

# Scenic Easements: A Unique Approach to Cooperative Management

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Preserving certain special scenic areas in this country has become a cooperative affair among some private landowners and the Bureau of Land Management (BLM).

Several methods to achieve such a goal are available. Some have been around for a long time, such as government purchase of key lands and participation by third party foundations in acquisitions. Some are just now being explored, such as special tax benefits and voluntary deed restrictions. One method that has been used in a few areas on public lands is a process called scenic easements.

A scenic easement is the right to control the use of a particular piece of private land to preserve the natural quality of the property or its surroundings. The Federal Government sometimes purchases scenic easements on private lands as a means of maintaining the status quo and preventing inappropriate development in areas adjacent to Federal lands with special designations.

The legal foundation for such easements dates back to the English concept of property rights. That concept, itself based in Roman law, is simply that property rights are made up of a bundle of sticks. When the property is transferred to another owner, all or only a few of the sticks may be included.

If the Federal Government acquires a scenic easement on your property, essentially you are selling, for a negotiated price, one of your sticks: the right to develop or change your property as you see fit. Instead, you agree to do certain things and not do certain things under the supervision of the Federal Government.

With the current boom in condominiums, perhaps the easiest way to illustrate scenic easements is to compare them with the rules and regulations of a condominium association. That association, which a new owner is required to join when he buys the living unit, has a clearly defined set of rules that all homeowners must legally follow. For example, rules common to most condominium associations include a prohibition against painting the exterior of your unit with paint other than the standard color for the complex. Adding an air conditioner, hot tub, solar panels, etc. are common situations which would require the association's permission prior to installation. Such additions are sometimes allowed, but must be in accordance with specifications approved by the association, such as concealing them from view or painting the addition with a certain color to blend with the natural surroundings.

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Scenic easements are very similar. In special areas, such as wild and scenic rivers or scenic highways, the Federal Government may wish to cooperate with those owning property adjacent to the Federal area in limiting development to preserve the scenic beauty. One way to do this, as an alternative to full acquisition or purchase of the property, is to negotiate a scenic easement.

Although scenic easements have been used by other Federal agencies for a variety of special use areas, here at BLM our use of scenic easements has been to preserve the scenic beauty of congressionally designated components of the Wild and Scenic River System. So far, we have used the scenic easement process on three rivers: the Rogue River in Oregon, the Upper Missouri in Montana, and the Rio Grande in New Mexico.

By far, our most extensive effort has been on the Rogue River. The Rogue was one of the eight original wild and scenic rivers designated by the National Wild and Scenic Rivers Act of 1968. The BLM was given responsibility for 47 miles, from the mouth of the Applegate River to Marial, covering one of the most beautiful and exciting stretches of river in the country. This beauty and challenge draws thousands of visitors each year to enjoy the river and camp along its banks.

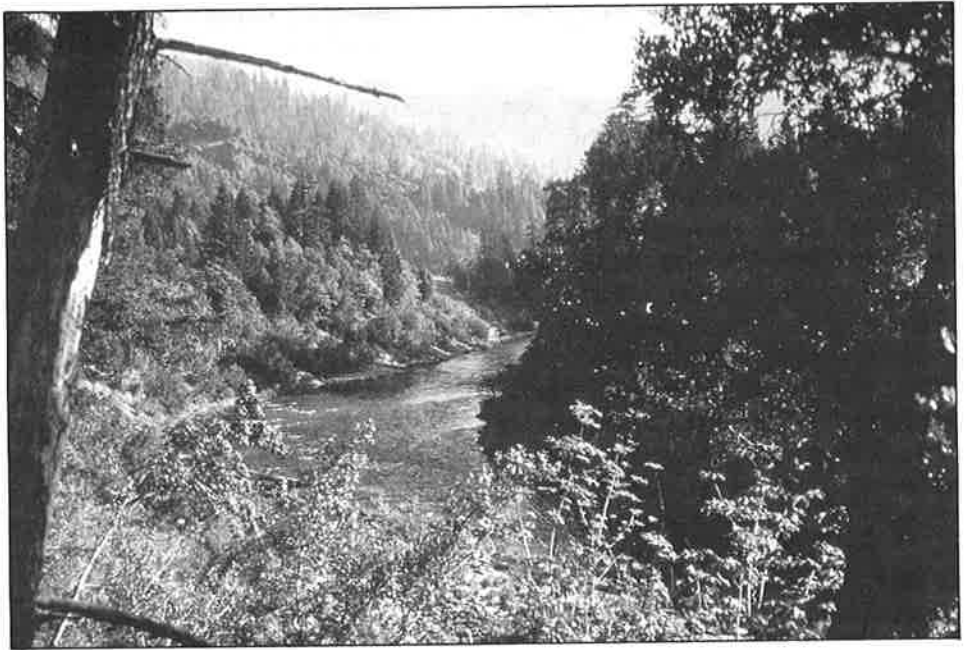
The Act directs these special values be preserved for present and future generations. Since 1972, Congress has appropriated money each year to BLM from the Land and Water Conservation Fund to purchase land and scenic easements to preserve the aesthetic, scenic, historic, archaeological, and scientific features.

Although scenic easements are not new, the BLM was one of the first agencies to apply the concept to a wild and scenic river. The past history of scenic easements was almost entirely in the area of scenic highways. Situations such as parks were traditionally handled through fee simple acquisitions.

The BLM set two objectives for its acquisition effort on the Rogue: 1) to protect vegetation and 2) to limit new structures. The term "limit" is important here, because the 1972 management plan, developed cooperatively with the U.S. Department of Agriculture's Forest Service, which also has management responsibilities on a portion of the river, states there are places where new development may be desirable.

Two types of acquisition methods, scenic easements and full purchase, were available to meet these objectives. The type chosen was based upon property values, present owner inclination, extent of development, river view, adjacent land use and ownership, and topography. Each parcel was critically evaluated on a case-by-case basis.

In the Rogue River situation, scenic easements were heavily used for a number of reasons. One reason was the nature of the river and the property owners who lived along it. Since the Rogue River is reasonably close to large population centers (13 million people reside with a 12-hour drive), many of the homes along the river were second or vacation homes, bought or built by the urban dwellers with a desire to "get away from it all." Many of these people strongly desired the river and its banks to remain in a reasonably undeveloped state. They wanted to keep their vacation homes rather than sell them and most were not



*The Rogue River*

opposed to limiting their remaining development opportunities. Scenic easements were therefore preferable to acquisition to many landowners.

Another reason was money. Although scenic easements are not inexpensive, in most cases the initial outlay to the Federal Government is usually less than acquisition of all property rights.

A third reason was practicality. The ultimate goal of the effort was to preserve the natural character of the Rogue River. With several hundred parcels of private land involved, scenic easements provided an opportunity to get closer to the goal within limited funding constraints and with less public opposition than outright acquisition.

The final reason was flexibility. With so many landowners and situations involved, there were bound to be a variety of both resource and individual needs. Scenic easements, with their inherent ability to be tailored to each particular situation, gave the BLM and the landowners the opportunity to work together in a mutually satisfactory way.

But there were, and continue to be, some problems. The first challenge on each parcel was to determine the management needs. That is, what restrictions were necessary

to preserve the natural character of the river. The lay of the land, the amount of vegetation, the existing structures and their location, the view or visual access from the river, all had to be considered. Especially in the early easements, it was difficult to foresee every possibility.

Once the needs were established and provisions of the easement drafted and negotiated with the landowner, the next step was appraisal. This proved to be a difficult task. The issue came down to how does one objectively determine the value of not doing something? The job of the appraisers was to determine the fair market value of the property before and after the easement is applied, certainly not an easy task.

The BLM approached this task carefully, researching the past history of scenic easements and adapting what we could to the Rogue River situation. But in most cases the effort involved new appraisal methods, unconventional approaches, and innovative ideas. Lack of resale history was a problem, but as some properties began to turn over, a firm base of comparison was established.

By necessity, no two easements were exactly alike. One common fac-