

RIGHT OF WAY MAGAZINE

The Voice of the Right of Way Profession

EXPERIENCE EDMONTON

A sneak peek into IRWA's 64th Annual
Education Conference



MAY/JUNE
2018

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RIGHT OF WAY

The Voice of the Right of Way Profession

MAY/JUNE 2018
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Building Relationships

The benefits of lifelong networks within the IRWA

JERRY COLBURN, SR/WA



When I became President last year, I talked about making a difference in our Association, in the industries that we serve and in the lives of the people we touch. As building relationships is the backbone of making that difference, creating a rapport with people is an important place to start. It draws people toward you so that trust will take root and a relationship can begin to form.

So why focus on creating relationships at all? I've found that real success—the kind that exists on multiple levels—is impossible without building great relationships. Of course, these take time, effort and emotional intelligence. Our members have good people skills and know intuitively how to build bridges with others so that relationship bonds are robust. They are adept at engaging others and getting desirable responses. They know how to win people over and appeal to different audiences to build consensus and support. This type of influence is essential in achieving our goals and outcomes; it is also absolutely crucial

to achieving our purpose of improving people's quality of life through our profession.

Firsthand Experience

All of my life, I have worked on building relationships both in business and in my personal life. In both cases, the IRWA has been the catalyst for building these relationships. As a right of way professional, I have experienced being an influencer, as well as the recipient of strong influence. Along the way, I have tapped into the ability to build a rapport with people and therefore have developed relationships that will last a lifetime.

For instance, I met one of my best friends at an IRWA class in Santa Barbara over 25 years ago. Another relationship that developed was with someone I coached to be a right of way professional. I currently share a leadership position with her in the IRWA. In addition to being one of my employees, she was once my client and has remained a friend for over 30 years—I even coached her son in

baseball. And it doesn't stop there. The best man in my wedding is going to retire this year from a successful right of way career that spanned three decades. I talked him into this business and in turn he influenced his wife and family to follow him into this incredible profession.

Reaping the Benefits

You all have stories like these. Without the IRWA, I would not have the incredible network of lifelong friends and clients that I can share a laugh with—and that includes all of my competitors that have become my friends.

I have a tip for the newer members that are reading this. When you attend an IRWA event, the return on your investment of time and effort might not be immediately evident. But as the years go by and your bonds get stronger and more deep-seated, you will have life-long relationships that will give you an edge in business, opportunities for learning and a remarkable chance to make a difference. 🙌



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THE INSTRUCTOR SPOTLIGHT SERIES

Get to know the people behind the purpose

BY DEIDRE ALVES, M.ED.

IRWA strives everyday to improve people's quality of life through infrastructure development. And at the front lines bringing this powerful purpose to life is our IRWA CLIMB Certified Instructor Team. Over the next few months, I will be bringing you The Instructor Spotlight Series, which will highlight some of the instructors on the team and allow them to share their thoughts on teaching for this impactful industry and what it means to be an infrastructure educator. We are very lucky to have this high-caliber team to serve the educational needs of our current and future students. I am proud to introduce the first CLIMB Certified Instructor in our series.

FAITH ROLAND, SR/WA

What is the most rewarding part of instructing for the IRWA?

My biggest smiles from teaching come the week after a class. I'll get an email or a quick call from a student where they recall a practical example or tip I shared during class. They remember the tip, take it back to their job, try it and then it works! Giving students real practical tools and tips they can immediately use is something I always strive for in a class. When they remember what I said, then immediately apply



the lesson to their daily work, I know I've made a difference and helped them grow in right of way.

IRWA's purpose is to improve the quality of life through infrastructure development. As an IRWA instructor, how do you contribute to the fulfillment of this purpose?

We improve quality of life and infrastructure development by improving the quality of the practitioners who complete the projects. As an industry, we are only as good as our least effective and least trained members. The more trained and highly skilled we become, the greater the impact and influence we have as a group. Every agency or company should have minimum standards of training that are required before a right of way agent is sent to the field to impact lives. I know that everyone that leaves my class has a few more skills and is better equipped to make a difference and improve quality of life. We make a difference one student at a time.

What is the most important thing you would like your future students to know upon entering your class?

Every student should be in my class because they believe in themselves and the personal investment they are making through education. Whether they attend classes because their boss told them to or because they feel peer pressure to get initials after their name, they should understand the value they hold as their own. Their time and often their financial commitment to education is something that, once earned, cannot be taken away. Without IRWA education and credentials, I would not have been able to accomplish all that I have in our industry over the past 25 years. I hope they are not afraid to invest in themselves, as I did, so they can reap similar rewards and fulfillment in their profession.



Deidre Alves is IRWA's Chief Learning Officer.

A special thank you to Faith for being the first instructor in our Spotlight Series. For more information on our CLIMB Certified Instructor Team or to book one of our CLIMB Certified Instructors with your Chapter today, please visit www.irwaonline.org/members/irwa-course-instructors and click "Find an Instructor" or contact education@irwaonline.org.



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SERIOUS IMPACTS OF ENCROACHMENTS

Protecting your existing right of way assets

BY JASON MCDADE

After seven years as a Right of Way Specialist for Alabama Power Company's Right of Way Services department, I can count on just one hand how many access rights I have acquired for Alabama Power. However, my department provides an extremely valuable service to our company and its operations through the management of our existing transmission line in right of way assets.

The matter of encroachments upon rights of way is a serious and never-ending challenge. Our rights of way are extremely critical to our business and in many ways, they cannot be duplicated. But we are not unique in this respect because encroachment management impacts every entity that has a right of way, from utilities and transportation companies to municipalities. None of us are immune to encroachments and addressing them after they happen can often become costly and problematic to current and future operations.

Managing Your Existing Right of Way

As with any asset, there is always some level of maintenance and rights of way are no different. Whether performing vegetation maintenance or ensuring the proper usage of the right of way, maintenance activities are an essential function of the utility, highway

department or municipality. This is certainly the case for acquired easements.

From a utility perspective, we focus on providing our customers with safe and reliable energy. As such, we strive to keep our right of way assets free from any encroachments that may interfere with the construction, maintenance and operation of our system. We aim to provide readily available and consistent information to the general public. We also monitor for ownership changes and tract usage changes. For instance, it is not uncommon for a new owner to take a tract originally used for recreational purposes and turn it into a commercial farming operation. This scenario presents many potential issues. An active right of way management program that focuses on managing existing rights of way can often come up with solutions that will allow both parties to operate successfully without interfering with the other operation.

And let us not forget the professionals who work within the right of way asset daily. We must ensure that they are able to do their job without having to work around foreign obstacles. The presence of encroachments can delay work, increase maintenance cost and potentially create a hazardous work environment.

Finally, there are the legal concerns associated with right of way protection. Frankly put, if you do not protect your right of way asset, you are open to losing acquired rights and introducing other potential liability issues. Since the laws in each state vary, it is recommended that you consult with an attorney in order to better understand the challenges of allowing encroachments to remain unchecked. From there, develop a plan to address new and existing encroachments. These resolutions can be achieved through license agreements, removal of the encroachment through negotiations or, in certain cases, by litigation. In addition, any plan to address encroachments should call for the reevaluation of existing items that are dismissed as non-issues, as the passage of time or behavior can quickly change an immaterial matter into a real and complicating encroachment.

Public Outreach is Essential

To be successful, your team should do more than just monitor your existing right of way asset. Your team should look for and develop innovative solutions that help achieve your desired intent. One of the most important initiatives your team can take on is public outreach. The reality is, most issues that arise from encroachments come from a simple misunderstanding, which can be avoided by targeting entities that are aware of potential issues long before the encroachment is found. Here are a few highlights of what that outreach looks like:

- Developing relationships with local municipalities in an effort to be included in dialogue from the onset of a potential proposed development.



Jason K. McDade is a member of Chapter 24 in Alabama. As a Right of Way Specialist for Alabama Power/Southern Company, he manages the Transmission Line rights of way within their Southern Division.

- Developing relationships with state agencies that are directly involved with training and certifying professionals who work around our rights of way, such as forestry owner and homebuilder associations.
- Developing relationships with state and local natural resources and conservation professionals, such as hunter education providers.

The above are just a few initiatives that may provide insight on how to enhance your right of way management operations and bring additional value to your organization. The key is to build these relationships and ensure a consistent message is being communicated.

Final Thoughts

A successful right of way agent who manages your existing right of way will

share certain traits and skills to that of an acquisition agent. But there is a stark difference in the day-to-day operations that should be recognized. An acquisition agent will meet with a landowner and discuss acquiring rights, while an agent who manages existing right of way may meet with a landowner who has potentially built their home within someone's easement. As you can imagine, it takes someone with strong dispute resolution skills to navigate conversations of this nature.

Sam Brannon, a right of way specialist with over 30 years of experience points out, "In many cases, right of way is not always the sacrosanct strip of earth we sometimes think it is. We build better relationships with local governments and the developing community by looking for newer and smarter ways to manage our interests, while ensuring that our rights are not compromised." ✪

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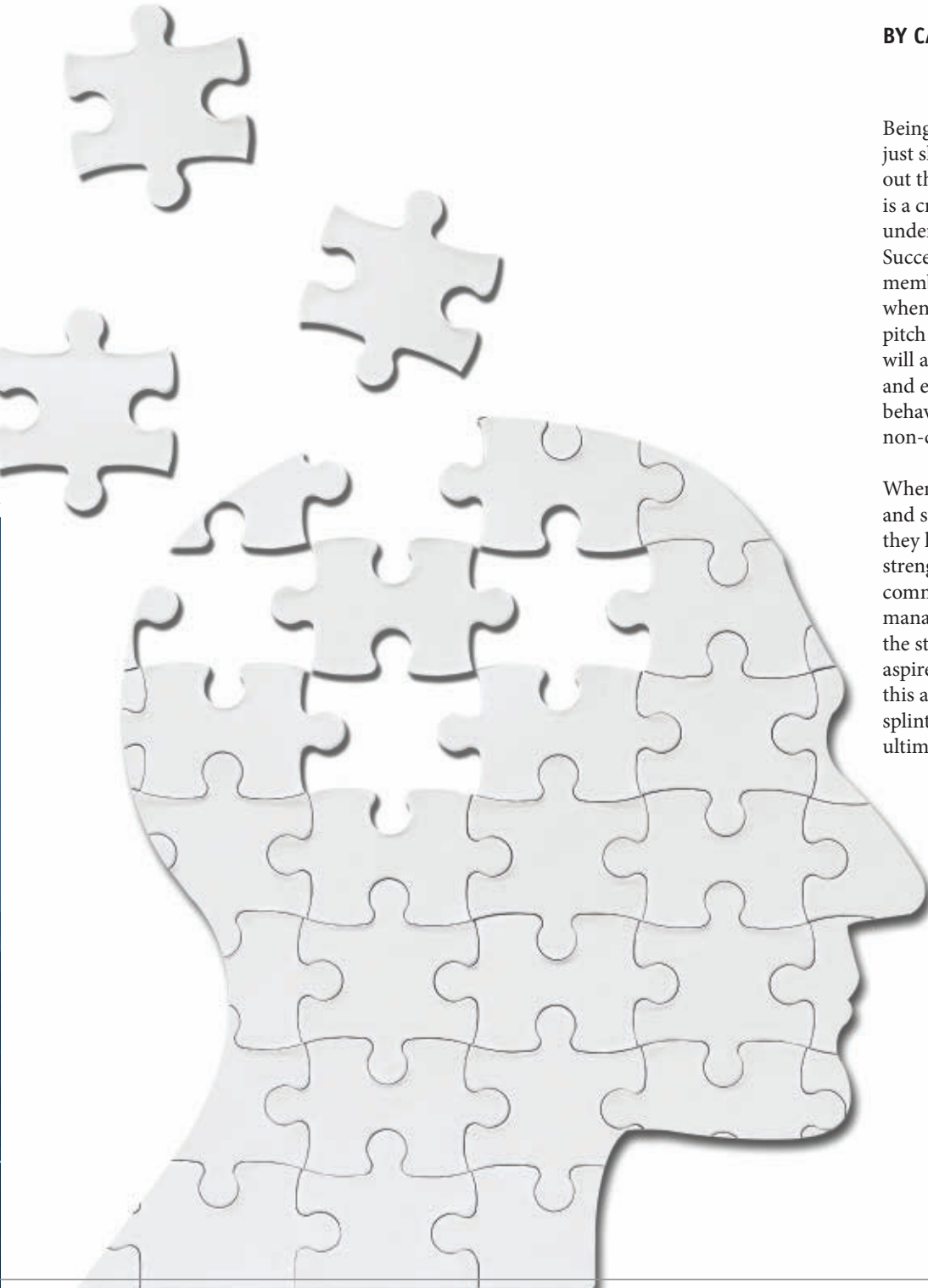
Understanding YOUR **PUZZLE PIECE**

Important roles in high-functioning teams

BY CAROL L. BROOKS, SR/WA

Being part of a team means much more than just showing up, giving a report, then dashing out the door at the end of the meeting. There is a critical component for team players to understand their best fit within the team. Successful teams recognize that like a puzzle, members are made up of unique strengths and when one member is missing, others should pitch in and help to fill the void. Team leaders will also identify and utilize team strengths and enable individuals to discuss their behavioral strengths in a productive, safe and non-confrontational way.

When members understand their personal and social roles within the team framework, they have a greater understanding of their strengths, which leads to more effective communication between colleagues and managers. And when individuals acknowledge the strengths of others, then that team can aspire to unimaginable results. Without this appreciation and recognition, the team splinters through jealousy and score-keeping, ultimately leading to their destruction.





Discovering Your Role

Dr. Meredith Belbin of the Belbin Team has identified personal and social roles that contribute to the victory of a group. Like a puzzle, each position becomes a necessary piece to form high-functioning teams. Consider what position best describes your role:

- **Encourager** – *Affirms, supports and praises the efforts of fellow group members. Demonstrates warmth and provides a positive attitude in meetings.*

The Encourager possesses a keen gift to overlook weaknesses and hone in on the strengths of a person. This invaluable insight allows them to practice what they do best: affirm, support, praise and motivate the team to continue their climb to excellence. When the team faces unexpected challenges, such as deadlines appearing out of nowhere or budgets getting slashed, the team is able to persevere and continue for another day thanks to the finesse of the Encourager.

- **Harmonizer** – *Conciliates differences between individuals. Seeks ways to reduce tension and diffuse a situation by providing further explanations or using humor.*

Virtually every family has a Harmonizer. Think of a mother who cares for scrapes and makes sure all the children are tucked into bed. She is the Harmonizer who makes sure all her children play nice. Harmonizers function as a neutral person—leaning toward a bipartisan perspective—to mend weatherworn relationships.

- **Compromiser** – *Offers to change their position for the good of the group. Willing to meet others half way.*

The Compromiser is more concerned about the welfare of the greater good than their own needs, concerns and wants. They recognize that one must give a little to get a little and that in the end, everyone can get a fair slice of the pie. Compromisers are known for being open minded and thus flexible. They know when it's time to let go and to fall out of love with their position. They are the leaders of change because once they are brave enough to make a change, then others tend to follow.

- **Gatekeeper** – *Regulates the flow of communication. Makes sure all members have a chance to express themselves by encouraging the shy and quiet members to contribute their ideas.*

The Gatekeeper limits those who dominate the conversation and may suggest group rules or standards that ensure everyone gets a chance to speak up. Because the Gatekeeper's role is to include everyone, their approach is caring and understanding as they call upon the shy and quiet member, not wanting to embarrass or offend them.

- **Follower** – *Accepts what others say and decide even though they have not necessarily contributed to the decision or expressed their own thoughts.*

Followers are invaluable to a team because on those rare occasions when they have something to say, it is awe-inspiring. Followers do their

best work when listening and they are typically non-judgmental. They gather the facts and evaluate them in their quiet way, as though on the outside looking in. Listening is a powerful skill as a listener hears the entire story and fully comprehends the direction of the team. From this perspective, the follower can become the leader by sharing their insights and observations.

Contributing to Success

Were you able to find yourself in one of these roles? Understanding your role will help you exercise your strengths in a way that promotes team effectiveness. Additionally, understanding the role of others allows you to fully acknowledge their importance and helps you determine how to best interact with them. You have the unique opportunity to promote their strengths by sharing these roles with your team. By doing so, they too will discover the importance of their role and their potential to enhance team effectiveness. When all of these roles are connected, then great teams can be put together—just like a puzzle without missing pieces. ✪



Carol Brooks, SR/WA, is owner of Cornerstone Management Skills and a well-renown author and lecturer. With 20 years experience in right of way, she is an IRWA CLIMB Certified Instructor and Vice-Chair of the Partnership for Infrastructure Professional Education. © 2018 Carol Brooks. Visit www.CornerstoneManagementSkills.com.

PUSHING ETHICS FORWARD

The importance of ethics in succession planning

BY BRAD YARBROUGH

Of the estimated 70 million baby boomers, it is believed that 10,000 are retiring each day. Among them are large numbers of small business owners and corporate leaders. The resulting vacancy of these decision-making positions presents unique ethical challenges.

The federal government reports that small, privately owned businesses comprise 99.7 percent of all businesses in the U.S. and 90 percent of those are family-owned. As the years pass, these companies face two inevitable options. They will either transfer over ownership (to family members or others) or the business will cease operations. Because these outcomes are expected, it's shocking that 70 percent of family businesses lack a thoughtful succession plan. Is this failure to plan unethical? It certainly creates a situation ripe with ethical dilemmas. Mishandling this transition can damage relationships and the business itself. Research indicates that 75 percent of family businesses would like to hand over the business but only 30 percent are successful at transitioning to the second generation. By the third generation, only 12 percent are still viable and by the fourth, only 3 percent of family businesses remain in existence.

Similarly, publicly-held companies are adversely affected by the retiring masses. Millennials are replacing baby boomers and bring a more fluid, collaborative work attitude focused on utilizing ever-advancing technology. As we transition to a new generation of leaders, the most discussed issues have been the transfer of knowledge and skills, while other equally important issues are often overlooked.



Creating and Maintaining an Ethical Culture

This transition in business ownership and leadership begs for thoughtful, advanced planning. But in the midst of being surrounded by lawyers, accountants, merger and acquisition specialists, business consultants and financial planners, businesses are scarcely talking about a subject critical to business success and succession: the ethical culture. Today's business leaders must get beyond mere platitudes which point to concern for people, the planet and profits. Owners, executives and managers must passionately pursue the highest levels of ethical conduct. An ethical business culture must be established. It's not enough to publish a polished assertion of the company's values or a clever mission statement. Nor is the culture created by just having ethics guidelines or a compliance department. The key to establishing this culture is ethical leadership. Leaders that exemplify ethical conduct motivate others to do the same. The pursuit of profit—whether financial or driven by the gain of power—must come along with our genuine concern for the people around us and the planet on which we live. As a leader, it's always the right time to lead by example and establish an ethical culture.

Firsthand Experience

Kimray, a family-owned, Oklahoma City-based company that manufactures pressure regulators for the oil and gas industry, has been successful in creating and maintaining an ethical culture. They're a three-time recipient of the Compass Award from the Oklahoma Ethics Consortium and they believe in doing the right thing even when no one is watching. Tom Hill, former CEO and author of the bestseller, *Making Character First: Building a Culture of Character in Any Organization*, grew the company

on the ethical foundations laid by his father-in-law who was its founder.

I recently spoke to Thomas Hill III, CEO since 2015, about the company's ethical culture and how important the preservation of this culture was to the success of the business. "Retiring leaders assume that they have created a culture that will survive them," he responded. "It seems obvious and clear to them, but it is often less clear to the rest of the team and even to the next generation. If they are making most of the significant decisions, it is unlikely that anyone else in the organization, including their own descendants, fully understands the underlying reasons."

Thomas commented that he has rarely seen the successful preservation of the high standards set by previous leadership. He surmised, "There is a reason most companies don't transition successfully to second or third generational leadership. At the root is a failure to clearly and consistently communicate the core values and mission that drive the decision-making for the organization. Again, it seems common sense to the outgoing leader, but is often misunderstood by the next."

Thomas offers a solution to the problem. "It is possible for succeeding leaders to understand, adopt and continue to act in accordance with the core values and mission set by their predecessor," he says. "This requires intentional training, communication and practice. Additionally, governance through a board or other advisory groups can be very important as the new leader becomes more fluent in aligning decisions with the core values and mission previously established."

Our Responsibility

"The recognition of the importance of culture has grown tremendously over time," says Craig Aronoff, co-founder of The Family Business Consulting

Group, noted speaker and a retired business college professor. "What we do is the expression of what we believe. Unfortunately, the majority of entities don't pay attention to the importance of culture, not consciously, whether in the manner it's created or sustained." During our conversation, he reminded me of the famous Peter Drucker line: "Culture eats strategy for breakfast." It underscores the importance prioritizing both culture and strategic planning if the business is hoping for success.

Led by the IRWA, the right of way industry has been diligently working to strengthen its ethical culture. Many IRWA members are owners of family businesses and others hold leadership positions in publicly-held companies. Faced with retirement, it's our solemn responsibility to exemplify ethical conduct, make sure we mentor our successors and implement structural features within our businesses that will promote an ethical culture. ✪



Brad Yarbrough is the Owner and CEO of Pilgrim Land Services, a right of way services company in Oklahoma City. With over 35 years experience in oil and gas, he has clients nationwide and an extensive network of landmen and agents.



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MOMENTS MATTER

A three-part strategy to effectively leverage your time

BY JILL J. JOHNSON, MBA

Most people manage their time by treating each of their priorities as if they have an equal weight, but in reality, they do not. When you are developing your time management strategy, consider breaking your time down into three different categories: routine activities, project-oriented activities and crisis situations. Each of these categories has a different impact on your productivity and your daily focus.

Developing a clearer understanding of what *type* of time you are dealing with allows you more options for developing a strategic approach to how you focus your daily priorities. Begin by breaking down your key areas of focus by evaluating the urgency and significance of your primary activities. This is followed by an evaluation of each of your major responsibilities to assess which category it falls into; then consider the amount of time that will be necessary to effectively complete each of them. This strategic focus will help you develop a more proactive approach to managing your

overlapping—and sometimes conflicting—responsibilities.

Neglecting Routines Creates Chaos

Routine activities involve responsibilities you can anticipate. Activities falling under this category include those with an automatic or regularly occurring deadline. This may be preparing quarterly reports, tax filings or actions you need to process on the first day of each month.

Unfortunately, many people procrastinate on assignments that have a routine deadline and wait until the last minute to begin working on them. Then they rush to pull together the needed information (even though waiting until the very last minute to focus on routine activities ends up compressing the completion time horizon). The frantic rush to meet the known deadline often results in missing critical elements, errors and a lack of quality work. Unsurprisingly, this also adds pressure and unnecessary stress.

Because routine activities are not surprises, do not treat them as such. Carve out the time you need in your schedule and make sure it adequately reflects the time necessary for completing these assignments. If these activities require research or advance preparation time, your schedule must allow ample time to work on them in advance. Shorten or eliminate all non-essential meetings as you get closer to a deadline. Set up alerts with a reminder of your schedule; then send alert notices to others who have critical information or essential insight you will need.

Taking a strategic mindset to approaching routine assignments encourages you to complete your preparation work as far in advance of your deadline as possible. The key is to dedicate the time you need into both your planning process and your schedule. If it is a new responsibility for you, budget time into your calendar to accommodate your learning curve.

If the routine activity is something you only engage in periodically, create cheat-sheets with screenshots and notes to yourself on issues you ran into and how you solved them. These notes can be a huge time-saver the next time you complete this activity.

Managing Projects Requires a Precise Plan

The second category or type of time consists of project-oriented activities. Projects are often complex activities with a defined expectation for deliverables or a date of completion—such as a major event. With projects, there are many moving parts and multiple deadlines. Projects may also include the involvement of a variety of other team members or vendors.

The challenge with most projects is that they often have long time frames, which allows those involved to push off key responsibilities because the completion date is perceived to be far off into the

future. Participants focus on day-to-day "fires" and do not worry about the project until there is an urgent rush to meet a deadline.

Effectively managing project-oriented time means developing and following a clearly established plan. There are a variety of formal project management methodologies you can follow. The key is determining the other people who need to be involved and clarifying the roles and responsibilities of each. Internal deadlines need to be clearly determined for all of those involved and direct responsibilities must be outlined. Consider breaking your project activities into smaller components and more manageable parts. Engaging in interim checkpoints on a periodic basis allows you to stay up-to-date on the progress being made on a project. These checkpoints provide the opportunity to determine if you have adequate resources deployed to the right areas so you can meet the deadline.

Another strategy you can implement is to engage in front-end loading. This means completing or beginning work when you are first assigned to it. By front-end loading your work, you will begin to identify challenges in obtaining a resource or needed information. This intensive work at the beginning of your project provides you with more time to resolve any glitches before they put your project completion at risk.

Expect the Unexpected

A crisis is an unexpected situation requiring you stop everything you are currently focused on to address the situation. When a crisis occurs, your entire focus shifts your priority to resolving the problem or the aftermath of an unexpected event. This could be a fire, data breach or the death of a key employee. As such, you must solely focus on the issues associated with the emergency.

The biggest challenge when dealing with a crisis is that you often do not have advance warning that something significant will happen. Few organizations adequately prepare for a disaster, so when something significant hits, everyone scrambles trying to figure out what to do. It is difficult to think clearly or to establish essential priorities when your adrenaline has kicked in and everyone is in a highly emotional or frenzied state of mind.

This is why it is essential to prepare a disaster plan for the types of crisis your enterprise is most likely to experience. When you have the luxury to prepare in advance, you and your team are more likely to have a clearer frame of mind when an emergency hits, and you can more easily identify what the focus of your priorities must be. This will help develop a clear framework for rapid action in an emergency.

Final Thoughts

When you begin to consider demands on your time as being different kinds of time, you can shift your focus toward optimizing your priorities and activities. This more process-oriented focus of your perception of productivity will help you more effectively avoid time-wasting activities and ensure you are focused on getting the desired results for the energy you spend. 🌟



*Jill Johnson is the President and Founder of Johnson Consulting Services, a highly accomplished speaker, an award-winning management consultant and author of the forthcoming book *Compounding Your Confidence*. For more information on Jill Johnson, please visit www.jcs-usa.com.*

WETLANDS

Considerations for real estate appraisal

BY JAMES COYLE, P.E. AND KYLE DRISCOLL, MAI



The presence of wetlands on a property can significantly restrict its development potential, highest and best use, as well as its value. Filling, grading, dredging and other construction disturbance activities that impact a wetland are regulated by local, state and federal agencies, and the associated permitting process can be complex and costly. Wetland considerations related to appraisal work may include analysis of useable development area, multiple value conclusions for the various land types on a property and costs associated with permitted mitigation. In order to fully understand all that must be taken into consideration when appraisers encounter wetlands in an assignment, we must first understand what wetlands are and their potential impacts.

Defining Wetlands

Wetlands come in many different sizes and types. In general, wetlands have three primary characteristics: a dominance of hydrophilic plants, wet or saturated soils and evidence of water. Many wetland types are only wet part of the year, while some wetlands never have standing water in them at all. They demonstrate that wetlands may not appear wet, so thorough investigation is needed to identify them properly.

The Value of Wetlands

Wetlands provide many important functions. One of the primary functions is to store water and slowly release it over time, which reduces the effects of flooding. They also act as filters by retaining sediments and nutrients, resulting in healthier streams and lakes. Wetlands provide wildlife habitat and recreational opportunities such as hunting, fishing and trapping.



The degree to which a wetland serves any of these functions depends on its type, size, landscape position and the level of disturbance. Although a wetland may not serve all functions, each wetland works in combination with other wetlands or streams as part of a complex and integrated system. Because of the importance of these functions, federal regulations require permittees to avoid, minimize and mitigate adverse impacts to these resources.

Regulatory Oversight

Section 404 of the Federal Clean Water Act of 1972 authorizes the U.S. Army Corps of Engineers to regulate the discharge of dredged or fill material into “waters of the United States,” including navigable waters, their tributaries and most wetlands. The following construction activities, among others, are candidates for wetland permit consideration:

1. **Filling:** Placing dredged or fill materials into a wetland.
2. **Excavating:** Removing material from a wetland.
3. **Grading:** Conducting earthwork to change the grade or contours of the land.
4. **Clearing:** Removing vegetation (shrubs and trees) from wetlands by bulldozing or grubbing, and removing the root structure.
5. **Other activities:** Such as placing structures within a wetland and temporary wetland impacts.

States generally work in conjunction with federal agencies to coordinate permitting activities in each state. Examples of such state agencies include the Wisconsin Department of Natural Resources (WDNR), the Ohio Environmental Protection Agency (OEPA) and the Michigan Department of Environmental Quality (Michigan DEQ).

Proper Identification

There are online tools available for public use that map potential wetland areas. These are based on aerial imagery studies

of topography, drainage patterns and vegetation combined with agency fieldwork and soil studies. As wetland reports are submitted for respective agency review, those wetland boundaries can be incorporated in mapping database updates.

Appraisers must use caution when relying on these types of mapping tools to evaluate the extent of wetlands on a property. First, these are largely based on aerial imagery and analysis that is subject to seasonal fluctuation in water levels and vegetation. Second, there may be multiple mapping tools available for the same site, and each map may show different potential wetland areas. Additionally, wetland areas may even be shown in different sizes and shapes in each tool. Mapping tools often include a disclaimer that must be accepted in order to view the map, which indicates the map is only a guide to potential wetland areas. The following example shows how the same site in Wisconsin is shown in two different government-provided mapping tools.

The image below shows a recent development site as displayed in the WDNR online wetland mapping tool. Note that there is an approximate 0.6-acre wetland area mapped in the northeast quadrant of the site. The same site is shown on page 21 using the U.S. Fish and Wildlife Service online mapping tool. Note that there is no wetland area mapped in the northeast quadrant.

This example demonstrates that it is important to check both the national mapping tool and the respective state tool if it's available. In some cases, there may also be a county or regional planning commission base map as well. In this example, the Wisconsin mapping tool showed an area with likely wetland characteristics that has a significant impact to the area of developable land. States agencies like the WDNR are generally the “front lines” of wetland permitting activities and may have more-updated data based on recent permit applications and more recent field work.



Source: WDNR Surface Water Data Viewer

Any wetland permit will require identification—also called *delineation*—of the wetland area by a qualified wetland professional. Requirements for professional qualification vary by state and local government, but generally include college education in an area of study such as environmental science or hydro-geology, as well as a record of successful submittals. Some states offer assurance certification programs to help identify consultants with an elevated level of experience and whose permit application reviews are less likely to be returned for missing or insufficient data.

Similar to appraisal reports, a permit-level wetland delineation report can range in cost from a few thousand dollars to tens of thousands of dollars, depending on size of the property, the complexity of the wetland ecosystem and the project impacts.

Permitting Process

The permitting process related to wetlands can be complex and varies by jurisdiction at the state level, with the U.S. Army Corps of Engineers acting as the top oversight agency at the federal level. In general, there are multiple types of permits available based on the extent of impact and quality/importance of a particular wetland.

Most states offer a “general” permit that may be used for less extensive impact areas. Other criteria must be met for this type of expedited permit, and some types of sensitive wetland impacts are not included. The foundational criteria for general permits is that the applicant has demonstrated—through a formal practicable alternatives analysis—that wetland impact has been avoided if possible. If wetland impact is unavoidable, it must be minimized to the greatest



Source: U.S. Fish and Wildlife Service

extent. Alternative actions include constructing entirely upland, selecting different sites, reducing the size of the facility and even adjusting the timing of the project.

If a wetland impact does not qualify for the simpler general permit, an “individual permit” is required. This type of permit is much more complex and includes a public notice period and a meeting with the U.S. Army Corps of Engineers in conjunction with the state agency. Factors taken into consideration when making a decision on a wetland permit include wetland functions and values, fish and wildlife habitat, water quality, plant diversity, groundwater recharge/discharge, shoreline protection, aesthetics, recreation and education/science.

Mitigation

A major component of the individual permit is the likely requirement to provide mitigation. Think of mitigation as the replacement of the wetland value lost by a permitted activity. The extent of mitigation required is defined by applying a ratio of mitigation area to impact area. Typical ratios vary from 1.2 to 2.1:1. In other words, a permittee may be required to mitigate 1.5 acres to compensate for a one-acre impact area. The applicable ratio is based on formulas that take into account items such as impact size, wetland quality, functional value lost, impact on the balance of the site and watershed.

Generally, a permittee can fulfill mitigation requirements in one of three ways:

1. Mitigation banking: The permittee buys “credits” in a privately-owned, state-approved wetland area. Each credit generally corresponds to an acre. The mitigation bank is preferred to be in the same watershed as the impacted wetland, and the type of credit purchased should be commensurate with the type of wetland impacted (e.g. marsh credit for marsh impact). Many states are short on available, state-approved bank projects in some of its watersheds, so states have been adopting an in-lieu fee alternative as a mitigation requirement option.



Real Estate Transactions

Because the presence of wetlands can significantly affect property values and could complicate sale transactions, many states have developed standard forms for use in transactions. For example, in cooperation with WDNR, The Wisconsin Realtors® Association has developed *Addendum W* for use in real estate transactions. The form requires the seller to indicate knowledge or lack of knowledge of wetlands, outlines that the buyer is responsible for providing a delineation report, and facilitates the potential calculation of a closing credit on a per wetland acre basis.

In Conclusion

Appraisal efforts should take into account the presence of wetlands and the impacts they may cause. Only a professionally prepared wetland delineation report will provide the “official” wetland area, but there are online mapping tools available to help estimate the presence and size of potential wetland areas on a subject property or a comparable sale property. The presence of wetlands may lead us to break up a site into different land types, each with a different value conclusion. Also, consideration may include extraordinary assumptions related to the presence and extent of wetlands when formulating value conclusions. Finally, it may be appropriate to include costs associated with wetland mitigation for a subject property or as a comparable sale price adjustment. 🌟

Source: Google Earth

2. In-lieu fee: This is similar to mitigation banking, but the mitigation wetland project may or may not yet be in existence. The state collects a fee for required credits to be used to undertake wetland projects in the state with approval from federal agencies. The permittee essentially pays the state to take responsibility for the mitigation requirement. As an example, in Wisconsin, in-lieu fee credit costs range from \$59,000 to \$62,000 per credit, depending on the watershed. This is comparable to credit costs of mitigation banks, although individual mitigation banks are able to set their own prices.

3. Permittee responsible on-site: The permittee may be able to develop a plan to mitigate impact on-site with the creation of new wetland areas. The new wetland areas would be subject to an ongoing maintenance plan and state review to ensure quality goals are met and maintained. A benefit of this alternative is that the goal of keeping mitigation in the same watershed as impact is satisfied. However, because many permittees do not have expertise in maintaining such a facility, this is often the least-preferred method from the state’s perspective.

Impacts on Development

The image above shows the extent of the potential wetland as shown by the mapping tool, with the addition of the City’s code requirement related to wetland setback known as “protective area” in the City’s development code. The “protective area” refers to an area of land that commences at the top of the channel of lakes, streams and rivers, or at the delineated boundary of wetlands.

In this example, nearly the entire northeast quadrant of the site is essentially off limits to development without being subject to state and federal permitting. The site totals 7.8 acres, with 1.3 acres of wetland/protective area. Thus, approximately 17 percent of the site is impacted by the presence of the wetland. Local requirements vary widely with regard to protective areas associated with wetlands, and it is important to research the requirements in order to understand the potential impact on site development.



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AVOIDING INNOCENT MISTAKES

Unexpected liability problems for right of way professional firms



BY PETER CHRISTENSEN, JD

Lawsuits could affect any firm involved in right of way work, whether the work involves acquisition agents, relocation agents, appraisers or surveyors. Take this appraiser (we'll call him "Bob") for example. Bob concentrates on condemnation work and operates a small firm. Despite not having performed an appraisal for any lender or for any loan in over a decade, he found himself in a lawsuit filed by the Federal Deposit Insurance Corporation (FDIC). Not long after that, he was sued by one of his former staff members.

None of Bob's legal problems had anything to do with the quality of his professional work. So how could a right of way appraisal firm owner end up being sued by the FDIC? Bob's problems arose from fairly innocent business mistakes, which are easily avoided. In fact, the two situations that led to these liability problems are common occurrences that I see with firms of all sizes and in all practice areas.

An Informal Arrangement

For 15 years, Bob's valuation practice focused on providing valuation and expert witness services to government agencies for condemnation. Bob operated his firm as a simple sole proprietorship; it was not an LLC or corporation. For most of those 15 years, the staff of his firm consisted of a part-time research assistant and an office manager/bookkeeper—with a few notable exceptions. One such exception was for a brief period in 2006 and 2007, when Bob and his firm had an informal arrangement with another appraiser located about 100 miles away. The other appraiser (we'll call him "Junior") was eager to pickup condemnation assignments from Bob because he wanted to diversify away from his regular commercial lending work. Bob felt that the arrangement would open up new client possibilities.



... Bob hadn't done any lending work in over a decade. So why was Bob being sued?



After a few months, they decided to make their ties a little closer and from the outside, it may have begun to look like they were the same firm with multiple offices. Junior began using an email address associated with the domain name for Bob's firm. He also shared the firm's access to property data services and certain software, and when reports were created, they went out under the DBA used by Bob's firm. Bob's firm also began to take care of billing for Junior—even for his separate non-condemnation work. The invoices used Bob's firm name because that was how the firm's billing software was set up. When payment was received for work by Junior, Bob's firm

would keep a small percentage of the billing for the office services and the bulk of the payment would be passed to Junior. If Bob originated the work, he kept a bigger share.

Bob did not consider Junior to be a partner, co-owner or any sort of employee or contractor. They both shared this view. As such, they continued to maintain separate professional liability insurance and also filed separate tax returns based on operating separately owned businesses.

Who's Liable?

The two appraisers ceased their informal business arrangement in 2007 when Junior decided to take a government job. But in 2012, a process server knocked on each appraiser's door to serve a summons and complaint. A bank had failed and the FDIC had "stepped into its shoes" as a receiver. In that capacity, the FDIC was suing both appraisers for professional negligence relating to an appraisal that Junior had performed for a lender in 2006. The loan had defaulted, and the FDIC alleged that the appraisal was negligently inflated and that the failed bank would never have made the loan if the appraisal had been accurate. The FDIC thus sought to hold the appraisers and Bob's firm financially liable for the full sum of unpaid principal, interest, late charges and other damages, which amounted to nearly \$300,000. To make matters worse, it was discovered that there were serious deficiencies in Junior's appraisal.

Only Junior had worked on and signed the appraisal, while Bob hadn't done any lending work in over a decade. So why was Bob being sued? The FDIC contended that Bob and his firm's arrangement with Junior amounted to a partnership or other business joint venture. Accordingly, the FDIC contended that Bob was fully liable for the appraisal work performed by the "partnership." Though shaken by being served with the lawsuit, Bob initially thought it wouldn't be

a major problem since Junior's E&O insurance provider would surely defend the lawsuit. Unfortunately, Junior soon revealed that he had no insurance coverage. He had cancelled his E&O policy when he went to work for the government. He also told Bob that he was essentially insolvent and could not pay for attorneys to fight the case. As a result, Bob's insurer ended up paying to defend Bob and his firm (as well as Junior) after Bob paid a sizeable \$10,000 deductible. Whether or not actual liability existed for Bob and his firm was a legal toss up, and there was a real risk he'd lose if it went to trial. He and his insurer thus ended up agreeing to a settlement in the range of \$100,000. Junior never contributed a thing.

Business Mistakes

The foundation to the FDIC's lawsuit against Bob was a collection of facts that they used to paint Bob's affiliation with Junior as some form of a partnership. Bob would have been wiser to avoid the following business practices:

- Permitting Junior to use the firm domain address for his email.
- Allowing Junior to use the firm's software and data services.
- Generating invoices with the firm's name on them.
- Collecting payments made out to the firm.

Bob's operation of his firm as a sole proprietorship also put him at personal risk. An appraiser is always going to have potential personal liability for his or her own professional errors, regardless of how he or she organizes a business. However, a limited liability business entity (such as a corporation or LLC) would likely insulate Bob from personal liability for the mistakes of employee-appraisers or other actual or alleged partners in the business. As a sole proprietor, however, Bob had full personal liability for all of the potential liabilities of his small firm and was thus made an individual defendant to the lawsuit.

Overtime Lawsuits

Bob eventually put the sour taste of the FDIC lawsuit behind him. Within a couple years, his condemnation work was booming. He added two new staff members: an experienced appraiser and a trainee appraiser. Because the workload of the firm was so busy, Bob and his new staff appraisers often worked into the evenings and on weekends as well, putting in 50+ hour workweeks. As the new kid on the block, the trainee sometimes toiled even longer than her supervisors.

Eventually the trainee appraiser decided that the field wasn't for her and left the firm. The trainee must have had an attorney friend or family member who knew something about employment law because another process server was soon at Bob's door handing him a lawsuit complaint. This time, the lawsuit was by his former trainee who sought compensation and penalties under the federal Fair Labor Standards Act (FLSA). This is the law that entitles non-exempt employees to overtime. Under the law, employees in most types of businesses are required to be paid overtime at 1.5 times their regular hourly rate if they work more than 40 hours in a seven-day workweek, unless they are properly classified as "exempt." Recent cases show that this law presents a genuine liability risk to firms of all sizes. The risk is that an employee who is misclassified as "exempt" and not paid overtime will later file a legal action alleging that he or she worked more than 40 hours in a workweek—perhaps for a period of years—and will demand all of the unpaid overtime, penalty damages, interest and attorney fees.

Exemption Analysis

Overtime lawsuits by appraisers, relocation agents, right of way agents and others involved in the land services field have been a growing trend. To many firm owners and managers—and also to employees themselves—it may be shocking to think that such professional-type employees may have to be paid overtime. Aren't they exempt as professionals? Recent cases underscore

that it's not that simple and firms need to carefully analyze whether their right of way professional employees are truly exempt for purposes of the FLSA.

Unfortunately, this question cannot be answered categorically for the job positions normally associated with right of way firms. Under the FLSA, it's a two-part analysis to determine whether an employee is exempt. The first part is straightforward: Is the employee paid on a salary basis and does that salary exceed \$455 per week? If the answer is no, then the employee is not exempt and must be paid overtime if he or she works more than 40 hours in a seven-day workweek.

The second part of the exemption analysis is more difficult and involves determining whether the employee actually performs exempt-type work duties. This is where the test gets fuzzy. For non-supervisory employees working for right of way firms, the second part of the analysis is primarily going to come down to whether the employee is determined to perform either "professional work" or "administrative work." Under the FLSA, if the employee satisfies the salary requirement and performs either professional or administrative work, then the employee would be exempt from overtime. Professional work generally means performing duties which are predominantly intellectual and require specialized, high-level education, as well as the use of discretion and judgment. Administrative work generally means performing duties that would be thought of as managerial—like managing human resources or performing financial accounting—and involve independent decision-making about significant issues. (For employees who actually supervise at least two other full time employees, there is also a supervisory exemption.)

When looking over Bob's situation, the facts were against him successfully defending the claim. By definition, a trainee's work must be supervised. A trainee cannot sign appraisal reports without a supervisor and does not

exercise independent judgment. In Bob's case, the trial court had no problem concluding that the trainee was not engaged in exempt work duties. In the end, the court awarded her approximately \$25,000 in unpaid overtime and penalties, plus her attorneys' fees and costs which amounted to over \$50,000.

In Summary

Overtime compensation in the right of way field is an issue that all firm owners and managers should carefully consider at this time. Overtime lawsuits are currently affecting a large number of firms providing valuation and right of way services. When taking on staff members to perform such services, firm owners and managers are advised to carefully consider whether the employee can properly be considered "exempt" from overtime as a professional or administrative employee. For very junior, trainee level employees, it can be difficult to support exempt status, putting the firm at risk for litigation or state regulatory action. For employees with higher levels of knowledge, education and responsibility, the determination will be more complicated and firms are advised to seek competent legal counsel from an experienced employment lawyer in their state. ★



Peter Christensen is General Counsel for LIA Administrators & Insurance Services and has been an attorney since 1993. LIA provides professional liability insurance and other insurance coverage to valuation and right of way professionals and firms.

THE DEMAND FOR DIALOGUE

Routine employee feedback is no longer optional

BY KATE ZABRISKIE

Not so long ago, most people in the workplace received feedback just once a year during a performance review. An employee didn't expect a development plan, a career track or anyone to take an interest in his or her professional growth. That responsibility was often a solo activity. In fact, as recently as a couple of decades ago, there wasn't a great deal of help on the road to career success. It simply was what it was.

But times change and norms evolve. The practice of once a year feedback is fast

becoming an anachronism and as out of place in the modern office as the fashions people once wore when holding those annual reviews. The reason the average worker has evolved to expect a steady diet of conversation is debatable and perhaps worth scholarly inquiry. In the meantime, however, a demand for dialogue exists and must be answered.

So why should managers take action? What does it take to establish and maintain an ongoing give and take? How can managers balance the constant conversation with their own workplace responsibilities?

Giving Regular Feedback

It's time to get with the times and accept that practices have evolved. If employees aren't expected to accomplish their work with a typewriter and rotary-dial desk phone, then managers should realize that in addition to advances in technology, management practices have also improved.

First-class organizations have career paths. They invest in employee development and their managers engage in regular dialog with their direct reports. The bottom line is if you want a top-notch worker, you have to start acting like you know what to do with one.

Establish and Maintain a Dialogue

Once you've bought into the notion that routine conversation is a must, the next step is knowing how to guide interactions.

1. Take an interest.

Very little builds engagement as well as a manager who seems to genuinely care for people, promote their success and has the ability to develop them. This is not an annual affair. Instead, you've got to have a range of formal and informal conversations throughout the year. To get started, ask questions and pay attention to the answers. Here are some examples:

- "What are you working on that's exciting to you?"
- "What aspects of your job do you enjoy the most?"
- "If you could eliminate parts of your work, what would you stop doing?"

- "What used to be interesting to you that's now become mundane or boring?"
- "If you could try something professionally with limited chance of failure, what risks would you take?"
- "Tell me a little about what first attracted you to this organization. Has anything changed about how you feel about your work here?"
- "How do you feel about our interactions? Do I give you development the right amount of attention, and do you receive the right amount of feedback?"

There is no limit to the questions you could ask. The key is showing a sincere interest in the answers, withholding judgement about what you're told and taking action when you can.

2. Be observant.

As a manager, your job is to focus on the work that gets done and how it gets done. When you pay attention and are specific with your feedback, you show you've spent time to notice what's working and where opportunities exist. In other words, it's important to communicate to people that they matter to you. Note the following examples:

- "Tim, I thought the graphics you used on those PowerPoint slides were very strong. You chose the unexpected, stayed away from heavy text and did something a little different than what we are used to seeing. I think your approach answered the challenge Roger gave us to think outside the box."

- "Gina, I'd like to talk with you about the report submitted this morning. Specifically, I want to discuss the proofreading process you're following. I noticed a few errors, and I want to see if there is a way we can reduce the mistakes. If we could increase the accuracy of the reporting, I think we would improve our department's credibility. Is now a good time for you or should I schedule something for this afternoon?"

There is no clock fairy or magic solution for time management and for fitting feedback and development conversations into a regular workload. It's an effort that requires discipline. To ensure planned dialogue happens, you need to put formal meetings on a calendar, schedule them at regular intervals, show up on time and put the smartphone away.

The Payoff

While increased levels of informal feedback and scheduled conversations can seem overwhelming at first, the more often a manager engages, the easier it is, the franker the discussions become and the greater the understanding between the employee and the manager grows. 🌟



Kate Zabriskie is the president of Business Training Works, Inc., a Maryland-based talent development firm. She and her team help businesses establish customer service strategies and train their people to live up to what's promised. For more information, visit www.businesstrainingworks.com.



HOW TO BUILD LEADERS

The future of the right of way industry

BY DUSTIN WEAVER

A little over 10 years ago, a right of way manager requested a meeting with me to discuss what it means to manage and develop leaders in the right of way industry. At this point, I had been in the business just shy of two years and had been assigned to some of the highest priority and most complex projects, which I oversaw from cradle to completion. Although I thought I was well-versed in managing the right of way business, a meeting with someone of his credentials was intimidating to say the least.

Contrary to what I expected, he didn't start with the development of my skills. Instead, he wanted to invest in my ability to lead by illustrating the importance of understanding the people and talents in a group in addition to what the business required to be successful. We reviewed overall project status reports for "big picture" thinking to challenge my reasoning. He then introduced me to budget allocations, estimating,

cost strategy, scope and methods for creating functional relationships. Little did I know that these short assignments were shaping my value system toward the business and my future leadership skills.

Over the last 12 years, the Oil and Gas industry has brought about a lot of changes as the markets have ridden highs and lows not seen for 30 years. This change in the industry has contributed to a change in the right of way workforce. Talented land professionals have left the industry, moved to other shale-producing regions or shifted careers to other responsibilities out of the land field. With this scarcity, it is more important than ever

to invest the proper time in creating strong leaders to run your projects and businesses. This development will continue to be important as the right of way workforce starts to mature and many managers and directors start to retire.

As the famed football player and coach Vince Lombardi says, "Leaders aren't born, they are made. And they are made just like anything else, through hard work. And that's the price we'll have to pay to achieve that goal, or any goal." This is certainly the case for the right of way industry. The following are recommendations to aid in developing your future leaders through the investment of time, coaching and performance feedback.

Lead By Example

"Lead by example" may seem cliché, but as leaders we have to emulate the actions, responses and performance we want out of our teams. We have to earn our leadership everyday. But this can be harder to accomplish than one might think, especially with lean workforces, tight deadlines and the many hats that the leader may already be wearing. To do this, carve out some time each day to reflect on your strategy for getting your team to engage in your vision for success. Use this strategy to complete more priority items that are instrumental to the organization's success. Once you have organized your day or week, it is easier to assign work to your team.

Next, ensure you fully understand on what level of experience your team is currently operating at using a project matrix with a responsibility chart. By laying out your team's abilities, you are able to begin the process of understanding and identifying gaps. The matrix will help in finding creative and respectful ways to engage your team members to meet goals at their associated level.

Lastly, monitor and reflect on your own actions with your team. Any time is a great time to modify your behavior to make your team more efficient and

successful. To have a highly effective team, everyone needs to practice trust, compassion and motivation to meet a common goal. As the leader, it is your duty to set the tone for this engagement.

Performance Feedback

Providing performance monitoring and feedback is a crucial step in the development process. This is the equivalent to providing a roadmap to a wayward driver. To properly move through this process, there needs to be real trust between the leader and the members of their team. Trust enables the team to fully believe that the leader has their best interest in mind.

Feedback conversations will not always be easy, but that is why a good manager has a game plan. Start with taking a good long look at the person's body of work, attitude and passion for the job. This will enable you to rate the person or place them in a matrix to accurately depict where they are on the learning curve. Next, use performance monitoring to check with their peers, functional leads and project accomplishments. Create mutual respect between the parties by celebrating the successes while at the same time challenging future goals. Lastly, create objectives in order to round out their skill set. These objectives must match the project requirements or business initiatives.

Stretch Job Assignments

Team members must be challenged with new job assignments that stretch their abilities and comfort levels in order to rise to future expectations. In this day and age, it is merely too easy to become complacent or stagnant in the same job or set of responsibilities. To develop future leaders, assigning a stretch job assignment can provide the opportunity for potential leaders to build character under the adversity of learning new skills. Create a new source of motivation to provide additional value to the company. These

assignments should encourage them to reach out to peers for assistance, build outside relationships and grow confidence in themselves to make decisions independently.

This step will require additional coaching and mentoring, while also pushing them to overcome barriers on their own. Author Napoleon Hill once said, "It is literally true that you can succeed best and quickest by helping others to succeed." Whether these land professionals are new to the industry or just specialized in one skill, being trained and developed properly will be pivotal in ensuring that the next generation of leaders will be just as successful as the last.

Bringing It All Together

This loop of coaching, mentoring, challenging and providing feedback will become an organic process that changes and evolves for each group and business as the organization grows. The investment into these potential leaders in the land profession will carry vast dividends over the sacrifices made today. It is our duty as the leaders of today to prepare the next generation to take on the ever-changing social, political and geographical challenges that the right of way industry will present in the future. Therefore, be bold and develop your teams into the future leaders that the industry will so desperately need in this next decade and beyond. ✪



Dustin Weaver is a Land Manager for Williams Companies. He holds an MBA from Baylor University and is licensed as a Texas real estate broker.



Definitions of the term *fee simple* typically focus on one of two things: the bundle of rights or the duration of the estate. A recent Property Rights Symposium and the associated *Discussion Paper* published by the Appraisal Institute brings to light a significant difference in how the term *fee simple* is customarily defined by appraisers and how it is defined by the legal profession and others in the real estate industry. This issue is important since eminent domain and property taxation typically require valuation of the *fee simple* interest. It is therefore worth

examining how the valuation profession can modify its conceptual understanding of *fee simple* to better conform to how others understand and use the term.

A History Overview

The concept of "fee" dates back to the feudal social system of Medieval Europe, where a *fief* was a property right granted by an overlord to a vassal whose fealty (*fee*) required some type



RETHINKING FEE SIMPLE

Proposed changes to fee simple and leased fee definitions

BY MICHAEL V. SANDERS, MAI, SRA

would create interests in favor of a lessor and lessee, but these were defined strictly in terms of the value attributed to the respective interests. The current definition in Black's Law Dictionary similarly recognizes fee simple as an inheritable estate and the broadest possible property interest allowed by law, defining *fee simple absolute* as "an estate of indefinite or potentially infinite duration."

In the 1962 edition of *Appraisal Terminology and Handbook*, the definition of fee simple was changed by adding that it was limited by the governmental powers of eminent domain, escheat, police power and taxation. While defined as "an inheritable estate," the revised definition subtly introduced the idea that fee simple was also defined by limitations on the bundle of rights.

The 1975 and 1982 editions of *Real Estate Appraisal Terminology* contained no changes to the definition of fee simple, but added a new term called *leased fee estate*, which is defined as "the ownership interest of the owner or landlord." This was significant because it created a new fee ownership estate defined solely by the bundle of rights—the right to receive rental income and a reversion at lease termination, with use and occupancy conveyed to a tenant.

Major Changes

It was the publication of the first edition of *The Dictionary of Real Estate Appraisal* in 1984 that produced the most profound change by redefining the term *fee simple estate* as "absolute ownership unencumbered by any other interest or estate; subject only to the limitations of eminent domain, escheat, police power and taxation."

For the first time, fee simple was defined solely in terms of the interests associated with the estate (bundle of rights), rather than the character of the estate, such as inheritability and indefinite duration. The leased fee estate was also redefined by incorporating the prior definition of *leased fee*, resulting in a more expansive but functionally equivalent definition. The current edition of *The Dictionary of Real Estate Appraisal* contains a nearly identical definition of fee simple estate. The term *leased fee interest* replaces leased fee estate but is still defined as "the ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease, plus the reversionary right when the lease expires."

The terms "estate" and "interest" tend to be used interchangeably but legal definitions of these terms suggest

of service in exchange. When feudal land tenure disappeared in the 1600's, fiefs effectively became "simple" without conditions (fee simple).

An early definition of fee simple in the 1950 edition of *Appraisal Terminology and Handbook* is as follows: "An absolute fee: a fee without limitation to any particular class of heirs or restrictions." The same text recognized that a lease

The changes proposed are important in bringing consistency to the definition of fee simple...



subtle differences. It might be helpful to think of *estate* as the character of ownership in terms of both possession and duration, while *interest* pertains to rights in real property. In this context, the estate is what is owned, while the interest is what has value.

A New Definition

The *Property Rights Symposium Discussion Paper* proposes defining fee simple estate in a manner more consistent with the legal definition: "The highest estate allowed by law. An inheritable estate of indefinite duration."

It is noteworthy that the new definition makes no mention of rights associated with fee simple ownership. Additionally, it comes with a proposal to discontinue use of the terms leased fee, leased fee estate and presumably leased fee interest. Estates to be valued could include any of the following:

- Fee Simple (indefinite duration; alienable, devisable and descendible)
- Life Estate (ownership for the duration of a person's life)
- Leasehold (tenancy for a periodic or specific time, or terminable at will)

In addition to specification of the estate, the new paradigm would also require appraisers to specify the interest to be valued, including any claims or limitations by other parties. What was previously identified as leased fee would now be described as "fee simple subject to existing lease(s)." This has the advantage of allowing the appraiser to be very specific about the interest to be valued and any assumptions to be incorporated. For example, a vacant property could be appraised as fee simple assuming market rent or as vacant and available for lease or occupancy. Similarly, a property could be appraised subject to specific encumbrances or restrictions that might affect the valuation. Other interests can also be specified and valued, including easements, remainders and fractional interests.

In Summary

The Uniform Standards of Professional Appraisal Practice (USPAP) require appraisers to "identify . . . the real property interest to be valued . . . [including] any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature." Most valuation assignments aim to appraise either the fee simple or leased fee interest, depending on whether or not existing lease(s) are considered in the valuation. But the definition of fee simple has changed significantly over time, with the notion of a leased fee estate added to appraisal nomenclature in the 1970's. Appraisers' current understanding of the terms fee simple and leased fee focuses primarily on the assumed bundle of rights rather than the duration of the estate, as it is commonly understood in the legal profession and elsewhere in the real estate industry.

The changes proposed are important in bringing consistency to the definition of fee simple, discontinuing use of the term leased fee, and encouraging appraisers to be more specific regarding the ownership estate and associated property rights, including actual or assumed encumbrances on the interest appraised. 🔄



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Get Ready for IRWA's 64th ANNUAL EDUCATION CONFERENCE

A sneak peek at some of the
upcoming educational sessions



For over 60 years, the IRWA has invited members from all around the globe to come together for the Annual International Education Conference. In addition to the special events, luncheons, receptions and networking opportunities, a highlight of the Annual Conference is the highly-anticipated batch of educational sessions. These informative sessions allow members to share best practices, provide insight into the latest industry trends and report on the most challenging issues facing the right of way profession today.

This year will be no exception. Over 1,000 right of way professionals will gather in Edmonton, Alberta, Canada on June 24 – June 27. For those of you attending this exciting event, we've provided a sneak peek into some of the sessions that will be offered this year (for a full schedule of events and listing of sessions, visit www.irwaedmonton2018.org). As for members who will not be attending the Annual Conference, we hope that this serves as another opportunity to help bring the experience to you.





DO YOU HATE LAWYERS?

Learn to love them and create a cohesive team in the process

BY MISCHA M. BOARDMAN AND DEVIN R. SULLIVAN

In 1591, William Shakespeare famously wrote, “The first thing we do, let’s kill all the lawyers.” Most of you probably think that nothing much has changed in the last 400 years. Non-lawyer team members on large-scale infrastructure projects often tell us that they think this way about lawyers. But feelings of dislike and distrust between team members can wreak havoc on your project. Through this article, and our accompanying presentation at the International Education Conference in Edmonton, we will help you recognize the important role of lawyers in your project and provide some advice on how to seamlessly integrate them into your team.

A Dangerous Misconception

Lawyers often rank as the least-liked and least-trusted of professionals. They are typically seen as arrogant, uncaring, self-interested, expensive and driven solely by the idea of making money. Although you can probably think of a lawyer that possesses at least one of these unsavory

characteristics, many of these are just broad stereotypes. In fact, many lawyers are none of these things at all. But as we’ve seen many times, the way project team members *feel* about lawyers can detrimentally affect the success of the project.

Any successful project starts with a well-integrated project team. This integration is invaluable as it is the cornerstone that allows the team to address and solve any of the broad spectrum of issues that will arise during land acquisition and construction of the project. Successful project teams include acquisition agents, company representatives, engineers, field construction teams, valuation experts and legal practitioners. All of these individuals must work together in identifying issues and developing solutions. Ensuring strong relationships among all team members is key to getting your projects done on time and on budget.

We see the aversion for attorneys play out in problematic ways in many right of way projects. Acquisition agents

worry that lawyers will prevent them from acquiring property by “over-lawyering” the negotiations. Engineers complain that the legal team is slowing down design with relentless questions on the need for certain property rights. All too often, we find other team members saying to themselves, “let’s leave the attorneys out of this decision, and just get it done.” But when team members aren’t fully cooperating and utilizing each other’s expertise, the project suffers. An attempt to exclude or work around lawyers can lead to a fractured team, resulting in errors in the process and missteps in decision-making.

An Effective Team

So how do you get land agents, engineers and appraisers to work hand in hand with the legal team? Here are some essential steps to ensure that your lawyers will be an effective part of the project team:

- **Hire the Right Lawyers** – Finding the *right* lawyer is hard. Start by picking an attorney that you like—someone with a good personality who you (and your team members) will enjoy working with. Pick someone who understands how the team members may view lawyers and has a sense of humor about it. This can go a long way towards countering the negative assumptions your team members may have about lawyers.
- **Understand the Psyche of Lawyers and How It Can Benefit You** – Most lawyers are classic “Type A” personalities. They hold themselves to extremely high standards and strive for perfection. Lawyers are also risk-averse, so they are always thinking about the worst-case scenario. Understanding this psyche goes a long way towards getting along with your lawyers. Plus, you can use these instincts to benefit the project. Fundamentally, the lawyers should be your canary in the coal mine. When there’s a potential problem on the horizon, your lawyer should be the first to spot it and help the team to avoid it.

- **Make Sure the Client is in Charge** – It’s important to make certain everyone on your project team is focused first and foremost on the goals of the agency/company. Maintaining a clear structure (with an identified decision-maker representing the agency/company) is of the utmost importance in making sure your project team functions well together. Remember, the client is in charge. Your lawyers are there to assist *you*.
- **Clearly Define Roles** – One issue we frequently see is team members feeling that the lawyers are invading their professional territory on a project. To prevent this, you have to make sure that your attorneys understand what you expect of them and what is and is not part of their job. This goes for all team members. Making sure each member understands their role in the project is imperative to creating a cohesive team.
- **Effectively Communicate Those Roles to the Team** – As in any relationship, communication is key. Once you’ve defined the roles of each team member, you have to communicate that to the entire team. If the team has a clear understanding of the role the attorneys play, they will be more accepting of those roles.
- **Be a Good Salesperson** – Even after you find an attorney that you like, you may still have to sell your team on them. Providing examples of how your attorneys have helped you on projects in the past will help to engender trust and buy-in from your team members.

In Summary

We get it. Some lawyers can be unbearable. But, a good lawyer has a lot to bring to your project. By following the above suggestions, you can successfully integrate lawyers into your project team, making it much more effective. You will see dividends in your project timeline and budget. If you’d like to learn more about how to identify the good lawyers and learn to love them (and maybe hear a couple of bad lawyer jokes to boot) come see our presentation in Edmonton on Monday, June 25, from 8:30 – 9:30 a.m. 📍

Session Info:

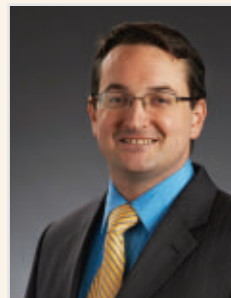
Learn to Love Your Lawyers

Monday, June 25th

8:30am – 9:30am



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Devin R. Sullivan is a Shareholder at Zausmer, August & Caldwell, P.C. in Michigan, whose practice focuses on eminent domain and commercial litigation. He has represented state departments, road commissions, water authorities and utilities in a variety of land acquisition matters and condemnation litigation.



Consumers Energy, Michigan's largest utility, sponsored IRWA's Social Ecology Course in August 2014.

PREDICT Community Push Back

Using the Social Risk Management Matrix

BY JAMES A. KENT, J.D., KEVIN PREISTER, PH.D. AND
GLENN WINFREE, SR/WA

IRWA has been adopting Social Ecology as a means to address successful community engagement at the project level. Most right of way practitioners have an interest in learning how to identify what projects are likely to experience community challenges in the project development process. Going hand-in-hand with that interest is a predictable desire to have that information as early as possible.

At the June Conference, this session will provide participants with practical tools to use in determining social risk early in a project development cycle. Why do communities push-back against some projects, but not others? Is it really possible to tell ahead of time that a community will challenge a project? If so, why aren't project owners taking timely action to avoid those challenges which sometimes kill the project?

What is Social Ecology?

At the heart of Social Ecology is a descriptive process of the informal communication and support systems present in any community so that a real-time understanding of how the community functions can be obtained. Three concepts are important to understand how the community handles change.

1. Discover the informal networks operating in a community, along with the caretakers and communicators who are well-regarded by their peers and the natural gathering places where residents share information on a routine daily basis.
2. Understand human geography, or the ways that residents relate to their neighborhood and community areas.
3. Take part in issue management, which creates alignment between citizen interests and company interests.

With this knowledge in hand and through building personal relationships, a project is in a strategic position to identify and respond to emerging citizen issues. As this capacity is developed, a "moderate middle" is fostered which tempers the influence of extreme voices.



Presenting a social ecology program at the 2013 Annual Conference. From left, Right of Way Magazine's former Publisher/Editor-in-Chief Barbara Billitzer, James Kent, Kevin Preister and Glenn Winfree, SR/WA, who is credited with bringing IRWA and the JKA Group together.

Social Risks

We will present a Social Risk Scoring Matrix of 12 indicators that identify social risk to a project early. Attendees will make a preliminary assessment concerning the risks of community push-back using the scoring matrix and the following guiding questions from us:

- What concerns can you identify now that would raise a “yellow flag” in your mind about the possibility of trouble ahead?
- What are some of the more complex, high-risk factors that indicate the need for the in-depth analysis of a professional to prevent harm to the project’s budget and /or schedule?
- What are proven methods to address citizen issues early, before disruption occurs, as a means to stabilize the project development process?

In Summary

This interactive session will show how effective citizen engagement can save time, save money and save projects. Entitled, *How to Predict Community Push-Back Before It Is Too Late: Using the Social Risk Management Matrix*, the session is scheduled for June 26, from 1:00pm to 2:00pm.



Many participants at the conference will recognize this session on social risk management as part of Social Ecology, a continuing effort on IRWA's part to support effective community engagement. This is an ongoing effort that resulted in over 29 columns being published in the Right of Way Magazine. IRWA published these columns as a stand-alone anthology in 2017 called *Social Ecology: A Special Collection of Articles on the Art and Science of Social Ecology*, which has been very popular among IRWA members.

Equally popular among IRWA members is Course 225, Social Ecology: Listening to Community. This course brings the process to Chapters in an accredited learning program. There have been Course 225 sessions held in Montana, Michigan, California, Ontario, Arizona, Colorado and Alberta. Course 225 is already scheduled in 2018 in the following cities: San Antonio, Texas (April 4), Philadelphia, Pennsylvania (May 4), Concord, New Hampshire (May 15), Baltimore, Maryland (May 17) and Sacramento, California (August 8). Chapters are encouraged to continue to sign up for Course 225. 🌟

Session Info:

How to Predict Community Push Back Before It Is Too Late

Tuesday, June 26th

1:00pm – 2:00pm



As President of the JKA Group, Jim is an advocate for using culture-based strategies when introducing site/corridor projects to local communities. He has fostered several successful long-term change projects in corporations and government units that have had long-term policy effects.



Kevin directs the Center for Social Ecology and Public Policy which creates corporate and governmental policy through culture-based project design. He has served as a project troubleshooter for numerous corporate and government clients.



Glenn Winfree, SR/WA is a Land Agent with Duke Energy with over 30 years of real estate experience. He is also the former Chair of the International Electric & Utilities Committee and an active member of the Carolinas Chapter 31.

Battling THE BEAST

Lessons learned after a devastating fire

BY NATHAN CARTER



It began just like any other Tuesday and ended like nothing Alberta, Canada could have imagined. On May 1, 2016, a small fire started near Fort McMurray, Alberta. Over the following weeks, the small fire turned into a beast reaching 6,000 square kilometers in size, an area larger than Prince Edward Island.

Assessing the Emergency

On May 3, the Regional Municipality of Wood Buffalo (RMWB) declared a local State of Emergency. Over the next 48 hours, mandatory evacuation orders were issued for more than 80,000 residents. Help came from all over the world to help get this fire under control, including more than 2,700 firefighters and 140 helicopters.

Tasked with putting together a response plan, ATCO did not initially understand the magnitude of the damage that the fire had caused or the obstacles they would be facing. Ideally, at the beginning of any project, there's a research phase to help identify potential issues that may arise. However, with natural disaster response you often don't have that time. Although ATCO had other crisis plans to refer to, this fire had its own set of unique obstacles. ATCO couldn't fully determine the next steps until they were able to get their boots on the ground to assess the situation.

Damage Control

During the initial response, ATCO's Gas Distribution and Transmission group had six employees in Fort McMurray to begin to shut off valves and lock up facilities. ATCO activated their crisis management team and set up employee support and assistance services for the employees affected by the fire. Within 72 hours, ATCO trailers were deployed for a temporary camp just south of Fort McMurray. These trailers—with complete kitchen facilities—grew from 42 to 1,200 beds and this became home to hundreds of employees and emergency responders.

As the weeks went on, the fire grew and more ATCO employees were

deployed to help with their response plan. Hundreds of employees assisted, whether it was to help assess the damage, formulate a plan to re-energize the natural gas system or assist with the re-entry. Furthermore, employees worked around the clock to ensure electricity continued to flow to the local pump house so that water was available to fight the blaze. Keeping the power on so emergency responders could do their best to protect the community was critical to the response and ultimately to the recovery.

Overcoming the Obstacles

Like any project or emergency response, challenges happen along the way. ATCO's challenges included resourcing, active wildfire, air quality, security protocols, wildlife, norovirus outbreak and more. Thankfully, they overcame these challenges and learned valuable lessons.

With 20,000 gas services turned off, 5,900 calls answered by our Customer Assistance Centre and the welcoming of 42,000 residents returning home, ATCO is proud of the work that was accomplished in Fort McMurray. Join Nathan Carter in this presentation to hear how ATCO responded to this devastating fire and the valuable lessons learned. 🌟

Session Info:

Battling the Beast

Tuesday, June 26th

8:30am – 9:30am



Nathan Carter is the Vice President of ATCO's Gas Transmission Operations and Gas Distribution Edmonton Operations. He has been with the company for 17 years. During his career with ATCO, Nathan has held many senior operational and leadership positions.



EFFECTIVE COMMUNICATIONS

Tips to benefit your professional and personal life

BY SCOTT SHELDON

How many times have we interpreted what another person said and in the process of filtering and distilling their words, we end up missing their point or coming up with an entirely different conclusion than what was intended? This is even easier to do today with the vague and implicit meanings in “text talk,” abbreviations, acronyms and social media. Even the best communicators can get lost in translation. Practicing effective, contextual communication helps us in all facets of our daily life. Without developing and constantly refining these skills, we will continue to have an issue getting our messages received as intended.

Communication Tools

The English language is complicated, and it’s easy for us to fall into the trap of assuming everyone will understand exactly what we are saying. For example, there is a big difference between “Your damn bridge requires a fare before we can cross it” and “Your dam by the bridge requires a fair amount of work before we can cross it.”

There are many examples of words that sound the same but have a different spelling and meaning. These are easier to comprehend in written form, but are not as distinguishable when spoken. Simply put, avoiding identical sounding words that have multiple meanings is a tool that leads to a more effective form of verbal communication. Another tool

is to hit the pause button on responding without thinking. Taking a moment to truly understand what the other person is saying will help you frame the appropriate response or ask clarifying questions to make sure you understand what is being said.

Convey Your Message

Good negotiations are all about good communications, and we all have experience negotiating with a spouse or significant other, kids, staff/employees, business associates, buyers or sellers. In fact, IRWA consultants, right of way agents, appraisers and attorneys are always negotiating something or trying to persuade you to “see” their point of view. So how can we be more effective in achieving our goals? The best results come from discussions where all parties understand one another.

Effective communication requires engaging all senses to accurately convey your message in a way that can be heard and understood by your audience. One way to think about this is to communicate by “painting a picture” with words. Metaphorically speaking, when you communicate, will your audience be able to *feel*, *smell* or *hear* the physical feelings you describe? After all, a picture is worth a thousand words.

In Summary

These concepts and others are what we will be discussing at the *Bringing out your Inner M.O.R.O.N.*® workshop at the annual IRWA Conference in Edmonton, Alberta. We will provide you with a different perspective and way of looking at effective communications in order to help you in your professional and personal world. ✪

Session Info:

Bring out your Inner M.O.R.O.N.®

Tuesday, June 26th

10:00am – 11:00am



Scott Sheldon is the President of Terra Realty Advisors, Inc., a real property consulting firm with over 40 years of experience in development, acquisition, disposition and forensic analysis. Our consulting practice includes public school districts, city, state and federal agencies, along with private sector clients.



RIGHT OF WAY AND THE LEGAL PROCESS

From the record room to the courtroom

BETH R. MINEAR, ESQ.

For the past 20 years in the energy, utility and infrastructure industries, more and more projects with eminent domain authority are facing lawsuits. These are often initiated by stakeholders and even non-stakeholders to challenge permits, applications, land rights freely negotiated, outreach and notice procedures. Often, the good stewards of the right of way industry can be caught in the crossfire. Increasingly, land acquisition or other service companies can be exposed to a cross-claim or a lawsuit and must share the burden of defense and attempt to rehabilitate public opinion.

Whether you work for a client (public or private sector) or a service company, you can't prevent frivolous claims from being filed. However, you can put your best foot forward in defending against claims, both minimizing exposure to liability and protecting your company's reputation. The ability to respond quickly, professionally and with precision can get a frivolous claim dismissed. While this article does not constitute legal advice, it may give you some questions to ask of your company's counsel in the event of litigation and raise awareness for the addition of witness training to your professional tool belt.

Understanding the Terminology

There are various aspects to the legal process. Becoming familiar with the basics of legal understanding can truly help reduce stress and improve performance. For example, responding to a legal hold to preserve documents relevant to litigation is formal, but passive. Alternatively, receiving a subpoena coupled with a Subpoena Duces Tecum requires you to show up to testify and to bring required documents, evidence and information. It is very formal and very active.

In what forum could you be called? It could be a deposition in a conference room, where a sworn testimony is given for your side or required by the other side. It could be in an alternative dispute resolution (ADR) setting, in the format of contractual, binding arbitration or in voluntary mediation. For the latter, more and more courts are requiring good faith mediation between the parties—particularly in eminent domain cases—before the parties can set foot in the courtroom. Between 2012 and 2015, I attended dozens of court-ordered mediations required by federal courts in Ohio, West Virginia, Pennsylvania and Maryland, all related to project execution or land acquisition. In the event ADR is bypassed and your forum is the courtroom, the decorum and process can be very different, but that is not your worry as a witness. The attorney for your company or for your clients will know when to speak and not to speak, how to address the judge, when to stand, when to bow and when to pound the table. You just need to be focused on yourself and witness training can certainly help your performance.

Understanding Your Responsibilities

No matter the forum, the type of legal process and the substance of litigation, your responsibilities are essentially the same: to tell the truth, to remain calm and professional, to not alter or destroy evidence/information, and to show up on time and well prepared. The attorneys assigned to the case will prepare you on what you are to expect and what you are to bring, how you are to dress and how to conduct yourself. They cannot and should not coach your testimony, but they should help you make eye contact and learn when to speak up. Attorneys very often know the judges well in a jurisdiction and can advise you on pet peeves of the court to help you avoid them.

Litigation Training

I advocate for companies to do rudimentary witness training on a regular basis. Practicing testimony and being briefed on legal trends for litigation in the project world can help both client and service companies evaluate operations and processes to minimize the litigation target. More and more project opponents are demanding company executives to testify to processes, procedures and training for their employees. Therefore, senior management can expect to be subpoenaed even if they never set foot on a project. Due to exposure across so many operational areas, some companies give executives annual witness training to keep senior management skills sharp.

In Conclusion

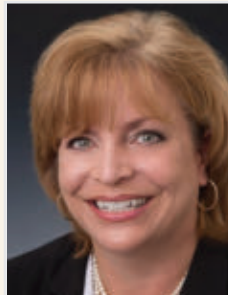
Does all of this matter? Absolutely! The testimony of right of way personnel and other professionals can decide a case. We are the boots on the ground, at the front lines and witnesses to the most crucial parts of a project. Many times, our teams are both subject matter experts on land acquisition and historians for everything else throughout a project timeline. I have had cases in federal court where the brilliant, professional and well-prepared testimony of a project land manager pushed the court's decision in a client's favor, forever serving as precedent for other companies and as a testament to our profession. You react how you are trained, so litigation training should be included in a company's professional development offerings. Doing so can make all the difference for a specific case, for a company and for our industry as a whole. 🙌

Session Info:

Legal Processes and the Right of Way Professional

Tuesday, June 26th

1:00pm – 2:00pm



Beth Minear is the president of Global Project Solutions Consultants, LLC, a comprehensive project strategy, land acquisition and regulatory compliance company. Along with other professionals of GPS Consultants, Beth offers customized annual and compliance trainings to client companies, including issues related to defensive drafting of contact notes, litigation planning and witness training. She has also been a licensed attorney for more than 20 years, providing counsel and business advice to energy companies and utilities in state and federal courts in multiple jurisdictions.



PROJECTS AND PROPOSALS IN THE UK

The development of major infrastructure over recent years

BY MEYRIC LEWIS

Despite the current uncertainties in the economic climate, this has been a busy time for large infrastructure projects in the United Kingdom. Citizens' rights are affected by both public and private proposals, so a delicate balance has to be struck in achieving a greater, general good compared to the inevitable interference with people's property and the surrounding environment. Road, rail, airport, energy, housing and other projects have been implemented or proposed with varied impacts on our green and pleasant land.

Major Projects in Construction

There has been a busy program of construction and development of major infrastructure over recent years in the UK. London is to have a new railway line named The Elizabeth Line in honor of the Queen, which will serve as a cross-town, multi-node connecting line. The project is 80 percent complete and will be delivered on time and within budget, with the first passenger trains running later this year. The new line will improve journey times across London,

ease congestion on the wider London Transport network and offer better connections to provide easier, quicker and more direct travel opportunities across the capital. It actually extends as far as Reading to the west of London (providing another connection to Heathrow Airport) and to Shenfield in Essex to the east. It is anticipated that it will generate £42 billion pounds (\$58 billion USD) for the UK economy.

Another major project for London currently under construction is the

Thames Tideway Tunnel, a 16-mile-long “super sewer” to take pressure off London’s existing Victorian sewage system. This was originally constructed to combat The Great Stink, which overwhelmed London in the summer of 1858. The smell from sewage in the Thames was so unbearable that the Houses of Parliament considered closing for business and relocating to Oxford. The new sewer is scheduled for completion in 2023 and will prevent overruns from the existing system, which can occur after heavy rain showers causing overflow into the Thames. The original sewers were designed to cater for a population of approximately 2 million people compared to the current figure of over 8.5 million.

Projects Waiting Approval

A particular cause of controversy in the UK has been the airport expansion plans for London. Aside from the City Airport, all of the airports serving London have been considered as possible locations for an additional runway to allow more flights and increase passenger throughput. The Government’s preferred scheme is the provision of an additional runway at Heathrow. Consultations are being undertaken on the extent of the physical changes on the ground needed to build a new runway. As a result of the expected local impacts, feelings have run so high that one member of Parliament resigned from Government. The former London Mayor, Boris Johnson, is a vocal opponent.

The proposed High Speed rail link, known as HS2, is also currently going through the approval process. This will extend for about 250 miles from London to Manchester and Leeds. Being a Government-promoted project, it is the subject of a legislative Bill in Parliament and open to scrutiny by both the House of Commons and House of Lords. It will affect millions of businesses and home owners, but it will also allow for a faster commute between the north and south of the country with the potential for onward extension to Liverpool, Newcastle and Scotland. The project cost is approximately £50 billion (\$70 billion USD), but it is

estimated that it will generate about £15 billion (\$21 billion USD) annually for the UK economy.

Public Concern

Elsewhere in the country, wind farms, power stations and electricity transmission lines are being developed to fuel the UK industry and economic growth initiatives following the financial recession of the late 2000s. The current economic situation is rendered even more uncertain by the UK’s decision to withdraw from the European Union, so the necessity to build a strong and stable economy is even greater.

But these infrastructure projects have to be accommodated within the rural landscape and urban fabric of a densely populated island nation. Citizens are concerned both about the impact on their property, as well as the impact on the natural and historic environment. Larger energy, water and rail projects can now be promoted by private companies who can exercise compulsory powers to purchase property from members of the public. The benefits of

the public good and economic growth from these projects can often be a hard sell where individuals who are directly affected are concerned.

Similar issues arise where areas of public housing are redeveloped to provide a more efficient and upgraded urban environment. People who have set down roots in a particular housing project or estate—even if it has become run down as a result of age and lack of maintenance funding—will usually object to being moved or relocated.

Looking Forward

In the UK, there are different authorization processes for different kinds of projects. For certain proposals, particularly those promoted by Government, the principle of the proposal cannot be challenged once it has been determined. But the critical question always remains, “Is the achievement of the greater public good sufficient to outweigh the particular impact on the private individuals affected?” Sometimes, truly creative solutions are required to accommodate the needs of those affected. ✪

Session Info:

Recent Infrastructure Projects and Proposals in the UK

Tuesday, June 26th

3:00pm – 4:30pm



Meyric Lewis is a UK Barrister at Law practicing from Chambers in London. He is former Chair of the UK Compulsory Purchase Association.

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Sunday, JUNE 24

- International Committee & CoP Meetings
- Exhibit Hall Open
- Opening Ceremony and Keynote Speaker
- Region Caucuses
- Welcome Reception

Monday, JUNE 25

- Full Day of Educational Sessions
- Exhibit Hall Open
- SR/WA Recognition & Awards Luncheon
- Education Foundations Event

Tuesday, JUNE 26

- Morning Plenary Speaker
- Full Day of Educational Sessions
- Foundations Golf Tournament
- International Luncheon
- Sponsored Receptions

Wednesday, JUNE 27

- Half-Day of Educational Sessions
- Board of Directors Meeting
- Closing Reception and Gala

For a full schedule of events and listing of sessions, visit:
www.irwaedmonton2018.org

Breakout Sessions



Monday, June 25

Successful Project Management: The Role of the Project Manager	8:00 am - 9:30 am
Learn to Love Your Lawyers (and Create a Well-Integrated Project Team in the Process)	8:30 am - 9:30 am
Avoiding Risk in Part Take Situations - Drafting Tips for Acquisition Documents	8:30 am - 9:30 am
Unmanned Aircraft Systems (Drones): From Land to Legal	10:00 am - 11:00 am
Easement Drafting Nuts and Bolts: How to Draft Utility Easements Ahead of Time to Ensure A Successful Project	10:00 am - 11:00 am
A Peek Around the Bend: Emerging Landowner Tactics to Maximize Just Compensation	10:00 am - 11:00 am
NEB - Current Initiatives	10:00 am - 11:00 am
Transportation Utility Corridor Development in Alberta	10:00 am - 11:00 am
ROW Game Show	10:00 am - 11:30 am
Successful Project Management (Part II): Leading & Managing the Project Team; Essential Skills for the Project Manager	1:30 pm - 2:30 pm
When Does a Partial Acquisition Trigger Relocation Assistance	1:30 pm - 3:00 pm
Utility Wildfire Risk Assessment	1:30 pm - 3:00 pm
Indigenous (Aboriginal) Consultation	1:30 pm - 3:00 pm
Getting the Most Out of the Pre-filing	1:30 pm - 3:00 pm
Site Selection Process for a New Central Library in Ottawa	3:30 pm - 4:30 pm
Streamlining the Bid Process Through Standardization	3:30 pm - 4:30 pm
Buying Islands for Millions, Overcoming Challenges in the Valuation and Acquisition of Habitat/Mitigation Property	3:30 pm - 4:30 pm
Cost Controls Through Proper Project Controls and Management	3:30 pm - 4:30 pm
Lessons Learned about Stakeholder Outreach: A Right of Way Perspective	3:30 pm - 5:00 pm
Don't Get Hung Up on Cell Tower & Billboard Relocation	3:30 pm - 5:00 pm

Tuesday, June 26

Battling the Beast	8:30 am - 9:30 am
Operating the Pipeline	10:00 am - 12:00 pm
Utilities Roundtable	10:00 am - 12:00 pm
Bring Out Your Inner Moron [®]	10:00 am - 11:00 am
Critical Infrastructure Information: Protecting Documents in a Post 9/11 World	10:00 am - 11:00 am
The Journey of a Young Professional	10:00 am - 11:30 am
Restaurant/Franchise/Business Relocations	11:30 am - 12:30 pm
Project Management of Right of Way Acquisition: How to Be Effective	1:00 pm - 2:00 pm
Legal Processes and the Right of Way Professional	1:00 pm - 2:00 pm
How to Predict Community Push Back Before it is Too Late - Using the Social Risk Management Matrix	1:00 pm - 2:00 pm
Coordination of Business Valuation and Real Estate Appraisal Experts in Expropriation Proceedings	1:00 pm - 2:30 pm
Building the Dream Team: Collaboration in Eminent Domain Litigation	1:00 pm - 2:30 pm
Project Management Basics for the Young Professional	1:00 pm - 2:30 pm
Stakeholder Engagement and Public Outreach: Regulator Guidance, Landowner Groups and Best Practices	3:00 pm - 4:00 pm
Blatchford Redevelopment	3:00 pm - 4:00 pm
Computing Replacement Housing Payments (RHPs) in Special Situations	3:00 pm - 4:30 pm
Recent Infrastructure Projects & Proposals in the UK	3:00 pm - 4:30 pm

Wednesday, June 27

Procurement 2018	8:00 am - 9:30 am
Residential Talk Show	8:00 am - 9:30 am
The Public Infrastructure Project - How The Right of Way Professionals Guide this Process	8:00 am - 9:30 am
Acquisition by Design: The Benefits of Engineering & Land Agent Collaboration	8:00 am - 9:00 am
State of the Nation on Canada Oil & Gas Activity	8:00 am - 9:00 am
Challenge Accepted! Non-Residential Talk Show	10:00 am - 11:30 am
Land Titles in Saskatchewan - Transformation From Paper Based to an Electronic System	10:00 am - 11:00 am
Trends in Automation of ROW Data Management Systems for US State Transportation Agencies	10:00 am - 11:00 am
Transmission Line Easement to GIS Conversion	10:00 am - 11:30 am

Note: Sessions are subject to change. For updated information, visit www.irwaedmonton2018.org.

OIL CITY *Classic*

GOLF TOURNAMENT

In conjunction with IRWA's 64th Annual International Education Conference in Edmonton, Alberta, the Right of Way International Education Foundation (RWIEF) and the Canadian Right of Way Education Foundation (CRWEF) are hosting their 22nd Annual Golf Tournament. **The Oil City Classic will be held at The Ranch Golf and Country Club on June 26, 2018.**

The tournament is limited to 144 participants, and all proceeds are donated to the Education Foundations. Prizes will be given for closest to the pin on the par 3's, long drive for both men and women, as well as the top three places. A large raffle will follow the event.



REGISTRATION

Registration for the general membership will open on March 1, 2018. Go to www.rwief.org to register online and pay by check or credit card. The fee to enter is \$125 and includes green fees, golf cart, lunch, range balls, and transportation to and from the conference host hotel.

SPONSORSHIP

Sponsorships range from the Platinum level at \$2,500, to sponsoring individual holes for \$300. Sponsors will have the opportunity to preregister before general membership. All activities related to the tournament will be handled by the RWIEF.

Contact Mike Pattison for additional information at mike@pattisonappraisals.com

ATTENTION TO DETAIL

The impact of minor details on major cases

BY MICHAEL F. YOSHIBA, ESQ.



As I sit here in a very complex trial lasting several weeks with 30 witnesses and several thousand documents, I am reminded of another case I was involved in a few years ago. After three years of preparation, one missed detail became the defining difference for a judgment in favor of my client.

Case Overview

The California Department of Transportation, better known as *Caltrans*, planned and designed a freeway widening project in Orange County, California. The property and business owner (one in the same) rejected the State's offer of compensation and the matter became a condemnation of a small part-take area in fee and a permanent easement from property occupied by a gas station along a busy offramp. Caltrans needed a 500-square foot permanent easement and a 100-square foot area in fee for the freeway widening and offramp realignment project. The fee take area was needed for relocation of a traffic signal switch box and the permanent easement was required for relocation of the sidewalk, curb and gutters. The proposed new public improvements were identified and depicted in the project construction plans.

Pre-trial tasks included written discovery of documents and depositions of the business owner, accountant, appraisers, architect and business valuation experts. There were negotiations, offers, demands and a voluntary settlement conference, yet the parties remained nearly \$500,000 apart in valuing the case. The difference in values was due to the opinions of the opposing business goodwill appraisers. The property owner's appraiser

found that the loss of business goodwill was \$450,000. The Caltrans appraiser found no loss of business goodwill at all. Both appraisers were well-qualified with appropriate education and experience credentials. However, it was noted at deposition that the property owner's business goodwill appraiser missed the one project detail that would lead to a pivotal moment during trial.

Business Goodwill Valuation

Valuation of loss of business goodwill requires the comparison of the before and after conditions of the business impacted by the property taken for the public project. From there, it must be determined if there has been a loss in the business goodwill caused by the taking.

Before trial in this case, the appraiser's deposition was taken. His working files and all the documents he acquired for this assignment were reviewed. The appraiser was questioned about each opinion made and how each document supported his final conclusions. The appraiser's working files contained several hundred documents, including financial records of the business, research of recently sold gas station businesses and reconciliation worksheets. Additionally, the files contained the planning, design and construction documents for the public project.

One Missing Detail

The deposition revealed that the appraiser's loss of business goodwill opinion for this gas station in the after condition was based upon the permanent loss of one of the three driveway access points for the property. Property accessibility, especially for a gas station business, is essential for customers and for product deliveries. Removal of a third access point for this gas station business would hinder future business operations and profitability. This property owner's appraiser argued that profitability in the after condition would be lessened by \$45,000 per year. That amount capitalized at a rate of 10 percent would result in a loss of business goodwill of \$450,000. By contrast, the appraiser for Caltrans opined that there would be no impact to the business in the after condition once the project was constructed and that there would be an improvement of traffic circulation and an increased number of cars driving by this location.

How could two qualified appraisers arrive at such different opinions? The property owner's

appraiser identified a driveway closure on a map in the construction plans and assumed that it was a permanent loss. He had relied upon a traffic sign placement map in the construction plans, which depicted the driveway closure. But he failed to recognize that the identified driveway closure was only temporary for the reconstruction of the curb, gutter and sidewalk.

In Conclusion

At the trial in this case, the appraiser's oversight was brought forth during the cross-examination portion of his valuation testimony and his opinions were appropriately discredited. The court initially agreed to completely exclude his testimony for lack of appropriate foundational basis, but the court later decided that the "one missed detail" was not enough to exclude his opinion entirely. Instead, it should go to the weight of his testimony. Not surprisingly, the case ended up with a judgment of no loss of business goodwill. As evidenced here, even the smallest of details in cases matter. 🔄



Michael Yoshida is a shareholder in the Eminent Domain and Litigation Departments of the Los Angeles law firm, Richards, Watson & Gershon.



"I give my full attention to each detail on every project to ensure deadlines are always met."

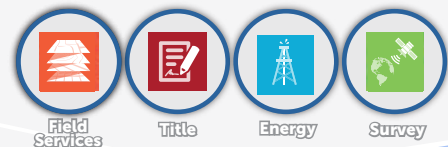
Jessica, Director - Title



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BASIC RIGHT OF WAY DISCIPLINES

100	Principles of Land Acquisition	2 days
102	Elevating Your Ethical Awareness	1 day
105	The Uniform Act Executive Summary	1 day

COMMUNICATION/NEGOTIATIONS

200	Principles of Real Estate Negotiation	2 days
201	Communication in Real Estate Acquisition	3 days
203	Alternative Dispute Resolution	2 days
205	Bargaining Negotiations	2 days
207	Practical Negotiations for U.S. Federal & Federally Assisted Projects	2 days
209	Negotiating Effectively with a Diverse Clientele	2 days
213	Conflict Management	1 day
215	ROW Acquisition for Pipeline Projects	2 days
218	ROW Acquisition for Electrical Transmission Projects	2 days
219	Introduction to Presentation, Instruction and Facilitation	2 days
225	Social Ecology: Listening to Community	1 day
230	Oil/Gas Land Basics & Related Surface Rights Issues	1 day
235	The Canadian Oil & Gas Industry Overview	2 days

MANAGEMENT

303	Managing the Consultant Process	2 days
304	When Public Agencies Collide	1 day

APPRAISAL

400, 400C	Principles of Real Estate Appraisal	2 days
402	Introduction to the Income Capitalization Approach	1 day
403	Easement Valuation	1 day
406A	15-Hour National USPAP Course Uniform Standards of Professional Appraisal Practice	2 days
406B	7-Hour National USPAP Course Uniform Standards of Professional Appraisal Practice	1 day
409	Integrating Appraisal Standards	1 day
410	Reviewing Appraisals in Eminent Domain	1 day
417	The Valuation of Environmentally Contaminated Real Estate	2 days
421, 421C	The Valuation of Partial Acquisitions	4 days
431	Problems in the Valuation of Partial Acquisitions	1 day

RELOCATION ASSISTANCE

501	Residential Relocation Assistance	2 days
502	Non-Residential Relocation Assistance	2 days
503	Mobile Home Relocation	1 day
504	Computing Replacement Housing Payments	2 days
505	Advanced Residential Relocation Assistance	1 day
506	Advanced Business Relocation Assistance	2 days

ENVIRONMENT

600, 600C	Environmental Awareness	1 day
603, 603C	Understanding Environmental Contamination in Real Estate	1 day
604	Environmental Due Diligence and Liability	1 day
606, 606C	Project Development and the Environmental Process	1 day

PROPERTY/ASSET MANAGEMENT

700	Introduction to Property Management	2 days
701	Property/Asset Management: Leasing	2 days
703	Real Property/Asset Management	1 day

REAL ESTATE LAW

800, 800C	Principles of Real Estate Law	2 days
801	United States Land Titles	2 days
801C	Canadian Land Titles	2 days
802, 802C	Legal Aspects of Easements	1 day
803	Eminent Domain Law Basics for Right of Way Professionals	2 days
803C	Expropriation Law Basics for Right of Way Professionals	2 days
804	Skills of Expert Testimony	1 day

ENGINEERING

900, 900C	Principles of Real Estate Engineering	2 days
901	Engineering Plan Development and Application	1 day
902	Property Descriptions	1 day

SR/WA REVIEW STUDY SESSION

SR/WA:	SR/WA Review Study Session	3 days
SR/WAC:	SR/WA Review Study Session (Canadian)	3 days

ONLINE

BASIC RIGHT OF WAY DISCIPLINES

100	Principles of Land Acquisition
103	Ethics and the Right of Way Profession
104	Standards of Practice for the Right of Way Professional
105	The Uniform Act Executive Summary

COMMUNICATION/NEGOTIATIONS

200	Principles of Real Estate Negotiation
203	Alternative Dispute Resolution
205	Bargaining Negotiations
213	Conflict Management

MANAGEMENT

303	Managing the Consultant Process
304	When Public Agencies Collide

APPRAISAL

400	Principles of Real Estate Appraisal
402	Introduction to the Income Capitalization Approach
403	Easement Valuation
411	Appraisal Concepts for the Negotiator

RELOCATION ASSISTANCE

503	Mobile Home Relocation
507	Specialized Nonresidential Payments
520	Special Topics in Replacement Housing
521	Nonresidential Fixed Payments

ENVIRONMENT

600	Environmental Awareness
606, 606C	Project Development and the Environmental Process

PROPERTY/ASSET MANAGEMENT

700	Introduction to Property Management
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REAL ESTATE LAW

800	Principles of Real Estate Law
801	United States Land Titles
802	Legal Aspects of Easements

ENGINEERING

900	Principles of Real Estate Engineering
903	IKT/IRWA Underground Infrastructure Panorama

For descriptions and to find a class, visit www.irwaonline.org.



PAST INTERNATIONAL PRESIDENTS

* Frank C. Balfour, SR/WA	1956-1957	Ronald L. Williams, SR/WA	1987-1988
* Richard Taylor	1957-1958	George D. Wilkerson, SR/WA	1988-1989
* Sam Houston	1958-1959	* Keith L. Densley, SR/WA	1989-1990
* Fred A. Crane	1959-1960	Gene A. Land, SR/WA	1990-1991
* Dan W. Rosencrans	1960-1961	Robert H. Tarvin, SR/WA	1991-1992
* Roger M. Lovell	1961-1962	* Donald A. Henley, SR/WA	1992-1993
* Roy A. Strobeck	1962-1963	* John W. Benson, SR/WA	1993-1994
* Dan H. Williamson	1963-1964	Donna B. Crosby, SR/WA	1994-1995
* Philip L. Rezos, SR/WA	1964-1965	Larry E. Griffin, SR/WA	1995-1996
* Adelbert W. Lee, SR/WA	1965-1966	Susan M. Serdahl, SR/WA	1996-1997
* Victor H. Eichhorn, SR/WA	1966-1967	* Woodrow Pemberton, Jr., SR/WA	1997-1998
* William F. Howard, SR/WA	1967-1968	Stephanie Rankin, SR/WA	1998-1999
* Garth J. Linkey, SR/WA	1968-1969	Dwight G. Pattison, SR/WA	1999-2000
* George R. Watson	1969-1970	* Wayne F. Kennedy, SR/WA	2000-2001
* Karl E. Baetzner, SR/WA	1970-1971	* Alan D. Wurtz, SR/WA	2001-2002
* Gene L. Land, SR/WA	1971-1972	Albert N. Allen, SR/WA	2002-2003
* Rexford M. Shaffer, Jr., SR/WA	1972-1973	Donald S. Marx, SR/WA	2003-2004
* David E. PUNCHES, SR/WA	1973-1974	Gordon E. MacNair, SR/WA	2004-2005
* William P. Snyder, SR/WA	1974-1975	Daniel W. Beardsley, SR/WA	2005-2006
Richard L. Riemer, SR/WA	1975-1976	James H. Finnegan, SR/WA	2006-2007
William L. Reid, SR/WA	1976-1977	Jim L. Struble, SR/WA	2007-2008
* Robert K. McCue, SR/WA	1977-1978	Faith A. Roland, SR/WA	2008-2009
* Wade S. Manning, SR/WA	1978-1979	Sandy A. Grigg, SR/WA	2009-2010
R. Tom Benson, SR/WA	1979-1980	Kenneth L. Davis, SR/WA	2010-2011
George E. Midgett, SR/WA	1980-1981	Randy A. Williams, SR/WA	2011-2012
* F. Larry Stover, SR/WA	1981-1982	Patricia A. Petitto, SR/WA	2012-2013
Robert L. Art, SR/WA	1982-1983	Lisa R. Harrison, SR/WA	2013-2014
W.A. Thomasson, SR/WA	1983-1984	Lee S. Hamre, SR/WA	2014-2015
Richard D. Ricketts, SR/WA	1984-1985	Wayne L. Goss, SR/WA	2015-2016
* John E. Day, SR/WA	1985-1985	Mary Anne Marr, SR/WA	2016-2017
Carroll W. Keck, SR/WA	1985-1986		
Donald H. Ellis, SR/WA	1986-1987		

* Deceased



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Cardno Hires Valerie Phipps



Valerie Phipps has joined **Cardno, Inc.** as a Senior Project Manager in the company's Houston, Texas office. She has more than 20 years of experience within the environmental industry, specializing in site characterization, remediation, pilot testing and system

design and optimization. Valerie has extensive experience managing key client accounts and teams across a range of geographies. Her technical project support includes site assessment and remediation on various projects in both the United States and Australia. Her experience in managing projects and communicating with stakeholders will support Cardno's clients and help projects move forward more efficiently.

Jeremy Runkle Returns to Cardno



Jeremy Runkle, PE, has returned to **Cardno, Inc.** as Senior Project Manager in the company's Clearwater, Florida office. Jeremy previously worked for Cardno from 2007 to 2014 and brings over 11 years of experience in transportation engineering and design, leading major roadway

projects with technical expertise and performance in production efficiency and continuous process improvement. Jeremy has a long record of providing design services, client support and utility coordination for construction projects throughout their life cycles, including spearheading multiple projects for the Florida Department of Transportation. His combination of business knowledge and technical expertise will help Cardno clients navigate their challenges.

Cardno Promotes Jason Yam



Professional infrastructure and environmental services firm **Cardno, Inc.** is pleased to announce the promotion of **Jason Yam, PE**, to Civil Southeast Roadway Practice Group Manager. In his new position, Jason will lead the roadway practice group's expansion, client relationships and business development efforts. He is an experienced project manager for roadway improvement projects and has expertise with the Florida Department of Transportation and local government roadway design projects across Florida, assisting with important upgrades, such as roadway capacity improvements, safety enhancements, pavement rehabilitation, multi-use trail design and traffic control plans. Jason has been with Cardno since

2000 and throughout his career, has worked on roadway projects ranging from sidewalk / trail projects to interstate capacity projects. He has extensive knowledge related to the preparation of roadway plans, signing, pavement marking plans and traffic maintenance plans.



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Brian McRae Joins Cardno



Cardno, Inc. welcomes **Brian McRae, PE**, as a Senior Consultant in the company’s Reno, Nevada office. Brian has 22 years of experience as a civil engineer, specializing in recreation, water quality and infrastructure projects throughout California and Nevada. His previous work includes support for the design and planning of over a dozen miles of bike trails in Northern Nevada and California. His project expertise includes construction management, stormwater quality, erosion control, geotechnical engineering and water rights. Brian is an active member of the International Erosion Control Association, the American Society of Civil Engineers and the American Public Works Association. Given his expertise, Brian will serve as a strong asset for Cardno clients on many kinds of recreational and water quality projects around Lake Tahoe, Reno and beyond.

Woolpert Hires Geospatial Scientist Steve Ambrose



Steve Ambrose joins **Woolpert** as Program Director for its Government Solutions market. Steve’s extensive experience with disaster management, remote sensing and applied science will support the firm’s work with critical infrastructure, natural disasters, climate change, water resources and information systems.

Steve comes to Woolpert with more than 40 years of experience in Earth science, climate, data engineering, and geospatial mapping and visualization, serving in multiple positions with the National Oceanic and Atmospheric Administration’s (NOAA), National Weather Service (NWS), National Ocean Service (NOS) and National Environmental Data and Information Service (NESDIS), NASA Headquarters, and the U.S. Fish and Wildlife Service, National Wetlands Inventory.

Woolpert Welcomes Eric Dillinger



Woolpert has hired **Eric Dillinger** as Vice President and Managing Director of Strategic Consulting, expanding the firm’s planned strategic growth in integrated advisory services for its clients. Eric, who most recently served as the Vice President of Jacobs Buildings and

Infrastructure Americas consultancy practice, has more than 30 years of experience providing planning, design, consulting and advisory services for the infrastructure and built environment. He holds a degree in industrial engineering from Kansas State University, has written multiple publications regarding asset management and is a member of the IFMA, The Institute of Asset Management, the Society of American Military Engineers and the Airport Council International, among others.



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INGAA Stresses Safety for Farmers and Ranchers



This past April, in honor of National Safe Digging Month, the Interstate Natural Gas Association of America (INGAA) focused on raising awareness within the agricultural and ranching community about the importance of contacting 811

to ensure that buried utility lines and pipelines are safely marked before digging.

Although accidental dig-ins of underground utilities and pipelines can happen to anyone (from a construction worker to a homeowner installing a deck), research indicates that farmers and ranchers have some of the highest rates of these accidents. Unfortunately, these dangerous accidental hits can lead to injury or even death.

Underground lines can be less than 12 inches below the surface due to topsoil removal, erosion and weather. As such, it's important to never assume the location or depth of underground lines. Farmers and ranchers should always call 811 before digging. Additionally, they may choose to contact the pipeline or utility line operator to discuss their project and check the location and depth of underground lines before deep plowing, tilling, ripping or installing a fence or drain tiles. INGAA stresses that they should call every time.

Through this phone call, operators can locate the pipeline, perform a depth and safety analysis and work with the rancher or farmer to help protect them, their land and the pipeline or underground utility line. This work is done free of charge. Taking an additional step, operators may request to be on-site during projects directly near the underground line to provide safety guidance concerning clearances and backfilling procedures.



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Woolpert Joins UC College of Business in Reaching Milestone

In March 2018, the University of Cincinnati College of Business celebrated the structure's "topping out." This traditional milestone signifies the steel frame of a structure reaching its maximum height. The facility is being built on the main campus and is adjacent to the site of the current College of Business, which will be renovated and expanded. The project is on track to achieve LEED Gold Level Status, the second highest designation by the U.S. Green Building Council.

Woolpert will provide civil engineering, structural engineering and landscape architecture for the 225,000-square foot facility. Woolpert will partner with BuroHappold Consulting Engineers for this project. Additionally, Henning Larsen Architects is providing design architecture services, while KZF Design will serve as the Architect of Record.

Woolpert Project Manager and Structural Engineer of Record, Frank Monastra, was among the team members who attended the ceremony and signed the steel beam. "The topping out ceremony is

just one milestone after a two-year collaborative design process that included input from the university, designers and the construction team," Monastra said. "I'm looking forward to this signature building opening next year, primed to train our next generation of world-class economic leaders."

The new school, which is more than double the size of the current facility, began construction in the summer and is on schedule to be open in the fall of 2019. "Every time I step onto the construction site, I'm literally living out a dream," Monastra said. "The building has an iconic presence with dramatic roof slopes at a key juncture on campus. It is a privilege to be part of a global project team, while showcasing Woolpert's creative design solutions at my alma mater."



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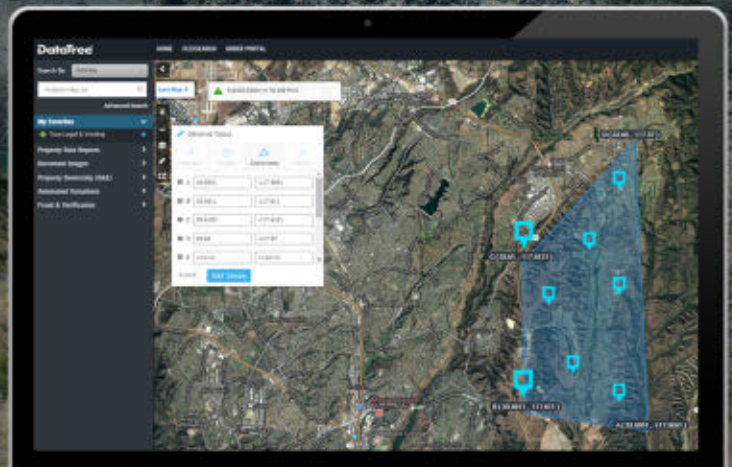
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WATER INFRASTRUCTURE

The Great Lakes One Water Partnership

Five shoreline community foundations announced they are coming together to join the Great Lakes One Water Partnership, an effort to help communities in six regions around the Great Lakes develop and implement projects to secure the region's water future. The Great Lakes One Water Partnership is a multi-year, basin-wide initiative supported by the Great Lakes Protection Fund and the Council of Michigan Foundations. The project will support these five shoreline community foundations as force multipliers to advance a "new era" of water infrastructure management for the benefit of people and businesses in the southwest region of Lake Michigan.


Currently, the project has \$1 million in funding from the Great Lakes Protection Fund, while the Council of Michigan Foundations and a team of water experts will be raising more than \$4 million to coordinate nearly 30 community foundations in six regions surrounding the Great Lakes, in the U.S. and Canada.

The Evanston Community Foundation's Monique Jones said, "We have incredibly talented leaders from our region who will provide the technical and political guidance needed to target the most innovative solutions to our water infrastructures."

The project goals are as follows:

- 1) Build the capacity of community foundations as force multipliers for progress on the most pressing water challenges across the Great Lakes.
- 2) Generate community support at all levels for timely and comprehensive action. This means proactively addressing water issues before a crisis occurs through a collaboration between philanthropic, governmental, business and community leaders.
- 3) Deploy best practices for streamlining and assembling partners for technology and risk management, and public-private-nonprofit partnerships. The Great Lakes One Water Partnership offers the six participating regions a structured approach for identifying and deployment of best practices across several key areas. With the rapid evolution of technology in water management, advances in financing and cost structures, and new models for public-private-nonprofit partnerships, the regions will be able to access valuable information and expertise through the structure of the Great Lakes One Water Partnership that otherwise would not be available to them.

The Great Lakes One Water Partnership will span a four year period and hopes to advance water infrastructure plans to improve health, economic development and equity in their communities.









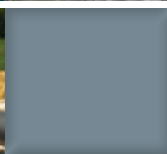



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ASSOCIATION NEWS

Tri-Region Forum

This spring, IRWA Region 9's Chapter 6 hosted Region 3 and Region 7 for a Tri-Region forum. In addition to the forum, Chapter 6 partnered with the International Transportation Committee to hold a symposium consisting of a half day communication workshop and mock trial, as well as Course 225 – Social Ecology. Attendance was high, boasting a registration count of 71 for the forum, 75 for the symposium/mock trial and 26 for Course 225.

In addition to education, an Escape Room experience and Casino Night fundraiser offered plenty of fun and networking opportunities. The fundraiser successfully raised \$2,475 for the Right of Way International Education Foundation. With support from sponsors, Region and Chapter leaders, and many volunteers, the event was a huge success. The only question Region 9 has now is, "Who do we partner with next?"



Bridges Closed in Mississippi After Emergency Declaration



Every four years, the the American Society of Civil Engineers releases an Infrastructure Report Card, which grades the condition and performance of American infrastructure and highlights all the necessary investments for improvement. The 2017 Report Card found that over 12 percent of Mississippi's 17,068 bridges were structurally deficient, exceeding the U.S. average of nine percent.

In response, Mississippi Governor Phil Bryant issued an emergency declaration, authorizing the Mississippi Department of Transportation workers to shut down over 100 bridges. This move comes after the administration sent a letter to Governor Bryant recommending 378 bridges to be closed immediately after being deemed deficient by FHWA's National Bridge Inspection Standards. As a further measure, if the bridges aren't closed, the Federal Transportation Administration has threatened to withhold funding to the state. The bridges expected to close are in Amite, Carroll, Clarke, Greene, Hinds, Humphreys, Itawamba, Jasper, Jones, Lauderdale, Leake, Lincoln, Newton, Pike, Smith and Wayne counties. According to a spokesman for the U.S. Department of Transportation, Mississippi was the only state to receive such a letter.

These bridges will remain closed until they are in compliance with federal and state laws, regulations and standards. As it stands, Mississippi's state legislature is tasked with finding ways to fund these bridge repairs. Legislators have been hesitant to increase state gas taxes and some have suggested using a state lottery to fund roads.

"These bridges have been deemed unsafe for the traveling public," Governor Bryant said in a statement. "Keeping them open constitutes an unnecessary risk to public safety, violates the corrective action plan agreed upon by the state and federal government and jeopardizes federal infrastructure funds Mississippi receives."

Educational Scholarships Now Available to IRWA Chapter 1 Members

The Chapter 1 Board of Directors has approved the Educational Scholarship Program for the 2018-2019 fiscal year. The recipient of the scholarship will be awarded five days of Chapter-offered courses, which translates into a benefit of \$1,375 based on tuition fees at member rates.

"The value afforded to members seeking to advance their professional development through IRWA credentials greatly exceeds the costs of the scholarship program to our Chapter," said Chapter 1 Representatives. "Winners of the award tend to take a more active role in the Chapter. Therefore, the Chapter's Board of Directors overwhelmingly approved the proposal by Marilyn Stuart, SR/WA, R/W-NAC, Chair of Professional Development Committee, to offer the scholarship as a way of supporting professional development and career growth of Chapter 1 members."

The scholarship application deadline is May 25, 2018. The scholarship is open only to members of Chapter 1 and the recipients have 24 months to use their scholarship benefits. The application package, timeline and scoring criteria are posted on the Chapter 1 website (<http://irwa1.org>).

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TECHNOLOGY

Private Air-Traffic Control for Drones

Major companies such as Amazon, Boeing and Google have pushed for the the creation of a privately funded and operated air-traffic control network, separate from the current federal system, to enable widespread operations at low altitudes for the commercial drone industry. The goal is to one day use automated cellular and web applications to track and prevent collisions of these drones when flying a few hundred feet above the ground.

According to Parimal Kopardekar, NASA's senior air-transport technologist, these groups are working alongside the National Aeronautics and Space Administration to conduct validation tests in order to develop a "new way of doing things." These tests would delve into how various networks would interact with one another, as well as methods to aid law enforcement looking into suspicious drone activity. The main goal is to allow different types of drones to communicate with one another via web-based applications.

The Federal Aviation Administration (FAA) would not run (or fund) these proposed systems, but they would retain some authority, such as the ability to temporarily ban drones from certain areas if police or medical-evacuation helicopters planned to pass through them. Of course, all performance information and safety incidents would be available to the FAA.

Currently, one of the biggest hurdles to overcome is the lack of a reliable means of traffic control. Much more research and technology refinement is necessary before package delivery to homes can even be feasible.

Despite the long road ahead, these major companies remain hopeful of finding a solution. Project Wing is Google's proposed customer delivery and drone integration program. James Burgess, co-lead of Project Wing, said given the drone industry's projected exponential growth, "automation is a better answer for safety, as long as it's done right."



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FUNDING

Improving the Nation's Bus Infrastructure



The Department of Transportation's Federal Transit Administration announced that \$264 million would be put forth to improve the safety and reliability of America's bus systems and enhance mobility for transit riders across the country. This means that 139 projects will receive funding to replace, rehabilitate and purchase buses and related equipment. Additionally, the funding will also go toward fixing and constructing bus-related facilities, including technological changes or innovations to modify low or no emission vehicles or facilities.

The Buses and Bus Facilities Infrastructure Investment Program received 453 applications, totaling to \$2 billion in funding requests—far exceeding the available funds. As such, projects had to be selected based on a specific criteria. Applicants had to show how their proposed project would address an "unmet need for capital investments in bus vehicles and/or supporting facilities" and how well the proposed project would improve the transit system and mention if funds were available locally or not.

Some of the projects the Federal Transit Administration (FTA) selected to receive the funding include the Alaska Department of Transportation & Public Facilities, Long Beach Public Transportation Company in California, the Iowa Department of Transportation, the Kentucky Transportation Cabinet and the Utah Transit Authority. The Tennessee Department of Transportation will use the funding to help transit agencies throughout the state improve bus service by replacing older transit vehicles that have exceeded their useful life. Similarly, The Miami-Dade County Department of Transportation and Public Works in Florida will receive funding to purchase Compressed Natural Gas (CNG) buses to replace older buses that have exceeded their useful life. The Port Authority of Allegheny County in Pennsylvania will receive funding to purchase low-floor clean diesel buses.

"FTA is proud to help bring new and rehabilitated buses, facilities, and equipment to communities across the country," said FTA Acting Administrator K. Jane Williams. "This marks a step forward in improving mobility for the millions of Americans who travel by bus to work, school, healthcare, and other services."

TRANSIT

Federal Way Link Extension Contract

South County Transit Partners, a joint venture of Mott MacDonald and SNC-Lavalin, was awarded a contract for the design-build project management of the Federal Way Link Extension in Seattle. The contract covers the preconstruction period up to the award of the design-build contract.

The Federal Way Link Extension project is a 7.8-mile extension of a regional light rail line with three elevated stations and will be Sound Transit's largest design-build contract to date. The project will extend regional light rail service from the Angle Lake Station to the Federal Way Transit Center. New stations will be constructed near KeMottnt Des Moines Road, South 272nd Street and the Federal Way Transit Center. These stations are expected to be open for service in 2024.

"This contract builds on the many years of solid design, project management, and construction management services that Mott MacDonald has provided to Sound Transit," said Nick DeNichilo, President and CEO of Mott MacDonald in North America. "We are pleased to be joining SNC-Lavalin in the latest phase of transit development in the Puget Sound region."

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ACKNOWLEDGING EXCELLENCE

The IRWA members listed below earned a certification or designation in the past two months. We applaud them for their commitment to professional growth in the right of way field.

GENERALIST CERTIFICATION/DESIGNATION

Mickie Abell, RWP

Golden West Telecommunications Cooperative, Inc.
Chapter 72 Wall, SD

Eric C. Alley, RWP

Enterprise Products
Chapter 8 Houston, TX

Nicole M.L. Anderson, SR/WA

Ministry of Highways & Infrastructure - Provincial Govt. SK
Chapter 79 Regina, SK

Angel Bailey, RWA

Memphis Light, Gas & Water
Chapter 32 Memphis, TN

Amy Brose, RWA

Minnesota Power
Chapter 20 Duluth, MN

Peter Bubula, SR/WA

Alberta Infrastructure
Chapter 62 Edmonton, AB

Debbie Y. Carter, SR/WA

Diversified Property Services, Inc.
Chapter 14 Timonium, MD

Dennis M. Cate, SR/WA

Fairfax County DPWES Land Acquisition Division
Chapter 52 Fairfax, VA

Albrina C. Coleman, SR/WA

Texas DOT
Chapter 39 San Antonio, TX

Bill C. Copeland, RWA

CVR Refining, LP
Chapter 5 Kansas City, KS

Dedra L. Davis, RWP

The City of Fort Smith
Chapter 33 Fort Smith, AR

Benjamin Garcia, RWA

Epic Land Solutions, Inc.
Chapter 3 Portland, OR

Mary Lou Gayle, SR/WA

City of Virginia Beach, Public Works-Real Estate
Chapter 52 Virginia Beach, VA

Robin Glasier, RWA

Wheatland County
Chapter 48 Strathmore, AB

Christopher R. Gomez, SR/WA

Terra Resources, LLC
Chapter 33 Oklahoma City, OK

Deborah K. Goodaker, RWA

Collier County Government
Chapter 82 Naples, FL

Kelly P. Griffith, SR/WA

Enbridge, Inc.
Chapter 54 Savona, BC

Swain M. Guzzardi, RWA

Kinder Morgan
Chapter 22 Alpharetta, GA

Haakon Hagemeister, SR/WA

Steigerwaldt Land Services
Chapter 17 Tomahawk, WI

Shawn M. Hardy, SR/WA

Global Petroleum Services LLC
Chapter 43 Lafayette, LA

Gaston Hardy, RWP

Energy Transfer
Chapter 36 Longview, TX

Richard Hayes, SR/WA

Farm Credit Canada
Chapter 63 Kanata, ON

Aurelio Hernandez, RWA

Brownsville Public Utilities Board
Chapter 39 Brownsville, TX

Carrilin Hirsch, RWA

Pender & Coward, P.C.
Chapter 52 Suffolk, VA

Stanley Kabzinski, RWP

Enterprise Products
Chapter 8 Houston, TX

Brett V. Kendig, SR/WA

NiSource, Inc.
Chapter 9 Merrillville, IN

Donna Kerr, RWA

DEL Management Solutions, Inc.
Chapter 29 Locust Hill, ON

Lisa Masters, SR/WA

The Regional Municipality of Peel
Chapter 29 Brampton, ON

Natalie S. Meighan, SR/WA

Boone County
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Jefferson County Transportation & Engineering
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Chapter 13 Columbus, OH

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Chapter 6 Louisville, CO

Note: Education milestones include only newly certified individuals.

IRWA offers two career paths for right of way professionals: a generalist path and a specialist path.

Generalist Certification/Designation

- RWA Right of Way Agent Certification
- ARWP Associate Right of Way Professional Certification *
- RWP Right of Way Professional Certification
- SR/WA Senior Right of Way Professional Designation

Specialty Certifications

- R/W-AC Appraisal Certified
- R/W-AMC Asset/Property Management Certified
- R/W-EC Environmental Certified *
- R/W-NAC Negotiation and Acquisition Certified
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- R/W-URAC Uniform Act Certified

SPECIALTY CERTIFICATION

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Chapter 6 Denver, CO

James Braden, R/W-RAC
Chapter 51 Oklahoma City, OK

Mariechen Cyr, R/W-RAC
Chapter 74 Austin, TX

Kimberly Gross, R/W-NAC
Chapter 37 Chesterfield, MO

Terry L. Gunn, R/W-RAC
Chapter 8 Houston, TX

Siska Hutapea, R/W-AC
Chapter at large Hagatna, GU

Allison Jackson, R/W-AC
Chapter 36 Fort Worth, TX

Nathan Molt, R/W-AC
Chapter 2 Concord, CA

Rory Smith, R/W-NAC
Chapter 36 Frisco, TX

Melissa Talley, R/W-RAC
Chapter 8 Houston, TX


Kenneth Young, R/W-AC
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*Retired as of September 1, 2014. Members who have earned this certification can retain it as long as they recertify every five years.

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IRWA Member Farewell

DAVID EDWARD ALLEN



David Edward Allen passed away suddenly at the age of 63 on April 2, 2018.

He was born April 21, 1954 in Louisville, Kentucky to Stuart and Carolyn (Graves) Allen. In 1977, David graduated from Transylvania University. He was a self-employed consultant, real estate broker, member of the Rotary Club and Toledo Chamber of Commerce. He was a dedicated member of the IRWA and served as a Chapter 13 Vice President. He married his high school sweetheart (Patti) in 1978 and they would have celebrated their 40th wedding anniversary on July 1st.

David was preceded in death in by his father, Stuart Allen, Jr. He is survived by his mother, Carolyn (Graves) Allen; his wife, Patricia (Carpenter) Allen; daughters, Whitney (Nick) Janney and Audrey (Sam) Caywood; grandchildren, Landon, Olivia, Adeline, Cora, and Charlotte Janney; grandchildren Mackenzie, Meghan, Owen, Paige and Graham Caywood; and brother, Stuart (Patti) Allen, III.

ROBERT "BOB" MCCUE



Bob McCue passed away on August 26, 2017. Born on October 26, 1924, Bob met his wife of 68 years at the University of Arizona, where he pursued a degree in political science. He served in Saipan in WWII before marrying Peggy and moving to California.

Bob had a distinguished career with CalTrans, ultimately becoming Assistant Chief Right of Way Agent for the state. He was Chief Land Agent at State General Services before retiring. Bob was active in the International Right of Way Association, serving as International President in 1977-1978. In retirement, he was active in Common Cause and was an avid pilot.

Bob is survived by his children, Michael (Karen Klempka), Susan (Hillary Gitelman), Margaret, and Robert, Jr; grandchildren, Maddy McCue, Eben Freeman, Chelsae McCue, and Maggie Freeman; one great-grandchild, Haley Antonio; sister, Judy Holmblad; nieces and nephews, Jill Whittington, Jan Coe, Joan Heisler, Mark Reppert, Tim Reppert, Betsy Weinberg, Ed McCue, Art McCue, Michael A. McCue, Mary Hughes, Heidi Holmblad, Gretchen Hardison, Kristi Holmblad); and their families.

RICHARD PRICE



Richard A. Price passed away on January 22, 2018. Born on October 15, 1969 in Tacoma, Washington, Richard received his Bachelor of Arts in Business Administration in 1998 and obtained his Commercial Real Estate Brokers License.

From there, he went on to work for Universal Field Services where he was able to work as a consultant on right of way projects for the City of Auburn and the City of Tacoma. In 2001, Richard went on to become a permanent employee at the City of Tacoma in the Public Works, Facilities Management, Real Property Services Division. He spent 17 years with the City, buying and selling real estate, acquiring and disposing right of way, working with other City of Tacoma Departments and Divisions, and working with outside developers, contractors and industry professionals.

Richard met his wife, Amber, in September 2006 and they were married on July 26, 2014.

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RIGHT OF WAY MAGAZINE

Send submissions and inquiries to Ethel at navales@irwaonline.org

UPCOMING IRWA EVENTS

www.irwaonline.org

2018 Conference
Edmonton, Alberta

June 24 – June 27

2020 Conference
Minneapolis, Minnesota

June 21 – June 24

2019 Conference
Portland, Oregon

June 9 – June 12

2021 Conference
San Antonio, Texas

June 6 – June 9

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