



# INTERNATIONAL RIGHT OF WAY ASSOCIATION

Kachina Chapter 28  
Phoenix, Arizona



Newsletter

[www.irwaaz.com](http://www.irwaaz.com)

## MARCH, 2005

### 2005 Kachina Chapter Executive Board

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### MARCH BOARD MEETING

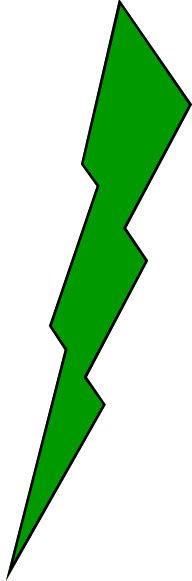
-  Wednesday, March 2, 2005
-  4:45pm
-  3rd Floor Conference Room
-  Az State Land

Confirm your attendance with  
Chris Banks, SR/WA at  
cdbanks@srpnet.com

### CHAPTER 28 To Host REGION 1 SPRING FORUM

Chapter 28 is proud to host the Region 1 Spring Forum on March 10, 11 & 12. More information can be found on [page 6](#) of this newsletter or on the Region 1 website, located at: [www.irwaaz.com/region1/forums.htm](http://www.irwaaz.com/region1/forums.htm)

Chapter members are encouraged to participate in the Forum activities. Pre-registration is required.





## PRESIDENT'S MESSAGE

Chris Banks, SR/WA, Chapter President



This should be a very busy year for the members of Kachina Chapter. The Light Rail Project has hit the ground running, the Glendale Sports Arena is getting closer to the finishing touches, the residential and commercial developers have the cities, the counties and the utility companies running at full speed trying to keep up, and the right of way agents involved in relocation will be attending classes to learn the new guidelines.

Our Executive Board in anticipation of the busy schedules has reduced the number of lunch meetings to be held to once every other month. We are working on providing the best speakers we can get for the price we pay (a free lunch). Questions about our lunch meetings should be directed to Gayle Leonard.

Our Education Chair and Co-chair, Rebekah Louis and Dan Kovochich, are working on making our classes easier for local and non-local members to attend. The number of classes being presented has been reduced and the emphasis has been placed on trying to present those classes most needed and/or requested. Questions about classes should be sent to Rebekah or Dan.

On March 12<sup>th</sup> the Chapter is hosting the Annual Spring Forum, a business meeting of Chapter Presidents and International Directors representing our Region 1 (California, Hawaii, Nevada and Arizona). Along with the Spring Forum, we are hosting the Environmental Road Show, a two-day event that will precede the general business meeting. Everyone is invited to attend the Forum meeting, including the tour of the environmentally impacted sites on Thursday and the class on Friday. Also, on Friday night we will host a hospitality event with drinks and munchies at the Sheraton Phoenix Airport Hotel from 6:30 to 7:30PM. The cost for the tour is \$10 each (to pay for the bus). The fee for the Environmental Road Show "class" is \$50; SR/WA recertification credits are available for the Friday class. Registration information can be found on this website. We would love to see a lot of you participate in this event.

Planning for the annual September Education Seminar is in full swing. We still need volunteers to help with the Seminar planning – and we need advertisers and sponsors. Everyone always appreciates the food, beverages and "goody bags" that our sponsors provide. If you are interested in being a sponsor, please email us at [info@irwaaz.com](mailto:info@irwaaz.com).

We can't promise you a chicken in every pot or a car in every garage, but we can promise you an interesting and exciting 2005.

Thought for the Day

May the leprechauns dance over your bed and bring you sweet dreams.



## VALUATION

Jared N. Huish, MAI, SR/WA

### Eminent Domain/Condemnation--Important Decision Coming From The US Supreme Court

The concept of condemnation and the right of the sovereign to take property for their use, goes back as far as the Old Testament, where it is described as a right available to kings and rulers, only their taking of personal property and real property did not require payment or compensation to the property owner. For thousands of years, the belief was that if the sovereign needed the property, and it was not his, he would take it, believing it was his right to do so. In 1215, the Magna Carta was signed by King John of England, which granted to the English barons certain rights and powers which previously they did not have, particularly rights pertaining to the control and use of their properties. Subsequently, other documents and laws came into being establishing and protecting the fact that real property could not be acquired without a need and payment of compensation. To be deprived of compensation would be an act of confiscation, and totally repulsive to us today, and yet for thousands of years, the right to confiscate property was a right of the sovereign, and still is today in many countries around the world. We refer to these countries as totalitarian governments or dictatorships. It is not considered a proper act of a democratic government to confiscate property without just compensation. We all agree that the sovereign has the right to acquire or condemn property, but with the payment of just compensation so that the property owner is made whole.

Many facets of old English law carried over into the writing of the Constitution of the United States, but specifics pertaining to eminent domain were not included in the Constitution. Following the Revolutionary War, the throne of England was no longer the sovereign power, and the colonies and their leaders became the next level of sovereign power. Upon framing of the Constitution, several of the representatives of the colonies or states, would not sign until several basic issues were resolved, including private property rights and control thereof. The Constitution of the United States did not specifically refer to the rights in real property and how they could be condemned or modified through law. Additional articles or amendments to the Constitution were agreed upon, thereby obtaining approval of a majority of the representatives of the 13 colonies. The first ten amendments to the Constitution were known as the Bill of Rights. Another 16 amendments have been added to the Constitution over the past 200+ years. There are three of these amendments which are the basis for the rights of the sovereign to acquire property rights for public use, providing their is compensation to the property owner. They are statements in the 5th, 10th, and 14th amendments which pertain directly to property rights and the ability of the sovereign to acquire them, with payment of just compensation. Over the years, the determination of 'just compensation' has become the responsibility of appraisers. This was a big change from a thousand years ago when it was believed that the sovereign could take whatever he wanted, and not have to compensate the property owner for it. The relevant portions of these amendments that pertain to eminent domain and condemnation are the following: **(5th amendment)...nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (10th amendment) The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. (14th amendment--AKA the 'taking amendment') ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.**

Originally, the sovereign power that held eminent domain and condemnation powers were the 13 states, who passed the power upward to the Federal Government to exercise eminent domain rights within the 13 States. These 13 States also had the right to pass down to cities, villages and counties, the rights of eminent domain. As each of the 37 additional States were added to the Union, the powers of eminent domain were granted to each State by the Federal Government at the time of Statehood. Those sovereign powers of eminent domain have been passed down to all government entities including cities, counties, school districts, and utilities. As long as the sovereign jurisdiction can show a legitimate need, the laws of eminent domain allow it to condemn property for public use. Whereas eminent domain was initially intended to ensure the creation and maintaining of public services such as roads and canals, local and state governments often use eminent domain for any project that is considered to be economically beneficial. In effect, public use has been transformed into 'public benefit'. For the past 50 years, government entities, primarily cities, have been relying upon eminent domain powers to acquire property in blighted areas, and set about economic re-development as a way to accomplish urban renewal projects as being a 'public benefit'. Recently, a couple of major court decisions have reversed the ability of cities to condemn private property for private use, wherein the city has been used as a vehicle to assemble the property, rather than private developers. It is estimated that over 10,000 properties have been acquired throughout the US during the past 6 years, for the benefit of private developers and not for public use such as for rights of way.

The Supreme Court has accepted on appeal, the case of *Kelo v. City of New London*, which is a case wherein property owners are challenging the decision of New London, Connecticut to seize their homes because the city decided redevelopment for commercial purposes would generate higher property values and taxes. It is not known when the Supreme Court will hear and rule on this case, but rest assured, it will be an important decision that will impact the entire Nation, especially those of us in the related right of way professions. The Court may strictly rule that eminent domain can only be used for 'public needs,' or it may define what is a 'public benefit' and allow eminent domain be used to assemble properties for private development, that can be defined as a public benefit, ie., blight removal through redevelopment projects. It is my opinion that the Court will take a moderate approach to the issue and allow certain defined 'public needs'. Until we have a Supreme Court ruling, most sovereign entities will be cautious about facilitating any new urban renewal projects. We may have a decision this Fall.



## Surveyor's Corner

Gregg Tuttle, Manager  
SRP Land Department  
Surveys Division

### **Gregg –Who were the most famous surveyors in America? What were their contributions to the profession?**

Well, there are a lot of famous American surveyors. There is a bumper-sticker which shows the four famous faces from Mt. Rushmore, and it's entitled: "Three Surveyors and the other guy."

That is because Washington, Jefferson, and, Lincoln were ALL land surveyors in their respective early careers and only later got dragged into politics. There are some good books out about just the surveying portions of those early lives. (Teddy Roosevelt did many things in his illustrious career, and even has Lake Roosevelt named after him, but, alas, Teddy never did any surveying that *we know of.*)

Then there was Lewis & Clarke – famous mappers, *and*, Surveyors.

How about Mason & Dixon? They rank right up there as famous American Surveyors.

James Abbot McNeill Whistler, (the artist of "Whistler's Mother" fame), *was first a surveyor* and cartographer. How about Henry David Thoreau (of "On Walden Pond" fame)? *Surveyor!* And there are some good books on each of these individuals dealing with their surveying.

And then, there are the lesser-known surveyors – some only know to other surveyors, such as: Ira M. (Tiny) Tillotson. "Tiny" was born April 11, 1920 in Nashua, Montana. He is now deceased. Tiny attended school for 8 years in a one-room country school in South Dakota; 3 years of High School in Edgemont, South Dakota; then graduating at Monticello, Iowa. He joined the infantry the day after Pearl Harbor, was sent to the Aleutians for one year; transferred to the Army-Air Force as an Air Cadet. He was then assigned to England as a B-17 Bomber pilot, returned to the United States as Squadron Combat Command Pilot. He then entered Colorado School of Mines, graduating in 1950 with the professional degree of Engineer of Mines. Tiny first became acquainted with property surveying in the uranium rush of the fifty's. Later he was to serve as Regional Cadastral Engineer in Region One of the U.S. Forest Service as a private Land Surveyor.

Tiny was best known by his associated and colleagues as a very colorful instructor of Seminars on property boundary law. He was proud of having conceived and authored the Montana Corner Record Act of 1963, which has been copied by many other States and is still working well in Montana.

Here are some quotes from Tiny's book: "*Legal Principles of Property Boundary Location on the Ground in the Public Land Survey States*":

### **What is Title to Land?**

"Many people think that a good title to land automatically gives boundary security, but it does not. Good title is based upon an unbroken chain of documents in the official records showing the ownership from the first patenting down to the present time. A chronological set of copies of these documents is called an abstract. The actual, claimable, sue-able, legal boundary, on the ground, *may not coincide at all with the title boundary.* This fact is little understood by lawyers, abstractors, title insurance people, engineers, real estate dealers, landowners, and, many licensed land surveyors. The abstract probably won't pay any attention to the deed records of adjoining properties if they have a different title history. It is not unusual for two properties to overlap on the ground but have perfectly clear individual titles.

The boundary on the ground is determined by the law, and according to the evidence of the writings in the deed records of your property and all adjoining properties. These writings must be related to monuments on the ground and to the past actions of surveyors and landowners in the immediate area. Deed writings that can't be related to the ground are void-able under the Statute of Frauds as being too vague."

*continued on next page....*

## ***Surveyor's Corner...continued***

### **What effect can a bad survey have on your property?**

"The actions of a subsequent surveyor may change your boundary. For instance, if your neighbor hires a surveyor to establish the common boundary between the two of you, and that surveyor is in error, his erroneous line probably will become the boundary unless you take appropriate action. You should never acquiesce in a boundary determination unless it is the best possible location of the true title boundary. If you discover that your boundary does not agree with your long-continued occupation lines, take some action with your neighbor. Neither one of you has good title to the overlap - in most states - and, in effect, the land isn't completely useable by either of you. Investigate the situation jointly with him, and hire a surveyor together, Take his results to a lawyer and have him formalize and record a title change or boundary agreement, and get copies into both abstracts. Remember, you will both lose if a court must resolve your disagreement."

### **How do my actions affect my property lines?**

"The common law holds that long continued use of land can give a title to that land that supercedes written title. Prescriptive and adverse titles are gained by such long use. However, these titles are questionable until formalized in writing and recorded.

You may lose land by your own acts. For instance, if you build a fence several feet over on your own side of the boundary, and your abutting neighbor is led to believe that the fence is on the line, and he acts on that belief, such as building a house across the actual line, your side can be stopped from going into court and testifying to the true position of the line. The actions of surveyors and landowners have a large effect on property boundary locations. A property boundary can be easily determined on the ground if there is an official record showing an unbroken chain of evidence of monuments, surveyor actions, and landowner actions. Unfortunately, this official record usually does not exist. The only persons who can straighten out the mess and bring the record up to date, short of court action, are a thoroughly competent, professional land surveyor and a lawyer, working together."

### **Doesn't Title Insurance protect my boundaries?**

"Regular title insurance doesn't insure anything as to your boundary on the ground. Special policies covering the boundary on the ground are very expensive and of questionable value. The best boundary insurance a landowner can get is the preservation of all the original survey markers and records and a jealous supervision of his boundaries to make sure no surveyor or landowner encroaches in any way whatever. If anyone such as a builder or contractor destroys one of your property corners, see your attorney immediately. He may wish to force re-establishment of the corner at the builders expense or bring a suit for civil damages. You may lose considerable land because of this destruction. Don't forget that a corner that has been destroyed and subsequently re-established is not free from the possibility of an encroachment suit from the adjoining landowner unless he signs an agreement. Bear in mind that someone, sooner or later, will have to pay for re-establishment of a lost corner at a cost of from a few hundred to several thousands of dollars. Make the culprit who destroyed it put it back at his own expense immediately. This applies to destruction by city, county, state and federal employees as well, and they are the usual malefactors."

Next time we have a few more thoughts from "Tiny" - such as:

### **How can I protect my property boundaries?**

**How can a surveyor help me protect my property boundaries?, and,**

### **What is the role of the surveyor with respect to my property?**

And, if we have some space left - we will take about a few of the early Arizona Territorial Surveyors, who have some Arizona geographical features named after them.

Meantime, If you have feedback or comments, please feel free to share them.

As always, I am interested in the opinions from, the readers of the Kachina Chapter 28 Newsletter.

Until next time - Thank you. Gregg Tuttle, manager, SRP LAND-Surveys Division





**MARCH 10, 2005**

8:30am—3:30pm

Our guide **Ken Houser** of SWCA Environmental Consultants has planned an interesting outing.

Maricopa County road and bridge project crossing the Gila River.

Natural Gas pipeline crossing through existing wetland

Visit a classic Hohokam site Archeological Excavation

Remember to dress for a work site  
Jeans, walking shoes or boots, sunglasses,  
camera, water, etc.

Meet at the Hotel @ 8:00am  
Lunch is on your own  
Pre-registration is required



**MARCH 11, 2005**

8:00am—5:00pm

We have 4 speakers for the Seminar on Friday.

Jimmy Smith of Burns & McDonnell will give us a judicial update on new Environmental Laws.

Cristin Cochran of C2 Consulting will speak on Environmental Justice

Derek Blackshare of Cinnabar Consulting will speak on Indian Casino's problems, permitting and Issues.

With our last speaker to be announced.

## **EDUCATION**

Rebekah Louis, Chair

The following classes will be held this spring and sponsored by Chapter 73 in Tucson. For more information, contact Rebekah at [rblouis@srpnet.com](mailto:rblouis@srpnet.com).

213 Conflict Management March 7, 2005  
400 Principles of Real Estate Appraisal March 8, 2005  
900 Principles of Real Estate Engineering March 10, 2005  
801 Land Titles April 18, 2005  
803 Eminent Domain Law April 20, 2005  
703 Real Property Asset Management April 22, 2005  
NON- IRWA CLASSES:  
2 Day Legal Description Class April 14th and 15th, 2005

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## **CHANGES FROM HEADQUARTERS**

The IPDC made the following policy change at their New Orleans meeting February 10-12, 2005. For IRWA Relocation instructors to continue teaching after May 15, 2005 it is mandatory for them to attend one of the 14 IRWA seminars or any of the Federal Highway Administration (FHWA) seminars.

With the recent changes to the Uniform Relocation Act, all IRWA Relocation Course Instructors must be well versed in these changes and have the ability to instruct students within the Course 500 series.

For more information, contact Rebekah at [rblouis@srpnet.com](mailto:rblouis@srpnet.com) or visit the International website at [www.irwaonline.org](http://www.irwaonline.org)

## **MEMBERSHIP**

Heather Davis-McCook, Chair

The following people were read for 30 day consideration at the February 2nd Executive Board Meeting:

- Marvin G. Lovlein, Carter - Burgess
- Chris J. Franks, Salt River Project
- Todd E. Rakstad, Salt River Project