RIGHT OF WAY AGREEMENTS
FOR THE CONSTRUCTION OF A ROAD
ON O & C LANDS

F.E. 407

Submitted by
M.S. Rosette
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The present day logger is often faced with the problem of obtaining rights of way through O & C timberland for a logging road. This problem is brought about because of the checkerboard pattern of the O & C holdings located in the timbered area of Oregon. The logging operator to obtain the right of way permit will have to comply with the government regulations concerning O & C lands, and this paper is an effort to present the O & C regulations for a right of way permit on their land.

A hypothetical case of a gyppo logger will be used as an example to show the procedure through which an O & C permit will be issued for a timber access road.

The Situation:

R. M. Jones, the gyppo logger, has contracted with D. S. Green to log the SW 1/4 of the NE1/4 of Section 15. G. Brown has a road through his property that will be used to transport the logs to the nearby mill. D. S. Green has assigned his R/W for log transportation over G. Brown's road to R. M. Jones. R. M. Jones then wants to build a section onto G. Brown's road into the SE 1/4 of NE 1/4; part of this section of road will go through O & C timberland. The ownership pattern is as indicated on the enclosed maps. R. M. Jones will then have
to comply with O & C regulations and procedures to get his R/W permit.

This paper will give a brief resume of the O & C regulations as published by the B.L.M. Reference will in some cases be made to the example for further clarification.

The regulations set the policy and govern the management of the O & C lands by the Bureau of Land Management (B.L.M.). The private operator or landowner to get the R/W permit will have to reciprocate and grant to the B.L.M. right/way for the use specified of the part of road that is controlled either indirectly or directly by the private operator. The operator will also have to grant the right to extend the road across his land for the purpose of harvesting O & C timber. R/W over other roads controlled by the operator might in some cases also be stipulated. The length of time these Rs/W were granted must be included in the permit.

From the example it will be seen that R. M. Jones, to get his R/W through the SE 1/4 of NE 1/4 of Section 15, will more than likely have to waive to the B.L.M. (U.S.) any restricted or exclusive R/W he has over G. Brown. R/W for the B.L.M. or its licensee to use and extend the road through Green's land will also be required before the B.L.M. will grant R/W through SE 1/4 of the NE 1/4.

The policy for O & C land further states, that in the case the permitter's road is used, a fair payment will be made to the permitter for the cost and mainenance of the road.
In the example R. M. Jones would be reimbursed for the cost and maintenance of his portion of road. This sum of money would be amortized against the O & C timber to be taken out across Jones's road and would be paid from the sale of the O & C timber.

The permit issued by the B. L. M. to the private operator is in the form of a license to transport logs and does not constitute an easement over the O & C land. Thus the permittee can not authorize the R/W to someone else to transport the logs over the road without the authorization of the regional administrator for the O & C land. This permit may be cancelled upon 30 days notice if the permittee: 1. Made false representations concerning any material facts, or 2. Failed to comply or defaulted in the performance of the conditions of the permit and did not correct the deficiencies within 60 days after receiving a written notice from the regional administrator.

These regulations would mean that R. M. Jones would not be able to sub contract the log hauling without the authorization of the B.L.M. Jones would have to correct any deficiencies according to the contract specifications within 60 days after receiving written notice from the B.L.M.

The applicant for a permit may not start construction of the road before the permit is issued. The construction in advance of permit by the applicant will constitute a trespass and damages would then be due the United States. The trespasser
will not be issued a permit unless he has fulfilled certain regulations. From Reference I, Paragraph 115.160 the regulation stated is:

"Until such trespass claim is fully satisfied or the trespasser has posted a surety bond satisfactory to the regional administrator conditioned upon the full payment to the United States of the damages as finally determined by the appropriate officer of the Bureau or Department of the Interior, . . ."

The B.L.M. thus ties the private operator down and protects the O & C land against flagrant violators.

To receive a permit the private operator will have to file an application form. The operator will have to furnish proof of U.S. citizenship and of his right to do business in Oregon. A road location diagram or map with the scale of 4" or 8" = 1 mile of the proposed road accompanied with specifications. Where the road crosses the O & C land the road will have to be built according to B.L.M. specifications and recognition of this requirement should be made in the application.

Accompaning the application the operator must furnish a diagram showing the roads, the ownership thereof, and the rights of way that form an integral part of the road that the R/W application is for. The applicant must also show on the map any indirect or direct control he may have concerning this road system.

Accompanying the application the operator will have to file a "certificate of applicant". The purpose of this
document is to have the operator prove his legal license to operate in Oregon. A surveyor's statement as to the accuracy of location is included to prevent misunderstanding as to the actual road location.

The R/W in the permit will be for a stated definite term and in the case of reciprocal agreements both periods of duration will be stated. At the termination of the O & C R/W that portion of the operators road constructed in accordance with the permit will revert back to United States ownership. The operator will at the permit termination usually have up to 6 months to remove any improvements that are not an integral part of the road from the R/W granted by the permit. That property not removed at the end of 6 months will revert to government ownership.

Before the permit is issued the applicant will have to pay the full stumpage value of the estimated volume of timber that is to be cut, removed, or destroyed on the R/W on O & C land in the construction or operation of the road.

In the situation where the applicant does not give reciprocal R/W agreements for his R/W through O & C lands; he will be required to pay a basic fee of $5 per mile or fraction thereof, per year for the use of the R/W. The entire basic fee payment must be made for the duration of the R/W or for five-year periods whichever is less. Where reciprocal rights to the B.L.M. can be granted, however, this regulation will not apply.
The permittee will have to comply with all the B.L.M. regulations that are applicable at the time the permit was issued. The permittee must agree not to cut any timber not previously purchased on the right of way without specific authority and payment. In relation to fire the permittee must take adequate precaution to prevent and suppress fire originating on or threatening the R/W. The operator must clean up within 6 months after the permit expiration all debris which resulted from his operation on the road. Finally the operator must leave the road in usable condition or repair any damage that resulted from his use within 6 months after R/W termination.

Thus it can be seen that a R/W agreement with the B.L.M. is no simple matter. The principle reason for this fact is that the government must have regulations to protect the O & C timberland.
An example of the "Statement of Road Control" and "Waiver of Rights" that Jones might submit in his application for a R/W permit over O & C land.

Statement of Road Control

I, R. M. Jones, have assignable rights on SW 1/4 NE 1/4 of Section 15 owned by D. S. Green.

I have unassignable rights over Brown.

Waiver of Rights

I, R. M. Jones, hereby waive to the United States any restricted or exclusive R/W I have over Brown.
BIBLIOGRAPHY

1. Permits for rights-of-way for logging roads; Bureau of Land Management, Department of the Interior; Federal Register Vol. 15, No. 67, April, 1950.
