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BPA And Tribes Agree On Right-Of-Way

feet to accommodate a 500,000 volt double-circuit transmission line, to be known as the Slatt-Marion Line.

The south corridor, or Maupin-Detroit Line, is 28.9 miles long and uses 958.2 acres of reservation land. The Tribes may elect before January 1, 1990 to have BPA Continue use of the transmission lines on a permanent basis or remove the facilities by 2010, returning the right-of-way to the Tribes.

If the Tribes request that the south corridor be vacated, then BPA, depending on determined energy needs, may expand the north corridor by not more than 240 additional feet with added compensation for right-of-way and timber lost. If the Tribes choose to let the BPA remain in the south corridor permanently then the additional transmission facilities would be constructed there and right-of-way requirements in the north corridor would be reduced accordingly.

By purchasing right-of-way through the reservation, the BPA is acquiring the right to remove timber and construct facilities. BPA would also have the right to build access roads, and maintain, repair and inspect facilities.

This is only an easement. The Tribes would retain ownership of the land and the right to occupy and use the land in any way that would not interfere with the power lines.

An unusual agreement

What makes the agreement between the Tribes and the BPA unusual is the method of acquisition and the manner of payment. Normally the BPA, an agency of the federal government, would receive land by condemnation (or the right of eminent domain). The landowner would be compensated at the fair market value of the land. The two existing corridors were acquired in this way.

The Tribal Council approved the south corridor on May 1, 1950, for which the Tribes received a flat \$31,357.51. Eighteen years later, on April 8, 1968, the Tribal Council approved the north corridor, of which only 2.9 miles were on the reservation. (When the McQuinn Strip was returned, 12.9 miles of line fell within reservation boundaries). For the north corridor, the Tribes received \$195,000.

If the widening of this corridor had been accomplished on

the same basis, the Tribes would have received only the appraised value of the land, or about \$365,000. An offer similar to this was made by the BPA and rejected by the Council in 1976.

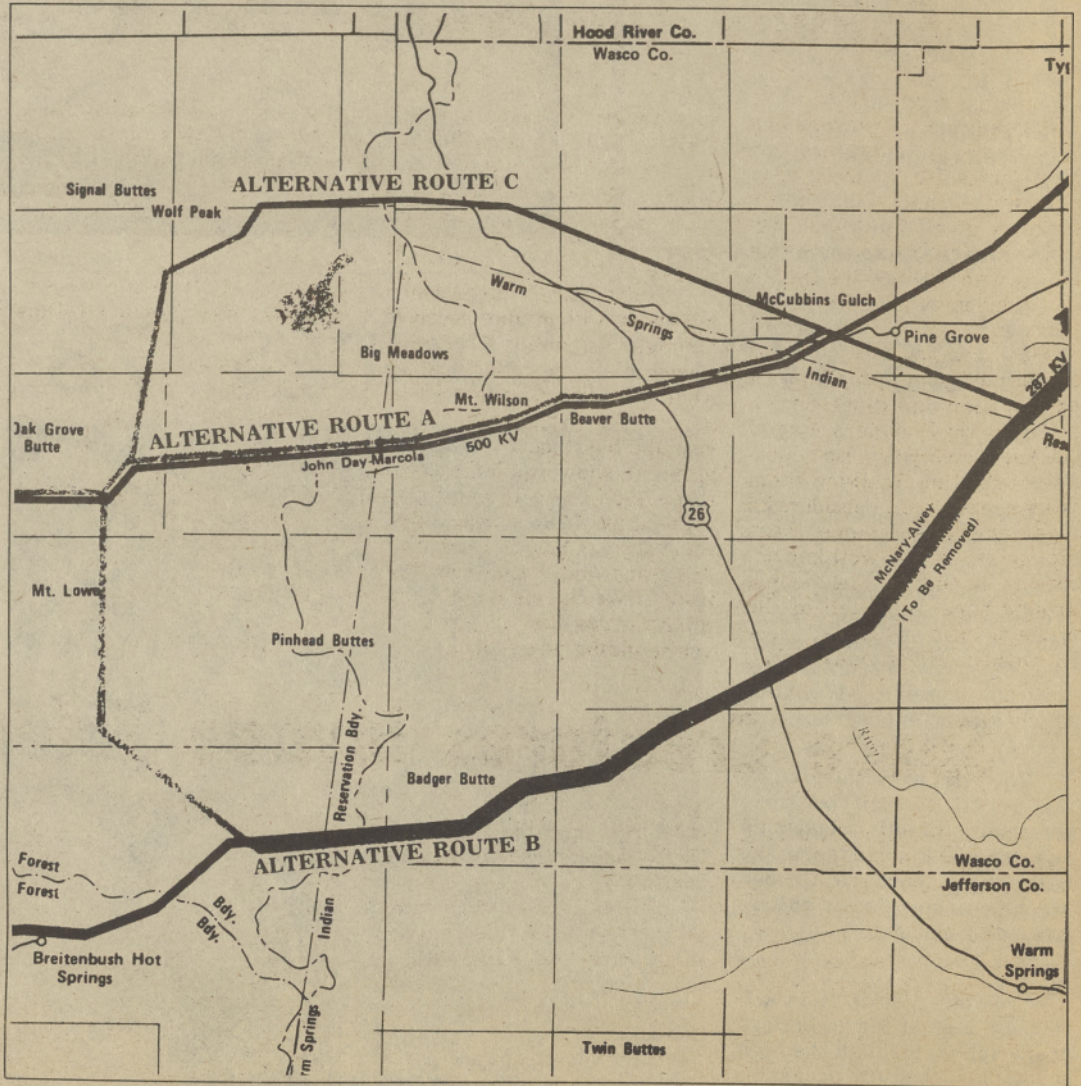
The base figure of \$4.5 million arose from a theory applied by Tribal attorney Dennis Karnopp. Using the successful logic of the recent Round Butte Dam settlement, Karnopp suggested that the Tribes should receive half of the cost difference between the Slatt-Marion route and the next best alternative. It had been estimated by the BPA that going around the reservation or expanding the south corridor would cost \$9 million more than widening the north corridor. Half the saving of taking this northern route through the reservation, or \$4.5 million, should go to the Tribes, maintained Karnopp.

Hodel's October 1977 proposal reflected this figure. Staff assistant Babbey, who was a liaison between the Tribes and the BPA through their negotiations, credited Hodel with the turn in events that made the Tribal request acceptable. Hodel, he said, preferred communication with the Tribes on a governmental basis rather than exercising simple condemnation. As Hodel pointed out in his October letter to the Council, the proposed agreement would encourage the Tribes and BPA to plan together in the future.

A note of urgency accompanied the BPA's proposal since delay was causing costs to rise. According to Chairman Gene Greene, the Council felt some pressure too, in the knowledge that, with the upcoming change in administration, the BPA could at any time opt for an alternate route or condemnation with less or no monetary benefit to the Tribes.

But the Tribal Council deliberated until its January 11 resolution. As Greene noted, "The Tribal Council debated for many hours - it was not a snap decision."

The new BPA administration under Sterling Munro apparently shares Hodel's cooperative stance. Chairman Greene noted that the proposed agreement with BPA is a "carry-over" from the precedent established with the memo of understanding on fishery enhancement signed by BPA and the Tribes last year. He is optimistic



ALTERNATE ROUTE A WAS PREFERRED BY BPA AND APPROVED BY COUNCIL

about the Tribes and federal agencies working together.

Impact on the environment

According to BPA's civil engineer and construction liaison Lewis Bohl, surveying for the Slatt-Marion Line will begin as soon as the agreement is signed and weather allows. A tentative energization date of 1980 has been set.

Bohl will work with the BIA to determine which trees will be cut. Some larger trees outside the right-of-way may need to be removed because of their potential danger to the power lines, said Bohl. Although no decision has been made, Bohl suggested the possibility that the removed trees may be sold back to Warm Springs Forest Products for milling.

Speaking to the environmental impact of the transmission lines, Bohl said that the land in the right-of-way can still be used for grazing, hunting and certain recreational activities. Christmas Tree farms could be a possible utilization of the land beneath the lines, Bohl also suggested.

The Tribes' engineering consultant Jerry Dibble said that

the lines would be high enough to pose no danger to people, animals or plants. Two positive environmental points of the BPA agreement, according to Dibble, would be the BPA's effort to conceal the lines from Highway 26 and the restoration of the range and forest in the south corridor, if it is vacated. These details must be worked out for the final agreement.

Impact on reservation's future

As Tribal attorney Panner noted, of course no amount of money can truly compensate for the loss of the land and timber, but considering the amount of the settlement there are many "natural power benefits" in the land-cash exchange.

The final agreement specifies that the Tribes may receive cash or a combination of cash and services from the BPA. Various options exist and the Tribal Council has yet to select a mode of compensation.

General Manager Ken Smith remarked, "I'm looking beyond the \$4.5 million. I'm looking to develop the Pelton Re-regulating Dam for the generation of power to be used on the reservation. We don't know the costs of such a project yet, but all indications

are that it would be feasible.

"This would be better for the reservation because everyone is talking about power costs and they're not going to go down.

"If we can develop a cheap source of power now it will be a tremendous asset down the road."

Smith favored depositing the money in a special fund earmarked for such a development.

Another possible use of the money that was referred to in the BPA proposal is the construction of transmission lines from the Pelton Dam to the Warm Springs substation and possibly on to Kah-Nee-Ta. Dibble noted that the Tribes may also opt to extend existing lines according to an agreement with Pacific Power and Light which now serves the reservation.

Few if any people are talking about placing the \$4.5 million in the Tribes' general fund. Investing it in the reservation's future appears to be a popular idea.

As Chairman Greene observed, "We hope our decision is in the best interest of the Tribes - only time will bear this out."

Other Energy Projects In The Works

On the same day the general council was informed of the BPA right-of-way agreement, engineering consultant Jerry Dibble reported to Tribal Council on the progress of various tribal energy projects.

The preliminary report on the feasibility of installing generators in the Pelton Re-regulating Dam will be completed in a month or so, said Dibble. The lengthy process of obtaining a license from the Federal Energy Regulatory Commission would follow, after which time draw-

ings would be prepared and contracts awarded. Construction would take at least 18 months, said Dibble.

In other energy news the renegotiation of the Pelton Dam contract is progressing, a petition for rent adjustment having been brought to the Federal Energy Regulatory Commission in January. Dibble is still researching the exact figure he will recommend for the rent of Tribal lands for Pelton Dam, but said "I would expect to take the same position as I did in the

Round Butte case." The Tribes received one-half of the difference between the cost of Round Butte energy and the next best energy alternative.

At the mill, two of the three generators installed last year are operating, reported Dibble. The mill is presently burning all its fuel and PP&L is temporarily paying 10 mills for each kilowatt hour of energy left over. A permanent contract for sale of power will eventually be negotiated.

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