

**VI.** BPA recognizes mutual respect between governments must be rooted in the individual working relationships of its members. BPA will enhance cultural awareness among its staff and will seek other opportunities to establish consistent individual working relationships between BPA and Tribal staff at all levels.

**VII.** BPA recognizes the importance of cultural resources to Native Americans and will respect Tribal values. BPA recognizes that the Tribes include as cultural resources such things as distinctive shapes in the landscape, natural habitats for subsistence or medicinal plants, traditional fisheries and wildlife, sacred religious sites, and places of spiritual renewal. BPA will work with the Tribes to identify important cultural resources for the purposes of inventory, protection, and mitigation where appropriate.

**VIII.** BPA will protect cultural resources by fulfilling its obligations as a Federal trustee, as required under terms of a treaty, and as required by the American Indian Religious Freedom Act (as amended), the Native American Graves Protection and Repatriation Act, the Native American Free Exercise of Religion Act, the National Historic Preservation Act, the Archaeological Resources Protection Act and other applicable laws and regulations. Prior to taking actions that may have an impact on cultural resources, BPA will consult with potentially affected Tribes.

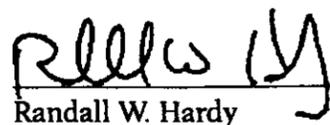
**IX.** To facilitate a government-to-government relationship, BPA will work cooperatively with each Tribe to develop points of contact and specific lines of communication.

A. Within the limits of its legal authority, BPA will not change this policy without advance notice and consultation with the Tribes.

B. BPA will make its best efforts to ensure that if future changes in its organization nullify any part of the policy, then BPA will promptly consult with the Tribes and revise the policy accordingly.

C. Successful implementation of this policy requires commitment throughout BPA's chain of command. BPA managers and staff will be accountable for creating and maintaining a mutually beneficial government-to-government relationship with the Tribes.

Signed:



Randall W. Hardy  
Chief Executive Officer/Administrator  
Bonneville Power Administration

4/30/96  
Date

### **Tribal Communication Team**

**Darrell Eastmen** - Burns-Paiute Tribe; Shoshone-Paiute Tribe; Shoshone-Bannock Tribes; and Salish-Kootenai Tribes of the Flathead Indian Reservation. Darrell is located in Portland and can be reached at 503-230-3869.

**Patricia Tawney** - Confederated Tribes of the Umatilla Indian Reservation; Confederated Tribes of the Warm Springs Reservation; Yakama Indian Nation; and Nez Perce Tribe. Patricia is located in Portland and can be reached at 503-230-4315.

**Katherine Cheney** - Confederated Tribes of the Colville Reservation; Spokane Tribe of Indians; Kootenai Tribe of Idaho; Couer d'Alene Tribe; and Kalispel Tribe. Katherine is located in Spokane and can be reached at 509-358-7470.

**John Smith** - Policy level consultation with all thirteen tribes, 509-358-7446

### **List of Possible Internal Services**

- Help identify potentially interested/affected Tribes and assist in making appropriate contacts within the Tribes
- Provide assistance in establishing mutually-acceptable expectations for consultation with each Tribe
- Make initial contacts for project staff and set up opportunities for long term relationships
- Provide guidance on Tribal protocol
- Help develop Tribal communications strategies
- Help BPA include Tribes early in decisions
- Provide a central location for information on Tribal contracts, MOAs, etc.

### **The 13 federally recognized tribes in the Columbia River Basin**

Burns - Paiute	Nez Perce	Umatilla
Coeur D'Alene	Salish and Kootenai	Yakama
Colville	Shoshone - Bannock	Warm Springs
Kalispell	Shoshone - Paiute	
Kootenai	Spokane	

Bonneville Power Administration  
PO Box 3621 Portland, Oregon 97208-3621  
DOE/BP-2971 MARCH 1997 1M



When Bonneville Power Administrator Randy Hardy signed the BPA Tribal Policy in April 1996, he reaffirmed the trust relationship between BPA as a federal agency and the 13 federally recognized tribes in the Columbia River Basin, as well as the other Northwest Indian tribes.

BPA's Tribal Policy responds to a memorandum issued by President Clinton to the heads of the executive department. In that memorandum, the President made trust responsibility and tribal relations the responsibility of all federal departments and all federal employees.

Following is the full text of BPA's Tribal Policy.

## **BPA Tribal Policy**

April 29, 1996

*It is the entire government, not simply the Department of Interior, that has a trust responsibility with Tribal governments. And it is time the entire government recognized and honored that responsibility.*

President Bill Clinton, in the Memorandum to the Heads of Executive Departments and Agencies, April 29, 1994

*We must: Respect the values, religions and identity of Native Americans; improve the Federal government's relationship with the Tribes and become full partners with the Tribal nations; and position American Indians and Alaska Natives to compete economically as we move into the 21st century.*

Former Energy Secretary Hazel R. O'Leary, in her remarks to Tribal leaders at the National Congress of American Indians Executive Council Winter Session, February 27, 1996.

*BPA will develop a format for a government-to-government relationship with the Tribes.*

Administrator Randy Hardy, to thirteen Indian Tribes, October 13, 1993

### **Purpose and Objectives**

The purpose of this policy is to outline the foundation of BPA's Trust responsibility as a Federal agency and to provide a framework for a government-to-government relationship with the thirteen Federally recognized Columbia Basin Tribes (Tribes).

### **General Principles**

The principles set forth below follow the Department of Energy's American Indian Policy (DOE Order No. 1230.2—Apr. 8, 1992) and serves as guidelines to BPA and the Tribes throughout the development of their government-to-government relationships.

**I.** BPA recognizes that a trust responsibility derives from the historical relationship between the Federal government and the Tribes as expressed in Treaties, statutes, Executive Orders, and Federal Indian case law. Using these legal underpinnings, BPA and the Tribes will work cooperatively to arrive at an understanding of how the trust responsibility applies to a government-to-government relationship.

**II.** BPA commits to a government-to-government relationship with the Tribal governments and recognizes the unique character of each Tribe. Tribal governments have the primary authority and responsibility for many reservation affairs, and may be co-managers of natural resources within their respective ceded, treaty, or usual and accustomed areas.

A. BPA fully respects Tribal law and recognizes Tribal governments as sovereigns.

B. In keeping with the principle of self-government, BPA recognizes, where appropriate, the legal authority of Tribal governments for making Tribal decisions which may affect Indian and non-Indian peoples and Tribal cultural and natural resources both on and off-reservation.

C. BPA will consult with the Tribal governments to assure that Tribal rights and concerns are considered prior to BPA taking actions, making decisions, or implementing programs that may affect Tribal resources.

**III.** The objectives outlined below define BPA's policy regarding the requirement for consultation with Tribal governments and are intended to assure that Tribal rights and interests are protected in all BPA decisions.

A. The objectives of consultation include:

1. Assure that Tribal policy makers and elected officials understand the technical and legal issues necessary to make informed decisions;

2. Improve policy-level decision making of both the Tribes and BPA;
3. Encourage Tribal implementation of fish and wildlife measures BPA funds;
4. Protect Tribal lifestyles, culture, religion, economy;
5. Encourage compliance with Tribal laws;
6. Comply with Federal Indian law, statutes, and policy;
7. Improve the integrity and longevity of decisions;
8. Strive to develop and achieve mutually agreeable decisions reflecting a consensus.

B. BPA will consult with Tribal governments by deliberating, discussing, or seeking the opinion of the Tribes when a proposed BPA action may affect the Tribes or their resources. BPA will solicit Tribal opinions and study them before taking an action that may affect the Tribes or their resources.

C. BPA will strive to differentiate between technical and policy issued, allowing for proper technical level and then policy level consultation. Technical level consultations should generally include the development, analysis, and review of information and the preparation of technical reports and recommendations. Consultation should result in a common understanding of the technical and legal issues that affect or are affected by a decision. BPA will strive to resolve such issues and arrive at a decision that responds to the Tribal concerns expressed.

D. Where BPA and one or more of the Tribes address issues of common concern, BPA will endeavor to use consultation to try and reach decisions that are compatible and mutually agreeable with the Tribal interests.

**IV.** BPA will seek mutually beneficial business partnerships with the Tribal governments through its various programs, pursuant to its authorities.

**V.** BPA recognizes it has mutual concerns and goals with the Tribes regarding the long term quality of life and natural resources in the Pacific Northwest and that both BPA and the Tribes have decisions to make regarding those resources. BPA will respect the authority of the Tribes to manage natural resources and respect their decisions regarding those resources. BPA will involve the Tribes in the beginning of its planning and management activities of water resources, fish and wildlife resources and other natural resources to achieve mutually beneficial results.

## Cowger, John R - TR-TPP-4

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**From:** Ward, Kevin A - TM-DITT2  
**Sent:** Tuesday, December 11, 2001 8:59 AM  
**To:** Cowger, John R - TR-TPP-4; Korsness, Mark A - TNP-TPP-3; Ferrera, Renee - TRF-TPP-4; Smith, John A - KT/Spokane; Shank, Bob - KT/Spokane; Eastman, Darrell - KT-7; McKinney, Thomas - KEC-4; Beraud, Bob - KEC-4; Tuck, Nandranie S - KT-7; Johns, Michael C - TNP-3; Raschio, Mike - TM-Ditt2; Graetzer, Inez - KEC-4  
**Subject:** FW: Tribal Action Plan for FY2002  
**Importance:** High

Last Friday - I was asked to send the TBL Tier II's our plan. This activity is tied to some of the Executives contract for the year - so I did not want to hold it up. I thought it would be best to send you all - the whole package as revised most recently. If you have any questions - please let me know. Thank you for your help in developing this. We will need to continue to work together over this next year to implement these focus areas. We will also need to work closely with the Business Line Tribal Reps as they are identified.

Thanks again for the help.

-----Original Message-----

**From:** Ward, Kevin A - TM-DITT2  
**Sent:** Friday, December 07, 2001 4:47 PM  
**To:** Meyer, Charles - TM-DITT2; Bennett, Ruth - TM-DITT2; Maher, Mark W - T-DITT2; Stout, Debbie - T-DITT2; VanZandt, Vickie - TO; Courts, Alan - TN-3; Nelson, Marg - T/Ditt2; Johnson, Frederick M- TF-DOB1  
**Subject:** Tribal Action Plan for FY2002  
**Importance:** High

I didn't want to hold this up any longer since this is part of some of your contracts - so here it is.

I have worked with a group of folks - the Tribal Team - representatives from TBL and Corporate to develop a couple of different pieces of paper. The first attachment below is the presentation that I was hoping to give to you including (1) what areas need to be focused on based on the FY2001 Tribal Survey for FY2002 and (2) how might these areas be improved upon through some suggested action items. This summarizes what we are proposing. (See Survey Results/Target Summary)

The next attachment is the plan itself. A very important piece of this which the team wanted me to emphasize is coordinating this effort with the other Business Line, Corporate, and the other Tribal Representatives. (See Action Plan)

The last attachment is a Matrix that the team will need to continue to work - with includes a list of the projects for FY2002 and the Tribes that will be particularly interested in being involved. Other Tribes will need to be informed - but there are specific Tribes that will need to be more actively involved and therefore the level of information and coordination will be greater for these tribes.

Last but not least - the names of the folks that have participated in this (if you don't mind me saying - excellent effort) are:

Myself  
John Smith  
John Cowger  
Mark Korsness  
Bob Shank  
Renee Ferrera  
Tom McKinney  
Darrel Eastman  
Mike Raschio  
Inez Graetzer  
Sonya Tetnowski  
Nandranie Tuck



SURVEY  
RESULTS1207.ppt



FY2002 Annual Tribal  
Action Pl...



Tribal Matrix01.doc

**FY2002 Annual Tribal Action Plan  
Outline  
December 7<sup>th</sup>, 2001**

**Purpose:** The purpose of this Tribal Action Plan is three fold. One purpose is to build a better working relationship and therefore understanding between BPA and the Tribes. The second purpose is to provide consistent, timely messages and information for distribution and release to the Tribes. This would also provide an opportunity to obtain information and input back from the Tribes. The third purpose is to educate BPA folks internally about Tribal issues and concerns to build better communications and tribal relationships. All three of these purposes would be accomplished through the development of a TBL (and eventually an agency wide) coordinated Tribal approach consistent with BPA's Tribal policy.

**Agency Wide Coordination:** The Team recognizes the need for a **strategic approach** in dealing with the many cross Business Line issues with the Tribes. This is both a coordination effort and a communication effort. Having a coordinated approach may provide BPA with some flexibility in negotiating specific needs and speaking to the Tribes. The Team strongly recommends – in order to make this Action Plan work - TBL invites PBL and Corporate (Environment and Fish and Wildlife) to participate in an agency-wide coordination effort. This would include entering projects/activities into the attached Tribal issues matrix, develop effective action items for each, and a commitment to updating the issues and action item periodically throughout the year.

**Issues:** The issues identified below are associated with the TBL and have been identified as having importance and/or interest to a number of Tribes throughout the Pacific NW. The Team thought it was imperative to develop an agency wide strategic tribal plan to deal with these and many interconnected issues that cross the two business lines and Corporate. This plan will: (1) identify issues that could be of interest to all of the 54 NW Tribes, (2) identify which of these tribes will require a higher degree of focus for FY2002, (3) identify how these tribes will be approached, (4) develop timelines associated with issues and tribes, (5) coordinate an agency wide strategy to cover all related issues when meeting with the tribes, and (6) develop action items to cover - who, what, when, and where.

**Inform and/or Involve:** Below is a list of issues that have been identified by the TBL Team as have the greatest degree of interest to the Tribes for FY2002. There are two different levels of interest or involvement that need to be considered for each issue. One level involves informing Tribes of particular issues or projects that maybe of interest but may not affect the Tribe. The second level is one where an issue or project may affect a Tribe and therefore the Tribe will want to be informed and may also want to be involved in a greater degree, such as decision making. The attached Tribal issues matrix provides a more comprehensive look at individual TBL projects and activities and which Tribes should be involved with each.

## 1. Right of Way Issues

- **Easement Renewals** – The extension or renewal of existing land rights that BPA currently holds that are expiring on certain Tribal Reservations. BPA may be required to renew, extend the term, or expand easement right to meet existing or future needs. The following Tribes would be involved in these negotiations and discussions in FY2002 - Nisqually, Salish-Kootenai, Umatilla, and Yakama.
- **Acquisition for Infrastructure** – The acquisition of new right of way easements needed outside of BPA's existing rights and right of ways. There is currently only one Tribe identified in FY2002 that would be involved in these negotiations. This is associated with the Infrastructure Program and land allotments owned by Yakama Tribal members.

**2. Generation and Integration** – This issue could include both new generator sites, i.e. - combined combustion turbines, gas turbines, and wind generation; and specific transmission lines that will be needed to integrate this new generation into BPA's high voltage transmission grid. There are several proposed projects that will be of general interest to Tribes who will want to be informed, see attached Matrix. There are other Tribes that will want to be involved in project decisions and developments. An example of two of these generation projects are Wallula and Starbuck, both having new generator sites and the need to integrate into BPA's high voltage grid. The Tribes currently identified that will want to be involved in these projects are the Spokane, Yakama, Nez Perce, see attached Matrix.

**3. G-13 and Other Project Identified for FY2002** – There are several different areas of interests to the Tribes associated with the G-13 projects. These include: (1) the potential for physical or visual impacts to natural resources, cultural resources, or traditional use areas through the construction of transmission facilities; and (2) the sensitivity and complexity of contracting with the tribes to assist in determining areas of concern and potential impact. Each project will require identification of the particular issue associated with each and which Tribes will want to be informed and/or involved. (See Attached Matrix for more information.)

- Natural Resource Areas
- Cultural Resource and Traditional Use Areas
- Socio-Economic Effects
- Introduction of noxious weeds
- ESA issues associated with raptors and plants
- Contracting with Tribes

**4. Formation of an RTO** – Due to the potential for wide spread regional change in the electrical industry if an RTO is formed – it is important for everyone to be informed and involved in this development. Throughout the next 3 years – during this initial formation - the Tribes will need to continue to be involved in the various activities associated with this development. Not only will this formation potential affect Tribal Utilities, but also

rate structures and associated issues. Throughout this year the TBL will be developing new tariffs and associate Business Practices that may also be of interest to the Tribes.

**5. Additional Agency Wide Issues:** Issues that will need to be addressed and coordinated when taken out to the Tribes are:

- Power Plants – (generation sites and order in the queue)
- Wind Generation Sites
- Energy Efficiency and Conservation
- Dam Re-licensing
- Relocating Transmission Lines
- Fish and Wildlife – ESA Issues
- New Tribal Utility formation
- BPA as one entity to the Tribes – not TBL, PBL, and Corporate
- Others to be identified by PBL and Corporate

#### **Proposed TBL's Action Items to Inform and Educate the Tribes and BPA**

**Goal:** In order to better meet the needs of the Tribes as identified and rated in the FY2001 Tribal Satisfaction Survey - BPA has identify specific goals to help increase our scores and better meet the needs of the Tribes. This can be done by keeping the Tribes better informed through proper dissemination of materials and information and through education – of both the Tribes and BPA of each other. Identifying our differences and educating each other on these differences will begin to create a better working relationship for the future. The TBL has contracted with the Affiliated Tribes of the Northwest Indians (ATNI) to help in these two different areas. Other action items were identified and presented to the TBL Executives in a slide presentation. These items have been agreed to and included in the action items below. (See Attachment – Survey summary.) The TBL has also identified some other areas of focus for FY 2002.

#### **Recommended Focus for FY2002**

1. Develop an annual Action Plan to target TBL issues, identify Tribes to focus on for any given year, and develop a release and implementation plan.
2. Coordinate this Action Plan with PBL/Corporate.
3. Keep track of meetings with Tribes (including issues and projects discussed and contracts made) and include this list in ATNI's Quarterly Report.
4. TBL Tribal Representative should focus on clarifying and understanding the consultation process and coordinate this effort with the Project Team members.
5. TBL Executives will attend at least 4 project meetings and all workshops throughout the year to increase face-to-face interaction between executives and Tribes.
6. BPA Executive and Project Managers are briefed periodically on Tribal issues and concerns identified by the TBL Tribal Representative.

7. The TBL Tribal Representative should work with the Cultural Resource representatives in Environment to ensure coordination, timely and effective contracts and activities.
8. Prepare and provide periodic status report to the TBL Executives on Status of Tribal issues associated with the Annual Action Plan.

**Suggested Action Items for FY2002:**

**Communication Action Items**

1. Prepare no less than 6 Tribal Alerts throughout the year to convey certain messages (concerns/problems) that arise quickly and are of importance to the Tribes. These Alerts can be dispersed to the Tribes through ATNI.
2. Provide Articles on TBL issues in the Quarterly Tribal Newsletter.
3. Provide updates to the TBL AE's on issues/concerns/strategies identified by ATNI or individual tribes.
4. Send TBL's Access Newsletter to Tribes.
5. Look for opportunities to keep Tribes more involved in TBL programs and issues.

**External and Internal Education Action Items**

1. Pull together 2 to 4 Workshops to educate Tribes on what is the TBL, discuss TBL issues to educate Tribe Representatives, as well as educating BPA representatives on Tribal concerns and issues.
2. Coordinate smaller regional meetings with Tribes on specific projects and issues.
3. Facilitate more opportunities for TBL executives to interact directly with Tribes.
4. Develop Tribal Treaty and Trust Obligation training for TBL Executive and employees.

# FY2002 ANNUAL TRIBAL PLAN: ISSUES AND ACTIVITIES MATRIX

Project Name	Company	Capacity (MW)	Location	Issues	Timeline	Contact
Condon near Condon, OR	SeaWest Wind Project	50	Umatillas	No known tribal issues	Energize Jan. 1, 2002	
Goldendale Energy, Klickitat Co, WA	Goldendale Energy, Inc (National Energy Systems, Inc)	247	Yakima	ROD Completed - Construction started No Known Tribal issues	Energize July 2002	Tom McKinney, 503-230-4749
Chehalis Gen., Lewis Co, WA	Chehalis Power, Inc (Tractebel)	600	?	Under Construction No Known Tribal issues	Energize July-Nov. 2003	Dawn Boorse, 503-230-5678
Columbia Gen, Longview, Cowlitz Co, WA	Enron Power Marketing, Inc	300	?	ROD completed - Looking for a buyer Uncertain whether project will be completed	Unknown	Phil Smith, 503-230-3294
Centralia (Big Hanaford) Gen, Lewis Co, WA	TransAlta	248	?		Start Construction - March 2002 Energize July 2002	Tom McKinney, 503-230-4749
Klondike near DeMoss, OR	NW Wind/Brett Wilcox	50	Umatillas	No known tribal issues	Energize June 2002	
Satsop Development Park Generation Grays Harbor Co, WA	Duke Energy	630	Nisqually Quinault	Under Construction Long term transmission needed - Paul Troutdale - ties into satsop	Energize June 2003	Dawn Boorse, 503-230-5678
Longview Mint Farm Gen, Clark Co, WA	Mint Farm Generation, LLC (Avista)	300	?	Under construction Long term transmission needed - Paul Troutdale -	Energize July 2003	Phil Smith, 503-230-3294
GNA Cliffs Gen Klickitat Co, WA	GNA Energy	180	Yakama	Oh hold - may change scope of project	Uncertain	Don Rose, 503-230-3796
Umatilla Gen, Umatilla Co, OR	Umatilla Gen Co, LP (PG&E National Energy Group)	581	Umatilla	Competition with the Tribal project - ROD Jan. 2001	December 2003 or later	Inez Graetzer, 503-230-3786
Summit Westward, Columbia Co, OR	Summit & GNA Brett Wilcox	520	?	Permits, EIS, and study in progress	Energize Nov 2003 or later	Dawn Boorse, 503-230-5678

FY2002 TRIBAL ANNUAL PLAN: ISSUES AND ACTIVITIES MATRIX

Nine Canyon near Kennewick, WA	Energy NW Wind Project	50	Yakamas and Umatilla	No known tribal issues	Energize Dec. 2002	
Nine Mile near Wallula, WA			Yakamas and Umatillas	No known tribal issues	Energize Nov. 28, 2002	
Wallula Power, Walla Walla Co, WA	Newport Northwest, LLC	1300	Yakama, Nez Perce, Umatilla, Sho-Bans, Colville	EFSEC process and EIS in progress Wallula, McNary-John Day transmission needed - project competes with Umatilla Tribes project	50/50 chance of completion Oct 2004	Don Rose, 503-230-3796
Starbuck Generating, Columbia Co, WA	Starbuck Power Co, LLC (PP&L Global)	1200	Yakama, Nez Perce, Umatilla, Colville, Sho-Bans	Start to LoMo and McNary-John Day transmission needed	Oct. 2004	Phil Smith, 503-230-3294
Umatilla Tribal Gen, Umatilla Co, OR	Williams & CTUIR	1300	Umatilla	Serious - connect into McNary-John Day. Competing with Starbuck and Wallula working on permits, BIA EIS, BPA coop.	Oct 2003 or later	Tom McKinney, 503-230-4749
Mercer Ranch, Benton Co, WA	Cogentrix	760		Siting, permits, and EIS in progress	Oct 2004	Don Rose 503-230-3796
Cherry Point, Whatcom Co, WA	BP (ARCO)	750		Permits, Study, EIS in progress	Jan 2004	Tom McKinney, 503-230-4749
Everett Delta, Snohomish Co, WA	FPL	250		Study in progress - Snohomish PUD connection EIS work to be determined	Jan 2004 or later	Tom McKinney, 503-230-4749
Grizzly Generation East of Madris, OR	CoGenrix	1100	Warm Springs	Just getting started	Energize Mid 2004	
<b>TRANSMISSION INFRASTRUCTURE G-13 PROJECTS</b>	<b>Priority of Projects</b>	<b>G-#</b>				
Puget Sound Addition King Co, WA	Phase I	G1	Muckleshoot, Nisqually, Puyallup			

FY2002 TRIBAL ANNUAL PLAN: ISSUES AND ACTIVITIES MATRIX

GENERATION PROJECTS	PROJECTS	PROJECTS	PROJECTS	PROJECTS	PROJECTS	PROJECTS	PROJECTS
Spokane Area and Western Montana Additions Spokane Co, WA		G9	Spokane, Colville, Shobans, Salish-Kootenai, Nez Perce				
North of Hanford/ North of John Day Co, WA		G2	Yakama				
Cross Cascades North Co, WA		G6	N/A				
Celilo Modernization The Dalles, OR		G7	N/A				
I-5 Corridor Generation Addition Co, WA		G8	Muckleshoot				
West of McNary Umatilla Co, OR		G3	Umatilla, Yakama				
Starbuck Generation Co, WA		G4	Yakama, Shobans, Umatilla, Colville, Nez Perce				
Lo Mo McNary Area (Wallula Generation) Co, WA		G5	Yakama, Shobans, Umatilla, Colville, Nez Perce				
Puget Sound Area Additions Co, WA	Phase II	G10					
Portland Area		G11	N/A				

FY2002 TRIBAL ANNUAL PLAN: ISSUES AND ACTIVITIES MATRIX

GENERATION AND INTEGRATION PROGRAMS	PROJECT	DESCRIPTION	STATUS	COMPLETION DATE	LOCATION
Additions Multnomah Co, OR					
Olympia Peninsula Addition II Co, WA	G12	Nisqually,			
I-5 Generation Addition Co, WA	G13				

**MATRIX TEAM FY 99 PROJECT EVALUATION FORM**

PAR #: TSR99001



WO #: **ENERGIZATION:** 07/01/01

**FACILITY NAME:** BPA System- Replace Expiring Transmission Line Easements

**PROJECT DESCRIPTION:** Negotiate and purchase term easements for transmission facilities over tribal lands in which the existing term easements are concluding. Project entails renegotiating land rights for transmission facilities originally obtained over tribal and allotted Indian land, where those original agreements are expiring. Includes transmission line rights of way, access roads and guy and anchor easements.

Pendleton - LaGrande (Oper. Roundup-LaGrande): There are approximately 44 access road ownerships, 17 transmission line ownerships and 2 guy and anchor ownerships where BPA's rights expire on July 1, 2001. We believe these are all allottee tracts rather than tribal tracts. Title investigations will determine the full scope.

Hungry Horse-Hot Springs (Flathead-Hot Springs): 15 tribal Access Roads

**JUSTIFICATION:** Pendleton - LaGrande (Oper. Roundup-LaGrande): If we do not have agreements in place by July 1, 2001, BPA will be in trespass.

Hungry Horse-Hot Springs (Oper. Flathead-Hot Springs): If we do not have agreements in place by 9/13/99, BPA will be in trespass.



**PRIMARY DRIVER:** Legal  
**ESTIMATES:** Provided by requester  
**PROG. COORDINATOR:** J D Burton  
**BENEFIT COST RATIO:**  
**DATE PREPARED:** 07/21/99 12:00:00 AM

	<u>98\$</u>	<u>99\$</u>	<u>2000\$</u>	<u>2001\$</u>	<u>&gt;2001\$</u>	<u>TOTAL \$</u>
<u>TOTAL \$(000)</u>	0.0	0.0	750	750	0.0	1500
<u>INCR \$(000)</u>	0.0	0.0	0.0	0.0	0.0	0.0



	<u>RAW SCORE</u>	<u>WEIGHT</u>	<u>NET SCORE</u>
<b>SBO1 - CUSTOMER SATISFACTION:</b>	4.0	0.25	1.0

**COMMENTS:** Criteria questions do not readily apply. Tribe relations are involved. BPA has maintained a high level of attention to maintaining good relations with the tribes.

	<u>RAW SCORE</u>	<u>WEIGHT</u>	<u>NET SCORE</u>
<b>SBO5 - SAFETY &amp; RELIABILITY:</b>	1.71	0.5	0.86

**COMMENTS:** 4+0+2+na+2+na+4 +0+0= 12/7= 1.71 If these easements were to expire and BPA loses the ability to use these lines the impact to the system would be significant, thus a "4" rating. It hasn't happened as of yet, thus a "0" rating. Any operational alternatives are not reasonable, thus "2". Spare parts are "na". This will not require main grid improvements on other parts of the system, "4" Has no impact on safety (unless you consider the risk of injuries in the efforts to build new lines around them).

	<u>RAW SCORE</u>	<u>WEIGHT</u>	<u>NET SCORE</u>
<b>SBO6 - ENVIRONMENTAL RESULTS:</b>	2.0	0.15	0.3

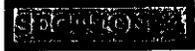
**MATRIX TEAM FY 99 PROJECT EVALUATION FORM**

**PAR #: TSR99001**

COMMENTS: 4+0= 4; 4/2= 2 If we had to build new lines around the tribes, there would be all the environmental impacts associated with building the new lines.

	<u>RAW SCORE</u>	<u>WEIGHT</u>	<u>NET SCORE</u>
<b>SBO7 - HIGH PERFORMING ORG:</b>	0.0	0.1	0.0

COMMENTS:



LEGAL/REGULATORY: Existing term easements are expiring. They must be replaced.

LONG TERM FTE IMPACTS:

RISK/CONFIDENCE IN PROJECT COSTS:

RISK/CONFIDENCE IN REVENUE PROJECTIONS:

RISK/CONFIDENCE IN POLITICAL ISSUES: Risk of political issues involving the tribes.

PART OF FUTURE PLAN:

TANGIBLE SOCIETAL BENEFITS:

STRANDED COST RECOVERY:

ACCOUNT EXEC. CONCURRENCE:



MATRIX TEAM COMMENTS:

MATRIX TEAM APPROVAL (Y/N):

## Cowger, John R - TR-TPP-4

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**From:** Easterling, Robert - TSR  
**Sent:** Tuesday, April 13, 1999 9:24 AM  
**To:** Cowger, John - TSR  
**Cc:** Ferrera, Renee - TSRF; Rapozo, Sandra M. - TFS/Spokane  
**Subject:** FW: Renewing Rights-of-Ways on Indian Lands

The traditional method, prescribed by BIA, for acquiring/renewing ROWs on Indian lands is to submit an application, which 25 CFR Part 169 details and the BIA realty staff implement with the applicant. After the application is submitted, the Tribe and/or allottee essentially negotiates via the BIA realty staff, or directly with the applicant. The full CFR for Indian Lands is available on the internet by using the following link. <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>,

Sandy worked closely with the Colville Agency BIA realty staff to acquire land rights required by GSA to dispose of the Okanogan-Tonasket line. As I recall, the BIA staff pretty much kept the process moving with the Tribe and allottees. However, the process moved very slowly due to an apparent Tribal strategy to hold all BPA projects and issues hostage to leverage their position on the Grand Coulee settlement that was pending during the same time period. The BIA realty staff first provided title information for all the lands affected. I don't recall whether BPA or BIA appraisers prepared the appraisals, but both agencies are normally allowed a review of the reports before they are approved for negotiation. Each tribe or BIA agency is likely to be different given their workload or relationship with one another, but the CFR process does serve to keep the parties on the subject of the application rather than widening the issues, although the tribes may try to introduce other issues as consideration nonetheless.

I agree that the timelines in the attachment may be insufficient.

-----Original Message-----

**From:** Cowger, John - TSR  
**Sent:** Friday, April 09, 1999 8:05 AM  
**To:** Rapozo, Sandra M. - TFS/Spokane; Ferrera, Renee - TSRF; Easterling, Robert - TSR  
**Subject:** Renewing Rights-of-Ways on Indian Lands

This attachment is a draft of the process to assist field realty specialists when renewing expiring tracts on Indian reservations. Please review this and return your comments by cob 4/16/99. Sandy, I'm asking your help because you are the only person I know who has successfully done this.



trbrwprocesses\_.doc

DATE: April 20, 1999

REPLY TO  
ATTN OF: TSR-3

SUBJECT: Renewing Rights-of-Way on Indian Lands

Marg C. Nelson, Vice President for Support Services – TS-CSB-2

The following is for the purpose of providing assistance and consistency in the approach to renewing expiring Bonneville Power Administration (BPA) rights-of-way (R/W) on Indian Lands. Because of multiple parties of interest, these renewals may be more complex and time consuming than most right-of-way acquisitions. They may involve tribal governments, the Bureau of Indian Affairs (BIA), individual allottees with large numbers of owners, and non-Indian private property owners. Many issues, such as fish, wildlife, right-of-way use, and deregulation business opportunities, may be raised, requiring coordination with other BPA groups. For these reasons, it will be important to allow sufficient time to communicate and coordinate with all interested parties.

1. **Transmission Business Line (TBL) Strategy for R/W over Tribal Lands (4/17/98).** Staff will review this strategy, and work with BPA Tribal Relations Group to contact Tribes for initiation of R/W renewal processes.
2. **Title evidence.** It must be obtained largely from BIA/Tribal sources and given their recent reorganizations and unknown competing demands on resources, we should allow up to one year for receipt.
3. **Rights-of-Way over Indian Lands (CFR 169.1-28)** (<http://www.access.gpo.gov/nara/cfr/waisidx/25cfr169.html>). Staff will review the CFRs on rights-of-way over Indian Lands. We will be in a position to make an appraisal-based renewal offer one to two years, prior to the expiration of each land right. BPA will initiate the process by making written application for renewal via the BIA, or Tribe, which in some cases has assumed the BIA realty function.
4. **Appraisals.** For Tribal Lands, we will work with the Tribe to determine who will accomplish these, i.e., BIA/Tribal or BPA staff, or fee appraisers. Regardless, both agencies will require review of reports. Allow six months to one year for appraisals.
5. **Negotiations/Tribal Tracts.** In addition to land values, negotiations may center around potential BPA economic benefits or assistance to Tribes, that will require BPA realty specialists to consult with other Transmission, Power, and Fish and Wildlife employees to determine the feasibility of Tribal proposals.
6. **Negotiations/Indian Allotments.** These tracts typically contain dozens of undivided or fractional ownerships that are particularly difficult, given the number of landowners who must be contacted and included in negotiations, consuming much time per tract. A majority (51%) of owners is required to renew allotment tracts.

7. **Perpetuity.** The perpetuity issue will likely become a negotiation issue. We will rely on BPA legal advice as to the term of our R/W. The workload will be much greater if some of the R/W currently thought to be perpetual is found to expire.
8. **Condemnation Authority.** Condemnation is an alternative of last resort, but only for allotted lands, and even then, it is undesirable. As always, the decision to condemn will require balancing BPA's desire to have good will with individual property owners against BPA's duty to ratepayers throughout the region. Where necessary and allowable, BPA may be forced to condemn and let the courts determine "fair market value" for land rights.
9. **Alternatives.** Some lines might be more economically relocated off-reservation should negotiations reach an impasse. Alternative such as relocation, of course, would require several years to plan, design, acquire new rights-of-way, and construct.

John R. Cowger  
Manager, Real Property Services

cc:

J. Smith – KT/Spokane  
BPA/Contractors – TSR-3  
R. Ferrera – TSRF-3  
BPA – TSRF  
J. Burgess – TSRS-3  
Official File – TSR-3

JCowger:(lmy):x3258:04/20/99 (W:\TSR\Word\_Proc\John\Tribal\trbrwprocesses.doc)

**United States Government****Department of Energy  
Bonneville Power Administration**

DATE: April 17, 1998

REPLY TO  
ATTN OF: T-DITT2

SUBJECT: Strategy for Addressing Issues of ROW over Tribal Lands

Fred Johnson - TF-DOB1      Vickie Vanzandt - TO-DITT2  
Charles Meyer - TM-DITT2      Marg Nelson - TS-PSB-2  
Alan Courts - TN-4

This outlines TBL's approach for identifying and resolving rights-of-way issues with affected Tribes. The approach may need to be modified if non-transmission issues, such as fish and wildlife, become linked to ROW issues during interactions with tribes. Our goal will be to resolve issues in a manner that meets the needs of the TBL and the impacted tribes, complies with the BPA Tribal Policy, maintains a government-to-government relationship, and improves tribal government satisfaction with BPA.

#### Collaboration

TBL will take the initiative, with assistance from BPA Tribal Relations, to effectively communicate and collaborate with tribes, both at leadership and staff levels. This will include an initial meeting with tribal leadership where BPA will explain this strategy and receive feedback.

#### ROW Research

Thorough research of the land conveyance records for the portion of each BPA facility located on reservations will be completed by January 1999. This research will show which facilities occupy ROW with an expiration date, and which occupy ROW with no expiration date. From the research, a prioritized list will be made, by expiration date, so that work can begin on the earliest expirations.

Title will be researched in instances where the land under expired ROW may have transferred into private ownership. In those instances, the tribal government will be informed, and an acquisition will be initiated with the private landowner.

For the remaining ROW, BPA will share its land conveyance records with the tribes, and we will request reciprocal sharing of tribal land conveyance records with BPA. This will allow both BPA and the tribes to fill missing gaps in their land records.

### BPA Project Team Formation

Teams will be formed for each instance where a ROW is within 5 years of expiration. Teams will also be formed where land records leave uncertainty over the term of the ROW. The team will be led by a project manager, with members from Field Services, Real Property Services, Operations and Planning, Environmental Policy, Strategy & Analysis, and Tribal Relations. General Counsel's Office will be consulted for legal advice, as necessary.

The team will identify known issues with the tribe, and Tribal Relations will coordinate meetings with the tribe to determine issues from the tribe's perspective. Any issues involving the Power Business Line, Energy Efficiency, or Corporate will be passed on to, and coordinated with those organizations. If there are multiple, complex issues, BPA will work with the tribe to develop a memorandum of understanding (MOU) identifying the issues and how we will jointly work toward resolution of those issues.

### Transmission System Studies

If either BPA or the tribal government oppose renewing the ROW, the team will begin the process of studying system alternatives. The tribes will be invited to participate in the studies. These studies will determine the least cost, environmentally acceptable alternatives. Both BPA and the tribes must be prepared to face typical opposition ('not in my back yard') that may be associated with various alternatives.

If neither party opposes renewal, system studies may be unnecessary.

### Negotiations

Negotiations will be led by Real Property Services, with assistance from Tribal Relations. Where there are multiple, complex issues and an MOU has been developed, consideration will be given to all alternatives identified in the MOU. One of those alternatives may be renewal of the ROW.

Where necessary, separate teams may be formed to deal with specific issues, such as access roads, vegetation management, or access to BPA fiber optic lines. Progress on negotiations will be regularly shared with the project team, and periodic status reports will be provided to TBL Management.

### Renewal of ROW

If renewal of the ROW is the preferred alternative, BPA's acquisition process will conform to applicable federal laws and regulations. Consideration will be given to tribal laws and regulations. Offers will be based on appraised fair-market-value, per the 'Uniform Appraisal Standards for Federal Land Acquisitions.'

/s/ Harvey P. Spigal

Harvey P. Spigal  
Senior Vice President,  
Transmission Business Line

cc:

S. Wright - AN/Wash  
J. Smith - AT/Spokane  
S. Hickok - A-7  
P. Tawney - AT-7  
A. Smith - E-4  
B. Beraud - EC-4  
R. Roach - L-7  
S. Baskerville - LL-7  
P. Majkut - LL-7  
D. Landers - TF-DOB1  
S. Furst - TM-DITT2  
B. King - TM-DITT2  
S. Long - TM-DITT2  
K. Moxness - TM-DITT2  
T. Noguchi - TM-DITT2  
C. Perigo - TM-DITT2  
A. Paschke - TM-DITT2  
M. Raschio - TM-DITT2  
T. Rodrigues - TM-DITT2  
J. Rogers - TM-DITT2  
K. Ward - TM-DITT2  
M. Johns - TN-4  
M. Bond - TOP-DITT2  
J. Cowger - TSR-3  
Official File - TSR-3 (LA-18-14)

JRCowger:jd:3258:4-10-98 (TSR-w:\TRBSTRAT.DOC)

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Easterling, Robert - TSR  
**Sent:** Friday, April 09, 1999 11:58 AM  
**To:** Hallgarth, Rebecca - TSR  
**Subject:** FW: Renewing Rights-of-Ways on Indian Lands

-----Original Message-----

**From:** Ferrera, Renee - TSRF  
**Sent:** Friday, April 09, 1999 9:05 AM  
**To:** Cowger, John - TSR; Rapozo, Sandra M. - TFS/Spokane; Easterling, Robert - TSR  
**Subject:** RE: Renewing Rights-of-Ways on Indian Lands

John: My gut reaction to this is that the timeframes may be a bit unrealistic. I am also concerned about the statement that we will have an offer only one year before expiration. I think we need to be ready much sooner than that. Especially if negotiations break down and we need to move our lines.

How will the money for this be added to BPA's budget? Shouldn't it be done rather soon, as some of these need to start now. And this may be pretty big bucks. Should the process address the budget issue - or at least where the money is coming from? Does this go before the matrix team for every line with each tribe, or some overall item?

-----Original Message-----

**From:** Cowger, John - TSR  
**Sent:** Friday, April 09, 1999 8:05 AM  
**To:** Rapozo, Sandra M. - TFS/Spokane; Ferrera, Renee - TSRF; Easterling, Robert - TSR  
**Subject:** Renewing Rights-of-Ways on Indian Lands

This attachment is a draft of the process to assist field realty specialists when renewing expiring tracts on indian reservations. Please review this and return your comments by cob 4/16/99. Sandy, I'm asking your help because you are the only person I know who has successfully done this.

<< File: trbrwprocesses\_.doc >>

## Cowger, John R - TR-TPP-4

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**From:** Hallgarth, Rebecca - TSR  
**Sent:** Friday, March 19, 1999 8:33 AM  
**To:** Cowger, John - TSR  
**Subject:** FW: Indian rights-of-way

When you mentioned this subject at the staff meeting this week, I couldn't remember for sure what the 1911 act said about durations, but I thought I remembered that it had been an issue. From the information below, it looks as though right-of-way granted to BPA before the 1948 act would be limited in duration. Maybe Legal Services had a different read on the 1911 act later on.

-----Original Message-----

**From:** Wolcott, Marian - TTRB  
**Sent:** Friday, January 19, 1996 11:28 AM  
**To:** Cowger, John - TSR; Gronvold, Jennifer W - TSRF; Hallgarth, Rebecca - TSR; Easterling, Robert - TSR  
**Subject:** FW: Indian rights-of-way

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**From:** McKenna, Michael (Scott) - LF  
**To:** Wolcott, Marian - TTRB  
**Subject:** Indian rights-of-way  
**Date:** Friday, January 19, 1996 11:05AM

Here's the written run-down you requested, Marian:

[1] The "Indian Right-of-Way Act" was enacted on 2-5-48. Significantly, it specifies no particular term of duration for rights-of-way over Indian lands.

[2] Regulations implementing the 1948 Act were not promulgated until 8-25-51, approximately three and one-half years later.

[3] The 1951 regulations limited rights-of-way for electric transmission lines to a duration of 50 years, and this limitation remained in effect until approximately 1967.

**CONCLUSION:** rights-of-way executed in the period of time between 2-5-48 and 8-25-51 (assuming they were granted under authority of the 1948 Act) appear to lack the 50 year restriction on electric transmission rights-of-way that was added in '51.

**NOTE, HOWEVER:** the assumption immediately above, in parenthesis, is a key assumption, because the other Act that could be involved is the Act of 1911 (now codified at 43 U.S.C. section 961), which limits all rights-of-way, issued under its authority, to a term of 50 years.

Thus, if there is a right-of-way grant (in the period between 2-5-48 and 8-25-51, for example) which does not specify which Act authorized it, either the 1911 or 1948 Acts could apply.

I do not see, however, why it would be unreasonable for BPA to assume that the 1948 Act, in fact, applied.

## Cowger, John R - TR-TPP-4

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**From:** Roberts, Mark - S [PORT/HQ7PO01/MLR6028]  
**Sent:** Thursday, November 05, 1998 8:23 AM  
**To:** Cowger, John - TSR; Silverstein, Brian L. - TMP  
**Cc:** Lee, Louis - TM  
**Subject:** RE: ROW Renewal

Some details would be useful.

Perhaps the info you prepared for Steve W's agency issues meeting includes some details.

At the moment, I have a general to vague understanding that Tribal issues will be with us for the next millenium ... with no sense of any points of time being more 'at issue' than any other.

I'm interested in BIG facilities (BIG = worth the Administrator's time in knowing or going to the mat over) with known expiration dates.

I'm assuming tht BPA will negotiate with Tribes for ROW rather than attempting to condemn ROW upon another sovereign but then it won't be my call, either.

In any case, knowing about when these proceedings may be important to the Agency will be important in assessing the legislative efforts that are being considered over the next 2 to 6 years.

Looking forward to some particulars

Thanks

Mark

-----  
**From:** Cowger, John - TSR  
**To:** Roberts, Mark - S; Silverstein, Brian L. - TMP  
**Cc:** Lee, Louis - TM  
**Subject:** RE: ROW Renewal  
**Date:** Wednesday, November 04, 1998 5:32PM

Mark,  
There are quite a few facilities across a number of reservations that could be impacted by expiration of right-of-way. We have some rights-of-way that have known expiration dates, and some that are unknown. The scope of the problems depends, in a large part, on whether certain regulations, limiting the term of rights-of-way on indian reservations to 50 years, apply to BPA. Another important variable is whether BPA may exercise its condemnation authority against a Tribe. In 1998, TBL developed a general strategy on how we will approach this issue.

In addition, we discussed this issue last year, at Steve Wright's agency issues meeting. If you need more details, please let me know.

John

-----  
**From:** Silverstein, Brian L. - TMP  
**To:** Roberts, Mark - S  
**Cc:** Cowger, John - TSR; Lee, Louis - TM  
**Subject:** RE: ROW Renewal  
**Date:** Friday, October 30, 1998 3:05PM

Yes.

John can provide the details. I presume this is for the Agency issues timeline that you are developing.

-----  
**From:** Roberts, Mark - S  
**To:** Silverstein, Brian L. - TMP

Subject: ROW Renewal

Date: Friday, October 30, 1998 10:55AM

quick question, do our "right of way" agreements with Tribes and other parties "mature" or come up for renewal in any important way for the temporal landscape discussion?

Critical line ROW renewals? big "chunks"?

Let me know

Thanks

Mark

**Cowger, John R - TR-TPP-4**

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**From:** House, Kathryn C. - TS [ROSS/RS2PO01/KCH0718]  
**Sent:** Monday, March 16, 1998 4:15 PM  
**To:** Cowger, John - TSR  
**Subject:** FW: Strategy for Expiring ROW on Reservations

**Importance:** High

John - FYI  
-----

From: Griffin, Kathie A. - TF  
To: House, Kathryn C. - TS  
Subject: RE: Strategy for Expiring ROW on Reservations  
Date: Monday, March 16, 1998 10:26AM

We have no comments on this.  
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From: House, Kathryn C. - TS  
To: Courts, Alan - TN; Nelson, Marg - TS; Johnson, Frederick M. - TF; Meyer, Charles - TM  
001; VanZandt, Vickie - TO 001; Spigal, Harvey P. - T  
Cc: Cowger, John - TSR; Garcia, Mary Alice - TN; Johns, Michael C. - TN; Beraud, Bob -  
ECN; Tawney, Patricia - AT; Majkut, Paul S. - LL; Baskerville, Sonya L. - LL; Willard,  
Barbara - T; Landers, Dean M. - TF; Griffin, Kathie A. - TF; Jones, Terrie L. - TF; Speer,  
Cheryl - TO 001; Lee, Louis - TM 001; Ricks-Born, Sharon - TM 001;  
Smith, John A - AT/Spokane; Hemmelman, Kenneth M-TFS/Spoka  
Subject: FW: Strategy for Expiring ROW on Reservations  
Date: Monday, March 16, 1998 9:37AM  
Priority: High

Attached for your review is the revised ROW draft from John Cowger and his e-mail that addresses your comments and concerns. Please provide any further comments to John by Noon on Thursday, March 19.

Thanks

Kathy  
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From: Cowger, John - TSR  
Subject: Strategy for Expiring ROW on Reservations  
Date: Thursday, March 12, 1998 4:00PM

The final draft of the TBL Strategy for Expiring ROW on Reservations is attached below. Thank you for the helpful feedback on draft 2. The following is a restatement of your questions, with an explanation of the changes that were made to draft 2:

Question 1. For expired ROW across lands initially owned by tribes, that later came into private ownership, what status would the tribe have in BPA perfecting its land rights?  
Change 1. Addition to ROW Research paragraph 2--In those instances, the tribal government will be informed, and an acquisition will be initiated with the private landowner.  
Comment 1. Notifying the tribe will help maintain BPA's commitment to a government-to-government relationship. It will also give the tribe an opportunity to identify issues with BPA's ROW. BPA may find a variety of tribal government practices regarding the government controls that are exercised over private property on reservations.

Question 2. What if the tribe agrees to renew a ROW, but BPA cannot accept the conditions, for example the price is too high?  
Change 2. Change to Transmission System Studies--If either BPA or the tribal government oppose renewing the ROW, the team will begin the process of studying system alternatives.  
Comment 2. This change recognizes that either party may object to renewing the ROW.

Question 3. How would we approach alternatives that don't include renewal of the ROW?  
Change 3. Change to Negotiations paragraph 1--Where there are multiple, complex issues and an MOU has been developed, consideration will be given to all alternatives identified

in the MOU. One of those alternatives may be renewal of the ROW.

Comment 3. This change recognizes that renewal of the ROW is only one of many possible alternatives that may be identified in the MOU.

Question 4. Shouldn't BPA consider tribal laws and regulations when renewing ROW.

Change 4. Addition to Renewal of ROW--Consideration will be given to tribal laws and regulations.

Comment 4. BPA must follow federal laws and regulations, but in recognition of the government-to-government relationship between BPA and the tribes, we should also consider tribal laws and regulations.

Question 5. What uncertainties are there about the terms (duration) of our ROW?

Change 5. Change to ROW Research paragraph 1--This research will show which facilities occupy ROW with an expiration date, and which occupy ROW with no expiration date.

Comment 5. We can easily separate ROW into the categories of those with an expiration date, and those with no expiration date, by examining the conveyances. There may be many subcategories under the category of 'no expiration date', depending on the laws, regulations, and various contracts that were made between BPA and the tribes over the past 60 years. We will need to collaborate with the tribes on this issue.

Question 6. What about other issues the tribe may have with TBL issues? How do we guard against bombarding the tribes with different people and different issues?

Comment 6. This will be a challenge for all TBL staff, and even for other BPA business lines. TBL staff will need to communicate with each other to ensure that our activities are coordinated. BPA's Tribal Relations Group can help in this regard, as they will be facilitating contacts with tribes. The strategy may help in this regard, in cases where an MOU is developed. The MOU should define outstanding issues between BPA and the tribes.

Question 7. How will the work be organized between teams--by tribe, by transmission facility, or by expiration date?

Comment 7. This will depend on the issues. Where practical, we may find it more productive to organize by tribe. In any event, we should be prepared to discuss all the facilities on a reservation at the same time, if this is agreeable to the tribe. On some reservations, we may find one ROW expiring in 5 years, and another expiring in 20 years, with the facilities having little in common. We may choose to collaborate with the tribe on the best approach in cases such as that.

Question 8. Could we include a completion date for the ROW research?

Change 8. Change to ROW Research paragraph 1--Thorough research of the land records for the portion of each BPA facility located on reservations will be completed by January 1999.

Comment 8. Most of BPA records research is complete. We do need to check with the Bureau of Indian Affairs and the tribes to ensure that we have all the necessary documentation. We believe this could be completed by January 1999. We will, however, complete this step earlier where we already know that we are soon approaching an expiration. We have already begun this with the Nisqually Tribe.

Question 9. Shouldn't the government-to-government concept come through in the Strategy?

Change 9. Change to paragraph 1--The goal of the strategy will be to resolve issues in a manner that...maintains a government-to-government relationship...

Comment 9. This is an important concept to keep in mind as we carry out the Strategy.

<<File Attachment: TRBSTRAT.DOC>>

**Cowger, John R - TR-TPP-4**

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**From:** Roach, Randy A. - L [PORT/HQ7PO01/RAR3985]  
**Sent:** Thursday, December 04, 1997 1:55 PM  
**To:** Spigal, Harvey P. - T  
**Cc:** Cowger, John - TSR; Key, Philip S. - LN; Nelson, Marg - TS  
**Subject:** FW: Easements on Tribal Lands

A little bit more info . . .

-----  
**From:** Key, Philip S. - LN  
**To:** Majkut, Paul S. - LL; Roach, Randy A. - L; Jones, Robert L. - LL  
**Subject:** RE: Easements on Tribal Lands  
**Date:** Thursday, December 04, 1997 11:37AM

I agree w/ Cowger, but I'd like to elaborate. Cowger is correct in stating that for tribal or individual tribal member land held in trust, it would take congressional authorization--and DOI approval-- for a taking. I agree w/ Cowger that this is widely held, but I think the belief is based less on treaty rights and more on 25 USC 177 which courts interpret to say tribal property cannot be condemned without Congressional consent. Cases indicate this even applies to federal agencies, Bear v. US 611 F.Supp 589, 599 (D.C. Neb. 1985), and the agencies tend to behave as if it does. Because this isn't based solely on treaty rights, this rule holds for executive order tribes as well.

For land owned in fee by either a tribe or individual tribal member, the usual rules of condemnation should apply. They definitely apply for off-reservation fee owned lands. However, in the rare instance where there are fee owned lands on a reservation and they're not in trust (if they were, the fee would be held by the U.S.), trust responsibility and possibly other policies might create an argument that the usual condemnation rules do not apply. From a purely legal point of view, such an argument should not prevail.

-----  
**From:** Cowger, John - TSR  
**To:** Roach, Randy A. - L; Nelson, Marg - TS; Spigal, Harvey P. - T  
**Subject:** RE: Easements on Tribal Lands  
**Date:** Wednesday, December 03, 1997 2:49PM

BPA has never used its Project Act Section 2(d) condemnation authority for tribal trust land, nor are we aware of any federal agency taking tribal trust land through eminent domain. It is widely held that condemning tribal trust land would require express congressional authority, because such a taking would constitute abrogation of treaty rights(at least for the treaty tribes).

BPA squarely faced this issue when selecting the route for the Colstrip transmission project. We chose to acquire new non-Indian right-of-way and build a new substation at Taft, rather than attempt to use an existing vacant right-of-way across the Flathead Reservation to Hot Springs Substation. Objections from the Tribe, combined with uncertainties surrounding the 50-year term of easement issue, were major reasons for avoiding the Reservation.

-----  
**From:** Spigal, Harvey P. - T  
**To:** Cowger, John - TSR; Roach, Randy A. - L; Nelson, Marg - TS  
**Subject:** FW: Easements on Tribal Lands  
**Date:** Wednesday, December 03, 1997 8:01AM

Is it true that we have no condemnation authority, or that for the last 20 or so years the Federal government has been unwilling to exercise this right on tribal lands?

-----  
**From:** Hickok, Steven G. - A-7  
**To:** Spigal, Harvey P. - T  
**Cc:** Yoakum, Ann - A  
**Subject:** Easements on Tribal Lands  
**Date:** Wednesday, December 03, 1997 6:54AM

I think I heard in the Political Landscape briefing yesterday morning that we were having difficulty negotiating successors to expiring easements for transmission facilities on tribal lands. The implication seemed to be that if we were not prepared to pay (for an easement renewal) just short of the cost of re-routing the line, that we would soon lose these rights-of-way (because we have no condemnation authority there).

What's the situation?

## Cowger, John R - TR-TPP-4

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**From:** Easterling, Robert - TSR [PORT/HQ3PO01/RLE3102]  
**Sent:** Friday, October 10, 1997 9:54 AM  
**To:** Cowger, John - TSR  
**Cc:** Lee, Louis - TM  
**Subject:** Renewing ROWs on Indian Lands

Below are the Code of Federal Regulations for renewing rights-of-way across Indian lands. I would argue that it is in BPA's best interest, and a legal requirement, to insist that these regulations be adhered to by all parties during the renewal process. You will note that they emphasize that the consideration for renewal be based upon appraised land values. Although not limiting payment to the fair market value of rights granted, I would expect that the overwhelming (if not all) renewal applicants are held to no higher standard, and BPA should presumably expect equal treatment.

These regulations do not apply only in the case of transmission facilities across tribal trust lands that require a license by the Federal Power Act (169.2). The main difference being that annual charges for the use of such tribal lands under any license issued by the Federal Power Commission shall be subject to the approval of the tribe.

You can access the entire set of CFRs (25 CFR Part 169.1-.28) on the Internet under the Govt. Printing Office or Dept. of the Interior (BIA) websites.

### 25 CFR 169.19 Renewal of right-of-way grants

"On or before the expiration date of any right-of-way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original right-of-way grant, the applicant may file with his application a certificate under oath setting out this fact, and the Secretary, with the consent required by 169.3 may thereupon extend the grant for a like term of years, upon the payment of consideration as set forth in 169.12\*. If any change in the size, type, or location of the right-of-way is involved, the application for renewal shall be treated and handled as in the case of an original application for a right-of-way."

### \*169.12 Consideration for right-of-way grants.

"Except when waived in writing by the landowners or their representatives as defined in 169.3 and approved by the Secretary, the consideration for any right-of-way granted or renewed under this part 169 shall be not less than but not limited to the fair market value of the rights granted, plus severance damages, if any, to the remaining estate. The Secretary shall obtain and advise the landowners of the appraisal information to assist them (the landowner or landowners) in negotiations for a right-of-way or renewal."

## Cowger, John R - TR-TPP-4

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**From:** Easterling, Robert - TSR [PORT/HQ3PO01/RLE3102]  
**Sent:** Thursday, September 11, 1997 9:29 AM  
**To:** Cowger, John - TSR  
**Subject:** RE: Expired Rights on Indian Lands

Marian said the title report will not be ordered until next week. There was some confusion about whether we wanted to rely on Metroscan and acquire an easement from the current owner. If fee-owned, the last deed of record in the title report should reveal when the Tribe conveyed it. The property might still be tribally owned, but under sales contract to another party, with the assessor's records commonly reflecting the party in possession who is paying the taxes. Although, I would think the taxes would be paid to the Tribe, not the county, if it is still in the reservation, regardless of ownership.

-----  
**From:** Cowger, John - TSR  
**To:** Easterling, Robert - TSR  
**Cc:** Hallgarth, Rebecca - TSR  
**Subject:** RE: Expired Rights on Indian Lands  
**Date:** Thursday, September 11, 1997 7:43AM

I believe the statutory period would have begun when the property became private, as it seems as though the grant would have expired when there was no longer Indian ownership. That would be an interesting legal question, but I doubt it is worth the effort to get an answer. Strategically, I think it is best to have clear title to all BPA R/W on reservations. I would prefer to acquire an easement from the new property owner, whether it is legally necessary or not.

-----  
**From:** Easterling, Robert - TSR  
**To:** Cowger, John - TSR  
**Cc:** Hallgarth, Rebecca - TSR  
**Subject:** Expired Rights on Indian Lands  
**Date:** Wednesday, September 10, 1997 1:26PM

After our meeting yesterday Rebecca and I talked a little about the Grande Ronde-Boyer tract whose 50-year term expired last fall, and which now appears to be fee-owned. You and I discussed whether BPA would need to acquire a conventional easement from the current fee owner, or whether BPA might have some other color of title, such as prescriptive rights.

Rebecca recalled our system disposal a number of years ago of the Okanogan-Tonasket line to Okanogan PUD. In that case GSA and the PUD required BPA to acquire easements, prior to selling the line, to replace expired 50-year Indian grants, some of which had been converted to fee-ownership during the intervening years. It would seem at first glance the same process would be required for the Grande Ronde-Boyer tract. I believe prescriptive rights would only begin tolling upon expiration of the Indian Grant, and given that occurred in late 1996, would not meet the Oregon statutory 10-year period. In addition, allowing prescription to begin tolling at this point would appear to me not to meet the takings philosophy of the Fifth Amendment and PL 91-646.

However, perhaps we should refer this issue to Bob Jones, since its likely some of the other rights across Indian lands that have expired, or soon will, are now held by fee owners.

## Cowger, John R - TR-TPP-4

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**From:** Baskerville, Sonya L. - LL [PORT/HQ7PO01/SLB2138]  
**Sent:** Thursday, July 10, 1997 5:56 PM  
**To:** Cowger, John - TSR; Majkut, Paul S. - LL; Nelson, Marg - TS  
**Cc:** Kim, Elizabeth C. - L; Carter, Eric H. - L  
**Subject:** RE: Please finish the 50 year easement on Indian reservation research

Collection of the land plats will be a necessary job for the Salish-Kootenai information, but the minute we request the information, they will consider that as a trigger for negotiations. Is there a schedule for negotiations with various tribes? I assume that we will not be able to negotiate with several tribes simultaneously. We should consider what would be the best time to approach the Salish-Kootenai.

-----  
**From:** Carter, Eric H. - L  
**To:** Kim, Elizabeth C. - L; Majkut, Paul S. - LL; Baskerville, Sonya L. - LL  
**Subject:** RE: Please finish the 50 year easement on Indian reservation research  
**Date:** Wednesday, July 09, 1997 3:27PM

It depends. We have already compiled expiration dates for the non-Flathead easements. It would not take very long to put this info into a chart showing when we expect the easements to expire. The Flathead easements are another story. We have lists of the easements we have across their land. However, we do not have the stamped land plats or copies of the actual easements. They were taken by the Tribe from the local BIA office and are in Montana. We could try to fire off a letter to them asking them to do the legwork in compiling the easements for us. This could take some time and they may not be receptive to doing it for us, depending on the quality of our past relationships with them. Alternatively, someone from here might need to go to their location and spend a couple of days trying to collect the information. Once we compile the info, we could probably analyze it and create an easement expiration chart in a relatively short time.

-----  
**From:** Majkut, Paul S. - LL  
**To:** Kim, Elizabeth C. - L; Carter, Eric H. - L; Baskerville, Sonya L. - LL  
**Subject:** FW: Please finish the 50 year easement on Indian reservation research  
**Date:** Wednesday, July 09, 1997 2:32PM

how long will this take?

-----  
**From:** Nelson, Marg - TS  
**To:** Majkut, Paul S. - LL  
**Subject:** RE: Please finish the 50 year easement on Indian reservation research  
**Date:** Wednesday, July 09, 1997 2:08PM

Yes, we should complete all of them since you have the staff available that are knowledgeable about the assignment.

-----  
**From:** Majkut, Paul S. - LL  
**To:** VanZandt, Vickie - TO; Nelson, Marg - TS  
**Cc:** Kim, Elizabeth C. - L; Carter, Eric H. - L; Baskerville, Sonya L. - LL  
**Subject:** FW: Please finish the 50 year easement on Indian reservation research  
**Date:** Wednesday, July 09, 1997 8:57AM

I assume you want us to work up the other easements past 10 years out and the Flathead easements.

-----  
**From:** Carter, Eric H. - L  
**To:** Baskerville, Sonya L. - LL  
**Cc:** Kim, Elizabeth C. - L; Majkut, Paul S. - LL  
**Subject:** RE: Please finish the 50 year easement on Indian reservation research  
**Date:** Monday, June 23, 1997 3:45PM

I was afraid of that. Try this one.

<<File Attachment: TRIBEZMT.DOC>>

-----  
From: Baskerville, Sonya L. - LL  
To: Carter, Eric H. - L  
Subject: RE: Please finish the 50 year easement on Indian reservation research  
Date: Monday, June 23, 1997 2:33PM

What type of document is it? WORD, EXCEL? I could not open it "as is."

-----  
From: Carter, Eric H. - L  
To: Kim, Elizabeth C. - L; Baskerville, Sonya L. - LL  
Cc: Majkut, Paul S. - LL  
Subject: RE: Please finish the 50 year easement on Indian reservation research  
Date: Monday, June 23, 1997 2:24PM

The last chart we did contains all of the easements we are aware of that will be expiring within the next 10 years, or that have indefinite termination dates. See chart attached below. The only easements that we haven't looked into in any depth yet are the Flathead conveyances. As you may recall, they have taken all the documents from BIA back to Montana. We will have to work directly with the Tribe to get copies of the easements and stamped land plats. Depending on how much work they are willing to do for us, we may have to get somebody from our Montana office to do the leg work for the OGC (or, possibly, consider sending somebody from here to get the info).

<<File Attachment: TRIBEZMT.EXP>>

Let me know if you have troubles accessing this document. If it satisfies your needs now, please forward it to Marge and Vickie.

-----  
From: Baskerville, Sonya L. - LL  
To: Kim, Elizabeth C. - L; Carter, Eric H. - L  
Subject: RE: Please finish the 50 year easement on Indian reservation research  
Date: Monday, June 23, 1997 1:46PM

If we are, that's great! Did we get the chart completed?

-----  
From: Carter, Eric H. - L  
To: Kim, Elizabeth C. - L; Baskerville, Sonya L. - LL  
Subject: FW: Please finish the 50 year easement on Indian reservation research  
Date: Monday, June 23, 1997 1:40PM

Let me know how you guys want to proceed on this. I thought we were done. ???

-----  
From: Majkut, Paul S. - LL  
To: Kim, Elizabeth C. - L; Carter, Eric H. - L; Baskerville, Sonya L. - LL  
Subject: Please finish the 50 year easement on Indian reservation research  
Date: Sunday, June 22, 1997 9:35AM

Marge Nelson and Vickie Vanzandt want to see it.

## **Cowger, John R - TR-TPP-4**

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**From:** Nelson, Marg - TS [ROSS/RS2PO01/MCN2233]  
**Sent:** Monday, January 06, 1997 10:03 AM  
**To:** Cowger, John - TSR  
**Subject:** FW: Tribal R/W and TBL Corporate

John,  
Let's talk about this this afternoon.  
Marg

-----  
From: Spigal, Harvey P. - TM  
To: Nelson, Marg - TS  
Subject: RE: Tribal R/W and TBL Corporate  
Date: Friday, January 03, 1997 4:53PM

Thanks.

I would like to talk to you about this. I recall reading Paul Majkut's legal analysis a couple of years ago, and, based on my experience in negotiating the Colville Settlement, I have some opinions about preparation and coordination with other Federal agencies, particularly DOJ.

I also am concerned that we have people at BPA who want to push this quickly to resolution. I don't believe it can done quickly. And some of the people who are pushing might not have an accurate sense for the scope and nature of the easement problem.

I would like to talk about how you would staff, schedule and prepare for this. Its up to you if you would like John or others to participate.

This can turn into a huge financial and policy issue.

On a different matter, I don't know the extent to which you want to hear about work issues. On some things, like the issue of the tribal easements, I would very much like to talk to you. I also would like your input on any drill to review and cut costs. I guess I need for you to tell me when you don't want to be bothered. Just tell me. I am not offended. If you want to stay involved, I'll call and e-mail. When you need a break or you need to be with Roger, be clear with me. Everything at BPA can wait.

-----  
From: Nelson, Marg - TS  
To: Spigal, Harvey P. - TM  
Subject: RE: Tribal R/W and TBL Corporate  
Date: Friday, January 03, 1997 4:31PM

Yes, my realty staff would have the lead role with legal assisting. John Cowger is the manager for this activity. I will forward this to him and plan to meet with him Monday before your staff meeting.

-----  
From: Spigal, Harvey P. - TM  
To: Nelson, Marg - TS  
Subject: FW: Tribal R/W and TBL Corporate  
Date: Friday, December 27, 1996 9:44AM

Is it your responsibility to renegotiate easements across reservations in the case of easements which BPA failed to acquire in perpetuity?

-----  
From: Luce, James O. - LN  
To: Wright, Stephen- AC; Spigal, Harvey P. - TM; Sienkiewicz, Ed W. - S  
Cc: Key, Philip S. - LN; Majkut, Paul S. - LL  
Subject: Tribal R/W and TBL Corporate  
Date: Friday, December 13, 1996 10:13AM

Ed -

In reviewing the isue of 50 year or perpetuity leases on Tribal reservations I was

thinking of how this might impact in a dotted line way to legislation BPA may seek to separate, undertake new functions in deregulated environment etc. So I called Steve/

Steve recalled that this was one of three or so issues that the TBL was going to deal with and get back at a later TBL mtg. Asked that I contact you to see abt when you have it scheduled.

I don't know what the right strategy is but I don't think I would recommend asking Interior for any favors w/Lower Snake direct funding hanging fire. Is one option just to let them go, get past the legislative effort in the next couple of years, and then engage. That would be consistent with the "options are in perpetuity" argument. And what are the Tribes to do? The power will flow and then in 2000 we deal with the issues without having them as leverage used against us.

Anyway, not my area but I am sure the TBL will be create:) and do the right thing:):)

JOL

## Cowger, John R - TR-TPP-4

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**From:** Nelson, Marg - TS/CSB-2  
**Sent:** Tuesday, March 16, 1999 11:22 AM  
**To:** Maher, Mark W. - T; Johnson, Frederick M. - TF; Cowger, John - TSR  
**Cc:** Lee, Louis - TM  
**Subject:** RE: Yakima Indian Nation

We have been very proactive on Tribal ROW issues. John and his staff have worked with legal to identify all our Tribal ROW agreement concerns, including expiration dates of ROW agreements and the other terms and conditions. That work was completed last year. This has allowed us to prioritize the work to be done with the Tribes and hopefully will provide us with enough time to work on relationships before we are steeped in negotiations on land rights. In addition as a Tribe expresses interest in other ROW issues outside the agreement John and his staff have been working with them. I think they are doing a pretty good job of managing the issues. But John will give you a more thorough briefing on what is happening and how they are managing.

-----Original Message-----

**From:** Maher, Mark W. - T  
**Sent:** Tuesday, March 16, 1999 10:59 AM  
**To:** Nelson, Marg - TS/CSB-2; Johnson, Frederick M. - TF; Cowger, John - TSR  
**Cc:** Lee, Louis - TM  
**Subject:** RE: Yakima Indian Nation

I am looking forward to this meeting. I am concerned that we not wait to engage the Tribal issues and that we be proactive and build a relationship with the Tribes.

-----Original Message-----

**From:** Nelson, Marg - TS/CSB-2  
**Sent:** Tuesday, March 16, 1999 8:32 AM  
**To:** Johnson, Frederick M. - TF; Maher, Mark W. - T; Cowger, John - TSR  
**Cc:** Lee, Louis - TM  
**Subject:** RE: Yakima Indian Nation

I will have John brief us on Tribal land issues and the current status of our Tribal agreements.

-----Original Message-----

**From:** Johnson, Frederick M. - TF  
**Sent:** Tuesday, March 16, 1999 7:08 AM  
**To:** Nelson, Marg - TS/CSB-2; Maher, Mark W. - T  
**Cc:** Lee, Louis - TM  
**Subject:** FW: Yakama Indian Nation

I think it would be good to have a briefing on where we are with Tribal lands issues at one of our staff meetings.

-----Original Message-----

**From:** Hemmelman, Kenneth M-TFS/Spoka  
**Sent:** Tuesday, March 16, 1999 6:40 AM  
**To:** Lee, Louis - TM; Johnson, Frederick M. - TF  
**Subject:** FW: Yakama Indian Nation

We have two critical lines on the Yakama reservation. They are the Hanford - Ostrander 500kV, and the North Bonneville - Midway 230 kV lines. FYI K

-----Original Message-----

**From:** Tawney, Patricia - KT  
**Sent:** Monday, March 15, 1999 6:41 PM  
**To:** Murphy, Thomas R - TFS/Spokane  
**Cc:** Cook, James B.-TFSK/Ellensburg; Rapozo, Sandra M. - TFS/Spokane; Cowger, John - TSR; Smith, John A - KT/Spokane; Wolcott, Marian - TSR; Hemmelman, Kenneth M-TFS/Spoka  
**Subject:** RE: Yakama Indian Nation

Yes, Tom, you've summarized what I thought we all felt were the over reaching issues during our last meeting.

I'd clarify the issues with the following points per item.

1) I believe what Marion said was, it is BPA's position that all ROW agreements allow for access to do general maintenance - No one has specifically looked at the ROW document for these specific ROWs. However, I don't believe YIN is contesting this under the current agreements.

In addition, the details about how this would be carried out will need clarification. TERO issues for example and Land Use issues related to water quality impacts etc. For example BPA has the right to have a tree cut - but by whom, when and how? And what becomes of the Tree? These issues were not resolved by Marion's shop and they do not have a budget for reviewing the lands documents to help determine if the answers to these issues are found there. Please correct me, if I've miss understood this piece.

I understand that BPA's strategy for resolving these concerns is: hear what YIN thinks the documents say and they see if BPA feels "OK" with YIN's interpretation. If not, then BPA would go about incurring the expense of reviewing the documents ourselves. Have I got this right? That is what my notes say. My notes do not suggest how BPA would make the "OK" determination, but I'm assuming that "lands" staff, along with Tom's expertise would make a "reasonableness determination" regarding YIN's interpretation and either accept it or reject it.

2) I agree. In addition - BPA has not discussed this issue internally - i.e. the good neighbor policy boundaries. With cost cuts initiated our historical practices related to good neighbor actions may be changing. No criteria has been established and Tribes may be looking at historical actions that may no longer apply in the new environment.

3) My understanding with TBL is that development of management plans for Indian country ROW was our "strategy" for working with the Tribes in the region as a way of meeting our obligations under BPA's Tribal Policy (Sec. III A 1-8, especially items 4 and 5).

4) My understanding is that the ROW agreements expire on some of the ROWs. BPA's lands staff identified three "status" areas for the ROW within the YIN's reserve. 1) perpetual by an act of congress 2) unknown and 3) probably 50 yrs. YIN thinks # 3 applies to everything. There are other issues as well, specific to the original ROW actions. For example "compensation" for the Trust lands within the reserve which were condemned. YIN believes that the compensation dollars were "low" because the government's (BIA/Interior) technique for assessing value was inappropriate due to the Govt. appraisal of Trust lands within a Tribal reserve by using comparable value with lands that were not comparable. The lands were not comparable because they were ordinary properties and not reserve/trust lands which are irreplaceable. YIN's disagreement is primarily with BIA acting on their behalf, so the debate may come up between BIA and YIN and not with BPA. The issue will come up in a renegotiations discussion.

-----Original Message-----

**From:** Murphy, Thomas R - TFS/Spokane  
**Sent:** Monday, March 15, 1999 5:02 PM  
**To:** Hemmelman, Kenneth M-TFS/Spoko  
**Cc:** Cook, James B.-TFSK/Ellensburg; Rapozo, Sandra M. - TFS/Spokane; Cowger, John - TSR; Tawney, Patricia - KT; Smith, John A - KT/Spokane; Wolcott, Marian - TSR  
**Subject:** Yakama Indian Nation

I see at least four distinct but related subject issues which BPA may address.

(1) BPA needs to perform routine maintenance this year on transmission facilities located within the Yakama Reservation. This need includes vegetation control on transmission line rights-of-way and access roads, and access road maintenance. From my meeting with Patricia and Marian Wolcott in January, I learned BPA holds current rights to perform these activities.

(2) Another issue pertains to a topic which the YIN has raised (at least to me) regarding their desire for BPA to participate in what I call "resource restoration" projects. These include, but are not limited to road abandonment, highway realignment, and general fisheries habitat enhancement strategies. The degree to which BPA will participate is a subject for consideration.

(3) One option which BPA has discussed with the YIN over the past year pertains to the creation of a Right-of-Way Management Plan. I have written such Plans with large land-holding corporations, the USFS, BLM, etc. The Plans, when fully executed, provide specific procedures and assigns specific responsibilities with respect to conducting activities on the rights-of-way, protection of resources, points of

contact, etc. The Plans are written for the "long-term" management of a facility, but the Plan is also a living, dynamic document which can, and is, updated as needed. Such Plans, I am told, do currently exist with other Tribes (Warm Springs?). BPA collectively, or Regionally, may opt to pursue the creation of such a Plan.

(4) I am told that the "permits" issued by the YIN to BPA for construction, operation, and maintenance of the transmission lines will be expiring in 3 - 4 years. Renewal of those "permits" is obviously critical to BPA. The degree of success achieved in items 1 through 3 above, may play a large role in the disposition of those permits.

This is probably an overly simplistic collection of issues, but it does at least represent a starting point for discussion.

## **Cowger, John R - TR-TPP-4**

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**From:** Rapozo, Sandy M-TFS/Spokane  
**Sent:** Monday, November 16, 1998 9:42 AM  
**To:** Cowger, John - TSR  
**Subject:** FW: Contacts @ Yakama Nation

John,

Please see last two messages. Do you have any policies or ideas that I should know about before this meeting? If there is anything in writing, would you please send it to me.

Thanks  
Sandy

-----  
**From:** Rapozo, Sandy M-TFS/Spokane  
**To:** Tawney, Patricia - AT  
**Subject:** RE: Contacts @ Yakama Nation  
**Date:** Monday, November 16, 1998 9:39AM

Patricia,

That works for me. But would it be possible to phone bridge rather than fly to PDX for one meeting?

Thanks  
Sandy

-----  
**From:** Tawney, Patricia - AT  
**To:** DeHerrera, Joe - EWN; Rapozo, Sandy M-TFS/Spokane; Murphy, Thomas R - TFS/Spokane  
**Cc:** Eads, Donna L. - AR-7  
**Subject:** FW: Contacts @ Yakama Nation  
**Date:** Monday, November 16, 1998 9:21AM

So, we all are on the hook for this! Sorry! We are looking at this internal meeting helping us clarify the policy level concerns that this project may generate. We are expecting to all agree on what BPA's policy level approach will be in development of the management plan from a BPA point of view. You may need management guidance on this prior to the meeting. I'm thinking of the meeting being December 1st in the Afternoon - about 2:00 PM is that OK with everyone? Do we need anyone else - We have Lands (Sandy), Public Affairs (me), Transmission (Tom) and EF&W (Joe).

-----  
**From:** Cowger, John - TSR  
**To:** Rapozo, Sandy M-TFS/Spokane  
**Cc:** Easterling, Robert - TSR; Ferrera, Renee - TSRF; Tawney, Patricia - AT  
**Subject:** FW: Contacts @ Yakama Nation  
**Date:** Monday, November 16, 1998 7:36AM

Sandy,

Could you coordinate with Tom, and respond on the meeting time? I'm not sure if the meeting would be in Spokane or in Portland. If Portland, perhaps you and Tom could participate by phone.

John

-----  
**From:** Tawney, Patricia - AT  
**To:** DeHerrera, Joe - EWN; Murphy, Thomas R - TFS/Spokane  
**Cc:** Cowger, John - TSR  
**Subject:** FW: Contacts @ Yakama Nation  
**Date:** Friday, November 13, 1998 4:53PM

Could people make a meeting on December 1 in the PM?

-----  
**From:** Austin, Bob - EWN  
**To:** Tawney, Patricia - AT  
**Subject:** FW: Contacts @ Yakama Nation  
**Date:** Friday, November 13, 1998 2:44PM

Patricia: I think Joe is the one. RJA

-----  
From: DeHerrera, Joe - EWN  
To: Austin, Bob - EWN  
Subject: RE: Contacts @ Yakama Nation  
Date: Friday, November 13, 1998 12:36PM

Bob: Should be interesting. I will be glad to. Joe

-----  
From: Austin, Bob - EWN  
Sent: Friday, November 13, 1998 11:34 AM  
To: DeHerrera, Joe - EWN  
Cc: Binney, Deanna K. - EWN  
Subject: FW: Contacts @ Yakama Nation

Joe: What do you think? I've unofficially suggested your name to Patricia but wanted your thoughts. RJA

-----  
From: Tawney, Patricia - AT  
To: Cowger, John - TSR; Austin, Bob - EWN  
Cc: DeHerrera, Joe - EWN  
Subject: FW: Contacts @ Yakama Nation  
Date: Friday, November 13, 1998 11:26AM

I'd like you or a representative work with us in developing our strategy for developing the ROW management plan on the Yakama Reservation. We are expecting to meet the week of the 30th (probably Tuesday the 1st). Please let me know about your availability. THANKS

-----  
From: Murphy, Thomas R - TFS/Spokane  
To: Tawney, Patricia - AT  
Cc: Hemmelman, Kenneth M-TFS/Spokane; Brock, Michael F-TFS/Spokane  
Subject: FW: Contacts @ Yakama Nation  
Date: Thursday, November 12, 1998 9:59PM

Let me know if you schedule any discussion regarding the Yakamas. I do feel we need to get internally organized now.

-----  
From: Murphy, Thomas R - TFS/Spokane  
To: Tawney, Patricia - AT  
Subject: Contacts @ Yakama Nation  
Date: Friday, October 30, 1998 10:36AM

Shown Below are the individuals I have had (varying) contact with during approximately the past 12 months:

Carol Palmer, Deputy Director, Department of Natural Resources.

Gina Ringer, Hydrologist.

David Lind, On Reservation Fisheries Manager.

Carl Moses - Hylpeer, Administrator, Water Code Administration.

Frank Gopher, Water Code Enforcement Officer.

Howard A. "Tony" Spencer, Program Manager, Vegetation Management, Department of Natural Resources.

Farrel Whitefoot, Permit Writer, Water Code Administration.

Jason D. Newquist, Forest/Range Ecologist, Vegetation Management, Department of Natural Resources.

## **Cowger, John R - TR-TPP-4**

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**From:** Tawney, Patricia - AT  
**Sent:** Monday, June 15, 1998 8:18 PM  
**To:** Cowger, John - TSR; Lee, Louis - TM  
**Subject:** RE: Realty Representative for the Yakama Reservation Issues

Thanks John, I haven't received a single availability response from anyone in transmission. In addition there seems to be some confusion about who really needs to go. I could use some help here. Suggestions welcome.

As for who comes, It really is your call. I'd prefer not to take to many people - only the primary contacts. To help people self select if might be useful to focus on what we are trying to build: long term relationships that will be developed down the road, so the person going should be "right" for that relationship building.

-----  
**From:** Cowger, John - TSR  
**To:** Tawney, Patricia - AT; Rapozo, Sandy M-TFS/Spokane  
**Subject:** RE: Realty Representative for the Yakama Reservation Issues  
**Date:** Tuesday, June 09, 1998 11:07AM

I also mentioned to Marg Nelson that she may want to sit in on the first meeting. She is interested, if it can be worked into her schedule. However, she wouldn't want to hold up the meeting, simply because of her schedule.

-----  
**From:** Tawney, Patricia - AT  
**To:** Cowger, John - TSR; Rapozo, Sandy M-TFS/Spokane  
**Subject:** RE: Realty Representative for the Yakama Reservation Issues  
**Date:** Monday, June 08, 1998 3:05PM

I'm setting up the first meeting as we speak. I'm getting potential days and putting together an agenda. Will keep everyone in the loop!

-----  
**From:** Cowger, John - TSR  
**To:** Rapozo, Sandy M-TFS/Spokane  
**Cc:** Tawney, Patricia - AT  
**Subject:** RE: Realty Representative for the Yakama Reservation Issues  
**Date:** Friday, June 05, 1998 5:09PM

I believe that Patricia Tawney will organize at least the initial meetings. Is that correct Patricia?

-----  
**From:** Rapozo, Sandy M-TFS/Spokane  
**To:** Cowger, John - TSR  
**Subject:** RE: Realty Representative for the Yakama Reservation Issues  
**Date:** Thursday, June 04, 1998 12:50PM

Is there anything that you need me to do at this time? If not please keep me informed of ongoing and upcoming issues that I will need to be involved in.

Thanks  
Sandy

-----  
**From:** Cowger, John - TSR  
**To:** Tawney, Patricia - AT  
**Cc:** Ferrera, Renee - TSRF; Nelson, Marg - TS; Hemmelman, Kenneth M-TFS/Spoka; Rapozo, Sandy M-TFS/Spokane; Murphy, Thomas R - TFS/Spokane  
**Subject:** Realty Representative for the Yakama Reservation Issues  
**Date:** Thursday, June 04, 1998 11:15AM

In response to our recent conversation about BPA issues on the Yakama Reservation, Renee and I would like Sandy Rapozo to be our representative. Sandy will take the lead for all realty issues on this Reservation. Sandy has past experience on the Colville and Flathead Reservations that should be helpful.

I understand that Yakama economic development people have raised the issue of expiring R/W, along with water quality, native plants, herbicide use, etc. My notes, from our discussion, show that Preston Harrison and Lawrence Spotted Bird are two of the Yakama people we will be working with.

Sandy, I believe Tom Murphy is working with the tribe on some of the maintenance issues.

## **Cowger, John R - TR-TPP-4**

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**From:** Tawney, Patricia - AT  
**Sent:** Monday, June 15, 1998 8:22 PM  
**To:** Brock, Michael F-TFS/Spokane; Rapozo, Sandy M-TFS/Spokane  
**Cc:** Cowger, John - TSR; Lee, Louis - TM; Hemmelman, Kenneth M-TFS/Spokane; Murphy, Thomas R - TFS/Spokane  
**Subject:** RE: Yakama Transmission meeting

Thank you! This is helpful!

-----  
From: Rapozo, Sandy M-TFS/Spokane  
To: Tawney, Patricia - AT; Brock, Michael F-TFS/Spokane  
Cc: Cowger, John - TSR; Lee, Louis - TM; Hemmelman, Kenneth M-TFS/Spokane; Murphy, Thomas R - TFS/Spokane  
Subject: RE: Yakama Transmission meeting  
Date: Monday, June 15, 1998 6:05PM

It is my understanding that John Cowger asked that I represent land and the involved ROW issues at this meeting because of my background with dealing with some of the other tribes on these issues and that I will be taking care of the renewal of the rights-of-way that have either expired or will be expiring in the near future. John, did I get this correct?

If the above is so, than I am not available from 6/29-7/7,1998 as far as scheduling a meeting with the tribe. I have the possibility of 2 other meetings for the week of the 22nd of June, but these have not been firmed up yet.

Sandy

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From: Tawney, Patricia - AT  
To: Brock, Michael F-TFS/Spokane  
Cc: Cowger, John - TSR; Lee, Louis - TM; Hemmelman, Kenneth M-TFS/Spokane; Rapozo, Sandy M-TFS/Spokane; Murphy, Thomas R - TFS/Spokane  
Subject: RE: Yakama Transmission meeting  
Date: Monday, June 15, 1998 5:35PM

I've been asking who the internal team is - an appreciate help in getting it clear. Its up to you folks in Transmission about who needs to come to the first introduction meeting. It should be the primary contact for the lands ROW issue. I'll leave it to you folks to help me identify who should be going. I recommend we not take more than one contact person per Transmission issue. One for ROW concerns, one for ROW management concerns, one for policy issues and one for sales - Have I missed an issue? Do we need someone regarding Transmission line maintenance for example?

My general idea and what I thought transmission and Yakama wanted was an introductory meeting with each other - Our Yakama Transmission team (not the larger internal team that will deal with all the details down the road for each issue) but a simple primary contact for YIN on each issue. The concept being that you can develop relationships with only so many people and a single person on each issue that YIN knows it can call and that internally we know is on point for the issue with the Yakama seemed helpful. However, if I've missed something - PLEASE let me know and we can work it out.

I need a clear list of who needs to come and some alternative days so I can start to firm up a meeting. I'm working with YIN to help firm up an agenda - what items did BPA have in mind for this first Transmission meeting - are the issues above specific enough for everyone? Perhaps we should have a planning meeting to make sure our internal ducks are in order before we venture out - a Conference call perhaps? Let me know if you think this would be useful and I'll work with Louis to set up something.

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From: Brock, Michael F-TFS/Spokane  
To: Tawney, Patricia - AT  
Cc: Hemmelman, Kenneth M-TFS/Spokane  
Subject: FW: Yakama Transmission meeting  
Date: Friday, June 12, 1998 1:19PM

Patricia, it is part of our operating plan to meet with the tribes to discuss these issues. I think Ken Hemmelman needs to be aware of the upcoming meeting and will want either himself or a designee to attend. We are very interested in their intentions regarding the status of our easements over tribal lands and the pending negotiations.

Thanks, Mike

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From: Murphy, Thomas R - TFS/Spokane  
To: Tawney, Patricia - AT  
Cc: Brock, Michael F-TFS/Spokane; Rapozo, Sandy M-TFS/Spokane  
Subject: FW: Yakama Transmission meeting  
Date: Friday, June 05, 1998 12:29PM

Sandy R. or Mike B. could probably best represent the Land's and/or the Region's perspectives at such a meeting.

I t doesn't appear there a REAL need for me to be in attendance at this meeting.

Tom M. - Spokane

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From: Tawney, Patricia - AT  
To: Silverstein, Brian L. - TMP; Rogers, Robert A. (Joe) - TM; Rapozo, Sandy M-TFS/Spokane; Murphy, Thomas R - TFS/Spokane  
Cc: Wilson, Sarah J. - AR  
Subject: Yakama Transmission meeting  
Date: Thursday, June 04, 1998 4:30PM

Last April Yakama Nation's rep. Preston Harrison asked to have a meeting with BPA to discuss a variety of issues regarding the ROW. I've been putting him off while we developed our ROW strategy, which is now in place. I'll be getting back to Preston today and see about possible dates.

I've asked Preston to provide us with more information on what it is exactly they'd like to talk about - I'll keep you posted. Do you have any items you'd specifically like to have on an agenda for this meeting? Please let me know.

Sarah will be working with Preston's secretary to set us this meeting and it would be helpful if you would provide us with several alternative dates that are available to you in the next three weeks so I can start putting something on people's calendars. THANKS for all you help!

## Cowger, John R - TR-TPP-4

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**From:** Baskerville, Sonya L. - LL  
**Sent:** Tuesday, January 27, 1998 4:35 PM  
**To:** Cowger, John - TSR  
**Cc:** Majkut, Paul S. - LL  
**Subject:** FW: ROW over Yakama Reservation

Is there anything happening with the Yakama request? Do we even have an pressing issue with the Yakama? As far as I can tell from the latest data, there easements don't expire until 2/17/2003, and it is clear that they do in fact expire.

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**From:** Majkut, Paul S. - LL  
**To:** Baskerville, Sonya L. - LL  
**Subject:** FW: ROW over Yakama Reservation  
**Date:** Tuesday, January 13, 1998 4:09PM

Please tlak to John ans see what they need on Yakama. Are there any other active disscussions?

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**From:** Nelson, Marg - TS  
**To:** Majkut, Paul S. - LL  
**Subject:** RE: ROW over Yakama Reservation  
**Date:** Tuesday, January 13, 1998 3:43PM

I'm aware of the work being done with the Nisqually Tribe. I think we're on track on that issue. We are actively trying to find a way to move the line off the reservation either through physically moving the line or by swapping land to allow the line to remain. The DOD/Army will be involved with us in this negotiation due to the close proximity of Ft Lewis and the potential need for some of that land.

On the Yakama issue I am confused. I thought you were asking whether to provide an issue paper that was releasable to counsel and the tribe. I'm assuming the Yakama issue is the visual impact of one of our lines that is not on a reservation. To my knowledge there have been no discussions or negotiations between lands and the Yakama Tribe. Before we provide any information to counsel on this I'd like to have a good understanding of the issues and options. An internal issue paper sounds like the right track.

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**From:** Majkut, Paul S. - LL  
**To:** Nelson, Marg - TS  
**Subject:** ROW over Yakama Reservation  
**Date:** Friday, January 09, 1998 5:13PM

We may want to do an internal issue paper on the Yakama's to prepare for discussions with them, but I would not "provide our opinions of rights that apply only to that tribe" to the tribe. That would only occur if we got to litigation and Justice would decide our position anyway. The Yakama's are the only ones I have heard about recently. Of course the Salish-Kootenai are tracking this issue. The Nisqually Tribe wants us off their reservation too.

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**From:** Nelson, Marg - TS  
**To:** Majkut, Paul S. - LL  
**Cc:** Cowger, John - TSR  
**Subject:** RE: ROW over Yakama Reservation  
**Date:** Friday, January 09, 1998 4:33PM

Let's talk. Harvey has handed this off to me.

My initial thoughts are that we should talk with individual tribes as requested or as contracts warrant and provide our opinions of rights that apply only to that tribe. I'd rather avoid having a general opinion since it will be the focus of attack as soon as we put it out and may get in the way of our being able to resolve some of these by mutual

agreement on issues outstanding with each tribe. Is the Yakama Tribe the only party pressing this right now?

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From: Majkut, Paul S. - LL  
To: Margeson, Jacilyn R. - LL; Key, Philip S. - LN; Jones, Robert L. - LL; Baskerville, Sonya L. - LL  
Cc: Cowger, John - TSR; Hallgarth, Rebecca - TSR; Hickok, Steven G. - A-7; Nelson, Marg - TS; Spigal, Harvey P. - T; AGC  
Subject: RE: ROW over Yakama Reservation  
Date: Friday, January 09, 1998 8:59AM

We have done only preliminary research into this issue. We need to tell outside counsel, when asked, that we do not have (and we do not intend to develop) an OGC opinion on the perpetual duration issue. We regard this as one of many policy issues BPA has with Indian tribes and its resolution will be handled tribe by tribe. We could prepare an issue paper if that is helpful to the client, including one that is specific to the Yakama Tribe and releasable. Harv, Marg, et al.?

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From: Key, Philip S. - LN  
To: Margeson, Jacilyn R. - LL; Majkut, Paul S. - LL; Jones, Robert L. - LL; Baskerville, Sonya L. - LL  
Subject: ROW over Yakama Reservation  
Date: Thursday, January 08, 1998 1:33PM

Jeff Schuster w/ the Yakama Indian Nation General Counsel just called wanting an opinion he heard about in which OGC examined the question of whether ROWs on Indian reservations are limited to 50 years or may be of perpetual duration. One of the tribal council members said he heard a BPA attorney reference such an opinion in a recent discussion regarding a BPA ROW over the YIN reservation. I told him we'd looked into the issue in a general way, but to date had no legal opinion on the question. I added that our preliminary work was not something we usually released outside the agency. He'll call Paul to see if there's something we've prepared that's releaseable.

United States Government

Department of Energy  
Bonneville Power Administration

# memorandum

DATE: November 17, 1998

REPLY TO  
ATTN OF: TSR-3

SUBJECT: Condemnation of Indian Lands

to: Paul Majkut, Assistant General Counsel - LL-7

This is a request for a legal opinion on whether BPA may exercise its Bonneville Project Act right of eminent domain to acquire property rights held in various forms of ownership by or for Indians. Please include analysis of whether BPA's right of eminent domain may be applied equally to all or some of the tribes in BPA's service area. I have attached a recent Western Area Power Administration legal opinion on condemnation of Navajo lands.



John R. Cowger  
Manager, Real Property Services

Attachment

cc:

M. Nelson - TS/PSB-2

B. Easterling - TSR-3

R. Ferrera - TSRF-3

Official File - TSR-3 (LW-11)

JCowger:jrc:(lmy)x3258:11/16/98 (W:\TSR\Word\_Proc\John\Project\_ActM.doc)

U.S. DEPARTMENT OF ENERGY  
WESTERN AREA POWER ADMINISTRATION  
CHIEF PROGRAM OFFICE

LANDS  
P.O. Box 3402  
Golden, CO 80401  
(800) 336-7288

FAX TRANSMISSION FORM

Fax No.: (303) 275-2637

Sent by: \_\_\_\_\_ Time: \_\_\_\_\_

Date: 10/23/98

Verification: (303) 275-2535, (Lou)

Transmit to: JOHN CONGER (Name) A3500 (Mail Code) (503) 230-3258 (Phone No.)

Company: BPA City: PORTLAND State: OR

Fax No.: (503) 230-7615 Fax Verification No.: \_\_\_\_\_

Sender: STEVE WARNER (Name) A3500 (Mail Code) (303) 275-2500 (Phone No.)

Company: WAPA City: GOLDEN State: CO

E-Mail Address: WARNER@WAPA.COM Title: LANDS MANAGER

Material to be transmitted: CONDEMNATION OF NAVAJO NATION  
LEGAL OPINION

Number of pages, including cover sheet: 7 Will follow by regular mail: yes \_\_\_\_\_ no X

Remarks/Comments: IN REREADING THIS OPINION, IT IS NARROWER  
THAN I REMEMBER (APPLICATION TO NAVAJO LANDS)  
I DON'T KNOW IF ANYTHING IN IT HAS BROADER  
APPLICATION (IE INDIAN LANDS IN GENERAL)

WAPA F.1400.59  
(1-93)  
EPG (7-91)

United States Government

Department of Energy

Western Area Power Administration

# memorandum

DATE: May 8, 1996

REPLY TO  
ATTN OF: A0211, K. Kawamura

SUBJECT: Legal Opinion Regarding Shiprock - Four-Corners 230/345 Kv  
Transmission Line Right-of-Way: Navajo Nation Negotiations

TO: S. Warner, A2500

## INTRODUCTION

The United States currently has a power transmission easement through the Navajo Nation near the Four Corners area; the Western Area Power Administration ("Western") administers this easement. Currently the easement is for a 230Kv transmission line. Western intends to upgrade the capacity of the transmission line to 345 Kv. In doing so, Western must reroute a portion of the transmission line where it enters the Four Corners Switchyard. Rerouting the transmission line will require Western to obtain a five (5) acre easement from the Navajo Nation. Upon completing the reroute, Western will abandon the existing seven (7) acre easement.

In preliminary discussions indications are the Navajo Nation would be willing to grant Western an easement provided Western agrees to pay \$1,000,000 per year. (Similar to a nine mile tap agreement negotiated by the Navajo Nation and Public Service of New Mexico). The fair market value of the easement is \$18,540.

In the event a negotiated compromise cannot be reached, you requested a legal opinion regarding the United States' ability to condemn the right-of-way through the Navajo Nation.

## DISCUSSION

Pursuant to Section 1 of the Act of February 5, 1948, the Secretary of Interior is empowered to grant rights-of-way through Indian reservations for all purposes subject to such conditions he may prescribe. 25 U.S.C.A. § 323 (1983). Pursuant to this Act, the Solicitor's Office held that lands in the Navajo Nation may be made available for use in connection with the construction, operation and maintenance of the Glenn Canyon Dam, Reservoir and associated facilities. 64 L.D. 70,76 (1957).

Section 2 of the Act of February 5, 1948 law, states that a grant of a right-of-way over and across lands belonging to certain Indian tribe may not be made without consent of the proper tribal

officials. 25 U.S.C.A. § 324 (1983), 62 Stat. 18 (1948). However, this does not in any manner repeal existing laws authorizing the Secretary of Interior to grant a right-of-way. 25 U.S.C.A. § 326 (1983), 62 Stat. 18 (1948).

An existing law authorizing the Secretary of Interior to grant a right-of-way is the 1902 Reclamation Act. The Act allows the Secretary of Interior to acquire land for reclamation projects by condemnation. 43 U.S.C.A. § 421 (1986), 32 Stat. 389 (1902). In Henkel v. United States, 237 U.S. 43, 49-50 (1915), the Supreme Court held that the 1902 Reclamation Act authorized the Secretary of Interior to condemn Indian lands for reclamation projects. The Supreme Court stated:

The reclamation projects undertaken by the government are very extensive and cover many states... and it must necessarily include much territory which is included in Indian reservations.... 'In carrying out the purpose of the [Reclamation Act], the Secretary of Interior is authorized to acquire any rights or property necessary for that purpose, and to acquire the same either by purchase or condemnation. Authority could hardly have been conferred in more comprehensive term, and we do not believe it was the intention of Congress, because of the Indians' right of selection of lands under the circumstances here shown, to reserve such lands from the operation of the act. To do so might defeat the reclamation project which it was evidently the purpose of Congress to authorize and promote.

Henkel v. United States, 237 U.S. @ 49-50.<sup>1</sup> Since the Act of February 5, 1948 does not repeal the Reclamation Act, the United States may condemn a right-of-way through Indian lands.

The Henkel decision is consistent with and in no way abrogates the Navajo Nation's treaty rights. The Treaty of 1868 specifically states that the Navajo Nation will not oppose the construction of railroads, wagon roads, mailstops or other works of utility or necessity which may be ordered or permitted by the

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<sup>1</sup>The Supreme Court followed these line of cases in Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99,120 (1960), where it held the State of New York Power Authority, under authority from the Federal Power Act, could condemn Indian land for a power project. C.f., United States v. Winnebago Tribe of Nebraska, 542 F.2d 1002 (8th Cir. 1976), (holding where rights of a treaty would be abrogated by the construction of a recreational lake project by the Army Corp of Engineers, clear congressional expression is necessary).

laws of the United States, provided just compensation is paid.<sup>2</sup> 15 Stat. 670. The reclamation projects are works of utilities which provide power and water to the arid west. As a result, condemning an easement, as authorized by the Reclamation Act, does not abrogate any treaty rights.

The Shiprock-Four Corners right-of-way is part of the Colorado River Storage Project. The United States constructed the Colorado Storage Project under the Reclamation Act of 1902. As a result, Western may condemn lands for the project. This right includes the right to condemn an easement through the Navajo Nation.

#### CONCLUSION

Congress authorized Western to condemn lands for the Colorado River Storage Project. Since the Reclamation Act predates the Act of February 5, 1948, Western may condemn a right-of-way through the Navajo Nation, even if the Nation does not consent.

Although Western has such a right, given the special position of Indian tribes in our laws, Western should carefully exercise this power and use it as a last resort.<sup>3</sup>

  
 Koji Kawamura  
 Attorney-Advisor  
 Office of General Counsel

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<sup>2</sup>The Treaty states that compensation will be determined by a board of three commissioners; the Nation shall appoint one commissioner.

<sup>3</sup>Although United States' may condemn tribal lands without the tribe's consent, Cherokee Nation v. Southern Kansas Ry. Co., 135 U.S. @ 657; Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99,120; see also, David Sweet, *Supreme Court's View as to What Constitutes Private Property within Meaning of Prohibition, under Federal Constitution's Fifth Amendment, Against Taking of Private Property for Public Use without Just Compensation*, 91 L.Ed.2d 582,594, it has a special responsibility to the tribes. The Courts and Congress recognize this responsibility as a trust obligation between Federal agencies and the Native Americans. This trust responsibility imposes strict fiduciary standards on the conduct of the executive branch agencies. Cohen, Handbook of Federal Indian Law, p.225.

TREATY WITH THE NAVAJO INDIANS. JUNE 1, 1868.

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Treaty between the United States of America and the Navajo Tribe of Indians, concluded June 1, 1868; Ratification advised July 26, 1868; Proclaimed August 12, 1868.

ANDREW JOHNSON,

PRESIDENT OF THE UNITED STATES OF AMERICA,

June 1, 1868.

TO ALL WHO SHALL COME TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

WHEREAS a treaty was made and concluded at Fort Sumner, in the Territory of New Mexico, on the first day of June, in the year of our Lord one thousand eight hundred and sixty-eight, by and between Lieutenant-General W. T. Sherman and General F. Tappan, commanders, on the part of the United States, and Bartouche, Arajo, and other chiefs and headmen of the Navajo tribe of Indians, on the part of said Indians, and duly ratified thereto by them, which treaty is in the words and figures following, to wit:—

Articles of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant-General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo nation or tribe of Indians, represented by their chiefs and headmen, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and headmen being herein subscribed,) of the other part, witness:—

ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease. The government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it. If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington city, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained. If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agrees that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from the assets or other resources due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damages shall be adjusted and paid until examined and passed upon by the Commissioner

of Indian Affairs, and no one residing here will violate, or become a party to, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

ARTICLE II. The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Cañon Benito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oro, near Spring, and west by a parallel of longitude about 108° 30' west of Greenwich, provided it embraces the outlet of the Cañon-de-Chilly, which outlet is to be all included in this reservation, shall be, and the same is hereby set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no person except those herein so authorized to do, and except such officers, soldiers, agents, and employes of the government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

ARTICLE III. The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter shop and blacksmith shop, set to cost exceeding one thousand dollars each; and a school-house and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

ARTICLE IV. The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of deprivation of person or property he shall cause the evidence to be taken in writing and forwarded, together with his findings, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

ARTICLE V. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privileges to select, in his presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it. Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

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TREATY WITH THE NAVAJO INDIANS. JUNE 1, 1868.

of Indian Affairs, and no one residing here will violate, or become a party to, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

Reservations boundaries.

ARTICLE II. The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Cañon Benito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oro, near Spring, and west by a parallel of longitude about 108° 30' west of Greenwich, provided it embraces the outlet of the Cañon-de-Chilly, which outlet is to be all included in this reservation, shall be, and the same is hereby set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no person except those herein so authorized to do, and except such officers, soldiers, agents, and employes of the government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

Buildings to be erected by the United States.

ARTICLE III. The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter shop and blacksmith shop, set to cost exceeding one thousand dollars each; and a school-house and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

Agent to make his home at the agency building.

ARTICLE IV. The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of deprivation of person or property he shall cause the evidence to be taken in writing and forwarded, together with his findings, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

Rights of citizens desiring to commence farming may select land, &c.

ARTICLE V. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privileges to select, in his presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Persons not heads of families.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

Certificates of selection to be returned, &c.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Navajo Land Book."

TREATY WITH THE NAVAJO INDIANS. JUNE 1, 1868.

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each.

The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper.

ARTICLE VI. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of the reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

The provisions of this article to continue for not less than ten years. ARTICLES VII. When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

ARTICLE VIII. In lieu of all sums of money or other articles provided to be paid to the Indians herein named under any treaty or articles heretofore made, the United States agrees to deliver at the agency houses on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian — each Indian being encouraged to manufacture their own clothing, blankets, &c.; to be furnished with no articles which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and accurate census of the Indians, on which the estimate from year to year can be based.

And in addition to the articles herein named, the sum of ten dollars for each person entitled to the benefits of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the articles, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to such purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the army to be present and attend the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

ARTICLE IX. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States to the

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TREATY WITH THE NAVAJO INDIANS. JUNE 1, 1868.

States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservations, as hereto defined, but retain the right to hunt on any unoccupied lands contiguous to their reservations, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2d. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3d. That they will not attack any persons at home or traveling, nor molest or disturb any wagon trains, coaches, mules or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in future oppose the construction of railroads, wagon roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head man of the tribe.

7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE X. No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and assented by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual number of the tribe of his rights in any tract of land selected by him as provided in article — of this treaty.

ARTICLE XI. The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence on route, and providing a reasonable amount of transportation for the sick and feeble.

ARTICLE XII. It is further agreed by and between the parties to this agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any conditions provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Bosque Reservoir reservation to the reservation, say fifty thousand dollars.

2d. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3d. The purchase of five hundred head cattle and a million pounds of wool, to be collected and held at the military post nearest the reservation, subject to the order of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be inherited for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mex.

Survey.

Alienation and descent of property.

Children to be educated in the reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

Duty of agent. Schools and teachers.

Seed and agricultural implements.

Delivery of articles to the Indians.

Clothing, &c.

Annual appropriation for ten years.

Money to be appropriated to better uses for the Indians.

Army officer to be present and attend the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

Stipulations of friendship by the United States to the

TREATY WITH THE NAVAJO INDIANS. JUNE 1, 1868.

...and when completed, the management of the tribe is revert to the proper agent.

Article XIII. The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not on a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall have the reservation herein described to settle elsewhere, so as they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart for the exclusive use and occupation of the Indians, holding a vendible title, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

In testimony of all which the said parties have herein on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

W. T. SHREVEAN, Indian Peace Commissioner. S. F. TAPPAN, Indian Peace Commissioner.

- BARBONCITO, Chief. his x mark. DELGADO. his x mark. MANUELITO. his x mark. LARGO. his x mark. HERRERO. his x mark. OHUQUETO. his x mark. MUEETO DE HOMBRE. his x mark. HOMBRE. his x mark. NARBONO. his x mark. NARBONO SEGUNDO. his x mark. GANADO MUCHO. his x mark.

Council.

- RIODO. his x mark. JUAN MANTIK. his x mark. SERGINTO. his x mark. GRANDE. his x mark. MOYENTHO. his x mark. MUCHACHOS MUCHO. his x mark. CHUQUETO SEGUNDO. his x mark. CABELLO MANUELLO. his x mark. FRANCISCO. his x mark. TORVIO. his x mark. DESDENPADO. his x mark. JUAN. his x mark. GUEBO. his x mark. GUGADOZE. his x mark. CABASON. his x mark. BARBON SEGUNDO. his x mark. CABARES COLORADOS. his x mark.

TREATY WITH THE NAVAJO INDIANS. JUNE 1, 1868.

Attest:

- GEO. W. G. COTTELL. Col. 57th Inf'y, B. Mj. Gen'l U. S. A. B. S. REESE. B. Mj. Gen'l U. S. A., Lt. Col. 64th Cav'y. J. COOPER MORTON. Lt. Col. Surgeon U. S. A. THOS. H. DOON. U. S. Indian Agt for Navajo. CHAS. MCCOY. B. Mj. and C. S. U. S. A. JAMES F. WEXER. B. Mj. and Lt. Surg. U. S. A. J. C. SUTTERLAND. Interpreter. WILLIAM VALE. Chaplain U. S. A.

Parties.

And whereas, the said treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-fifth day of July, one thousand eight hundred and sixty-eight, advise and consent to the ratification of the same, by a resolution in the words and figures following, to wit:—

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES, } July 25, 1868.

Resolved, (two-thirds of the senators present concurring) That the Senate advise and consent to the ratification of the treaty between the United States and the Navajo Indians, concluded at Fort Sumner, New Mexico, on the first day of June, 1868.

Attest:

GEO. C. GORHAM, Secretary. W. J. McDONALD, Chief Clerk.

Proclamation.

Now, therefore, be it known that I, ANDREW JOHNSON, President of the United States of America, do, in presence of the advice and consent of the Senate, as expressed in its resolution of the twenty-fifth of July, one thousand eight hundred and sixty-eight, except, ratify, and confirm the said treaty.

In testimony whereof, I have hereunto signed my name, and caused the seal of the United States to be affixed. Done at the City of Washington, this twelfth day of August, in the [seal.] year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the thirty-third.

By the President: W. HORTON, Acting Secretary of State.

United States Government

Department of Energy  
Bonneville Power Administration

# memorandum

DATE: April 20, 1999

REPLY TO  
ATTN OF: TSR-3

SUBJECT: Renewing Rights-of-Way on Indian Lands

to: Marg C. Nelson, Vice President for Support Services – TS-CSB-2

The following is for the purpose of providing assistance and consistency in the approach to renewing expiring Bonneville Power Administration (BPA) rights-of-way (R/W) on Indian Lands. Because of multiple parties of interest, these renewals may be more complex and time consuming than most right-of-way acquisitions. They may involve tribal governments, the Bureau of Indian Affairs (BIA), individual allottees with large numbers of owners, and non-Indian private property owners. Many issues, such as fish, wildlife, right-of-way use, and deregulation business opportunities, may be raised, requiring coordination with other BPA groups. For these reasons, it will be important to allow sufficient time to communicate and coordinate with all interested parties.

1. **Transmission Business Line (TBL) Strategy for R/W over Tribal Lands (4/17/98).** Staff will review this strategy, and work with BPA Tribal Relations Group to contact Tribes for initiation of R/W renewal processes.
2. **Title evidence.** It must be obtained largely from BIA/Tribal sources and given their recent reorganizations and unknown competing demands on resources, we should allow up to one year for receipt.
3. **Rights-of-Way over Indian Lands (CFR 169.1-28)** (<http://www.access.gpo.gov/nara/cfr/waisidx/25cfr169.html>). Staff will review the CFRs on rights-of-way over Indian Lands. We will be in a position to make an appraisal-based renewal offer one to two years, prior to the expiration of each land right. BPA will initiate the process by making written application for renewal via the BIA, or Tribe, which in some cases has assumed the BIA realty function.
4. **Appraisals.** For Tribal Lands, we will work with the Tribe to determine who will accomplish these, i.e., BIA/Tribal or BPA staff, or fee appraisers. Regardless, both agencies will require review of reports. Allow six months to one year for appraisals.
5. **Negotiations/Tribal Tracts.** In addition to land values, negotiations may center around potential BPA economic benefits or assistance to Tribes, that will require BPA realty specialists to consult with other Transmission, Power, and Fish and Wildlife employees to determine the feasibility of Tribal proposals.
6. **Negotiations/Indian Allotments.** These tracts typically contain dozens of undivided or fractional ownerships that are particularly difficult, given the number of landowners who must be contacted and included in negotiations, consuming much time per tract. A majority (51%) of owners is required to renew allotment tracts.

## Notes of Briefing for Jack Robertson, 10/25/94

Attending: Paul Majkut, LL Carol Larvik, TET  
Joyce Patton, LL Kevin Ward, ECN-3  
Vickie VanZandt, TE me

### Issues discussed:

- Right-of-way questions affecting fiber optics project on Flathead Reservation. The issue is whether easements for the Hot Springs-Anaconda line are perpetual or for a term of fifty years. BIA's authority to grant a perpetual right-of-way is questionable because of language of the grant and of statute and regulations in effect at the time of the grant. In addition, the Salish and Kootenai Tribes question whether the scope of the easement is sufficient for BPA's commercial use of fiber on the right-of-way. BPA's use for system operation appears not to be in question.
- Duration of easements for other BPA transmission lines over Indian reservations. The question about BIA's authority to grant perpetual rights-of-way potentially applies to other easements over other reservations. Number and identity of such lines are unknown.
- Renewal of rights-of-way on expiration of term. BPA may have to renew some term easements over Indian reservations relatively soon. In addition to easements known at the outset to be for a term of fifty years, these could include easements described as perpetual at the time of the grant.

### Discussion at meeting:

As to rights-of-way in general: Office of General Counsel believes there's real question whether a court would find the easements in question to be perpetual. Concern was raised about the implications system-wide. It would require a substantial effort (staff time) to determine the language of every such grant, as shown by BIA records. OGC and TE raised the point that, apart from this issue, many BPA rights-of-way over reservations were explicitly granted for a term and will require renewal. (Not everyone had been aware of this.)

As to the fiber optics project on the Flathead Reservation: BPA must decide how to approach the immediate issue of the Hot Springs-Anaconda line. Litigation would settle the perpetual/term question. BPA may not want the issue litigated. It appears that BPA may be able to add fiber optics for our operational use, without challenge until fifty years from the date of the grant (1952/2002) or until BPA leases excess capacity. Although BPA could avoid the issue of scope by abandoning the fiber optic project, the issue of term would remain. This issue is the more troublesome for BPA, in General Counsel's opinion. Also, BPA needs to improve communications to increase reliability. Adding radios would be more expensive and would require negotiation with the Tribes, anyway, as radio sites would be needed on the Reservation.

## **Decisions:**

As to Flathead Reservation, Jack Robertson asked BPA to search with Tribes for mutually acceptable agreement. He believes that BPA should be concerned about fostering good relations with the Tribes, for both political and business reasons, and he would like to avoid having the easement issue litigated. He would like BPA to explore a business arrangement with the Tribes that would benefit both sides and would not involve a concession by BPA that the Hot Springs-Anaconda line was granted for a fifty-year term. He recommended approaching the Tribes' business council for these discussions. He would not be opposed to offering to the Tribes some portion of revenues from leased excess capacity. He is particularly interested in knowing whether the Tribes have water rights that might be part of any deal.

As to expiring rights-of-way, Mr. Robertson didn't seem particularly alarmed at the prospect of renewal of term rights. He commented that in most cases the issue was several years down the road. He didn't believe that it was necessary to search the BIA records at this point to determine every right-of-way that might be affected by the grant authority question.

Some issues for Real Estate (my own thoughts):

- What involvement does Real Estate want in negotiations with the Tribes? I'm not sure who within BPA expects to undertake these negotiations. It appeared that Office of General Counsel might be intending further discussions in an attempt to settle the legal controversies. As to any fiber optics or water rights arrangements, I'm sure subject specialists would be involved. Jack Robertson asked the meeting participants to talk to John Smith, too.
- What further record searches, if any, should we undertake now? To prepare for the briefing, Office of General Counsel and our office began a search of the BIA records. A lot of the groundwork has been done now that may make it relatively easy to finish determining the status of rights-of-way granted in the thirties and forties. I'd suggest that we do this to be sure we don't have any easements shown by BIA records to have expired or be about to expire. (Our own records should show at least approximate expiration dates for easements that we know to be term easements, from this and all other periods.)

Rebecca Hallgarth  
10/26/94

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Hallgarth, Rebecca - TTRB  
**Sent:** Monday, October 17, 1994 4:36 PM  
**To:** Cowger, John - TTR  
**Cc:** Easterling, Robert - TTRB; Gronvold, Jennifer - TTRB  
**Subject:** RE: Vickie Briefing

Several points came out of this morning's briefing for Vickie VanZandt. I think I can hit the important points while I respond to the messages between you and Paul Majkut, below.

I think that two types of review are under discussion here. The Office of General Counsel had already been planning a review of BIA records to find out what they show for 1) the duration of every BPA right-of-way over every reservation and 2) the authority under which these rights-of-way were granted. This information would be available from notations on the right-of-way maps on file at BIA. I think that your answer to Paul's message suggested a second type of review to him: He is recommending an exhaustive review of each such right-of-way to reveal any unperfected rights that might exist.

It seems important to me to get the first type of review done as quickly as possible, so that BPA will know the scope of the perpetual vs. 50-year issue. That issue itself has two aspects: While we've known that many BPA easements over Indian land were explicitly limited to a term of 50 years, BPA as a whole may not have planned for the time and expense of renegotiating these agreements as they expire. Vickie confirmed in today's briefing meeting that she, at least, hadn't known of it. (I'm sure that others in management must have been aware of this in the past.) In addition, Office of General Counsel believes that there's a real possibility that certain ostensibly perpetual easements are limited to a 50-year term. That could increase the requirement for renegotiation beyond what we ourselves had expected.

I question whether the need is urgent to begin comprehensive rights reviews on all BPA easements on reservations immediately. Paul seemed to be advocating this in today's briefing meeting. I do agree that it's very important for BPA's management to be aware that renegotiation of easements will have to occur and to know the extent of the required renegotiation. I recognize, too, that negotiations with tribes can be expected to be lengthy. If BPA means to begin renegotiation discussions with every tribe right away, we may need to begin rights reviews right away, also. However, it's the review of BIA map notations that we need to finish before BPA can answer the original question: how many rights-of-way may require renegotiation after expiration of a 50-year term.

Both Paul and Vickie said that they regarded the specific Flathead Reservation/fiber optics question as less significant than the issue of renegotiation in general. In fact, the Flathead situation may not be as troublesome as it appeared. OGC staff understood from their meeting with the tribal attorney last week that he doesn't contest BPA's right to add fiber optic cable to the Hot Springs-Anaconda line now for our operational use. He questions the unlimited duration of our easement and our right to sell excess fiber capacity to others. BPA doesn't presently have a contract to sell excess capacity on this line, so that is not yet an issue. The meeting between attorneys on both sides was very cordial, and the Tribes didn't appear to contemplate any legal action against BPA.

Actions agreed to in the briefing meeting this morning are: 1) OGC (with our help, if available) will review BIA records of every BPA right-of-way over Indian trust land. This will include a small number of easements over allotments outside reservations. 2) OGC will continue to research the legal issues related to the term of the easements. 3) I will make sure that Vickie gets information on the Okanogan-Tonasket renegotiation. She has asked how much BPA paid for new easements in that case. She would be interested in any other renegotiation history, I'm sure. (Warm Springs?) 4) Vickie will phone the Tribal Chairman of the Flathead Reservation, but not before she has been briefed further.

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**From:** Cowger, John - TTR  
**To:** Majkut, Paul S. - LL; Thurein, Ingo - EL; Hallgarth, Rebecca J. - MMLB  
**Cc:** Larvick, Carol M - TET; VanZandt, Vickie - E; Spigal, Harvey P. - L; Patton, Joyce E. - LF; Baskerville, Sonya L. - LL; Easterling, Robert - TTRB

Subject: RE: Vickie Briefing  
Date: Monday, October 17, 1994 8:42AM

Paul,  
Thanks for the note. We've been aware of this issue with the Flathead Reservation for some time. In order to prepare a negotiating strategy, about 6 months ago we started a review of all of BPA's land rights on the Reservation. That work was set aside by some higher priority work until recently when the fiber optic project brought the issue to a head. We have since restarted the review. My staff estimated 6-10 weeks to complete a review just for the Flathead Reservation. Since receiving your note, I have asked them for a rough estimate to complete a review for all reservations. I'll let you know how it turns out.

When we have completed the reviews, I expect we'll find a wide variety of rights-of-way conveyances, including term permits, perpetual easements, and sections of right-of-way with no apparent conveyances. Some of the rights-of-way will be quite old, some will have been originally acquired by BPA, and some will be system acquisitions from other agencies (e.g. Bureau of Reclamation) and other utilities.

A rights review for the recent sale of the Okanogan lines, revealed about 12 Colville Reservation right-of-way tracts that had been granted originally by permit which was now expired. The PUD required that BPA acquire new permits or easements before the sale could be completed. The negotiations were very lengthy and painful, so you are correct about the potential impacts of this issue on BPA.

John

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From: Majkut, Paul S. - LL  
To: Thurein, Ingo - EL; Cowger, John R. - MML; Hallgarth, Rebecca J. - MMLB  
Cc: Larvick, Carol M - TET; VanZandt, Vickie - E; Spigal, Harvey P. - L; Patton, Joyce E. - LF; Baskerville, Sonya L. - LL  
Subject: FW: Vickie Briefing  
Date: Saturday, October 15, 1994 sHostLanguage=usa 12:18PM

I asked Sonya Baskerville to invite Rebecca Hallgarth to the Fiberoptics briefing with Vickie VanZandt. Sonya and I met with Randal McDonald, attorney for the Salish and Kootenai Tribe in Pablo, Montana on Thursday, October 13, 1994, to discuss our claim to an perpetual easement for the Hot Springs-Anaconda line across their reservation, which we wish to use for a fiberoptic cable. We are briefing Vickie on the results of our meeting. I thought you also should know the results of our meeting.

Mr. McDonald raised questions about the term and perfection of our easement, suggesting that it expires in 50 years, or 2002, although we claim it is perpetual. Not only does this issue have great significance for this project, but also for the rest of our easements on Tribal Reservations throughout the Pacific Northwest. The most disturbing information we learned was that some of our easements are explicitly for a period of only 50 years, as stated on the easements. Mr. McDonald gave us two samples, from the Hungry Horse-Hot Springs Line and the Spokane-Hot Springs line.

We strongly recommend that a complete investigation of all of our tribal reservation easements begin immediately. It is important that we assess the potential cost to the agency of renewing such easements, or rerouting those lines if renewals cannot be negotiated. Our office will continue to investigate the Salish and Kootenai claim that our Hot Springs-Anaconda easement expires in 2002.

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From: Patton, Joyce E. - LF  
To: Majkut, Paul S. - LL  
Subject: FW: Vickie Briefing  
Date: Thursday, October 13, 1994 8:39AM

FYI

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From: Patton, Joyce E. - LF  
To: Larvick, Carol M - TET; Ward, Kevin A. - EFBG; Prickett, Steven L. - EFCG;  
Baskerville, Sonya L. - LF  
Cc: Coleman, Debra D - TET  
Subject: RE: Vickie Briefing  
Date: Thursday, October 13, 1994 8:38AM

I will put this briefing on my calendar since Paul and Sonya aren't here today and I don't know what their calendar is like next Monday. Be assured that one of us will attend. Where is it-405??

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From: Larvick, Carol M - TET  
To: Ward, Kevin A. - EFBG; Prickett, Steven L. - EFCG; Patton, Joyce E. - APF;  
Baskerville, Sonya L. - LF  
Cc: Coleman, Debra D - TET  
Subject: Vickie Briefing  
Date: Wednesday, October 12, 1994 5:17PM

We are on Vickie's calendar for 9:30-10:30 on Monday, October 17th, to brief her on and discuss the status of the tribal situation on the Hot Springs-Garrison project. Sonya (and Paul and Joyce?) will brief Harvey on Friday, the 14th, and then relay the reaction to Vickie at our Monday meeting. Please let me know if you cannot attend. If there is anyone else you feel should attend, please let me know by Friday morning so I can arrange things. Thanks.

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Cowger, John - TTR  
**Sent:** Wednesday, October 19, 1994 4:32 PM  
**To:** Gronvold, Jennifer - TTRB; Hallgarth, Rebecca - TTRB; Easterling, Robert - TTRB  
**Subject:** FW: Update on Flathead/Fiber Easement Issue

**Importance:** High

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**From:** Thurein, Ingo - TT  
**To:** Cowger, John - TTR  
**Subject:** FW: Update on Flathead/Fiber Easement Issue  
**Date:** Wednesday, October 19, 1994 sHostLanguage=usa 2:08PM  
**Priority:** High

FYI I noticed you were not copied, looks like it may get complicated. Ingo

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**From:** Majkut, Paul S. - LL  
**To:** VanZandt, Vickie - E; Thurein, Ingo - TT  
**Cc:** Spigal, Harvey P. - L; Patton, Joyce E. - LF; Baskerville, Sonya L. - LL  
**Subject:** FW: Update on Flathead/Fiber Easement Issue  
**Date:** Wed, Oct 19, 1994 1:07PM  
**Priority:** High

FYI. Sonya is investigating what steps we will need to take and how long that would take if we want a decision from Interior and/or BIA on the length of the term or the scope of the easement.

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**From:** Baskerville, Sonya L. - LL  
**To:** Larvick, Carol M - TET; Ward, Kevin A. - ECN; Prickett, Steven L. - TELL; Spigal, Harvey P. - L; Patton, Joyce E. - LF  
**Cc:** Majkut, Paul S. - LL  
**Subject:** Update on Flathead/Fiber Easement Issue  
**Date:** Wednesday, October 19, 1994 12:15PM  
**Priority:** High

Paul and I talked with Danial Decker and Ranald McDonald yesterday via conf call regarding the protocol for discussions between Bonneville and the Tribes on the fiber optic line across the reservation. Decker indicated that they view the legal questions (1. terms of easement; 2. purpose of easement) as the controlling factors and believe that the discussions should remain on an attorney to attorney level until both sides have had an opportunity to analyze their respective positions. After the legal work is done, we all agreed that the discussions/negotiations for resolving the issues will have to involve policy people from both sides who can make the necessary decisions. Decker indicated that he would probably include Sam Marjeau as their policy person.

With regard to the issues, we agreed to disagree on the term of the easements. Both Decker and Ranald made it clear that they viewed the term of the easement as no more than 50 years; Decker even suggesting that the 1911 Act remained the controlling statute. Ranald stated that he believed that the tribe did not intend to grant a perpetual easement. For a moment we debated their concerns with the information that we had to the contrary, but decided that it was not productive to do that at this point anyway, since we both need to spend some time doing research.

As far as the issue of use is concerned, both Decker and Ranald seemed to agree that there is a permissible operational use for the fiber as an upgrade for our communications system, but both were reluctant to comment on the argument that the excess marketing was O.K. because there is no additional burden to the subservient estate. Ranald stated that he had not had the time to do the research on that point. We asked whether there would be a problem if we put in the fiber now without any immediate intention to market the fiber. Decker stated that that would be a policy decision. They indicated that something could probably be worked out.

Decker said that he would check with the Cultural Resource Group to find out the status of the comments on the cultural assessment. I told Decker and Ranald that I contacted Ed Courville about the need for us to have the comments on the EA by Monday.

We also told Decker that we had been in contact with Colleen Kelly at BIA here in Portland, and David Etheridge in D.C. Both sides promised to keep the other informed of new developments, finding, etc.

Scott McKenna is proceeding with the legal research on the 50 year term question. The research on permissible uses had already been completed by Scott - Ranald is to do that research and let us know of any different interpretation.

Any questions, let me know. Thanks.

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Hallgarth, Rebecca - TTRB  
**Sent:** Monday, November 06, 1995 6:05 PM  
**To:** Baskerville, Sonya L. - LL  
**Cc:** Ward, Kevin A. - TETE; Easterling, Robert - TSR  
**Subject:** More on Umatilla r/w

I forgot to mention in the first on this topic that the "perpetual" grants have another seeming anomaly: From what I've seen so far, they appear to have been given by allotment owners, not holders of fee title subject to restrictions on alienation. BPA had detailed directions from Interior Department officials as to exactly how the documents should be drawn and executed, attorneys and title officers who reviewed the documents seemed satisfied with their form, and correspondence in files states that they conform with applicable law--which isn't easy to check on quickly, fifty years later. Don't know what the applicable law was then. However, it seems very odd that the grants weren't by the United States, if in fact the U.S. held the land in trust for allottees. (If this IS a defect, I suppose it would have been easily cured back at that time, since the easement deeds could have functioned as the necessary owners' consents, and Interior could have made the grant on their behalf. Don't know if it would be so easy to remedy now.)

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Cowger, John - TTR  
**Sent:** Monday, July 01, 1996 2:23 PM  
**To:** Cheney, Katherine - AT/Spokane  
**Cc:** Hallgarth, Rebecca - TSR; Easterling, Robert - TSR; Baskerville, Sonya L. - LL  
**Subject:** RE: March-April Tribal Update

I'll be glad to send maps to you and John.

As to the term of our Indian rights-of-way, we don't know anything more than we knew a couple of months ago, with the exception of the research that led to the map. I can tell you that none of them are leases. For transmission facilities, we have almost always acquired permanent land rights. The only exceptions are a few permits from Tribes and the USFS that have specific expiration dates. Until recently, we assumed that the remainder were perpetual grants. This assumption is now in question.

Many of the grants specifically state that they are perpetual. These are not at issue. Other grants that have no expiration dates are now in question. Ordinarily, in real estate, a grant is perpetual unless it specifically expires. This is not necessarily true for the Indian grants. For the Indian grants, the question is whether the particular regulations, at the time of the grant, limited the term of the grants. The answer to this question will need to be given by the Department of Interior lawyers, as it may require substantial legal research of which laws and regulations apply to BPA. We have been getting ready, with research of all of our Indian grants, to request assistance from DOI. We should soon be ready to send this question on to the DOI.

I agree that a strategy is necessary for any renegotiations. We need an answer to the grants with no expiration dates before we will know the scope of the issue. We'll keep you posted, and hopefully make more progress on this before too long. When we do know the full scope of this, I'd like to get a team together to map out a strategy. We would appreciate your help on this.

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**From:** Cheney, Katherine - ECP\Spokan  
**To:** Cowger, John - TTR  
**Subject:** RE: March-April Tribal Update  
**Date:** Monday, July 01, 1996 10:40AM

John - thanks a lot for the information. Would it be possible to send a copy of the map to John and I? I think Caroline Whitney has asked Vicki for similar information - including when the ROW leases expire. Do you know when they do? It would be good to get out in front of these renegotiations with a strategy ! Thanks.

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**From:** Cowger, John - TTR  
**To:** Cheney, Katherine - ECP\Spokan  
**Subject:** RE: March-April Tribal Update  
**Date:** 07/ 01/ 96 9:54

There's not a lot more to say about this. I edited the paragraph below to include the date and purpose.

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**From:** Cheney, Katherine - ECP\Spokan  
**To:** Cowger, John - TTR  
**Subject:** RE: March-April Tribal Update  
**Date:** Thursday, June 27, 1996 9:58AM

John - thanks for the information. Can you tell me what the date was and any particular purpose or outcomes from the meeting? Thanks a lot!

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**From:** Cowger, John - TTR  
**To:** Cheney, Katherine - ECP\Spokan  
**Subject:** RE: March-April Tribal Update  
**Date:** 05/ 30/ 96 15:53

Katherine,  
For your May-June Tribal Update--

At the request of Janet Nicholson, Portland BIA Realty Officer, John Cowger attended a May 1st meeting of Realty Officers from a number of Northwest BIA Agencies. There was a general discussion of BPA transmission and fish and wildlife projects. John provided copies of a recent BPA map showing BPA facilities crossing Indian Reservations in the Northwest. The meeting provided a get-acquainted opportunity to facilitate future rights-of-way negotiations with the tribes and BIA.

John

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From: Cheney, Katherine - ECP\Spokan  
To: Williams, John J - CK; Atkins, Leslie - AC; Sandford, Sue - FRB; Kirkman, Kenneth C. - EC; Frederick, Barbara A. - CH; Adams, Julie E. - CHR; Birthmark, Joyce - CPSG; Astorga-Juarez, Ann - CPB; Long, Alivia - FRI; Graves-Pyrch, Karen - FCC; MontesdeOca, Lulu - FB; Dan, Phil M - CION; Cowger, John - TTR; Smith, Alexandra - E; Thoms, Andy - EWP; Alton, Charles - ECP; Craig, Charlie - EWP; Lohn, Bob - EW; Lindsay, Joyce - EWP; DeHerrera, Joe - EWP; Palensky, John R. - E; Burbach, Linda - ECN; LaFayette, Marcella - EWP; Armbrust, Maryann - EC; Shank, Bob - ECN; Walker, Robert - EWP; Watson, Roberta - EC; Beraud, Bob - ECN; Mason, Stacy L. - ECN; Vincent, Tammie - E; Sanchez Jr, Andres - CIS; Willard, Barbara - L; Evans, Bart - CKC; Hirsch, Barry - CKP; Whitney, Caroline A - CK; Mahar, Dulcy - CKM; Eastman, Darrell - CKC; Balla, Nicia N. - CKC; Moore, Hugh A. - CKM; Blazek, Joseph B - CI/911-2; Traversie, Joan F. - AKF; Luce, James O. - LN; McElhaney, Judy - A; Mills, Jock - CK; Hunt, Karen - AR; Tawney, Patricia - CKP; Key, Philip S. - LN; Hickey, Sue - A; Lee, Vena - CKC; Goodwin, Morgan A - CIVD/911-2; Burns, Allen - MPB; Jones, Cynthia L. - MPP; Jacobson, Cynthia L. - MPMO; Copeland, Dorothy - MR; Wolfe, Don - MS; Itami, Rick - MPD; Thor, Phil - MGC; VanZandt, Vickie - TE; Ridenhour, Randy - SC; Topacio, Cayan - CK; Pennell, Hope E. - EPF/Spok; Smith, John A - CK\Spok; Bare, Patrick J - CFK\Spok; Swedo, Robert L - CKC\Spok; SACKMAN, SUE B. - SK\Spok; Ferron, Dyson P - TEOC (VAX)  
Subject: March-April Tribal Update  
Date: Friday, May 10, 1996 10:31AM

Attached please find the March-April Tribal Update.  
<<File Attachment: MARAPR96.DOC>>

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Hallgarth, Rebecca - TTRB  
**Sent:** Monday, August 05, 1996 7:03 PM  
**To:** Jones, Robert L. - LL  
**Cc:** Easterling, Robert - TSR; Gronvold, Jennifer W - TSRF; Wolcott, Marian - TSR  
**Subject:** Abandoned condemnation of Indian land

Several months ago I came across a file that raises questions. BPA filed a declaration of taking in August 1981, as to an easement for an access road across an Indian allotment on the Colville Reservation. BPA was awarded possession effective the same month and used the road during construction of the Chief Joseph-East Omak transmission line. The landowners contended that the offered compensation was inadequate, in part because of knapweed problems that they attributed to BPA's activities on the property.

Discussions between the landowners and BPA apparently dragged on, very sporadically it seems, until September 1989, when the court ordered the U. S. to show cause why the case should not be dismissed for lack of prosecution. The U. S. Attorney checked with BPA, found that we didn't need to use the road any longer, and, with BPA's agreement, decided that there was no reason to object to the dismissal. The defendants requested an opportunity to respond to our statement as to dismissal (no copy of this statement in our file), but the judge dismissed the case without prejudice on October 17, 1989, a day after the defendants' request was filed.

In January 1990, the defendants' attorney proposed a settlement that would re-vest title to the easement in the defendants, compensate them for use of the right-of-way during the period of BPA's use and for any damages, return deposited funds to the U. S., and avoid the possibility that the U. S. would be required to pay the defendants' attorney's fees incurred in the abandoned condemnation. The \$11,200 proposed compensation being well over BPA's estimated just compensation of \$175, the U. S. declined the offer to settle. The last notation in our file, dated April 20, 1990, says, "The Assistant U. S. Attorney suggested we should just wait and see what happens. We can determine what course of action to take if and when an action is filed by the landowners with the court." The \$175 deposited in the court registry, along with accrued interest, has never been withdrawn. We have heard nothing further from the landowners.

What is our legal position in this matter? Did the dismissal result in the United States' taking property without paying just compensation for it? Is the United States required to take any further action? Would it be advisable for the United States to take further action? Is the answer to either of these questions affected by the United States' position as trustee for the Indian landowners?

## Hallgarth, Rebecca - TR-TPP-4

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**From:** Hallgarth, Rebecca - TTRB  
**Sent:** Thursday, October 03, 1996 12:08 PM  
**To:** Bennett, Karen L. - TSR  
**Cc:** Wolcott, Marian - TSR; Gronvold, Jennifer W - TSRF; Presley, Madonna - TSR; Berglund, Gloria D. - TSR  
**Subject:** RE: BIA Acquisitions

Thanks, Karen. Maybe I should have been aware of this. I did know of a lag in getting certain documents into the BIA title plant, but I don't believe that I've known that we needed to ask the agencies directly when we request title data from BIA. I guess I thought they'd coordinate to make sure the information was current. Thanks again!

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**From:** Pick, Karen - TTRC  
**To:** Hallgarth, Rebecca - TTRB  
**Subject:** BIA Acquisitions  
**Date:** Thursday, October 03, 1996 10:56AM

Rebecca: You probably already know this, but I told BIA that I'd pass on the information. On trust lands, the Indian agency has authority to issue outgrants. The agency is then supposed to send a copy of the document to the BIA title plant for recordation. So, BIA's title plant is accurate only insofar as the agency provides information. The BIA reps (Realty Specialist and Attorney) recommended that when we acquire tribal lands, that we not only obtain title info from BIA, but also from the Indian agency.  
Thanks for humoring me,  
kp