide for cost recovery. While the proposed changes will help clarify several other items in the regulations, the main purpose is to provide for an application fee and cost recovery. Funds collected through cost recovery will be deposited as general receipts into the U.S. Treasury. Hence, we will continue to give emphasis to applicants providing data, studies, and analysis as the funds collected from cost recovery cannot be used to pay Forest Service costs. Our funding for special-use work will continue to be by appropriation from Congress as in the past. Because the cost recovery is still a proposal and has not been reviewed by the Administration, we cannot give further detail about it at this time. 