



**2018 Wisconsin Tribal Transportation Conference**  
**25 CFR Part 169 - Rights of Way**  
**November 6 & 7**

# 25 CFR Part 169



**Rights – of – Way (ROW)  
over Indian Land**

# Subpart A - Lands (169.3)



- Applies to only Indian and Bureau of Indian Affairs (BIA) Land.

# Subpart A - When is a ROW needed? (169.4)

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**To cross over Indian Land(s), a ROW is required if you are:**

- ❧ A person or legal entity that is NOT an owner of Indian land;
- ❧ A fractional co-owner (Individual);
- ❧ Indian Tribe, Agency or instrumentality of the Tribe who owns a fractional interest.

# Subpart C - Application (169.102)



- ❧ Requests for ROW application must be submitted to the BIA office with jurisdiction.
- ❧ Upon written request, BIA will provide names, addresses, and ownership percentage of individual landowners to obtain landowners' consent for survey, appraisal, and NEPA requirements.

**UNITED STATES DEPARTMENT OF THE INTERIOR**

**BUREAU OF INDIAN AFFAIRS  
Great Lakes Agency  
916 West Lakeshore Drive  
Ashland, WI 54806**

RIGHT-OF-WAY APPLICATION MUST IDENTIFY [§169.102(a)]:

1. Applicant Name and Address: \_\_\_\_\_  
\_\_\_\_\_
2. Tract(s) or parcel(s) affected by the right-of-way: \_\_\_\_\_
3. General location (easement description): \_\_\_\_\_
4. Purpose: \_\_\_\_\_
5. Term (Renewal, if applicable): Perpetual
6. Identify ownership of permanent improvements associated with the right-of-way and the responsibility for constructing, operating, maintaining, and managing; or removal of permanent improvements under §169.105:

REQUIRED SUPPORTING DOCUMENTS [§169.102(b)]:

1. Accurate legal description of the right-of-way, its boundaries, and parcels associated with the right-of way;
2. A map of definite location of the right-of-way; (25 CFR 169.102((b)(2); survey plat signed by professional surveyor or engineer showing the location, size, and extent of the ROW and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C.§ 176, 43 U.S.C. § 2 AND § 1764, and showing existing facilities adjacent to the proposed project.)
3. Bond(s), insurance, and/or other security meeting the requirements of §169.103;
4. Record of notice that the right-of-way was provided to all Indian landowners;
5. Record of consent that the right-of-way meets the requirements of §169.107, or a statement documenting a request for a right-of-way without consent under §169.107(b);
6. If applicable, a valuation meeting the requirements of §§ 169.110, 112, 114;
7. With each application, if the applicant is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, demonstrating that:

- a. The representative has authority to execute the application;
  - b. The right-of-way will be enforceable against the applicant; and
  - c. The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.
8. Current environmental and archaeological reports, surveys, and site assessments, as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;
9. If required, a statement from the appropriate tribal authority that the proposed right-of-way is in conformance with applicable tribal law.

THE APPLICANT FURTHER STIPULATES AND EXPRESSLY AGREES AS FOLLOWS:

To conform and to abide by all applicable requirements with respect to the right-of-way herein applied for. The applicant agrees to conform to and abide by the rules, regulations, and requirements contained in the *Code of Federal Regulations*, Title 25 Indians, Part 169, as amended, and by reference includes such rules, regulations and requirements as a part of this application to the same effect as if the same were herein set out in full.

Applicant Point of Contact Information:

Name: \_\_\_\_\_

Address:

State, \_\_\_\_\_

Zip:

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

DATE: \_\_\_\_\_

APPLICANT: \_\_\_\_\_(Signature)

APPLICANT: \_\_\_\_\_(Print Name)

# Subpart C - Obtaining a ROW



**The following must be submitted with the application:**

- ❧ Accurate legal description of the ROW
- ❧ Map of definite location
- ❧ Bond(s), insurance, and/or other security meeting the requirements of § 169.103
- ❧ Record of notice of the right of way was provided to all Indian landowners;



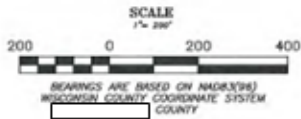
# Map of Definite Location

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☞ *Map of definite location* means a survey plat signed by a professional surveyor or engineer showing the location, size, and extent of the right-of-way and other related parcels, with respect to each affected parcel of individually owned land, tribal land, or BIA land and with reference to the public surveys under 25 U.S.C. 176, 43 U.S.C. 2 and 1764, and showing existing facilities adjacent to the proposed project.

# CERTIFICATE OF SURVEY

SECTION 18, TOWNSHIP 38 NORTH, RANGE 8 WEST  
 COUNTY, WISCONSIN

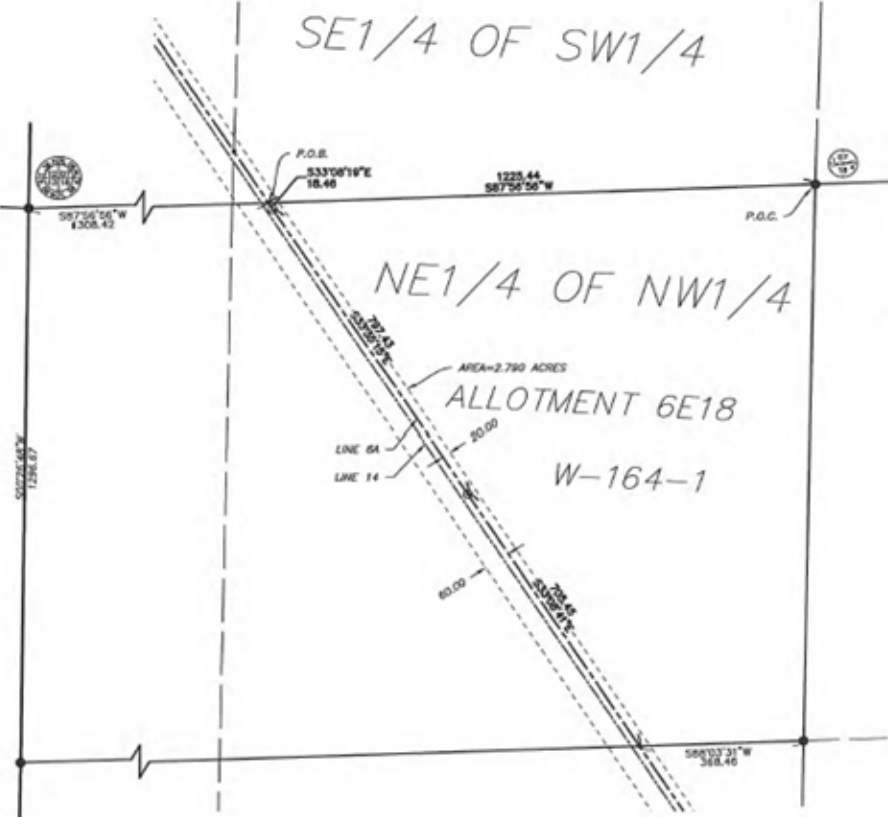


### SECTION BREAKDOWN



### LEGEND

- BLM MONUMENT FOUND
- IRON MONUMENT SET 1/2" x 18" REBAR
- ⊙ DEFLECTION POINT
- PROPERTY BOUNDARY
- - - PIPELINE EASEMENT
- - - CENTERLINE OF PIPELINE 6A
- - - CENTERLINE OF PIPELINE 14
- - - RIGHT-OF-WAY
- - - SIXTEENTH-LINE
- - - QUARTER-LINE
- - - SECTION-LINE
- - - TOWNSHIP-LINE



**SURVEYOR'S AFFIDAVIT**  
 I,  Licensed Land Surveyor, am under contract to  and I hereby certify that an accurate survey has been made under my direct supervision to describe an 80.00 foot wide permitted area as shown on this map. Whereas,  and its successors and assigns, have made an application to renew an 80.00 foot wide permitted area across Tribal lands in the Northeast Quarter of the Northwest Quarter, Section 18, Township 38 North, Range 8 West of the 4th Principal Meridian in the County of Wisconsin,  County, Wisconsin.

Date

**LEGAL DESCRIPTION:**  
 An 80.00 foot wide strip of land lying over, under, and across that part of the Northeast Quarter of the Northwest Quarter, Section 18, Township 38 North, Range 8 West of the Fourth Principal Meridian,  County, Wisconsin. Said strip is based on the location of the  is 20.00 feet northerly and 60.00 feet southerly of the  and is described as follows:

Commencing at the north quarter corner of Section 18, Township 38 North, Range 8 West of the Fourth Principal Meridian; thence South 87 degrees 56 minutes 56 seconds West, along the north line of said Section 18, a distance of 1227.41 feet to the centerline of  and the point of beginning; thence South 33 degrees 08 minutes 19 seconds East, along said pipeline, a distance of 18.46 feet to a deflection point; thence South 33 degrees 35 minutes 15 seconds East, along said pipeline, a distance of 797.43 feet to a deflection point; thence South 33 degrees 08 minutes 41 seconds East, along said pipeline, a distance of 705.45 feet to a point along the south line of said Northeast Quarter of the Northwest Quarter, said point being 368.46 feet westerly from the southeast corner of said Northeast Quarter of the Northwest Quarter, and there terminating.

The sidelines of said strip are to be lengthened or shortened to terminate on the south and north lines of said Northeast Quarter of the Northwest Quarter. Said permitted use area contains 2.790 acres.

**APPLICANT'S CERTIFICATE**  
 I,  Agent and Attorney in Fact, do hereby certify that I am the Agent and Attorney in Fact for  hereinafter designated the applicant; who subscribed to the foregoing affidavit, prepared this map of the  permitted area for pipeline purposes and performed the survey; that the location of said permitted area as shown on this map, consisting of 2.790 acres more or less is accurately represented on this map. Approved pursuant to the Act of February 5, 1948 (62 Stat 17) and Department Regulation 25 CFR (47 FR 13327) and subject to any prior valid, existing or

Date

Agent and Attorney in Fact

Date

# Subpart C - Bonding (169.103)



- ❧ **BIA may waive the bond/insurance requirement if:**
- ❧ For **Tribal land** - If the Tribe determines that a waiver of a bond, insurance, or alternative form of security is in its best interests;
- ❧ For **Allotted lands** - if landowners of majority interest request it and BIA determines in writing that a waiver is in the best interest while considering the purpose of the right of way and risks associated with the right of way; and if the Grantee is a utility cooperative/tribal utility and provides a direct benefit to Indian land.

# Subpart C-Consent (169.106)



## How to obtain consent for ROW?

- ❧ **Applicant** obtains consent
- ❧ **Applicant** must submit written request to BIA to obtain:
  - ❧ Name and Addresses
  - ❧ Ownership Interest
  - ❧ Parcel Information

# Subpart C -BIA Consent (169.107)



**BIA may grant ROW without individual landowner(s) consent if ALL apply:**

- ❧ Owners are so numerous, it would be impracticable to obtain consents; and
- ❧ 50 or more co-owners of undivided trust or restricted interests
- ❧ No substantial injury to the land or any landowner; and
- ❧ All landowners will be adequately compensated; and
- ❧ BIA provides 60-day notice of intent to consent on behalf of all owners and provide 30 days to object.

# Subpart E: Effectiveness (169.301-169.302)

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## **When will a Right-of-way will be effective?**

- ✧ A ROW will be effective on the date approved unless otherwise negotiated.

## **Recordation**

- ✧ ROW document will be recorded immediately following approval.



# Service Line Agreements

# Subpart B - Service Line Agreements (SLA) 25 CFR § 169.51- 169.56



## **Service Line**

∞ A utility line running from a main line, transmission line, or distribution line used only for supplying telephone, water, electricity, gas, internet service or other utility service to a house, business, or other structure.



# Subpart B - Service Line Agreement (169.52-.53)

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- ☞ Agreement(s) signed by the utility provider and landowner(s) for the purpose of providing limited access to supply the owners (or authorized occupants or users) of one tract of tribal or individually owned Indian land with utilities for use by such owners (or occupants or users) on the premises.

**SERVICE LINE AGREEMENT**

**WHEREAS,** (Insert Applicant/Service Provider Name), organized and existing under the laws of the \_\_\_\_\_ (insert State/Tribe), hereinafter termed **“APPLICANT”**, requested to extend \_\_\_\_\_ (insert purpose) --- service to \_\_\_\_\_ (Name of legally authorized occupant) thereafter termed **“AUTHORIZED OCCUPANT”** of tract of \_\_\_\_\_ (Insert Tribal/Allotted) land located on the \_\_\_\_\_ (Insert Name of Reservation) \_\_\_\_\_, described below:

(Insert Legal Description (including acreage) – at a minimum should include Section, Township, Range, Principal Meridian, County, and State.

**WHEREAS,** the location of the service line required to serve the above described premises, and its extent, is more particularly shown and delineated on **“EXHIBIT A”**.

Exhibit A - Plat or Diagram of Service Line Please include acres, Township, Range, and Section. The plat or diagram needs to show the boundary of the ownership of the parcel and point of connection of the service line with the distribution line.

**Now**, therefore, it is hereby agreed that in consideration of the Applicant supplying\_\_\_\_(insert purpose)\_\_\_\_ to the described premises, the **AUTHORIZED OCCUPANT** hereby grants permission to Applicant to construct, operate, and maintain a service line on and across said premises, with the right of ingress and egress.

Applicant agrees to comply with all the applicable requirements of 25 CFR Subpart B (169.51-.56) – Service Line Agreements.

**APPLICANT**

Name of Applicant

\_\_\_\_\_(Signature)

**AUTHORIZED OCCUPANT**

Name of Occupant

\_\_\_\_\_(Signature)

Lease No. \_\_\_\_\_

**ATTEST:**

Filed with the Superintendent or other officer in charge of the \_\_\_\_\_ Agency on \_\_\_\_\_, 20\_\_.

**NAME OF TRIBE**

\_\_\_\_\_(Authorizing Signature)

IN WITNESS WHEREOF, this agreement was executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

# Subpart B - Service Line Agreement (169.56)

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## **Filing and Recording**

- Parties must file an executed copy of the agreement with a plat or diagram with BIA within 30 days after signing the service line agreement.

# ***Questions?***

## ***Reference***

*25 CFR §169 – Rights-of-Way over Indian Lands*

## ***Panel***

*Jeremy Larson-Realty Specialist, Great Lakes Agency*

*715-685-2364*