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Report to the Chairman, Subcommittee on Oversight of Government Management and the District of Columbia, Committee on Governmental Affairs, U.S. Senate

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U.S. FOREST SERVICE

Fee System for Rights-of-Way Program Needs Revision

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Resources, Community, and
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The Honorable William S. Cohen
Chairman, Subcommittee on
Oversight of Government Management
and the District of Columbia
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

The U.S. Department of Agriculture's Forest Service authorizes, through special use permits, a variety of rights-of-way on national forest lands. These rights-of-way include such commercial uses as oil and gas pipelines, power lines, and telephone and fiber-optic lines as well as such public and private uses as state roads and private driveways.

Concerned about whether the Forest Service is receiving fair market value for the lands being used for rights-of-way, as required by the Federal Land Policy and Management Act of 1976, the Mineral Leasing Act, and the Office of Management and Budget's Circular A-25, you asked us to review several issues in connection with how the Forest Service is administering these lands. Specifically, you asked (1) whether the fees currently charged to users of Forest Service-authorized rights-of-way for oil and gas pipelines, power lines, and communications lines (such as telephone and fiber-optic lines) reflect fair market value; (2) how the Forest Service's fees compare with the fees charged by nonfederal landowners; and (3) what, if any, changes are needed to the Forest Service's fee system to ensure that the fees reflect fair market value.

Results in Brief

The Forest Service's current fees for rights-of-way for oil and gas pipelines, power lines, and communications lines frequently do not reflect fair market value. In 1986, the Forest Service prepared to implement a fee schedule based on market data. However, because of concerns by the industry and the agency's management that the fees were too high, the fee schedule's rates were reduced. The fee schedule that was eventually implemented, according to agency officials, did not consider the factors critical to determining fair market value. As a result, the fees in the schedule represented the low end of the market. Agency officials acknowledge that current rates are too low. They estimate that in many

cases—particularly in high-value areas near major cities—the Forest Service may be charging as little as 10 percent of the fair market value.

Nonfederal landowners frequently charge higher fees than the Forest Service for rights-of-way. While some states and localities use a fee schedule, most nonfederal entities we spoke with use market-based techniques—appraisals and negotiations—to determine the fees to be charged for rights-of-way. As a result, their fees are frequently higher than those of the Forest Service. For example, in 1995 a company running a fiber-optic cable in Colorado paid a one-time fee of $791 per acre for a right-of-way on state land. If this right-of-way had been on Forest Service land, the annual fee would have been $11.48 per acre—an amount equivalent to a one-time lump-sum payment of $202 per acre. Thus, the Forest Service's fee is less than 30 percent of the state of Colorado's fee for the right-of-way in this example. We found many similar examples on state and private lands in the vicinity of the national forests we visited.

To meet the requirements of the Federal Land Policy and Management Act, Mineral Leasing Act, and Office of Management and Budget's Circular A-25, the Forest Service needs to revise its fee system to reflect fair market value by basing the system on market-based valuations of the land being used. These valuations would be made using appraisals and market surveys. Industry officials we spoke with indicated that the Forest Service's current fees are generally lower than what the industry pays nonfederal landowners. The officials stated that they are not opposed to paying higher rates to the Forest Service. However, they indicated that in order to charge market rates, the Forest Service needs to administer rights-of-way by using practices commonly found in the marketplace, such as granting authorizations for rights-of-way with an easement instead of a permit. Forest Service officials acknowledge that they could do several things to update or improve their rights-of-way program and make it more market-like as well as more efficient to administer.

Background

Through special use permits, the Forest Service authorizes a variety of rights-of-way across the lands it administers. These include commercial uses such as pipelines and power lines and noncommercial uses such as driveways, roads, and trails. In total, there are about 13,000 permits for all rights-of-way. This report focuses on three commercial uses—oil and gas pipelines, power lines, and communications lines. In 1995, there were about 5,600 permits for these uses, which generated about $2.2 million in fees to the government. According to federal law, 25 percent of the fees

generated from these permits is returned to the states where they were generated.[1] The remaining 75 percent goes to the U.S. Treasury.

The Forest Service administers about 191.6 million acres of land—roughly the size of California, Oregon, and Washington combined. The networks of oil and gas pipelines, power lines, and communications lines that cross the nation frequently go through national forest lands. Where these lands are located near population centers, the demand for land is higher, which thereby increases the value of a right-of-way.

In order to best serve their customers, businesses that operate oil and gas pipelines, power lines, and communications lines frequently need to gain access to many miles of land in strips usually 20 to 50 feet wide. These companies negotiate with numerous landowners—both public and private—to gain rights-of-way across their lands.

The Federal Land Policy and Management Act (FLPMA) of 1976 and the Mineral Leasing Act (MLA) generally require federal agencies to obtain fair market value for the use of federal lands for rights-of-way. In addition, title V of the Independent Offices Appropriation Act of 1952, as amended in 1982, requires the federal government to levy fair fees for the use of its services or things of value. Under the Office of Management and Budget's (OMB) Circular A-25, which implements the act, the agencies are normally to establish user fees on the basis of market prices. While there are exceptions to this practice, they are generally reserved for federal, state, and local government agencies and nonprofit organizations.

Fees for Rights-Of-Way Frequently Do Not Reflect Fair Market Value

The Forest Service's current fees for commercial rights-of-way for oil and gas pipelines, power lines, and communications lines frequently do not reflect fair market value. Before 1986, the Forest Service used a variety of techniques to establish fees for rights-of-way. These fees were based on appraisals, negotiations, a small percentage of the permittees' investment in the land, or a small percentage of the estimated value of the land. However, in 1986 the Forest Service implemented a fee schedule to address the problems that the agency was having in administering the fees for rights-of-way. Agency officials told us that the 1986 fee schedule reflected land values representing the low end of the market. As a result, when the fee schedule was implemented, the fees for rights-of-way near some urban areas were significantly reduced from pre-1986 levels.

[1]Specifically, 16 U.S.C. 500 requires that 25 percent of the fees generated from each forest be paid to the state in which the forest is situated for the benefit of public schools and public roads.

Before 1986, the Forest Service did not have a consistent system to establish fees for oil and gas pipelines, power lines, or communications lines. The agency's field staff used different methods for developing the fees for rights-of-way. Some used a percentage of the estimated value of the land or a percentage of the permittees' investment in the land, while others used appraisals and negotiations with the permittees to set the fees. However, in addition to being inconsistent, these practices resulted in unpredictable fees and appraisals that were subject to an appeals process. At that time, agency officials thought that moving to a fee schedule based on fair market value would resolve these problems.

To develop a fee schedule based on fair market value, Forest Service officials, as well as officials from the Department of the Interior's Bureau of Land Management (BLM), collected market data on raw land values throughout the country. On the basis of these data, the Forest Service and BLM produced a fee schedule in 1986 which charged annual per acre fees that were based on the location and type of the right-of-way. The rates in the fee schedule were indexed to the Implicit Price Deflator to account for future inflation.[2] However, according to Forest Service officials, the agency's management and the industry viewed the rates as being too high. As a result, the fees in the 1986 schedule were reduced by 20 percent for oil and gas pipelines and 30 percent for power lines and communications lines.

Before the reductions, the fees represented average raw land values for federal lands. These values did not consider several factors that are critical to establishing land values that reflect fair market value. Specifically, they did not reflect what the land was being used for, the "highest and best" use of the land, or the values of any urban uses. For example, if these factors are not considered, land located near a large metropolitan area, which might otherwise be used for a residential housing development, would be valued as if it were being used for livestock grazing—a use that would result in a considerably lesser value. As such, according to Forest Service officials, the data used to generate the land values used in the fee system represented the "bottom of the market" and did not reflect fair market value. Nonetheless, the fee schedule established in 1986 is the basis for current fees.

The Forest Service officials in the agency's Lands Division, which is responsible for the rights-of-way program at a national level, estimated

[2]The Implicit Price Deflator is an index of inflation produced by the Bureau of Economic Analysis within the Department of Commerce.

that many of the current fees for rights-of-way may be only about 10 percent of the fair market value—particularly for lands near large urban areas. However, agency officials acknowledged that this estimate is based on their professional judgment and program experience and that there are no national data to support it.

Because the fee schedule did not reflect several critical factors for determining fair market value, the fees for many rights-of-way, especially in forests near urban areas, were reduced when the fee schedule was implemented in 1986. For example, in the San Bernardino National Forest near Los Angeles, the annual fee for a fiber-optic cable was $465.40 per acre before the fee schedule was implemented and $11.16 afterwards. In the same forest, the annual fee for a power line was $72.51 per acre before the fee schedule and $8.97 afterwards. While these examples are among the most notable, the fees at forests that were not near urban areas frequently were also reduced. For example, in the Lolo National Forest in Montana, the fees for a communications line right-of-way went from $19.88 per acre to $17.23 per acre. Overall, at four of the six national forests where we collected detailed information, we found examples of fees that were reduced when the agency moved to a fee schedule in 1986.

The Forest Service and BLM use the same fee schedule for rights-of-way. In March 1995, the Department of the Interior's Inspector General issued a report which found that BLM's fee system did not collect fair market value for rights-of-way.[3] In the report, the Inspector General estimated that BLM could be losing as much as $49 million (net present value[4]) during the terms of the current rights-of-way by charging less than fair market value. At the time of the report, the agency had authorized 30,600 rights-of-way subject to rental payments.

[3]Right-of-Way Grants, Bureau of Land Management, U.S. Department of the Interior, Office of Inspector General (95-I-747, Mar. 31, 1995).

[4]Net present value analysis is a technique that allows meaningful comparison between a one-time payment and a series of annual payments. In general, revenues to be received in the future are worth less than equal revenues on hand today because money on hand can be invested to yield a higher amount in the future.

Forest Service's Fees Are Frequently Less Than Those Charged by Nonfederal Landowners

To determine how the Forest Service's fees compare with those charged by nonfederal landowners, we collected and analyzed information on charges for rights-of-way by states and private landowners. We found that state and private landowners frequently charge higher fees than the Forest Service. However, because our analysis is based on a judgmental sample of forests, it is important to note that our findings may not be representative of the situation for the nation as a whole.

To compare the Forest Service's fees with those charged by nonfederal landowners, we collected available data on fees charged by nonfederal landowners in the same states as the forests that we visited. These forests included the San Bernardino National Forest and Angeles National Forest in California, the Arapaho/Roosevelt National Forest in Colorado, the Lolo National Forest in Montana, the Washington/Jefferson National Forest in Virginia, and the Mount Baker/Snoqualmie National Forest in Washington. Our objective was to include forests from different parts of the country, some of which are near urban areas and some of which are in rural areas.

Since most nonfederal landowners charge a one-time fee either in perpetuity or for an extended term, such as 30 years, we used a net present value analysis to convert the Forest Service's annual fees to an equivalent one-time fee, which could then be compared with the one-time fee charged by nonfederal landowners.[5] Table 1 compares the Forest Service's fees at the six forests we sampled with those charged by nonfederal landowners in the general vicinity of that forest.

[5]In order to compute the net present value of future payments to the Forest Service, we deflated future payments by 4.2 percent per year. We obtained this number by subtracting the expected inflation from the 30-year government bond rate. As of March 21, 1996, the 30-year government bond rate was 6.65 percent, and the WEFA Group's forecast for inflation was 2.45 percent. (The WEFA Group is a commonly cited private economic forecasting organization that produces estimates of the long-term economic outlook, including the expected inflation.)

Table 1: Comparison of the Forest Service's Fees With Fees Charged by Nonfederal Landowners

State (landowner)	Type of right- of-way (year granted)	Nonfederal landowner's one-time cost	Forest Service's comparable annual fee	Net present value of Forest Service's fee	Difference between nonfederal fees and Forest Service's fees
California (state)	Natural gas pipeline (1995)	$130,726 per acre	$32.80 per acre	$814 per acre	$129,912 per acre
Virginia (private)	Natural gas pipeline (1991)	$2,406 per acre	$23.55 per acre	$584 per acre	$1,822 per acre
Virginia (private)	Natural gas pipeline (1991)	$1,925 per acre	$23.55 per acre	$584 per acre	$1,341 per acre
Virginia (private)	Natural gas pipeline (1991)	$1,906 per acre	$23.55 per acre	$584 per acre	$1,322 per acre
Virginia (private)	Natural gas pipeline (1991)	$1,900 per acre	$23.55 per acre	$584 per acre	$1,316 per acre
Colorado[a] (state)	Power line (1993)	$1,322 per acre	$5.50 per acre	$97 per acre	$1,225 per acre
California (private)	Communications line (1995)	$1,964 per acre	$34.46 per acre	$855 per acre	$1,109 per acre
Virginia (private)	Power line (1993)	$1,400 per acre	$22.01 per acre	$546 per acre	$854 per acre
Colorado[a] (state)	Communications line (1995)	$791 per acre	$11.48 per acre	$202 per acre	$589 per acre
Colorado[a] (state)	Natural gas pipeline (1994)	$793 per acre	$12.94 per acre	$228 per acre	$565 per acre
Montana (private)	Communications line (1994)	$708 per acre	$16.97 per acre	$421 per acre	$287 per acre
Virginia (private)	Power line (1983)	$775 per acre	$22.97 per acre	$570 per acre	$205 per acre
Colorado[a] (state)	Communications line (1995)	$529 per acre	$22.97 per acre	$404 per acre	$125 per acre
Virginia (private)	Power line (1993)	$650 per acre	$22.01 per acre	$546 per acre	$104 per acre
Virginia (private)	Power line (1993)	$650 per acre	$22.01 per acre	$546 per acre	$104 per acre
Montana (state)	Communications line (1992)	$413 per acre	$16.08 per acre	$399 per acre	$14 per acre
Montana (state)	Communications line (1994)	$410 per acre	$16.97 per acre	$421 per acre	($11) per acre

[a]The terms of these rights-of-way are 30 years. All the other rights-of-way in the table have been acquired in perpetuity.

Source: GAO's analysis of data collected from nonfederal landowners.

As table 1 shows, the Forest Service's fees are frequently less than fees charged by nonfederal landowners for similar rights-of-way. This was the case in 16 of the 17 examples we found during our review. In over half (10) of the examples, the Forest Service's fees were over $500 per acre less than the fees charged by nonfederal landowners. For example, in 1993 a power company negotiated with a private landowner in Virginia to obtain a right-of-way to run a power line. The power company agreed to pay a one-time fee of $42,280 for 30.2 acres of land, or $1,400 per acre. The Forest Service's annual fee in 1993 for that part of Virginia was $22.01 per acre. Our use of net present value techniques showed that the right-of-way operator's annual payment to the Forest Service of $22.01 per acre was equivalent to a one-time payment of $546 per acre. Thus, the Forest Service's one-time fee was $854 per acre less than the fee charged by the private landowner. Another example from the table shows that in 1995, a natural gas pipeline in California paid a one-time fee of $130,726 per acre for a right-of-way on state land. As the table shows, the Forest Service's comparable fee is over $129,000 less than the state of California's fee. While this difference is atypical of other examples we found, it nonetheless demonstrates how a unique parcel of land can have a considerable value. Furthermore, it is an example of how difficult it is to design a fee schedule that can reflect the fair market value of all lands managed by the Forest Service.

In addition to collecting comparable data on fees in the same states as the six national forests we visited, we also gathered examples of the rates paid to state and private landowners by the Bonneville Power Administration (BPA)—an electric utility operating in the northwestern United States. BPA runs power lines across hundreds of miles of land owned by the federal government, states, and private entities. We included BPA in our review because during the course of our work, we learned that this utility had extensive data on the rates it was paying for rights-of-way. Therefore, it was a good source of data on fees. The data in table 2 are based on a sample from a database of fees that BPA paid to state and private landowners.[6] The table compares the rates BPA paid to state and private owners with the rates charged by the Forest Service in that area.

[6]We reviewed 23 rights-of-ways from BPA's database. The data from Montana were based on a random sample of over 190 rights-of-way in that state. The data from Washington included rights-of-way from one of BPA's most recent lines. For presentation purposes, we used only 14 of the examples in table 2. The remaining nine examples are similar to those that are included in the table.

Table 2: Comparison of the Forest Service's Fees With Fees Charged to the Bonneville Power Administration by State and Private Landowners

State (landowner)	Year power line right-of-way was granted	BPA's lump sum payment per acre	Forest Service's comparable annual fee in year right-of-way was granted or 1987	Net present value of Forest Service's fee	Difference between BPA's fees and Forest Service's fees
Washington (private)	1988	$8,141 per acre	$13.84 per acre (1988)	$343 per acre	$7,798 per acre
Washington (private)	1988	$3,400 per acre	$13.84 per acre (1988)	$343 per acre	$3,057 per acre
Washington (private)	1988	$3,209 per acre	$13.84 per acre (1988)	$343 per acre	$2,866 per acre
Washington (private)	1988	$2,400 per acre	$13.84 per acre (1988)	$343 per acre	$2,057 per acre
Montana (private)	1990	$2,208 per acre	$14.88 per acre (1990)	$369 per acre	$1,839 per acre
Montana (state)	1984	$1,712 per acre[a]	$13.46 per acre (1987)	$334 per acre	$1,378 per acre
Montana (private)	1984	$1,114 per acre[a]	$13.46 per acre (1987)	$334 per acre	$780 per acre
Washington (private)	1988	$1,000 per acre	$13.84 per acre (1988)	$343 per acre	$657 per acre
Washington (private)	1988	$750 per acre	$13.84 per acre (1988)	$343 per acre	$407 per acre
Montana (private)	1983	$681 per acre[a]	$13.46 per acre (1987)	$334 per acre	$347 per acre
Washington (private)	1989	$675 per acre	$14.24 per acre (1989)	$353 per acre	$322 per acre
Montana (private)	1982	$397 per acre[a]	$13.46 per acre (1987)	$334 per acre	$63 per acre
Montana (state)	1984	$229 per acre[a]	$13.46 per acre (1987)	$334 per acre	($105) per acre
Montana (private)	1982	$229 per acre[a]	$13.46 per acre (1987)	$334 per acre	($105) per acre

[a]For comparison purposes, these payments were converted to 1987 dollars using the gross domestic product Implicit Price Deflator.

Source: GAO's analysis of BPA's data.

As table 2 shows, in 12 out of 14 examples, the fees charged by nonfederal landowners were higher than those charged by the Forest Service and in most cases were significantly higher—$100 or more per acre. In 6 of the 14 examples, the fees charged by nonfederal landowners were over $1,000

per acre higher than the fees charged by the Forest Service in the area. For example, in 1990 BPA negotiated with a private landowner in Montana to gain a right-of-way for a power line. BPA and the landowner agreed to a one-time payment of $11,106 for 5.03 acres of land, or about $2,208 per acre. In comparison, in 1990 the Forest Service's fee schedule produced an annual fee of $14.88 per acre for land located in the same county as the private land. Our use of net present value techniques showed that the annual payment received by the Forest Service of $14.88 per acre was equivalent to a one-time payment of $369 per acre. Thus, the Forest Service's one-time fee was $1,839 per acre less than the fee charged by the private landowner.

Forest Service's Fee System Needs Revision

In order to meet the requirements of FLPMA, MLA, and OMB Circular A-25, the Forest Service needs to revise and update its current fee system to establish fees that more closely reflect fair market value. The way to accomplish this task is to develop a system that is based on data that reflect current land values. However, each of the several available options for developing such a system has costs and benefits that need to be considered. Many of the industry representatives we spoke with acknowledged that nonfederal landowners generally charge higher fees than the Forest Service. Furthermore, these representatives indicated that they would be willing to pay higher market-based fees if the Forest Service improves its administration of the program by using more market-like business practices.

Both the industry representatives and Forest Service officials suggested several changes that, if implemented, could improve the efficiency of the program for both the Forest Service and the industry.

Options Available to Revise the Fee System

The Forest Service has several options available to revise its fee system for rights-of-way to reflect fair market value. Among them are three basic options: (1) develop a new fee schedule based on recent appraisals and local market data; (2) develop a new fee schedule, as noted above, but allow agency staff the alternative of obtaining site-specific appraisals when the fee schedule results in fees that do not adequately reflect the fair market value of a right-of-way; or (3) eliminate the fee schedule and establish fees for each individual right-of-way based on a site-specific appraisal or local market data.

The first option involves developing a new fee schedule based on recent appraisals and local market data. This option would include performing some site-specific appraisals of Forest Service rights-of-way and developing an inventory of the rates charged by nonfederal landowners for various types of rights-of-way in the area. These data would be used to formulate a new, more up-to-date fee schedule that would set annual fees for identified areas within a forest. The fee schedule would be used in the same way that the current schedule is used. In this way, the Forest Service could, for the most part, charge annual fees that broadly reflect the fair market value of a right-of-way for an area.

The advantage of having a fee schedule, and one of the reasons the agency originally decided to use a fee schedule, is that it is both easy to use and generates fees that are consistent and predictable for the industry. The disadvantage of a fee schedule is that it does not take into account the unique characteristics that may affect the value of a particular parcel of land. Therefore, instances may arise when a fee schedule will charge fees that are significantly different from fair market value—as our analysis has shown. Furthermore, performing appraisals and collecting market data to develop a new fee schedule will cost the agency time and money. However, these additional costs may be offset by the additional revenue that would be generated from the increased fees. Another disadvantage of using a fee schedule is that it carries the administrative burden and cost of having to bill and collect fees every year.

A second option available to the Forest Service is a variation of the first option. It too would involve developing a new fee schedule based on recent appraisals and market data. However, under this approach, the fees in the schedule would be used as minimum fees. When it appears that the fees from this schedule do not properly value a right-of-way, the agency would be permitted to obtain an individual site appraisal to determine the fair market value of the site. The fee would then be based on the appraisal instead of the fee in the schedule.

This option would offer the ease of use provided by a fee schedule combined with an accounting of the unique characteristics of individual parcels of land as provided for in appraisals. If the agency decided to use this option in developing a new fee system, it would have to develop meaningful criteria for when field staff should seek an appraisal. Otherwise, agency field staff may not seek to obtain appraisals when they are justified. For example, the Forest Service's current fee schedule contains a provision that permits Forest Service field staff to obtain

appraisals. However, basing a fee on an appraisal can only occur when fair market value is 10 times greater than the fee from the fee schedule. This "10-times" rule is viewed by Forest Service officials in headquarters and in the field as being too high and, as a result, serves as a disincentive to obtaining appraisals. In fact, Forest Service headquarters and field staff could recall only one occasion in the past 10 years when this 10-times rule was used.

A third option available to the Forest Service is to eliminate the fee schedule and establish fees for each individual right-of-way based on a site-specific appraisal or local market data. Appraisals are a technique commonly used in the marketplace for determining fair market value. By performing site-specific appraisals, the Forest Service could charge fees reflective of the fair market value for each individual permit. The fees could also be based on local market data. This method would be the most appropriate when agency staff are familiar with the fees being charged for nonfederal lands or when recent appraisal data are available from nearby lands.

The obvious advantage of obtaining site-specific appraisals is that the practice would result in fees that would accurately reflect the fair market value for each individual permit throughout the Forest Service. As such, it would meet the requirements of FLPMA, MLA, and OMB Circular A-25. Like the other options, the downside of using appraisals is that they could be costly and/or time-consuming and could likely be subject to appeals because of their inherent subjectivity. In addition, this approach could be more difficult to administer than a fee schedule because of the need to perform appraisals on thousands of right-of-way permits across the nation. However, to mitigate this burden, the agency could require the users of rights-of-way to pay for any needed appraisals—something the industry representatives we spoke to agreed with.[7]

Industry Not Opposed to Higher Fees If the Program's Administration Is Improved

Industry officials we talked to representing a large segment of the users of rights-of-way indicated that, from their perspective, the value of rights-of-way on Forest Service lands is generally less than the value of similar nonfederal lands because of the administrative problems the

[7]In addition to dozens of individual users of rights-of-way, the primary industry group we talked to during the course of our work was the Western Utility Group. This organization represents over 25 major companies that operate oil and gas pipelines, power lines, and telephone and fiber-optic lines. These companies represent about 75 percent of the energy and communications business in 11 western states. About 74 percent of all the land managed by the Forest Service is within these 11 western states. For a list of member organizations of the Western Utility Group, see app. I.

prospective permittees may encounter in obtaining Forest Service permits. However, most of the industry representatives we spoke with told us that if the Forest Service improves its administration of the rights-of-way program by using more market-like administrative practices, they would be willing to pay fair market value for rights-of-way on Forest Service lands.

While revising its fee system, the Forest Service can do several things to improve the administration of permits for rights-of-way. These include (1) using a more market-like instrument, such as an easement instead of a permit, to authorize rights-of-way; (2) billing less frequently or one time over the term of an authorization instead of annually; (3) providing consolidated billing for operators that have more than one right-of-way permit in a forest or region; and (4) making more timely decisions when processing new authorizations. These improvements would both reduce the agency's cost of administering rights-of-way and bring about the use of industry practices commonly found in the market. The Forest Service has the authority to make most of these changes. However, MLA requires annual payments for rights-of-way for oil and gas pipelines. Thus, changing fee collection from an annual payment to a one-time payment would require legislative action from the Congress.

Instead of employing special use permits to grant right-of-way authorizations, one improvement the Forest Service could make is to grant authorizations using an instrument, such as an easement, that is more commonly found in the market. Special use permits convey rights that are similar to those of easements but not equal to them. Special use permits are revocable. In other words, during the term of a permit, if the agency decides that a right-of-way is no longer consistent with management's goals for an area of a forest, the agency can revoke the permit and require the operator to remove his investment in the land and leave. Because of this situation, banks do not recognize a permit as granting a value in the land equivalent to that granted by an easement, which is not revocable but can be terminated if the operator breaches the terms and conditions of the easement. The constraint on special use permits affects the users of rights-of-way when they are trying to obtain financing for a project. With a permit, the permittee is also at risk if the Forest Service decides to trade or exchange the land that the right-of-way crosses. In such instances, the permittee must renegotiate a right-of-way with the new landowner. If the Forest Service is going to revise its fee system to reflect fair market value, then the agency also needs a comparable instrument that conveys rights similar to those commonly found in the marketplace. This comparability

could best be achieved by issuing easements instead of permits. Permits have been viewed by agency officials as giving the Forest Service more flexibility because it can terminate them if the use is no longer consistent with management's objectives in a forest. In practice, agency officials indicated that rarely has this flexibility been used to revoke a permit.

Another improvement available to the agency in administering rights-of-way is to revise its billing system to eliminate the annual billing of permit fees. Instead, the agency could bill only once for the 20- or 30-year term of an authorization, or perhaps reduce billing to every 5 or 10 years. The agency has the authority to make this change for power lines and communications lines, but it would need to seek authority to do so for oil and gas pipelines. In addition, the agency can consolidate billing for operators that have multiple permits within the same forest or region. One-time billing and consolidated billing would reduce costs to both the agency and the permittee. For example, the Forest Service estimates that it costs the agency an average of about $40 to mail a bill and collect payment for a permit. Over the life of a 30-year permit, the agency's costs would be $1,200. With 5,600 rights-of-way permits for oil and gas pipelines, power lines, and communications lines, the potential savings for the program could be substantial—roughly $6.7 million ($1,200 x 5,600 permits) over a 30-year term. (The potential savings of $6.7 million has a net present value of about $3.9 million.) If the agency moved to a one-time payment, it would substantially reduce the costs of processing bills in the future. These costs can be further reduced by consolidating billing for multiple permits issued to the same operator within a forest or region. While the agency has made progress in consolidating some bills into "master permits," industry officials indicated that there remain more opportunities for consolidation. Both one-time billing and consolidated billing are commonly found in the marketplace, and both are supported by industry representatives.

Furthermore, moving to a one-time billing process has significant cost-savings implications if and when the Forest Service attempts to increase its fees to reflect fair market value. Specifically, if the Forest Service decides to move to site-specific appraisals to establish fees, as described in the third option, the agency would have to do thousands of appraisals to determine the fees for the current permits. As we noted, under current conditions, this additional workload could be both costly and time-consuming. However, if the agency moved to a one-time billing process and based its fees on site-specific appraisals, then the agency would need to perform an appraisal on each permit only once over a 20- to

30-year authorization period. While the agency would spend more of its resources on appraisals, agency officials indicated that the cost savings of moving to one-time billing would more than cover the additional appraisal costs. Furthermore, the agency can largely negate these costs by requiring the users to pay for any needed appraisals. The industry representatives that we spoke to had no problem with paying for the necessary appraisals as long as the agency also moved to easements and one-time billing.

Another improvement to the agency's administration of rights-of-way is to reduce the time the agency takes to reach a decision on whether to approve a new right-of-way. Industry representatives indicated that it frequently takes months and occasionally years for the Forest Service to reach a decision on whether to approve an application for a new right-of-way permit. Generally, delays in approving applications are the result of a lack of agency staff to perform environmental studies and inconsistent requirements among Forest Service units. Forest Service headquarters officials acknowledged that applications for permits are not processed in a timely manner, and they are now trying to identify opportunities for streamlining the agency's practices to help address this issue. It is their view that the industry should assume a greater share of the costs of both processing applications for new rights-of-way and administering existing rights-of-way. Industry representatives we spoke with indicated a willingness to pay for application and administration costs. Both agency and industry representatives have been working together to implement and resolve this issue.

Conclusions

The Forest Service needs to update its current fees to fair market value for rights-of-way used by operators of oil and gas pipelines, power lines, and communications lines. In most cases, nonfederal landowners charge higher fees for similar rights-of-way. In attempting to arrive at fees based on fair market value, the agency has several options. Each of these options has a number of advantages and disadvantages. The initial costs of developing a new fee system could be substantial because of the need to perform appraisals and collect the market data needed to establish fair market value. These costs could be mitigated, and in some cases negated, with some administrative improvements to the program. Given the tight budgets and resource constraints that all federal land management agencies are experiencing, one option appears to be the most advantageous—obtaining site-specific appraisals that are paid for by the users of rights-of-way. However, to implement this option, a number of

other changes would have to be made to the program to make it more market-like and more efficient to administer.

Recommendations

To meet the requirements of FLPMA, MLA, and OMB Circular A-25, we recommend that the Secretary of Agriculture direct the Chief of the Forest Service to develop a fee system that ensures that fair market value is obtained from companies that have rights-of-way to operate oil and gas pipelines, power lines, and communications lines across Forest Service lands. While there are a number of options available to accomplish this goal, the option of establishing fees based on local market data or site-specific appraisals paid for by the users of rights-of-way appears to be the most attractive because it collects fair market value for each right-of-way and also reduces the agency's administrative costs.

We also recommend that the Secretary improve the administration of the program by (1) authorizing rights-of-way with a more market-like instrument—specifically, easements; (2) billing once during the term of an authorization or, at a minimum, reducing the frequency of the billing cycle; and (3) consolidating the billing of multiple permits issued to the same operator in a forest or region. To the extent that the agency needs additional authority to charge one-time fees, we recommend that the Secretary seek that authority from the Congress. In addition, we also recommend that the Forest Service continue its efforts to streamline its practices for processing applications for right-of-way authorizations.

Agency Comments

We provided a draft of this report to the Forest Service and the Western Utility Group—an industry group representing a large number of users of rights-of-way—for their review and comment. We met with officials from the Forest Service—including the Acting Director of the Division of Lands—and with officials from the Western Utility Group, including its Chairman. Both the agency and the Western Utility Group agreed with the factual content, conclusions, and recommendations in the report. While the Forest Service officials agreed with the report's recommendations, they noted that the recommendations should also include having the Forest Service (1) look for ways to operate more efficiently and (2) manage the rights-of-way program in a more business-like manner. We are not including these points because we believe they are already inherent in our recommendations. The Forest Service officials also stated that the industry should assume a greater share of the costs of both processing applications for new rights-of-way and administering existing

rights-of-way. We have revised the report to reflect this comment. Officials from the Western Utility Group provided us with some clarifications on technical issues, which have been included in the report as appropriate. They also noted that while they currently pay nonfederal landowners higher fees for rights-of-way, it is their view that they get more from these landowners than they do from the Forest Service because nonfederal landowners (1) generally use easements, instead of permits, to authorize rights-of-way and (2) are more timely than the Forest Service in responding to requests for rights-of-way.

We conducted our review from April 1995 through March 1996 in accordance with generally accepted government auditing standards. We performed our work at Forest Service headquarters and field offices. We also contacted nonfederal landowners and representatives of companies that operate oil and gas pipelines, power lines, and communications lines on federal lands. Appendix II contains further details on our objectives, scope, and methodology.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of Agriculture, the Chief of the U.S. Forest Service, and the Director of the Office of Management and Budget. We will also make copies available to others on request.

Should you have questions about this report or need more information, please call me at (202) 512-3841. Major contributors to this report are listed in appendix III.

Sincerely yours,

Victor S. Rezendes
Director, Energy, Resources
and Science Issues

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Abbreviations

BLM	Bureau of Land Management
BPA	Bonneville Power Administration
FLPMA	Federal Land Policy and Management Act
GAO	General Accounting Office
MLA	Mineral Leasing Act
OMB	Office of Management and Budget

Members of the Western Utility Group

Arizona Public Service Company
AT&T
Bonneville Power Administration
Idaho Power Company
Kern River Gas Transmission Company
Los Angeles Department of Water & Power
MCI Telecommunications Corporation
Montana Power Company
Nevada Power Company
Northwest Pipeline Company
Pacific Bell
Pacific Gas and Electric Company
Pacific Gas Transmission Company
PacifiCorp (Pacific Power/Utah Power)
Plains Electric Generation and Transmission Cooperative
Public Service Company of Colorado
Public Service Company of New Mexico
Puget Sound Power and Light Company
Salt River Project
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company
Sprint Communications Company, Inc.
The Gas Company
Tri-State G&T Association, Inc
US West
Washington Water Power Company
Western Area Power Administration

Objectives, Scope, and Methodology

We were asked by the Chairman, Subcommittee on Oversight of Government Management and the District of Columbia, Senate Committee on Governmental Affairs, to determine (1) whether the fees currently charged to users of Forest Service rights-of-way that operate oil and gas pipelines, power lines, and communications lines reflect fair market value, (2) how the Forest Service's fees compare with fees charged by nonfederal landowners, and (3) what, if any, changes are needed to the Forest Service's fee system to ensure that fees reflect fair market value.

Our review included rights-of-way managed by the U.S. Department of Agriculture's Forest Service. Our work addressed the major commercial users of rights-of-way: oil and gas pipelines, power lines, and communications lines.

To determine how the Forest Service establishes fees for rights-of-way, we reviewed the laws and implementing regulations governing rights-of-way. Because the Forest Service and the Bureau of Land Management (BLM) worked together to develop the joint 1986 fee schedule for rights-of-way, we reviewed the methods these agencies used to develop the schedule. However, we did not verify the accuracy of the data or the computations used by the agencies in developing this fee schedule.

To determine whether the current federal fees reflect fair market value, we reviewed applicable laws and regulations, along with the Department of Agriculture's requirements for obtaining fair market value on lands it administers. We interviewed representatives of nonfederal entities (states, counties, private companies, and private landowners) to obtain information on commonly accepted techniques for determining fair market value. We also interviewed officials at Forest Service headquarters and field locations. We reviewed rights-of-way in six national forests: the Angeles National Forest and the San Bernardino National Forest in California, the Arapaho/Roosevelt National Forest in Colorado, the Lolo National Forest in Montana, the Washington/Jefferson National Forest in Virginia, and the Mount Baker/Snoqualmie National Forest in Washington. We selected these sites to obtain broad geographical representation and to encompass a high volume of commercial rights-of-way.

To determine how federal fees compare with fees charged on nonfederal land, we compared the fee determination methods used by the Forest Service and BLM to those used by states, counties, private companies, and private landowners. For example, we interviewed state and county officials responsible for rights-of-way agreements in California, Colorado,

Montana, Virginia, and Washington. We also interviewed commercial land managers who manage private lands in Montana and Virginia. Furthermore, we reviewed the Bonneville Power Administration's (BPA) settlement records for rights-of-way in Montana and Washington states. In addition, state and county officials, private land managers, and BPA administrators told us what they charged and/or were charged for various types of rights-of-way agreements. Using net present value techniques, we compared these fees with those charged by the federal government.

In order to compute the net present value of future payments to the Forest Service, we deflated future payments by 4.2 percent per year. We obtained this number by subtracting expected inflation from the 30-year government bond rate. As of March 21, 1996, the 30-year government bond rate was 6.65 percent, and the WEFA Group's forecast for inflation was 2.45 percent. (The WEFA Group is a commonly cited, private economic forecasting organization that produces estimates of the long-term economic outlook, including expected inflation.)

To obtain views on potential changes to the Forest Service's fee schedule, we met with officials of the Western Utility Group. This organization represents over 25 major companies that operate oil and gas pipelines, power lines, and communications lines. These companies represent about 75 percent of the energy and communications business in 11 western states. About 74 percent of all the land in the Forest Service is within these 11 western states. (For a list of member organizations of the Western Utility Group, see app. I.) In addition, we interviewed private landowners and Forest Service personnel in each of the states we visited. Finally, we interviewed several BLM field staff to obtain their viewpoints on the fee schedule.

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