



# Kachina Chapter 28, Newsletter

April, 2009

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## 2009 Kachina Chapter

### Executive Board

#### President

Kathie Sholly, SRWA  
623.930.3652

President@irwachapter28.org

#### President Elect

Karen Williams, SRWA  
602.542.8857

karen.williams@azag.gov

#### Secretary

Mary Smith

602.682.0000 ext. 309

msmith@tierra-row.com

#### Treasurer

Jason Foster

602-328-1959 (83-1959)

602-809-3217

jason.foster@aps.com

#### International Director

Doug Estes, MAI, SRWA

480.345.4111

dougest@hotmail.com

#### PDC Chair

Lisa Amos, SRWA

Office: 602-506-4747

lla@mail.maricopa.gov



## Member meeting and luncheon.

Speaker is:

**Keith Russell,**

**Maricopa County Assessor**

(see BIO on page 7)

## The Old Spaghetti Factory!!

1418 N. Central Avenue, Phoenix

**April 7, 2009**

**11:30am ~1:00pm**

**Cost: \$20.00**

**\*\*Use the Light Rail!!**

**\*\*Stops right in front, just before McDowell\*\***

Please note, seating is limited to **65 persons only!**

**RSVP today to confirm your seat!!!**

Remember, if you rsvp and don't show you could still be invoiced!!



# Presidents Message

“Ch-ch-ch-changes. Turn and face the strange . . .” – *David Bowie*

We are certainly facing many changes in the upcoming years. Within the IRWA, the leadership of the Association is proposed to be restructured to create an expanded Governing Council, and rename the Board of Directors the International Assembly of Delegates. (<https://www.irwaonline.org/EWEB/upload/BODMIN062508AUSTIN.PDF>) The realignment of the regions will continue to be studied, but at this time no formal action is slated to be taken in June 2009.

The most prominent recent headline story, of course, is President Obama’s stimulus package, which includes an influx of federal money, earmarked for such things as infrastructure improvements and enhancements (\$83 billion), education, health care, science research and technology, and green redevelopment projects (\$22 billion total). This will provide a variety of new opportunities for all Americans, but particularly to the professions in which we, the members of the International Right of Way Association, are engaged.

By invitation, I recently attended the National Brownfields Conference in Phoenix, Arizona. Many ideas were shared about how, because of the funding sources that will be available, projects in the near future will likely blend several of these aspects (e.g., green infrastructure improvements or solar plants constructed on brownfields properties). Participating in projects of a different nature than what we may have done in the past will encourage us – perhaps even require us – to broaden our range of education and skills. Even the proposed changes to the 2010-11 USPAP (Uniform Standards of Professional Appraisal Practice) could affect the way we do business.

Recognizing the need for us to “take it to the next level”, at the January 2009 IPDC meeting, decisions were made to: study the SR/WA designation and the concept of adding “levels” of mastery; new policies regarding facilitators and their qualifications (in lieu of a Facilitator Clinic in Indianapolis in June, a Trainer’s Training will be held to enhance the skills of existing certified facilitators); recertification and continuing education requirements; and more. (Minutes from this IPDC meeting at <http://www.irwaonline.org/EWEB/upload/IPDCmin0109.pdf>)

On April 4, several of us will attend the IRWA Region 1 Spring Forum in Los Angeles. This is one of two semi-annual meetings of the leadership of all of the chapters within the region, who meet to discuss IRWA issues. (<http://region1.irwachapter46.org/pages/forum.html>)

Nominations for the Region 1 Chair and Vice Chair will also be discussed, in anticipation of the voting in of our new Region 1 leaders at the International Educational Conference in Indianapolis, Indiana in June 2009. As of this writing, I am aware of one candidate for Region 1 Chair (our own Chris Banks, SR/WA, current Region 1 Vice Chair) and two candidates for Vice Chair, Renee Marruffo, SR/WA of Chapter 73 in Tucson, and Janet Parks, SR/WA, R/W-AMC of Chapter 57 in Riverside, California. Both candidates for Vice Chair currently serve on International committees. Randy Williams, MAI, SR/WA, FRICS will attend the Spring Forum as our representative from the IEC. Headquarters staff attending will include Valerie Fries, Heather Morris, and Nikki Adams.



Region 9 Chair Kevin Winner, the biggest promoter of the region realignment, has also expressed an interest in attending.

Additionally, a report on Chapter 28 will be presented. As was the case last year, our report is largely positive:

**Strengths:**

Active participation of Executive Board members in attending meetings and fulfilling responsibilities to ensure that the core business of the chapter is completed;

A sound education program (directed by a dedicated committee chair) with a variety of classes offered regularly;

Good past leadership to provide direction for current chapter leaders;

A large and diverse membership (268 total as of December 31, 2008 per headquarters) many of whom regularly participate in chapter functions;

Continued growth in membership (30 new members and 2 transfer members in 2008);

A large number of SRWA's (84 as of December 31, 2008 per headquarters); and

Continued achievement of SR/WA designation and R/W certification by our members

**Weaknesses:**

A lack of newsletter article contributions from the membership and difficulties related to the large geographical location covered by our membership (e.g., convenient meeting locations; regular assemblies).

**Opportunities:**

Increasing membership by expanding to agencies and small utility companies that are not currently involved in the IRWA and need quality right of way education for their employees; and

Continuing to hold member meetings at different locations, in proximity to the different locales of our members, so that all have an opportunity to attend.

**Threats:**

Agency budget reductions;

Reduced agency support;

Current economic situation; and

Increasing member meeting luncheon and seminar costs.

**General Condition of Chapter:**

With increasing membership, a good education program, and healthy balance sheet, the overall outlook of the Chapter is good.

It is my sincere hope that you are able to attend the Annual International Education Conference in Indianapolis, Indiana June 28 – July 1, 2009. The educational sessions promise to be timely and informative, and there is no better opportunity to interact with fellow IRWA members from around the globe.

Sooner than that, however, I hope to see you at the April 7th Chapter 28 Member meeting and luncheon at the Old Spaghetti Factory.

Sincerely,  
Kathie A. Sholly, SRWA  
2009 Chapter 28 President (President@irwachapter28.org)





## **IRWA's 55<sup>th</sup>** **Annual International Education Conference**

**Indianapolis, Indiana**

**June 28 - July 1**

Each year, IRWA's Annual International Education Conference provides right of way professionals with unparalleled learning and networking opportunities.

With typically more than 1,000 registrants, attendees have the opportunity to learn about best practices, share project challenges and hear solutions from the industry's leading professionals.

### **Earn Recertification Credit**

Did you know that IRWA members can get up to 24 hours of SRWA Designation and Certification Program recertification credit for attendance at the Annual International Education Conference?

**[www.irwaonline.org](http://www.irwaonline.org)**  
**to register and for more information!**

## Acquiring Right of Way in Today's Economy

By: Mack Dickerson, RW/RAC, GRI, Tierra Right of Way Services, Ltd., Vice-President, Right of Way Operations

The Dow Jones Industrial Average dipped below 7000, its lowest point in the last 11 years. You cannot open a newspaper or turn on the television or radio without hearing reports of economic doom, recession, even depression. Foreclosures are at an all time high and banks are unloading their assets as fast as they can. All of this affects our industry in some manner.

For capital projects with large right of way requirements, it would seem that this is a good time to move forward with those projects. So let's assume that your capital project is going to take advantage of the current market. How does this economy affect your job, acquiring right of way?

A project which we are completing, produced several challenges as a result of the economy. On this project, we had several property owners which had agreed to sell the client agency the needed right of way for the project. But when it was time to close the escrow, the property owner's lien/mortgage holder took all of the agencies offer and paid down the principal balance on the loan. This upset many of the property owners we were dealing with. Some, when they learned that their lender was doing this, refused to close escrow which forces legal action on the acquisition agreement they signed with the agency or even a condemnation action. Some property owners did not agree to sell the client agency the needed right of way and opted to hold out for a higher dollar value in the condemnation action. Many of those are now facing foreclosure or have been foreclosed against.

So what solutions are available to the right of way agent in this economy? At the Federal Agency Update this past January, there was a session on acquiring upside down properties. While the solutions presented were largely from the viewpoint of a public agency as the acquiring party, some of the solutions presented could also be used by utility companies. Some solutions that were discussed are:

**The Appraisal:** In the scope of work for your appraiser, consider requiring the appraiser to choose sales comparables that are not distressed sales. Since many of the sales that are occurring today are foreclosures that are being sold at discount prices, this tends to drag the appraised value of the property downward. The "arms-length", "non-distressed" sales tend to be at the higher end of the range of values for comparable sales. Choosing such a strategy will insure that the property owner is adequately compensated at the true market value and most importantly, that your acquisition will go smoother.

**Be Proactive:** Educate the property owner about the appraisal and that their lender is likely to use the proceeds from the acquisition to pay down the principal balance of the property owner's loan, even if their credit is excellent. Explain the benefits of the acquisition proceeds being used to pay down the principal balance. Would refinancing the loan after the principal is paid down benefit the property owner?

**Administrative Settlements:** Use them to bridge the difference between the appraised value/offer amount and the amount owed against the property when practical. Will a quick acquisition accelerate the construction schedule? If so, then the acquiring agency or utility might want to consider an administrative settlement, especially when advancing the construction schedule may save the agency/utility in the construction bids to build the project. Public agencies must be aware of the "gift" statutes when making such an administrative settlement.

**Condemnations:** In those acquisitions of full parcels where the difference in the offer amount and the payoff amount is so great that an administrative settlement is not warranted, consider having the plaintiff or defendant's attorney request the judge to enter into the possession order, an order barring the lender from reporting a deficiency judgment against the property owner and any negative credit reporting by the lender as a result of the deficient loan payoff. This might save the property owner's good credit, allowing the property owner to purchase a replacement property. I understand that this was asked for on three separate occasions by a plaintiff's attorney in California and the judge granted the attorneys motion each time.

While these are truly difficult economic times for everyone, such times require "out of the box" solutions to new challenges and issues. If your agency decides to advance the capital project thinking it will save money in right of way acquisition, you might advise that a longer acquisition schedule may be necessary. With all the foreclosures across the nation, there are few people left to handle partial releases or subordinations within the lending companies. Therefore, providing right of way clearance for such a capital project may take longer. If you have experienced a successful solution to acquiring an upside down property, please share it with me so that I may share it with others in our association in the future.



## Chapter 28, Education Schedule

### July

C800 Principles of Real Estate Law 07-15 to 07-16-09 at APS

C802 Legal Aspects of Easements 07-17-09 at APS

### September Seminar

(Facilitator and Location TBD)

C-104 Standards of Practice for the Right of Way Professional

C-803 Eminent Domain Law

### October

Facilitator and Location TBD

SR/WA Review



## International Education Schedule for April/May - check website for more classes and details!!!

### **SR/WA Study Review Session**

SR/WA Review Study Session & Exam 04.01.09 Downey, CA

### **Basic Right of Way Disciplines**

#### **100 - Principles of Land Acquisition**

100 Principles of Land Acquisition 04.07.09 Austin, TX

100 Principles of Land Acquisition 04.13.09 Sacramento, CA

#### **103 - Ethics and the Right of Way Profession**

103 Ethics and the Right of Way Profession 06.05.09 Austin, TX

103 Ethics and the Right of Way Profession 06.25.09 Indianapolis, IN

#### **104 - Standards of Practice for the Right of Way Professional**

104 Standards of Practice for the R/W Professional 04.23.09 Tucson, AZ

104 Standards of Practice for the R/W Professional 04.24.09 Portland, OR

104 Standards of Practice for the Right of Way Professional TENTATIVE 05.02.09 AR

104 Standards of Practice for the R/W Professional 05.13.09 Houston, TX

104 Standards of Practice for the R/W Professional 09.14.09 Oklahoma City, OK

104 Standards of Practice for the Right of Way Professional TENTATIVE 05.14.10 St. Louis, MO

#### **105 - The Uniform Act Executive Summary**

105 The Uniform Act - Executive Summary 04.06.09 Oklahoma City, OK

105 The Uniform Act - Executive Summary TENTATIVE 11.11.09 Bellevue, WA

### **Appraisal**

#### **400 - Principles of Real Estate Appraisal**

400 Principles of Real Estate Appraisal 04.27.09 Cincinnati, OH

#### **401 - Appraisal of Partial Acquisitions**

401 The Appraisal of Partial Acquisitions 04.13.09 Pearl, MS




# April, 2009



Sun	Mon	Tue	Wed	Thu	Fri	Sat	Schedule of Events
			1	2	3	4	• Board Meeting at SRP or ASL @ 4:30pm!!
5	6	7	8	9	10	11	• The Uniform Act Executive Summary
12	13	14	15	16	17	18	• Member Meeting and Lunch @ Old Spaghetti Factory on Central Ave.
Happy Easter							• Principles of Land Acquisition
19	20	21	22	23	24	25	• Standards of Practice for the Right of Way Professional.
26	27	28	29	30			• Easter Sunday!!!
							• Newsletter Articles Due!

## BIO: Keith E. Russell - Maricopa County Assessor

Keith E. Russell, MAI is the 20th person to serve as your elected Maricopa County Assessor. Keith was first elected in November of 2004 and was re-elected in November of 2008 to a second term. He has been involved in the real estate market in Arizona since 1976. In 1985, he formed Sunset Appraisal which is an appraisal firm specializing in commercial real estate.

Mr. Russell is a member of the Appraisal Institute and has earned the Institute's highest designation, the MAI. He is and has been very active in the Appraisal Institute on a local level as well as regionally and nationally. Mr. Russell served as the President of the Phoenix Chapter of the Appraisal Institute in 2002 and is an Instructor with the Appraisal Institute. He is a Certified General Real Estate Appraiser with the Arizona State Board of Appraisal and had the opportunity to serve as a member of the State Board of Appraisal from 1998 to 2000.

Mr. Russell is a third generation native of Mesa, Arizona. He attended Mesa Community College and graduated from Arizona State University in 1983.

He and his wife Rebecca have three children.

Join us for our member meeting... see page 1 for details.

# Minimizing Move Damage Claims.

Submitted by Roger Ottaway

One of the biggest challenges to an agency can be a move claim from a displacee for damages to furniture, equipment or for lost items. The claim becomes more challenging when there is no documentation that reflects the condition or existence of the item when it was located at the former site. However, there are several things that an agency can do to minimize these claims.

One of the initial activities that will minimize claims is to conduct a very thorough walk-thru of the site at the time of the initial visit with the displacee. During the walk-thru it is a good idea to note the significant items to be moved. Examples of significant items would be expensive furniture, delicate furniture or equipment. Some other major issues to consider that are associated with the move of equipment are whether the equipment needs to be disassembled, anchored, calibrated, etc. This information can be very helpful in resolving a claim for a commercial move or a self-move because it helps to document the condition and factors that were considered in compiling the move cost estimate and the subsequent move.

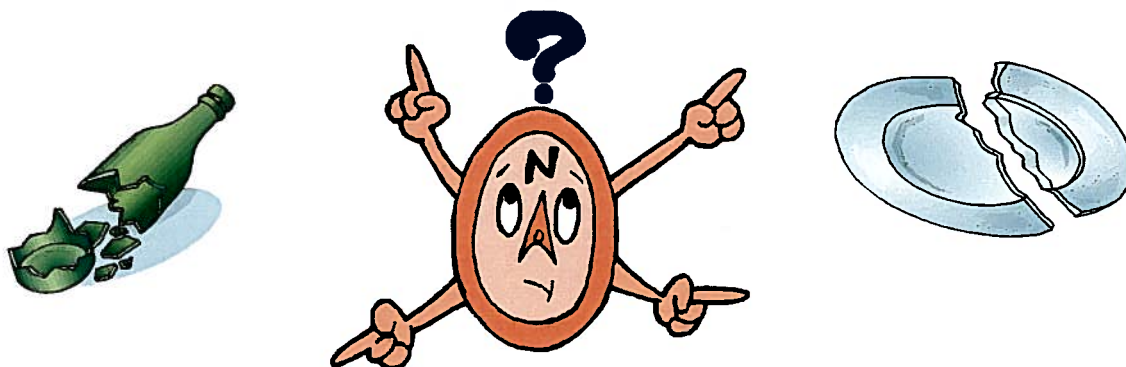
In general, commercial movers are not concerned with the "working" condition of equipment at the current or new location. This is stated in the "Bill of Lading". However, a mover will be responsible if damage is caused by some type of physical abuse or mishandling of the item.

One other important activity is the completion of a detailed inventory. Not only should the inventory account for all items to be moved but also for any visible or obvious damage to the equipment or furniture. Also, the inventory will be the main document that can determine if an item was lost during the move. It will also serve to protect the agency and mover against claims for physical damage if the item was noted to have damage or a noticeable problem before the move.

Another potential area for claims results from the relocation of telephone systems or computer systems. It is a good idea to note the specific equipment items as well as the age of the system. Many displacees do not realize that their current computer or telephone system may need additional equipment or upgrades to be operational at the new site. It becomes a lot easier and prevents problems (claims) for the displacees when they are fully advised of all the necessary considerations and responsibilities for the successful move of their systems. Also, it is helpful to know when a system is outdated and may not be successfully moved and what relocation benefits options are available. It is not hard to imagine receiving a claim from a displacee saying that the agency did not adequately evaluate and advise them of whether the system could or could not be effectively moved. Also, displacees should be advised that movers are not responsible for any computers that are not in working condition or fail to work as a result of road vibration.

An answer to this problem is to make sure that the vendors evaluating the move of the computer or telephone system considered all factors for the move. Additionally, it's always important to make sure the vendors that are proposing to move the system are qualified to do the work.

One final important item to remember is to update and review the inventory of items to be moved. It is not unusual for some businesses to add inventory. Also, some businesses have reduced their inventory as result of sales. By reviewing the inventory before the move, the agency can determine whether the relocation move benefits should be adjusted up or down.





Members should check the Region 1 website - (<http://region1.irwachapter46.org/pages/>) for minutes from the January 2009 IPDC meeting. There are many interesting topics discussed. For example: the Credentialing Taskforce is looking at the SR/WA designation - perhaps adding "levels" of mastery; region realignment is still being studied, although at a slower pace; new facilitator policies and qualifications; discussion about recertification and CEU requirements; new and revised courses information; and a whole lot more!"



## Welcome New Member

**John McCook - Davis Valuation Group**

### Board and Member Meeting

**April 1, 2009 at 4:30pm**

Locations: SRP & ASL

~All are welcome to attend~

Please contact a Board Member or email the Secretary, Mary Smith for further details.

[Secretary@irwachapter28.org](mailto:Secretary@irwachapter28.org)



Check out the "new look" of International's website.

[www.irwaonline.org](http://www.irwaonline.org)

Feel free to email Chapter 28 President, Kathie Sholly with any comments about the redesign.

[president@irwachapter28.org](mailto:president@irwachapter28.org)

*Require subordination? - Perhaps largely due to past personal experiences, wherein I've been asked "Why should we require a subordination? We're only acquiring a small part of the whole property!" the following article struck home with me. With permission of the author, I offer this purely as "food for thought", particularly given our current economic situation. - Kathie Sholly, SR/WA*

**MORTGAGE DEFAULTS ARE AT AN ALL TIME HIGH! HOW DO YOU PROTECT YOUR EASEMENT ACQUISITION?** Subordinations, by Jerry Moran, NMI Management & Training Services, [nmi@flash.net](mailto:nmi@flash.net)

Let's say that we are acquiring a 50-foot by 50-foot easement on a five-acre parcel with only a single-family residence (SFR) on it. The local water agency is going to put a 10-foot by 20 foot building on the easement with room for parking. The subject property is situated about one mile from the edge of a rapidly growing town. The property owners are Dan and Marilyn Smith. The Smiths have owned the land for sixteen months. The fair market value of the property is \$700,000.00 and the balance of the mortgage is \$561,000.00. Taxes are current.

The offer to the Smiths is \$7500. They accept the offer and sign the easement. The document is recorded immediately. Let's say that for some reason we don't take a subordination from the lender. Fast-forward a year: The Smiths find themselves out of work and default on the mortgage. The lender visits the property and decides that an SFR on five acres is underutilizing the potential of the parcel and sells the land to a developer. The developer demands that you remove your facility from the property at your expense. Can your facility be required to move at your expense? Most probably. The chain of title on the subject property reads:

1. The Smiths
2. The lenders mortgage
3. Your organization's easement
4. The developer

Notice where your easement is in the chain. The lender has a superior interest in the property. When a default on the mortgage occurs the lender(s) are first in line and if you didn't get them to subordinate their interest to your easement you do not have an enforceable right!

All hope is not lost. Since the Smiths signed your easement, you are not in trespass. That means that condemnation is a possibility. You of course would have to weigh the economics. So, back to the question: when do you consider taking a subordination? When the subject property is likely to change its use (farmland for example). When the current owners of the subject property have a high mortgage to FMV ratio. When your facility has a high dollar value and you don't want to be required to move it.

How do you get a subordination agreement? You contact the lender and ask for one. Beware if they ask you what you are paying for the easement. Sometimes they demand that the money be given to the lender and they apply the amount to the borrowers account. Following is an example of a subordination agreement that you are welcome to use. Caution: make sure that your legal counsel approves its use for your organization. The following format may be used for a subordination agreement.

The undersigned Trustor/Mortgagor, Trustee/Mortgagee, and Beneficiary(ies), in that certain deed of trust/mortgage recorded on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at Book\_\_\_\_, Page\_\_\_\_, (or File Number\_\_\_\_\_) in the office of the county recorder of \_\_\_\_\_, State of \_\_\_\_\_. Said deed of trust/mortgage, being on the same property described in favor of (your company/agency) dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, concurrently herewith, do hereby consent to the execution of said grant of easement and to all the terms and conditions thereof; the undersigned further agree that the lien or charge of said deed of trust/mortgage will be and it is hereby subordinated to said grant of easement.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Borrower)  
Trustor/Mortgagor

# Job Board

## Senior Right-of-Way Agent/Environmental Analyst

Location: San Diego County, La Mesa, CA

The Helix Water District has a position in which the incumbent has a significant role in a variety of professional and technical activities associated with the acquisition, management and disposition of right-of-way and fee property for waterworks facilities; and coordinates and participates in activities to ensure District compliance with applicable environmental regulations. This position requires six years of increasingly responsible real estate and/or right-of-way acquisition experience, including one year as a SRWA or equivalent.

Certification as a Senior Right-of-Way Agent (SRWA).

Salary: \$5,455 - \$6,963/ month (DOQ) with an excellent benefit package.

Please visit [www.hwd.com](http://www.hwd.com) for more information and application.

Closing Date: Open Until Filled

Anne Shogan; (619) 667-6263;

[anne.shogan@helixwater.org](mailto:anne.shogan@helixwater.org)

## Senior Leader

URS is currently searching for a Senior Leader in their Transmission Power business unit in **Denver, CO**.

The ideal candidate is someone with a Seller/Doer background or mentality with a minimum of 10 years experience in permitting/sitting/ right of way or engineering project management for electric power transmission and distribution projects.

This position will manage multiple projects; manage proposals for power-related T&D efforts and direct project staff in this area of delivery. This individual has the potential to lead Power and Transmission delivery on either a regional or national level depending on the expertise they bring to the table.

If you know of somebody who may have interest in this opportunity please contact

Troy McLeland, URS

[Troy\\_mcleland@urscorp.com](mailto:Troy_mcleland@urscorp.com)

Ph: 303-740-3888