



# INTERNATIONAL RIGHT OF WAY ASSOCIATION

## Kachina Chapter 28 Phoenix, Arizona

Newsletter

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

## NOVEMBER, 2006

### 2006 Kachina Chapter Executive Board

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**Region 1 Vice Chair:**

Chris Banks, SR/WA  
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### DECEMBER BOARD MEETING

 Wednesday, Dec. 6, 2006

 4:45pm

 3rd Floor Conference Room

 Az State Land

Confirm your attendance with Doc Sterling at doc51s.ent@cox.net

### 2006 CHAPTER AWARDS

The Nominations & Elections Committee proudly announces the recipients of the 2006 Chapter Awards. They are:

SPECIAL SERVICES:

Gayle Leonard, SR/WA

SPECIAL SERVICES:

Beverly Francy, SR/WA

PROFESSIONAL OF THE YEAR:

Chris Banks, SR/WA

EMPLOYER OF THE YEAR:

Acquisition Sciences, Ltd.

### December Holiday Luncheon & Officer Installation

**DATE:** Tuesday, December 12, 2006

**TIME:** 11:30am

**PLACE:** Double Tree Guest Suites / 320 North 44th Street

**COST:** \$20.00 for members and guests

**MENU:** Salad of Garden Field Greens; Prime Rib Cooked medium Rare served with Creamy Horseradish and Natural au Jus; Chef's Choice of Vegetable and Baked Potatoes; Freshly baked Rolls and Butter; Classic Bread Pudding with Vanilla Sauce; Freshly Brewed Iced Tea, Coffee, Decaf and Hot Tea

**RSVP DEADLINE:** Thursday, December 7th @ 3:00pm

This is the annual Chapter Holiday Luncheon when we install the incoming Chapter Officers.

## **PRESIDENT'S MESSAGE**

**Michael "Doc" Sterling, Chapter President**

Chris Banks (Region 1 Vice Chair), Caroline Tillman (incoming Kachina Chapter 28 President for 2007), Mike Burns (Region 1 International Utilities Committee Member) and I attended the IRWA Fall Forum in Sacramento in mid-October.

The hot button item continued to be ongoing Region 1 (and I suspect nationwide) IRWA Education related issues. The Region 1 International Delegates voted unanimously that the Region Vice Chair, as the Region Course Coordinator, may allow Region Chapters not in close proximity to one another to present the same course within 2 months of each other. Additionally, the Region has some serious concerns as to the role and manner of the International Headquarters Director of Chapter and Region Relations. The Region Chair and Vice Chair will communicate these concerns through the appropriate organizational channels. Region 1 hopes to see some significant changes in this area; changes that will promote the Educational needs of International members being dealt with in a mutually progressive manner, rather than a top down style of management that is seemingly focused on form instead of substance and common sense.

On another note, Sacramento appears to be an ideal setting for the International Annual Conference next June. There will be ample facilities for scheduled Conference activities, as well as opportunities aplenty for activities outside of the Conference. Having attended my first such Conference in Denver this past summer, I was amazed at the educational and networking opportunities available at the conference as well as other recreational activities to be enjoyed in the spare time available.

It appears that the Chapter will be participating in some seasonable charitable activities again this holiday season. More specific information will be presented at the Chapter Luncheon on November 7<sup>th</sup>, as well as an opportunity to donate some of your time and/or other resources (CASH! And other forms of donation).

The Chapter also hopes to be able to introduce to you to a new Education Committee Chairperson then as well – or draft one on the spot! Also, Carrie Lundin of Acquisition Sciences LTD will be introduced as the new Luncheon Coordinator for 2007.

Thus, I continue to look forward to seeing many of you at our Chapter Luncheon on November 7<sup>th</sup>! Hope you are making a dent in your Christmas shopping so that you don't have to do it all at the last minute!

**PDC Annual Report:**

It's been a productive year for the PDC, with a lot of activity by members working toward their SRWA designations and various Certifications. I've very much appreciated the assistance of Mark Keller and Ray Warriner as fellow members of the PDC this past year. I have great confidence in the new incoming PDC member Lisa Amos, as I've had the pleasure of working with Lisa at Maricopa County for several years and know she'll do a good job for the chapter. And we all know Mark Keller who will become our PDC chair next year is an asset and proven winner for Chapter 28. I'd encourage all members to pursue getting their SRWA. We're very fortunate to be getting quite a few new members within the Chapter as of late, so please consider working for that SRWA designation; it's well worth the effort and is something that will distinguish you as a top notch professional in the right of way industry..

Here's a recap of some of the PDC activities this past year:

**New SRWAs in 2006:**

Dianna Cunningham, Maricopa County  
Kathie Sholly, City of Glendale  
Budd Rogers, Salt River Project  
Doug Hansen, Pinal County  
Debra Carter, Universal Field Services (UFS)  
Carol Martsch, City of Tempe  
William Biggs, SRP

**New Certifications:**

Carol Rempel-Bear, UFS, Relocation  
Mark Hampton, Property Specialists, Relocation  
Pamel Hansel, O R Colan, Relocation  
David Rausch, APS, Negotiation/Acquisition  
Debra Carter, UFS, Relocation

**New SRWA Candidates:**

Doug Estes, Sell & Associates  
Jan Sell, Sell & Associates  
Pat Mertz, Maricopa County  
Susie Beall, Maricopa County  
Mona Cervantes, Tierra R/W  
Becky Glover, UFS  
Renee Fugiel, Namwest

REGION 1 REPORT  
Chris Banks, SR/WA, Region 1 Vice-Chair



Chris Banks, SR/WA, Region 1 Vice Chair

Every three months the IR/WA's Region Vice Chairs participate in a conference call with the other Vice Chairs and International Headquarters. During this conference call we discuss the issues that our Region and others are experiencing. We had the latest conference call on November 16, 2006. By the way, if you would like to listen in on these conference calls, please let me know and I will try to arrange it for you. The issues that are discussed are of importance to all of us.

The issues during this last conference call were mostly regarding education issues. International is assisting the Regions in trying to make sure that all of the core classes needed to get the SR/WA designation are held at least once during a 3 year period within a reasonable distance of all chapter members. This is the reason for the Education Survey that was sent to all of you via a web link. Hopefully you have responded to this survey and made your voice heard.

Also discussed were the staffing changes at International. For those of you familiar with the staff at IR/WA, Connie Sanchez is no longer working there. We'll definitely miss her. Judith Arnold will be the contact for all questions regarding education courses. The Region Vice Chair (me) will be responsible for the approval/disapproval the Chapters' education schedules within our Region. The schedules for all Regions should be up on the International Web Site soon.

I hope your holidays are good. Please remember those less fortunate than you this holiday season. Give generously. And if you can't give money or food, volunteer some of your time to help someone who needs you.

Chris

## UPCOMING EVENTS AROUND THE VALLEY

### First "Taking it to the Streets" Fair Set for Jan. 13 in Downtown Phoenix

Phoenix families and residents are invited to enjoy the music, food and neighborhood activities at the city's first "Taking It To The Streets Fair," set from 8:30 a.m. to 1:30 p.m. Saturday, Jan. 13, at Phoenix City Hall Plaza, 200 W. Washington St.

Sponsored by Fry's Food and Drug Stores and the Neighborhood Services Department, the free event will recognize the efforts and accomplishments of neighborhood associations and Fight Back groups throughout the city.

The fair will include national motivational speaker Bill Strickland, neighborhood workshops, and networking opportunities with different community and entertainment organizations.

Phoenix Mayor Phil Gordon and City Council members also will be on hand at the celebration, which also will include an awards ceremony for distinguished neighborhood associations or neighborhood accomplishments.

To participate as a community group or for more information, call 602-534-4446.

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### Ready, Set, Glow!

#### The countdown is set for the 2006-07 Spectacular Season of Glendale Glitters, which kicks off Nov. 24-25

'Twas the night before Glitters, and all through the land  
the anticipation was building, for this year's season was to be grand.  
The lights were all hung downtown with such care.  
Soon families and friends would be gathering there.  
So rest up, stay snuggled, all warm in your beds,  
and let visions of Glitters dance in your heads.  
Because when it comes to holiday festivities in the west,  
this year's Glendale Glitters promises to deliver the best!

### Holiday Spirit Awaits

What could put you more in the holiday spirit than festive holiday music and dancing, a winter wonderland of snow, all your favorite comfort foods, holiday shopping and 1.3 million twinkling lights?

Mark your calendar and check 'holiday fun' off your list as you make plans to attend Glendale Glitters Spectacular Weekend presented by SRP, Arizona's largest holiday display with more than 1.3 million twinkling lights blanketing Downtown Glendale. The season kicks off Nov. 24-25, from 5-10 p.m. on both Friday and Saturday.

### The Fun Continues

The holiday light display, which attracted more than a quarter of a million people last season, will run six weeks. The holiday fun continues for Glendale Glitters Enchanted Evenings, Friday and Saturday evenings, Dec. 1-23, with entertainment and horse-drawn carriage rides from 6-10 p.m. each night.

The glittering magic of Glendale's holiday display remains lit nightly through Jan. 6, from 5-10 p.m.

The holiday season concludes on Jan. 6 with the Glitter & Glow Block Party, this year with football-related attractions just in time for college's national football championship game to be played in Glendale. Highlights will include pep rallies, cheer squads, mascots and marching bands, and downtown streets will also be filled with glowing hot air balloons, street performers and a variety of the region's top rock, jazz, reggae and blues bands.

For more information, call the Special Event Hotline at 623-930-2299.

[Glendale Glitters is presented by SRP and sponsored in part by The Arizona Republic and Qwest Communications.]

## Propositions Affecting Right of Way Professionals

### **Prop 105 - RESULTS: 28.7% YES; 71.3% NO—FAILED**

Official Title: House Concurrent Resolution 2045

Proposing an amendment to the constitution of Arizona; amending article X, Sections 3 and 4, constitution of Arizona; amending article X, constitution of Arizona, by adding sections 4.1, 4.2 and 4.3; relating to state trust lands; providing for conditional repeal and conditional enactment.

Descriptive Title:

Allows: granting public rights of way and sale of conservation trust land to governmental entities without auction, sale of certain urban land for conservation and conveyance of up to 400,000 acres of non-urban with legislative approval, local coordination of commercial trust land use; requires public accessibility of conservation trust land; restricts development.

### **Prop 106 - RESULTS: 48.4% YES; 51.6% NO—FAILED**

Official Title:

An initiative measure proposing an amendment to the constitution of Arizona; amending article X, sections 1, 3 and 4, constitution of Arizona; amending article X, constitution of Arizona, by adding sections 1.1, 1.2, 7.1 and 12; relating to State Lands.

Descriptive Title:

Sets aside 694,000 acres of state trust land in conservation reserve; allows conveyance of conservation land and rights of way without auction and certain land without compensation; establishes board to plan and dispose; allows land transfer before revenue sharing payment and use of some revenues for administration; requires state and local coordination.

### **Prop 207 RESULTS: 65% YES; 35% NO—PASSED**

Official Title:

An initiative measure amending title 12, chapter 8, Arizona revised statutes, by adding article 2.1; relating to the private property rights protection act.

Descriptive Title:

Establishes rights when government takes property for public use (eminent domain); defines "public use" to include public and public agency use, utilities, acquiring abandoned and hazardous property; prohibits taking property for economic development; requires comparable replacement of primary residences; requires compensation for decreased property value resulting from land use laws.

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#### Comments from Chapter Members...

**Prop 105:** It was a bad prop. It was put on the ballot by the Legislature to confuse and obfuscate the State Land Trust reform issue. The good ol' boys there were worried that they might not be able to control an independent commission that would be created with the passage of Prop. 106

**Prop 106:** This was a good solution to reform the Arizona State Land Trust and to modernize the way the State Land Department does business. It was well supported by state agencies, local governments and NGO's. It would have set aside considerable land for preservation of open space. Putting Prop. 105 on the ballot confused many voters, and, as we know, confused voters most often vote no. Given that the Prop. 106 was defeated by such a small margin (only 3.2%), I believe it would have passed if the Legislature had not proposed Prop. 105. There is no question that Arizona taxpayers will be eventual losers the as these important places are sold off to the highest bidder. Years from now people will wake up and wonder what happened to all the open spaces.

**Prop 207:** In my opinion this prop. was unnecessary and will overly complicate otherwise straight-forward acquisitions. The only winners here will be the legal community and to a much lesser extent the property owners. Losers will be the condemning agencies, the courts and the tax paying citizens of Arizona. With this proposition in place I expect acquisition costs to balloon out of control. These changes to the law will degrade the quality and quantity of future public projects.

As regards Propositions 105 & 106, I voted against both of them.

We have system in place. That can be modified through the executive and/or legislative processes. Both propositions would have added to the bureaucracy, making it even more difficult for individuals and/or ranchers, farmers, loggers & other businesses to interact with the system.

As regards proposition 207, I voted against it also. The State of Arizona case law already shows that Arizona is not willing to allow private property to be condemned for private commercial development uses. There have been two major cases within the past couple of years that amply demonstrate the 'mood' in Arizona: Bailey Brakes in Mesa and the 'brownfields' private commercial development in the City of Tempe bounded by McClintock and S.R. 101/Salt River and University. The passage of 207 once again complicates the system and will not benefit private property owners nearly as much as it will benefit Real Property Appraisers and Lawyers specializing in eminent domain and add even more time & legal costs to the process; i.e., additional costs and extended emotional agony for the private property owners.

## Letter to the Editor regarding Proposition 207

Jim Schwartzmann, SR/WA, Retired

I am a retired SRWA, former division manager for Real Estate for both MCDOT and FCDMC, former division manager for the ASLD, and retired Arizona Certified General Real Estate Appraiser. I was responsible for managing condemnation (Eminent Domain) cases for several county agencies for a number of years. This included working with appraisers, private landowners, County attorneys, and condemnee attorneys.

I believe that Arizona Voters passed Proposition 207 as a result of backlash and discontent with past government condemnation practices. The most recent and noteworthy case was the "Bailey Brake Service" case which was ultimately decided by the Arizona Supreme Court. At any rate, I don't believe that voters really understand the immense financial ramifications of passing this proposition. Here is a brief summary of some of the expected problems that Right of Way agents and other Right of Way professionals will have to deal with and, which government and other condemning agencies will need to deal with as a result of this new set of laws.

I expect the land and/or real estate costs of various public projects will increase dramatically over what we have seen as a result of; 1) guaranteed attorney fees now required by law for eminent domain lawsuits and, 2) a significant increase in the percentage of acquisitions going to court or condemnation. The past condemnation laws did not guarantee any payment for attorneys in those contested cases. Many of the fees were based on a contingency fee basis which was some percentage of the ultimate settlement amount, judge or jury determination. The vast majorities of condemnations were relatively small sums of money, or were in such a narrow range of value, that they really weren't worth attorney's time to pursue. I expect that now, virtually all acquisitions of property could be potentially challenged because the condemnor agency will be responsible to pay for the condemnee attorney fees. The condemnee really has nothing to lose by taking an acquisition to court as a result of the passage of this proposition. It also may take eminent domain actions from a niche legal area of practice to a mainstream boutique practice because of the guaranteed payment of attorney fees. So, Right of Way agents budget more for these costs in your projects.

There will also be confusion and perhaps additional cost associated with the propositions language that "Primary residences" be replaced by a comparable dwelling. Appraisals done today use comparable sales to determine the value of a residence taken, which included consideration of comparable dwellings. I would hope the courts determine that an appropriate amount of money will satisfy the comparable dwelling replacement issue because people will argue over the definition of comparable. As relocation agents realize, finding a "comparable dwelling" can be a monumental task if it can be accomplished at all.

There are also additional definitions of "public use" and a prohibition on the use of condemnation for "economic development". The taking of land for "economic development" was probably the single most important factor in this proposition being brought before the voters and passed.

Zoning will also be a potentially costly issue for local jurisdictions to deal with under prop. 207. Again, this is a brand new area for attorney's to receive guaranteed fees by claiming a reduction in property value as a result of land use laws. The proposition doesn't specify that a given parcel needs to be directly impacted by land use laws; it may be that an attorney determines that zoning on an adjacent parcel reduces a client's value. It may seem rather extreme, but this proposition opens many avenues for significant cost increases for local jurisdictions in acquiring land.

There are many unanswered questions regarding the legislation enacted by the passage of this proposition, but will inevitably lead to changes in the way acquisitions are made, and also in the costs associated with land acquisitions. I don't believe the public will feel the real impact of this proposition for several more years, but it will happen.



## Surveyor's Corner

Gregg Tuttle, Manager  
SRP Land Department  
Surveys Division

### Question:

*I work for a utility company. In many instances we acquire utility easements, (usually along one of the customers' property lines, say an eight-foot width strip from the street to the point of termination.) The thing that amazes me is that in what appears to substantially similar surveys, the costs can vary by as much as four times?!?!? Why is that?*

Well, I think that the operative phrase is "substantially similar".

I am presuming that you are looking at the similarity in the layout configuration, and the overall distance, and **\*\*IF\*\*** that were all that determined the cost of the survey then your question would be spot on. Unfortunately, the shape and the length of the requested easement are only the beginning.

Many uninitiated individuals in the lay public believe that all the surveyor needs is a copy of the property's deed to perform a boundary survey, (of which an easement survey is a subset of boundary survey, by Arizona regulation and rules.) However, I would most certainly hope that the vast majority of the (professional R/W Association) readers of this column would know better.

The property's deed (and/or a (hopefully) recorded "Results-of-Survey" (ROS) drawing) are a good first place to begin the surveying exercise. Most lay persons who need to hire a professional land boundary surveyor usually have a copy of their deed and some may even have a copy of prior survey drawing. Some also have a copy of the County Assessor's map (*but, assessor's graphics should NEVER be used as the only determiner in a land boundary property survey.*)

The surveyor may choose to begin with just the deed (and drawings, if they are available).

The surveyor should start with the property itself, to determine if the parcel fits the supplied "legal" description, such as for the distances between the corner monuments found, and as to the shape and area of the parcel, as determined from such information as the bearings along the line and/or the angles between the lines of the property.

Presuming that the property and the found corner monumentation "fits" the description, AND, that there were no obvious, visible signs of encroachments (either ONTO or FROM the property), then the surveyor will use the given 'deed' information to work backwards to the "Point of Beginning" (POB) and (if different) the "Point of Commence" (POC) for the description.

Now, hopefully, the surveyor found "no problems" during the verification of the actual possessed and occupied property as related to the given / supplied deed and/or drawing information.

GOOD! NO - EXCELLENT!!

Now that surveyor can "*probably*" layout the proposed easement location, create either, (as appropriate), a ROS drawing or an exhibit sketch, and forward the graphical presentation to the company's friendly neighborhood land-agent, or land consultant, to complete the easement acquisition.

Unfortunately, in a non-trivial number of occurrences, the survey does always NOT unfold according to the hoped for and described game-plan. There can be an infinite number of possible scenarios that cause our "quick & low-cost" boundary survey to mutant into a long drawn out and (very) expensive exercise in futility, that is know as "*the boundary survey from hell*" (BSFH), (please pardon our *french*.)

While many books have been written covering a wide variety of BSFH scenarios, we will just focus on a couple of aspects. For this example we will concentrate on the situation where the preferred property boundary line for the easement appears to be in conflict with the adjoiner's (common) line.

Continued on next page....

## Surveyor's Corner continued

Now sometimes the first thing a utility company might consider is: *"can we either increase the width of the easement (to get our physical facility further away from the problematical boundary line)? Or, can we relocate the proposed utility facility to another location on the property, thus avoiding having to participate in the resolution of the boundary line problem?"* For the sake of this article we will simply state that those options were not available, and, as such, the utility surveyors are now involved in determining the correct location of the boundary line from which the easement is to be referenced and co-located.

The field surveyors have discovered what apparently appears to be a serious overlap between the adjoiners, a lot the property boundary line in question. And, for the sake of brevity, we will stipulate that it has been determined that the problem is discovered to be one that may have been created when the adjoining parcels were created from a parent parcel.

Parcels of land created from a parent parcel, by a common grantor, are commonly known as *sequential conveyances*. Senior (prior or "superior") rights are determined by examining the deeds of ALL of the parcels created from the parent parcel with respect to the date that they were initially executed. The surveyor must now obtain an original chain of descriptions so as to be able to plot the parent parcel, and then create a "*deed-mosaic*" by plotting all the parcels created from the parent parcel, in chronological order. Once the "*deed-mosaic*" is completed and all the gaps and overlaps are discovered and displayed, the boundaries of the subsequent subject parcels *might* be resolved, (well, at least, initially, on paper.)

Surveyors and land professionals *(should)* know that the first time a party conveys a portion of his or her land that *a senior right is created in favor of the grantee*. That right insures the grantee, and the grantee's successors, heirs, and assigns, that they will always get whatever size parcel the first deed says that they will get, regardless of the dimensions of the parent parcel.

The grantor becomes junior and retains the remainder. **(NOTE** – one exception to the grantee becoming senior occurs when the deed from "A" to "B" reads: "*All of Lot 08 Excepting therefrom the Westerly 60 feet.*" Then, "A", the grantor, is senior, and is assured of a 60-ft parcel.)

Other than the exception note, what about parcels that were conveyed first that did *not* become senior, or have since 'lost' their senior status? Could something occur to change senior status of that parcel, now making it a junior parcel? Unfortunately, YES, there are various situations and scenarios that can or could have occurred to change the apparent seniority of a parcel from senior to junior OR from junior to senior. Several of the scenarios involved when the various deeds created got officially recorded, (for you land professionals, this entails knowing whether *Arizona* is a "*Pure Race*" or a "*Race Notice*" or a "*Pure Notice*" state as far as its state statutes involving the chronology of recorded (and unrecorded) documents of land transfer. Talk among yourselves. J )

These recordation determinations are different than discovering physical evidence that might indicate that the corner monument was established incorrectly, and, also different than situations involving acquiescence, prescriptive or adverse land rights. Something surveyors are (un)lucky enough to discover ALL of the problems mentioned, from senior/junior, to mis-monumentation, to adverse (unwritten) property rights which 'ripened' concerning the subject property boundary line. From a utility company's perspective, some creative solutions as far as easements are concerned involve many different approaches, from getting easements from both adjoining property owners, to blanket easements, to withholding utility infrastructure - until the adjoiners can work out a solution, in addition to the those solutions mentioned early.

In any case, as you can (hopefully) understand, the cost, and especially the timelines and timeframes for easement acquisition, (surveying and land-agent work), can quickly escalate when such unexpected - (but unfortunately, not uncommon) - conditions are discovered during what was anticipated to be just another quick & low-cost acquisition assignment.

Well, that's it for this article from the "*Surveyor's Corner*:"

If anyone has 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. Please keep sending in those questions.

*Until next time, Thanks for reading about land surveying & land surveyors. –  
Gregg Tuttle, AZ/RLS # 11121; Manager, SRP LAND-Surveys Division*