

Statement of Pete Culp
Assistant Director
Minerals, Realty & Resource Protection
Bureau of Land Management
House Resources Subcommittee on National Parks, Recreation, & Public Lands
HR 3258; "Reasonable Right-of-Way Fees Act of 2001"

April 11, 2002

Mr. Chairman and members of the Committee, thank you for the opportunity to appear here today to discuss the methodology by which the Secretaries of Interior and Agriculture determine the fair market value of rights-of-way (ROW), and to present the Department of the Interior's views on HR 3258, the "Reasonable Right-of-Way Fees Act of 2001."

The Department is committed to working with our stakeholders and Congress to ensure that ROW rental fees on public lands are appropriate and fair, and that there is certainty in ROW rental fee valuation. We believe that the existing land-based linear ROW rental fee schedule established by regulations in 1986 and the rental fee schedule for nonlinear communication facility ROW established by regulations in 1995 can continue to be an appropriate basis for derivation of ROW rental fees, with periodic adjustments for inflation.

The Department is concerned that the proposed bill would not allow for fair market value rates of return for rights-of-way on the public lands as required by the Federal Land Policy and Management Act (FLPMA); would require a time-consuming, multiple appraisal process for every ROW before issuance or renewal; and would establish a different standard for establishing rental fees for rights-of-way authorized by FLPMA (generally involving roads, electrical transmission lines, and telecommunication facilities) and rights-of-way authorized by the Mineral Leasing Act (which primarily involve oil and gas pipelines). In addition, we believe that this bill may be inconsistent with the goals of the Department in that it would delay, rather than expedite, the processing of ROWs authorized by FLPMA, especially electric transmission lines.

The Department realizes that ROW rental fees can be a contentious issue. For at least the last two years, the Bureau of Land Management (BLM) and the Forest Service (FS) have engaged in dialogues with our stakeholders, including appraisal organizations, ROW interest groups and industry, on the subject of linear right-of-way rental fee issues. The BLM and the FS also worked with industry and the congressionally-established Radio and Television Use Fee Advisory Committee to finalize regulations in 1995 for rental fee schedules for nonlinear rights-of-way for various communication facilities on the public lands. As mentioned, the Department is committed to continuing to work with our stakeholders and Congress to ensure fairness and certainty for ROW rental fees on public lands.

Rights-of-Way Background

BLM and FS lands are managed for a variety of multiple uses, including the location of ROWs that are a vital part of our nation's infrastructure for telecommunications purposes and for the delivery of critical

energy supplies. This ROW infrastructure is a significant component of our nation's interstate commerce, as well as our national defense and homeland security. Due to our nation's increasing demand for energy, the need for energy-related ROWs also will increase.

The BLM processes approximately 6,000 right-of-way (ROW) actions each year, including the issuance of 2,700 ROW grants and amendments. Currently, the BLM administers approximately 63,000 ROWs authorized under FLPMA and 24,000 ROWs authorized under Mineral Leasing Act. The FS, meanwhile, administers approximately 24,000 FLPMA ROWs and 1,000 MLA ROWs on Forest land. Both BLM and FS right-of-ways also cross state and other non-federal landowners. Of the total BLM authorized ROWs, about 21,000 FLPMA and 23,000 Mineral Leasing Act ROWs are currently subject to the collection of rents. The remaining ROW authorizations are not subject to rent, either due to statutory exemptions or because they meet other rent reduction regulatory criteria.

Rights-of-Way Rents

Prior to 1986, the BLM and FS carried out their respective responsibilities for collecting market rent from ROW users by making appraisals for each separate ROW. In order to reduce overall administrative costs, and to make ROW processing more timely and consistent, the BLM and FS in 1986 established the linear ROW rent schedule that is still in use today.

The current linear ROW rental schedule is based on the following three factors:

- 1) An average land value for the linear ROW facility, using county boundaries and zones (based on market data in 1986, each county in the lower forty-eight states was placed in one of eight land valuation categories or zones);
- 2) An impact adjustment factor of either 80% (generally for roads and oil and gas pipelines) or 70% (generally for electric transmission and telecommunication lines) based on the type of linear ROW facility to be authorized; and
- 3) An interest rate (6.41%) for converting the land value to a dollar-per-acre annual rental for each land value zone.

In addition, the current linear ROW rental schedule has been adjusted annually since 1986 using the annual percentage change in the Implicit Price Deflator, Gross National Product Index (IPD).

Proposals to Revise Current Linear ROW Rent Schedule

The BLM and FS implementing regulations of 1986 state "that at such time that the cumulative change in the IPD index exceeds 30% the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures." This threshold was exceeded in 1995 and the cumulative change in the IPD index now stands at 45% for calendar year 2002.

A 1995 Department of the Interior's Office of the Inspector General report (Audit No. 95-1-747) and a 1996 General Accounting Office report (GAO/RCED-96-84) indicated that the linear rent schedule used by BLM and the FS at the time of the audits did not reflect fair market value. These findings prompted the BLM and the FS to begin to engage in discussions regarding the rent schedule values. These discussions have most

recently involved a December 2001 workshop sponsored by the Appraisal Institute that involved the BLM, FS, industry and other interest groups, and congressional staff. Any further efforts by the BLM and the FS to continue any fair market value studies regarding linear rights-of-way are currently on hold pending additional dialogue with our stakeholders and Congress.

HR 3258

The Department's concerns regarding the legislation generally center on its elimination of the existing linear rental fee schedule (1986) and the communication facilities ROW rental fee schedule (1995), and the requirement that time-consuming and costly multiple appraisals be completed for every ROW before issuance or renewal. The legislation also would establish an inconsistent process to determine rental fees for FLPMA rights-of-way different than rental fees for Mineral Leasing Act rights-of-way.

The bill requires the BLM and FS to conduct three valuations to determine the value for FLPMA rights-of-way. First, the agencies would be required to do an appraisal of the lands crossed by a proposed ROW use. Second, another appraisal would be conducted to determine the loss of value in the lands crossed by the proposed use. Third, a reclamation plan for the project would have to be conducted to determine the costs to be incurred at the end of the grant term. Only after these three valuations are completed, and the lowest amount is determined, will involved federal agencies be able to establish the rental for a FLPMA ROW.

The administrative costs to process an application and the multiple appraisals would be extraordinary - potentially increasing several fold. Also, for lengthy linear ROW projects, it will be especially problematic to determine the current values of the multiple parcels of land that a ROW crosses. The costs of these additional appraisals inevitably will be passed on to ROW applicants as part of the Federal Government's costs in processing a ROW. Such timely and costly impediments to ROW processing are inconsistent with the Department's goal to expedite the processing of rights-of-way - especially energy-related rights-of-way.

The Department wishes to continue to engage in discussions with all interested parties, including Congress, to ensure that ROW fee schedules for BLM and FS lands are consistent, fair and promote timely consideration of ROW applications.

Conclusion

Mr. Chairman, thank you for the opportunity to testify before you today. I would be pleased to answer any questions that you or the other members of the Subcommittee may have.

####