

An Historic Overview of How the Bureau of Land Management Values Rights-of-Way

Ted Bingham



As the Bureau of Land Management moves toward implementation of a schedule of rentals, here is a concise look at various valuation methods used in the past.

Ted Bingham is chief Division of Rights-of-Way, Bureau of Land Mgt., Wash., D.C. This article was portion of a presentation made at the 32nd Annual IRWA Intl. Educational Seminar in Winnipeg, June 1986.

Unless they take a monopolistic view, Federal land management agencies such as the Bureau of Land Management face difficulties in establishing values for each of the thousands of linear rights-of-way permitted on Federal lands. The problem is further complicated with a highly decentralized field organization.

Historically BLM, and its predecessor the General Land Office, rental charges have varied. For example, the 1943 regulations for the GLO provided for one group of R/Ws (linear) on a per mile basis and another group of R/Ws (areal) on land value with a minimum of \$5 per year.

In 1952, now BLM, two additional groups (communications) were added:

Radio and TV broadcasting site rentals were based on land value with a sliding minimum based on input power.

Other communication sites were also on land value with a minimum of \$50 per year.

In the 1950's the Bureau of the Budget,

now Office of Management and Budget, established government wide standards stating:

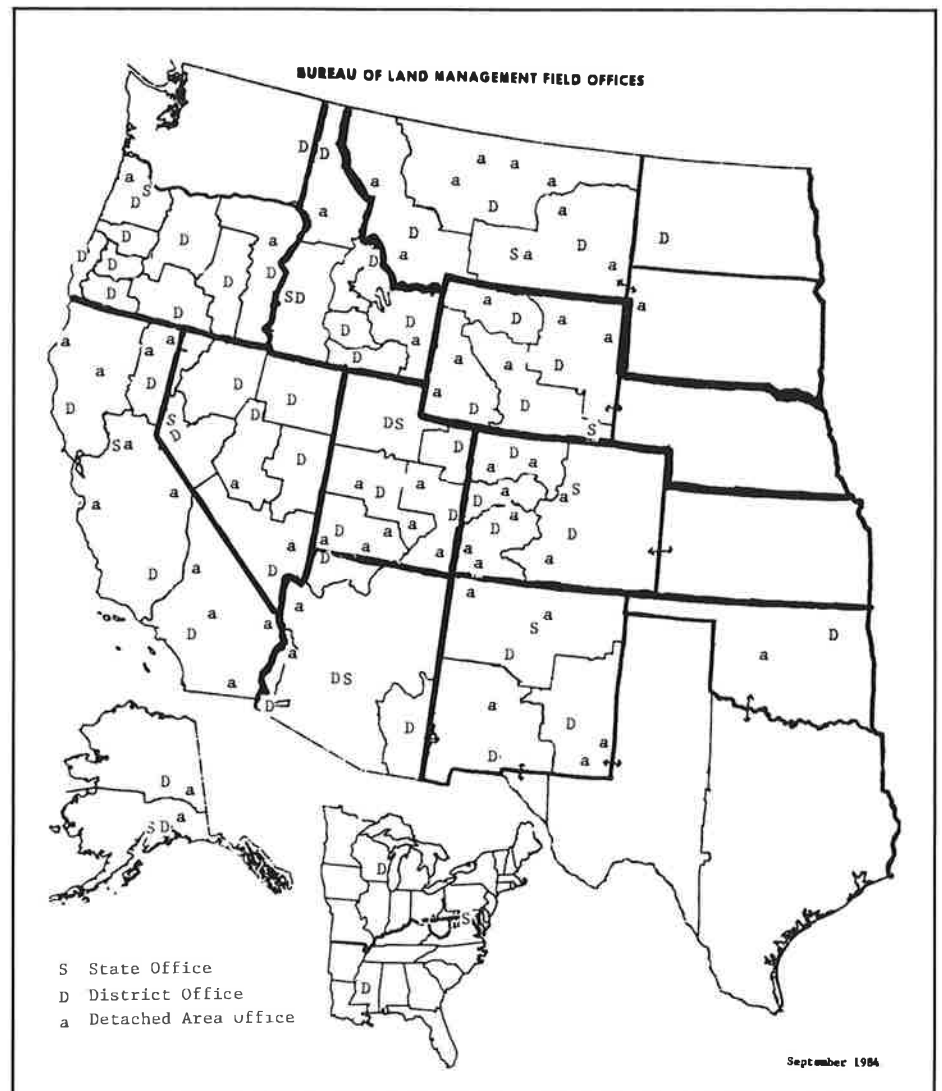
Agencies are to establish user charges based on sound business management principles and, to the extent feasible, in accordance with comparable commercial practices.

As a result of these standards the regulations were changed in 1961 and provided:

A minimum, charge of \$25 for a five year period. (Note this five year period corresponds with the historic maximum period before review and possible adjustment of rental.)

The annual rental would be determined by a fair market value type of appraisal.

The Bureau could require either periodic or lump sum payments.



In 1964 the Bureau of the Budget (OMB) issued further guidelines as a result of their *Natural Resources User Charges Study* which provided:

...the Government should recover the fair market value for the use of Federal land resources. Competitive bidding will be used to establish the fair market value in all instances where an identifiable competitive interest exists. Where a competitive interest does not exist, fees should be comparable to those charged for the use of similar private lands. Fees and charges for long-term use should be established in such a manner as will allow for periodic timely adjustment.

In 1980 the regulations were again changed. The primary purpose was to implement the 1976 Federal Land Policy and Management Act but the new regulations also incorporated internal changes made as a result of the BOB (OMB) 1964 report. Among other internal changes in 1966 the Bureau discontinued the use of lump sum payments. Under the 1980 regulations:

Annual rentals would continue to be determined by FMV appraisals.

Lump sum payments were not permitted.

The Bureau could require up to a five year payment where the annual rental was \$100 or less.

Under current law, holder of rights-of-way are required to:

...pay annually in advance the fair market value thereof as determined by the Secretary. . .(43 U.S.C. 1764 (g))

...pay annually in advance the fair market rental value. . .as determined by the Secretary or agency head. (30 U.S.C. 185(1))

Beginning in the early 1960's, Bureau efforts were turned toward established valuation processes which could be utilized to estimate rentals on various kinds of rights-of-way.

Of the three "standard" approaches to valuation, only the market - comparison

approach is useful. Neither the cost-sum-mation or the income - capitalization methods are applicable to the Bureau's normal R/W rental situations. However, some of the sub-processes of these two approaches provide assistance or support in market comparisons.

By the 1970's the Bureau had settled in on two general methods of estimating annual rentals:

1. Sufficient communication site *rental* data existed in the market place for comparative analysis. Thus, a fairly straight forward market - comparison approach could be utilized for communication site type rights-of-ways.
2. For other types of rights-of-way, especially linear ones, transactions in the marketplace are normally either fee interest purchase or the acquisition of an easement for a one-time, up front payment. For the later, unspecified damages are sometimes included as part of this on-time payment

By the mid-1970's bureau field office in responding to increased demands for new R/Ws (5-6,000 per year) and the 5-year cyclic review of existing R/W rentals (2-3,000 per year) had 'simplified' linear right-of-way rental estimations. An 'assumed' percentage of use was applied to the estimated fee value. This value was CONVERTED to an annual rent by application of an interest figure established annually based on long-term Federal bond rates.

In addition, a screening process was established. Appraisals were not conducted when the screening indicated the annual rental would be less for a five year period than the cost of preparing the appraisal.

\$100 per acre fee x 75% bundle of right x 10% interest = \$7.50 per acre per year. For 5 years, \$37.50 per acre which, for a 10 acre R/W, would amount to \$375. With a standard appraisal costing near \$500, simply charging the \$5 per year minimum results in a positive return to the Government. In this manner a simple screen requiring a minimum per acre fee value estimate against the number of acres in the right-of-way was established.

In the late 1970's some Bureau

appraisers observed that many private right-of-way acquisitions exhibited a purchase pattern not directly related to the underlying fee value. Analysing many hundreds of transactions, appraisal reports were prepared resulting in greatly increased rental rates.

Three BLM states New Mexico, Wyoming, Colorado instituted this market-comparison approach (referred to by some as the "Going Rate" Approach) in 1980-83.

Objections were raised with arguments basically centering on:

the comparative analysis (value difference) between private 'easements' and Federal 'rights-of-way',

the added 'costs' of construction and operation of a R/W on Federal land,

the 'unsoundness' of the 'Going Rate' approach, and

inconsistent application of valuation methods in determining rentals within the Bureau's organization.

We opine that the first three arguments relate to subjective decisions or interpretation. Most parties agree that some differences exist, but few can agree on the degree of difference. Market transactions that identify one, some, or all of the individual differences either do not exist or, those that do exist, support both ends of the argument.

Agreement does exist that the Bureau has not been overly consistent.

BLM currently has some 35,000 granted rights-of-way. Of these, some 26,000 are linear rights-of-way involving rental. Each year some 3,000 new rights-of-way are issued that require rental determinations. An additional 4,000 rights-of-way are reviewed each year for possible rental adjustment. Making appraisals for these rental determinations is costing between \$50 and \$100 per case. With the 5-year cyclic review, our annual cost to determine rentals is \$10 to \$20 per case. The average rental received is only about \$30; thus we are spending \$1 or \$2 to collect \$3, not a very efficient approach.

The Bureau is currently moving toward implementing a schedule of rentals based upon market valuation, but with many of the moot issues determined administratively. (IRMA)