

Joint State-Federal Workshop

*Rights of Way for Utility Infrastructure Development
on Tribal Lands in Southern California*

November 14, 2024



Agenda

10:05 a.m. – 10:10 a.m.

Land Acknowledgement and Welcome

10:10 a.m. – 10:30 a.m.

Opening Remarks

10:30 a.m. – 11:15 a.m.

Federal & State Agency Presentations

11:15 a.m. – 12:15 p.m.

Tribal Representative Presentations & Panel

12:15 p.m. – 1:15 p.m.

Lunch Break

1:15 p.m. – 2:30 p.m.

Energy Utilities & Telecommunications Providers Panel

2:30 p.m. – 3:30 p.m.

Q&A Discussion Session

3:30 p.m. – 3:45 p.m.

Wrap Up & Conclusion of Public Workshop

3:45 p.m. – 4:00 p.m.

Break


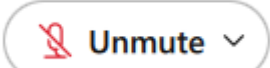
4:00 p.m. – 5:00 p.m.

Government-to-Government Consultation

Land Acknowledgement & Welcome



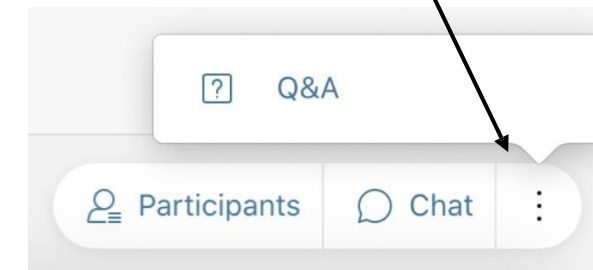
Logistics for Remote Attendees

- All attendees are muted upon entry.
- To ask questions during the Discussion portion, please 'raise your hand' and the host will unmute you. 
- If you would rather type, **please use the "Q&A" or Chat function.** Q&A questions will be read aloud; attendees may be unmuted to respond to the answer verbally if requested. 

*Reminder: Please press mute when done speaking



"Q&A": on the bottom right of screen, click "3 dots"



Opening Remarks

- Darcie L. Houck, Commissioner, California Public Utilities Commission
- Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs, U.S. Department of Interior
- Matthew Baker, Commissioner, California Public Utilities Commission
- Mark Monroe, Deputy Director, California Department of Technology
- James Qaqundah, Special Advisor, on behalf of Noemi Gallardo, Commissioner, California Energy Commission

State & Federal Agency Presentations

Yvonne Rangel, Realty Officer, Southern California Agency, Bureau of Indian Affairs, U.S. Department of the Interior

Amanda Velasquez, Tribal Relations Manager, Western Area Power Administration

Michael Rosauer, Senior Regulatory Analyst, California Public Utilities Commission

Shannon Martin-Guzman, Project Delivery Manager, California Department of Technology

Matthew Rantanen, Director of Technology, Southern California Tribal Chairmans Association and Co-Founder, Tribal Broadband Bootcamp

Sri Balasubramanian, Deputy Division Chief, Caltrans

BUREAU OF INDIAN AFFAIRS



SOUTHERN CALIFORNIA AGENCY: YVONNE RANGEL, REALTY OFFICER

AUGUSTINE BAND OF CAHUILLA INDIANS
 CABAZON BAND OF CAHUILLA INDIANS
 BARONA BAND OF MISSION INDIANS
 CAHUILLA BAND OF INDIANS
 CAMPO BAND OF DIEGUENO MISSION INDIANS
 EWIIAAPAAYP BAND OF KUMEYAAY INDIANS
 IIPAY NATION OF SANTA YSABEL
 INAJA BAND OF DIEGUENO MISSION INDIANS
 JAMUL INDIAN VILLAGE
 LA JOLLA BAND OF LUISENO INDIANS
 LA POSTA BAND OF DIEGUENO MISSION INDIANS
 LOS COYOTES BAND OF CAHUILLA AND CUPENO INDIANS
 MANZANITA BAND OF DIEGUENO MISSION INDIANS
 MESA GRANDE BAND OF DIEGUENO MISSION INDIANS
 MORONGO BAND OF MISSION INDIANS
 PALA BAND OF MISSION INDIANS
 PAUMA BAND OF LUISENO MISSION INDIANS
 PECHANGA BAND OF INDIANS
 RAMONA BAND OF CAHUILLA

RINCON BAND OF LUISENO MISSION INDIANS
 SAN PASQUAL BAND OF DIEGUENO MISSION
 SANTA ROSA BAND OF CAHUILLA INDIANS
 SANTA YNEZ BAND OF CHUMASH
 SOBOBA BAND OF LUISENO INDIANS
 SYCUAN BAND OF THE KUMEYAAY NATION
 TORRES MARTINEZ DESERT CAHUILLA
 TWENTY-NINE PALMS BAND OF MISSION
 YUHA AVIATAM OF SAN MANUEL NATION
 VIEJAS GROUP OF CAPITAN GRANDE

PALM SPRINGS AGENCY: BERNADINE SALDANA, REALTY OFFICER

AGUA CALIENTA TRIBE



-TRIBAL LAND: HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF INDIAN TRIBES. THE TRIBE WOULD PROVIDE CONSENT, BY TRIBAL RESOLUTION, FOR THESE LANDS.

-ALLOTTED LAND: HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF INDIVIDUAL INDIANS. THESE LANDS HAVE BEEN PROBATED OVER THE YEARS AND CREATED AN UNDIVIDED INTEREST OWNERSHIP SCENARIO.

>UNDIVIDED TRUST INTEREST: AN INTEREST IN THE WHOLE WITHOUT THE ABILITY TO IDENTIFY, ON THE GROUND, WHO OWNS ANY SPECIFIC AREA.

Rights-of-Way Over Indian Land

General Overview of the BIA ROW Application Process

What is a Right-of-Way (§169.2)?

An easement or legal right to go over or across tribal land, individually owned Indian land, or BIA land for a specific purpose and term; including but not limited to building and operating a line or road. **Title to the land remains vested in the landowner.**

The BIA follows the regulations at 25 CFR Part 169 - Rights-of-Way over Indian land

This part applies to Indian and BIA Land;

This part **does not** apply to fee land or fee interest;

The BIA will not negotiate, compensate, or calculate consents for fee interest.

When is a ROW needed ?

A ROW is required when a utility company wants to cross over, under, or above Indian land.

-Note, a Service Line Agreement is not a ROW but must branch from one

How to Contact the Indian Landowner ?

Request for landowner information from the local BIA office.

Notification to Landowners & Permission to Access the Land

Notice of Intent – written notification of your intent to apply for a ROW and request for consent to conduct preliminary survey(s) on the land

ROW Application Packet

Executed application and required supporting documents, §169.102

ROW Application Packet and Supporting Documents

- ROW Application – no standard form, requirements to identify §169.102
- Supporting documents §169.102(b):
 - Legal description and Map of definite location (obtained from a licensed surveyor);
 - Bond(s), insurance, and/or other security (§169.103);
 - Copy of Record of Notice sent to all landowners (the Notice of Intent);
 - Landowner Consent Forms and/or Tribal Resolution;
 - Valuation, if applicable;
 - Corporate documents, if applicable;
 - NEPA documents – Environmental & Archaeological reports;
 - Statement that proposed use is in conformance with applicable tribal law, if required.
 - Permission to cross any existing ROWs (overlapping ROW)

Landowner Consent

§169.106-109

Tribal Land:

Tribal consent is required, provided by:

Tribal resolution;

Letter; or

Written agreement

Tribal consent is required when Tribe owns a fractional interest in an Allotment

BIA cannot consent on behalf of a Tribe

Individual Owned Indian Land:

Written consent of the owners of the majority interest (template)

BIA may provide consents on behalf of:
Whereabouts unknown, Estates, Non-compos Mentis, Orphaned Minor, Power of Attorney

Fee interests not included

BIA may issue a Grant of ROW w/out consent if certain conditions are met

Compensation

§169.110 - 122

Tribal Land:

BIA will defer to the Tribe on:

Compensation

Valuation

Both can be waived by the Tribe

Tribes may request that BIA
determine FMV

Individual Indian Compensation:

Compensation of not less than FMV, unless
certain conditions are met;

Can be waived by 100% of the landowners

FMV is starting point in negotiations

No established ceiling on comp. amount

Form of compensation can be monetary or
non-monetary (ex. free internet services)

ROW APPLICATION REVIEW

§169.123

Approval Authority: Delegation to the Agency Superintendent

Application Review - Agency staff conducts a preliminary review of application package for completeness within ten (10) days of receipt.

Incomplete Application

Agency staff will return the package within **(10) days** to the applicant including a letter identifying the missing information and/or documents.

Complete Application

Agency staff will conduct a comprehensive review from the acknowledgement of a complete application package

Prepare a decision letter to authorize a ROW **within 60 days**.

Review Extension

Agency staff will notify the Grantee if additional review time is required
decision will be **(30) days** from date of notice of additional review time

TRESPASS

When a ROW is **not executed and approved**, and possession is taken, any occupation and construction is considered a Trespass

When a ROW term has **expired**, any continued use/occupation is considered a Trespass

Under the Quiet Title Act, no prescriptive rights exist on Indian Trust lands

Consequences of Trespass – subject to jurisdiction of Tribal Court or the United States Department of Justice



**Right of Way Issues on
Tribal Lands
In Southern California**

Southern California Agency Contacts

Superintendent, Javin Moore
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Deputy Superintendent – Trust Services, Joann C. Koda
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Realty Officer, Yvonne Rangel
Yvonne.rangel@bia.gov

Realty Specialist, Phillip Madrigal,
Phillip.madrigal@bia.gov

Environmental Protection Specialist, John Lin
John.lin@bia.gov

QUESTIONS?



Western Area Power Administration

Overview of CPUC Infrastructure Permitting

*Electric Transmission, Telecommunications, and Natural Gas
Easements and Rights of Way*

California Public Utilities Commission

Energy Division, Infrastructure Planning & CEQA
Michael Rosauer, Senior Regulatory Analyst

November 14, 2024

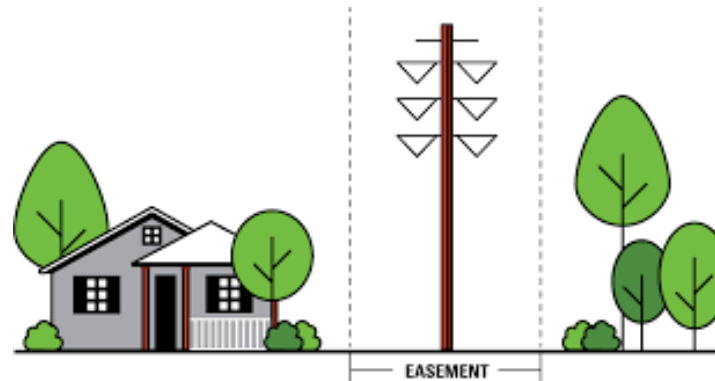


Definition - Easement

- Easements are a nonpossessory property interest in land that is often perpetual and confers certain rights and obligations to both the easement holder, and the landowner.
 - Affirmative Easement gives easement holder the right to perform a particular action on one's property (e.g., to install and operate infrastructure).
- The property owner may continue to enjoy the real property. Owner may exclude everyone but the easement holder from the land.
- Easements are created in two ways:
 1. By express agreement between the party who owns the land and the party that seeks to own the interest, or
 2. By Court Order (Condemnation)

Overview – Typical Easement Agreements with Private Landowners

- The landowner sells the easement to a utility for a negotiated amount of money. The contract specifies the restrictions on both the utility and landowner's use of the land and specifies the rights of the utility. It is binding on both parties and is perpetual unless dissolved.
- When negotiations break down, the utility may seek condemnation.
- Utilities have been granted the right of eminent domain because it is in the public interest to provide safe and reliable electric service at a fair price.



Common Issues Regarding the Installation of New Broadband Infrastructure

- Is there existing infrastructure, public roadways or franchise agreements in place?
- What is the exact language of the easement? Is it expressly limited to the provision of electric service, or can it be interpreted more broadly?
- What is the additional physical burden on the Servient Estate?
- Is there a pole sharing agreement with communications companies?
- If ROW is on Tribal Land is there an agreement with BIA regarding conditional use of the ROW?
- If there is disagreement over use of the easement is the CPUC the appropriate place to settle the disagreement or does it require resolution in court?

Definition - Right of Way (ROW)

- A corridor of land on which electric lines (or other infrastructure) may be located. The transmission owner may own the land in fee, may own an easement, or have certain franchise, prescription, or license right to construct and maintain lines.
- Telecommunications Public Utilities Code Section 7901 creates a right to construct facilities along and upon public roads and highways.
- The width of the corridor is established by engineering or construction standards.
- The ROW width in no case exceeds the transmission owner's legal easement but may be less.



Overview – Types of Right of Way (ROW)

- **Fee Simple Ownership**—the landowner sells the strip of land to the utility outright. This is common for substations.
 - Recorded Easement on property deed granting use of land for infrastructure location. Landowner retains rights to use land.
- **Franchise Agreement**—contract between utility and local government to grant a right to use public ROW for installation and maintenance of infrastructure. Agreement covers permitting procedures, notice requirements, insurance or indemnification, and any applicable cost, fees, or tax arrangements.
- **Public Utility or Road Widening Easement** - typically granted by local government.

ROW Rules for Telecommunications Infrastructure

- CPUC Decision 98-10-058 determined that communications providers' access to utility poles was a necessary precondition to the development of competition in the local exchanges and required that investor-owned utilities provide access to their utility poles.
- CPUC Decision 18-04-007 Amended ROW rules to provide Competitive Local Exchange Carriers (CLECs) with expanded nondiscriminatory access to public utility infrastructure.
- Expanded access is limited to telecommunications facilities that are necessary or useful to the provision of telecommunications services.

CPUC Role in Permitting Electric Infrastructure

- CPUC General Order (GO) 131-D includes:
 - Rules for the permitting of electrical transmission and distribution lines, substations, and generation facilities 50kV or above in capacity
 - ✓ Certificate of public convenience and necessity (CPCN) criteria and process
 - ✓ Permit to Construct (PTC) criteria and process
 - ✓ Tier 2 Advice Letter process for projects exempt from the PTC requirement
 - ✓ CPCN and PTC application requirements including the Proponent's Environmental Assessment (PEA)
 - Reporting requirements for electric public utilities
 - Procedures for CPUC review of projects approved by the California Energy Commission (CEC)
 - Protest and complaint procedures

General Order 131-D Updates



- Pursuant to SB 529 (Hertzberg, 2022), GO 131-D was revised in December 2023 to allow a utility to file an application for a Permit to Construct (PTC) application in lieu of an application for a Certificate of Public Convenience and Necessity (CPCN) application for Transmission projects (200kV and above) in **existing** transmission easements, franchise agreements, and ROW.
- Certain transmission (200 kV and above), powerline (operate between 50 and 200kV), and substation projects are exempt from PTC Requirements. However, they must be noticed in compliance with GO 131-D (Section XI.B)
- **CPUC is currently in the process of adopting a new General Order version by January 31, 2025. This considers more extensive changes to provide a clearer, more efficient and consistent process.**

GO 131-D Section III.B.1 Exemptions

- a) Powerline facilities with an in-service date before January 1, 1996.
- b) Replacement of existing facilities with equivalent facilities.
- c) Minor relocation of existing powerline facilities.
- d) Conversion of overhead to underground.
- e) Placement of new conductor or insulators on supporting structures already built.
- f) Powerlines to be relocated or constructed which have undergone review pursuant to CEQA as part of a larger project, and for which no significant unavoidable environmental impacts were identified.

GO 131-D Section III.B.1 Exemptions (cont'd)

g) Powerline facilities to be located in existing franchise, road-widening setback easement, or public utility easement; or in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies and for which a final Negative Declaration or EIR finds no unavoidable environmental impacts.

h) The construction of projects that are statutorily or categorically exempt from CEQA



Exceptions for GO 131-D Exemptions

- **Exemptions do not apply if exceptions identified in CEQA Guidelines Section 15300.2 are present:**
 - a) Reasonable possibility that the activity may impact an environmental resource of hazardous or critical concern.
 - b) Cumulative impact of successive projects of the same type in the same place over time is significant; or
 - c) There is reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Distribution Level Infrastructure (under 50kV) Does not Require CPUC Permit or Notice

- **GO I31-D. Section III.C** -Requires no CPUC permits for distribution voltage level projects and requires no discretionary permits or approvals by local governments.
- Requires utility compliance with local building standards.
 - The utility must first communicate with, and obtain the input of, local authorities regarding land use matters and obtain non-discretionary permits.

Utility Noticing Requirement - Infrastructure Projects Requiring CPCN or PTC Applications

GO 131-D Section IX. A.1

- g) A listing of government agencies with which the proposed route reviews have been undertaken, including a written request for a brief position statement by that agency. Listing shall include the Native American Heritage Commission (NAHC) which shall constitute notice on California Indian Reservation Tribal Governments.

CPUC CEQA Tribal Outreach Procedures for PTC and CPCN Applications

- CPUC provides Tribal notification using NAHC list of project area Tribes
- CPUC statutory outreach pursuant to AB 52
 - Consult master list of CPUC AB 52 Tribes and mail notice letter describing proposed project and offering an opportunity for consultation to determine possible impacts to tribal cultural resources and how best to mitigate as part of the environmental review process.
- Independent of CEQA requirements the CPUC may consult with Tribes pursuant to our Tribal Consultation Policy

For more information, please reach out to:

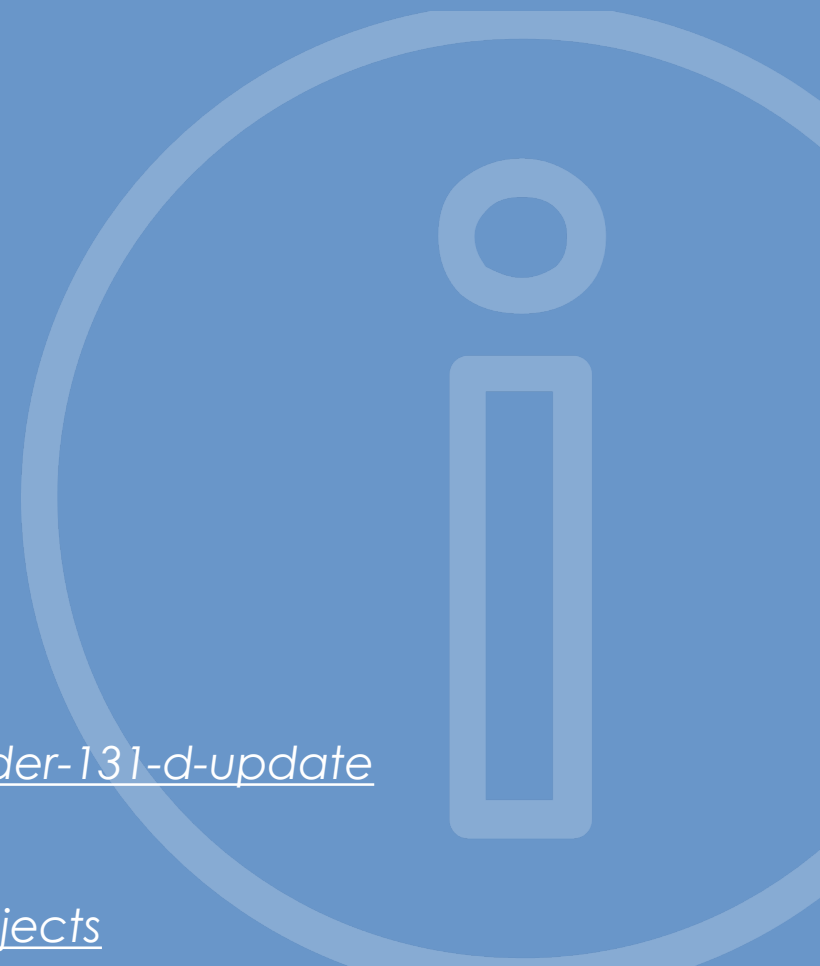
Michael Rosauer

CPUC Energy Division

Michael.Rosauer@cpuc.ca.gov

Additional Resources:

- <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/permitting-and-environmental-review>
- <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/permitting-and-environmental-review/general-order-131-d-update>
- <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/infrastructure/permitting-and-environmental-review/current-projects>





BROADBAND FOR ALL

Middle-Mile Broadband Initiative Overview



November 14th, 2024



MMBI OVERVIEW

Middle Mile Broadband Initiative

- Senate Bill 156, signed into law in July 2021, initiated the creation of an open-access middle-mile network
- This initiative seeks to bridge the digital divide by connecting underserved and rural communities with more affordable, reliable internet options with emphasis on Tribal Lands



Tribal Policy – Tribal Lands

- MMBI developed a baseline offer as a tribal policy for each of the tribes whose lands the Middle-Mile Broadband Network will cross or run adjacent to.
- In exchange for right of way, MMBI is offering dark fiber and lit services:
 - Six (6) Dark Fiber Strands (3 pairs) to the nearest diverse hut site
 - Two (2) diverse 10 gigabit circuits (Dedicated Internet Access)
- MMBI program team is meeting with each tribe 1:1 to deliver this tribal policy.

Tribal Policy – Connecting to Middle Mile

- MMBI developed a baseline offer as a tribal policy for each of the tribes planning to connect to the Middle-Mile Broadband Network.
- In exchange for right of way, MMBI is offering dark fiber and lit services:
 - Four (4) Dark Fiber Strands (2 pairs) to the nearest diverse hut site
 - Two (2) diverse 10 gigabit circuits (Dedicated Internet Access)

TRIBAL POLICY PACKAGE

Example Diagram

Logical Portion

Internet Service 1 [uses 2 strands]

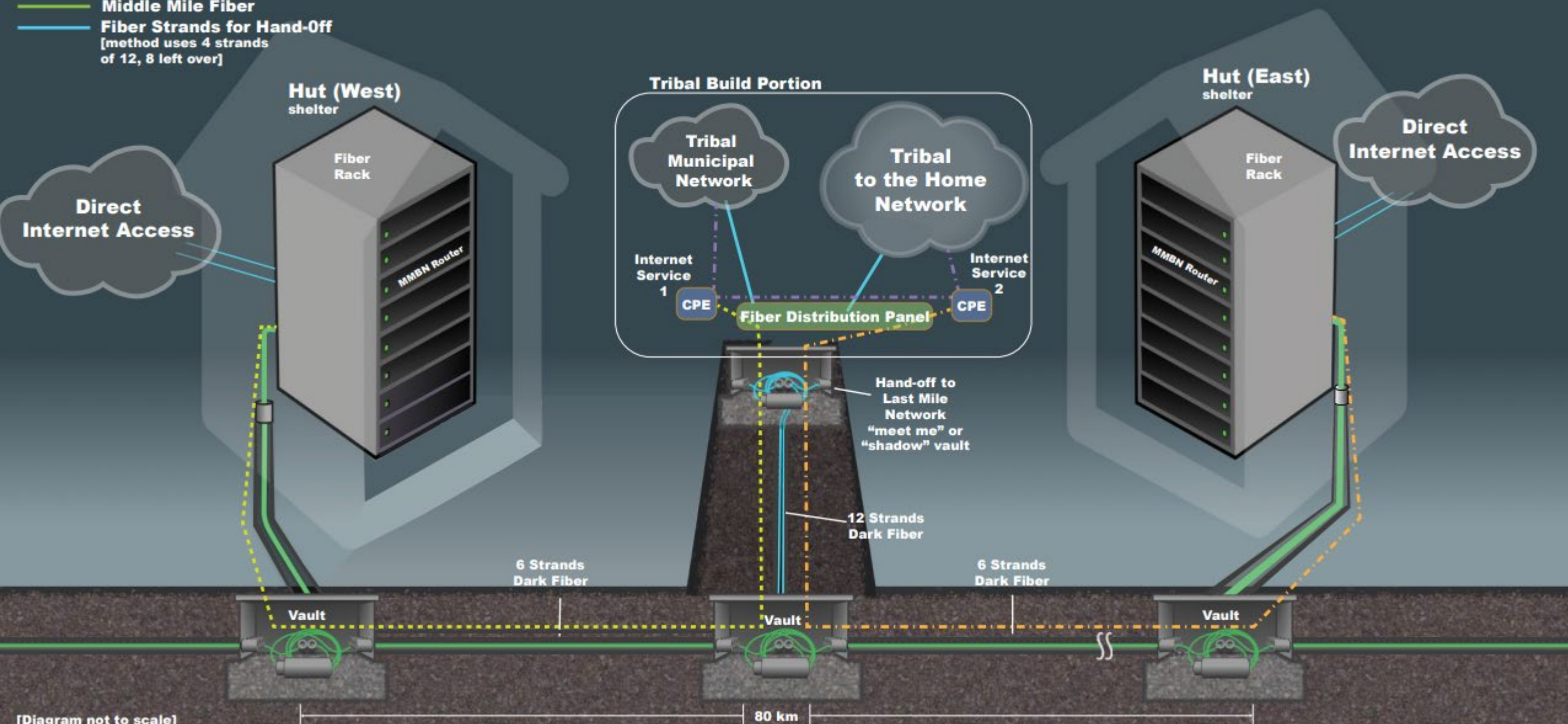
Internet Service 2 [uses 2 strands]

Connectivity to the internal Tribal Network
[over local infrastructure]

Physical Portion

Middle Mile Fiber

Fiber Strands for Hand-Off
[method uses 4 strands
of 12, 8 left over]



MMBI OVERVIEW

MMBI ROW Process

Initial Engagement

- Work with BIA and Tribe
- Identify Land Status and Landowners
- Submit LOI to Tribe and BIA

LOI Received

- Application is in process
- Survey
- NEPA
- Appraisal is triggered

Appraisal Process

- AVSO will work with appraisers
- AVSO sends approved appraisal to BIA

Right of Way Consent

- Negotiations between CDT and Tribe
- If tribe approves, receive right of way consent

Package Review

- Once package is deemed complete, 60-day review
- Decision is made by BIA to grant or deny ROW

Grant of ROW is issued

MMBI OVERVIEW

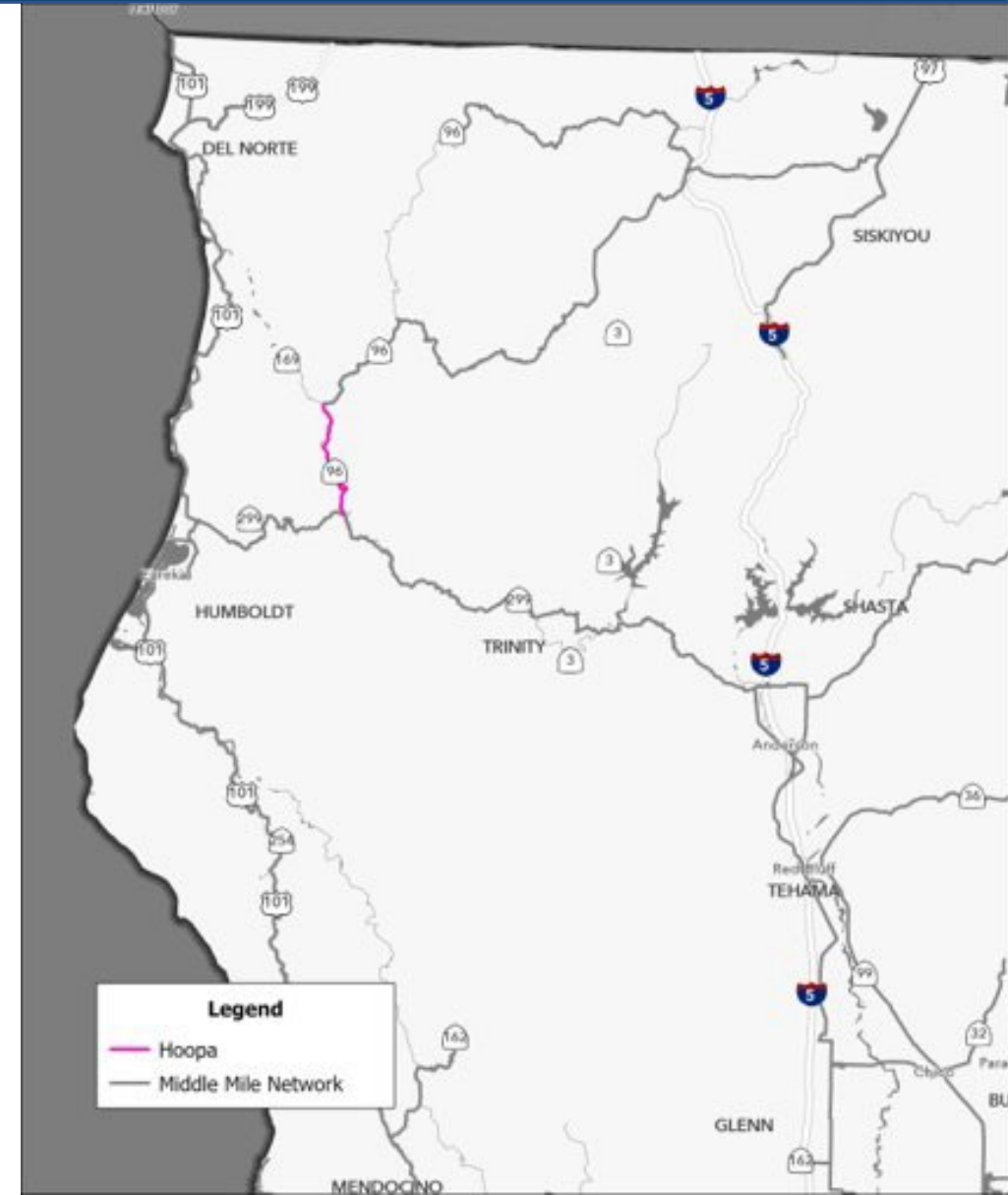
Caltrans Engagement

- Working with BIA on Initial Engagement before submitting LOIs to BIA and Landowners.
 - 60 LOIs for one allotment in development
- Caltrans, CDT, and other agency partners, held three virtual Tribal Engagement Sessions in early 2023 to share information and discuss the MMBN with tribal leaders and their designated cultural-environmental experts.
- Caltrans District cultural-environmental staff are conducting ongoing outreach and consultation with culturally-affiliated tribal governments on a project-by-project basis to identify and address potential cultural sensitivities or concerns related to the MMBN projects.

MMBI OVERVIEW

Joint Builds – Hoopa Valley

- The Hoopa Valley Tribe is a key partner in our joint build project to construct about 23 miles along SR96 in Humboldt County.
- They have completed 60% of the preconstruction phase and plan to finalize all plans by January 2025, obtain permits by March, and begin construction in April 2025.

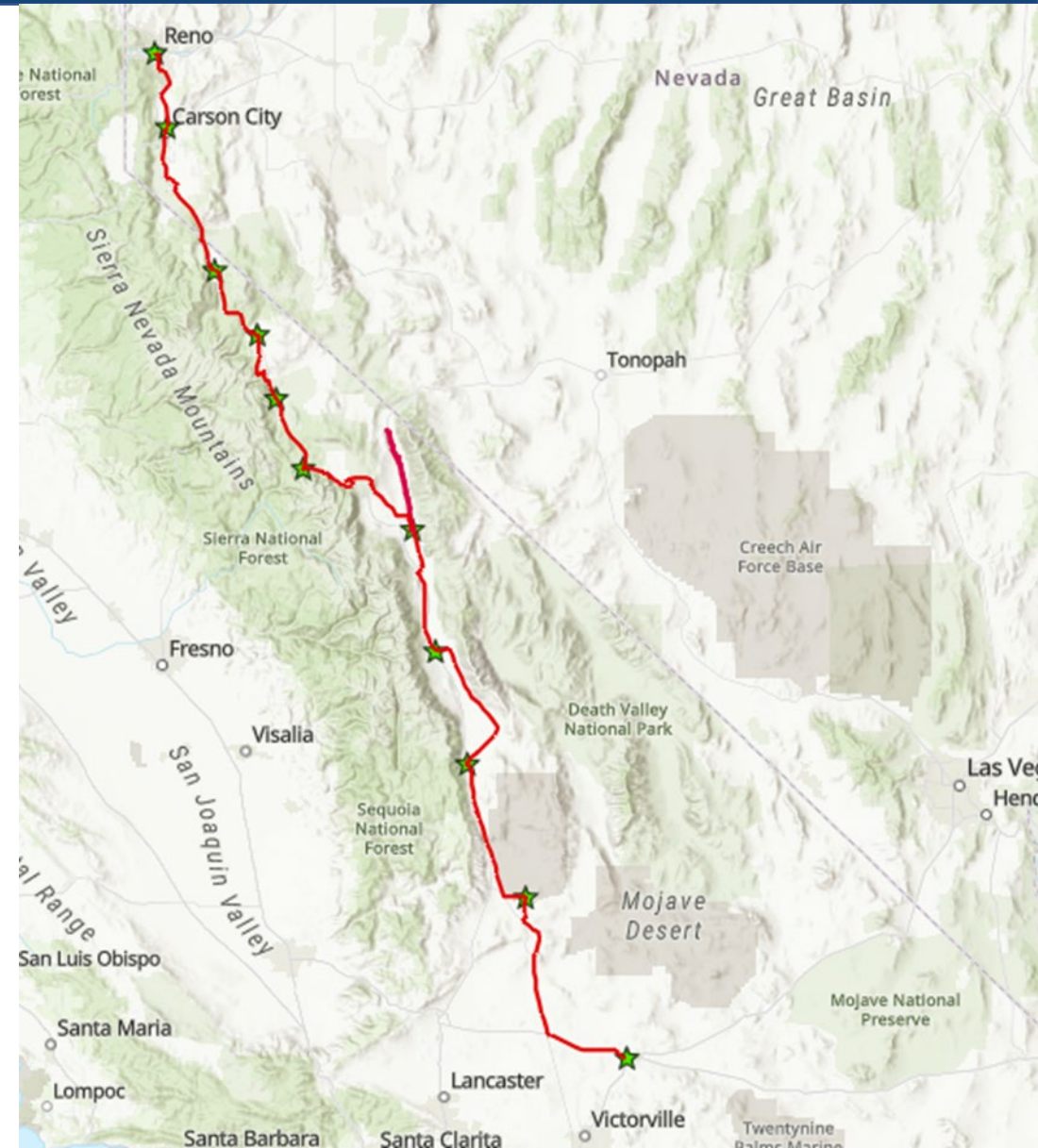


MMBI OVERVIEW

D395 Network Purchase from CBC



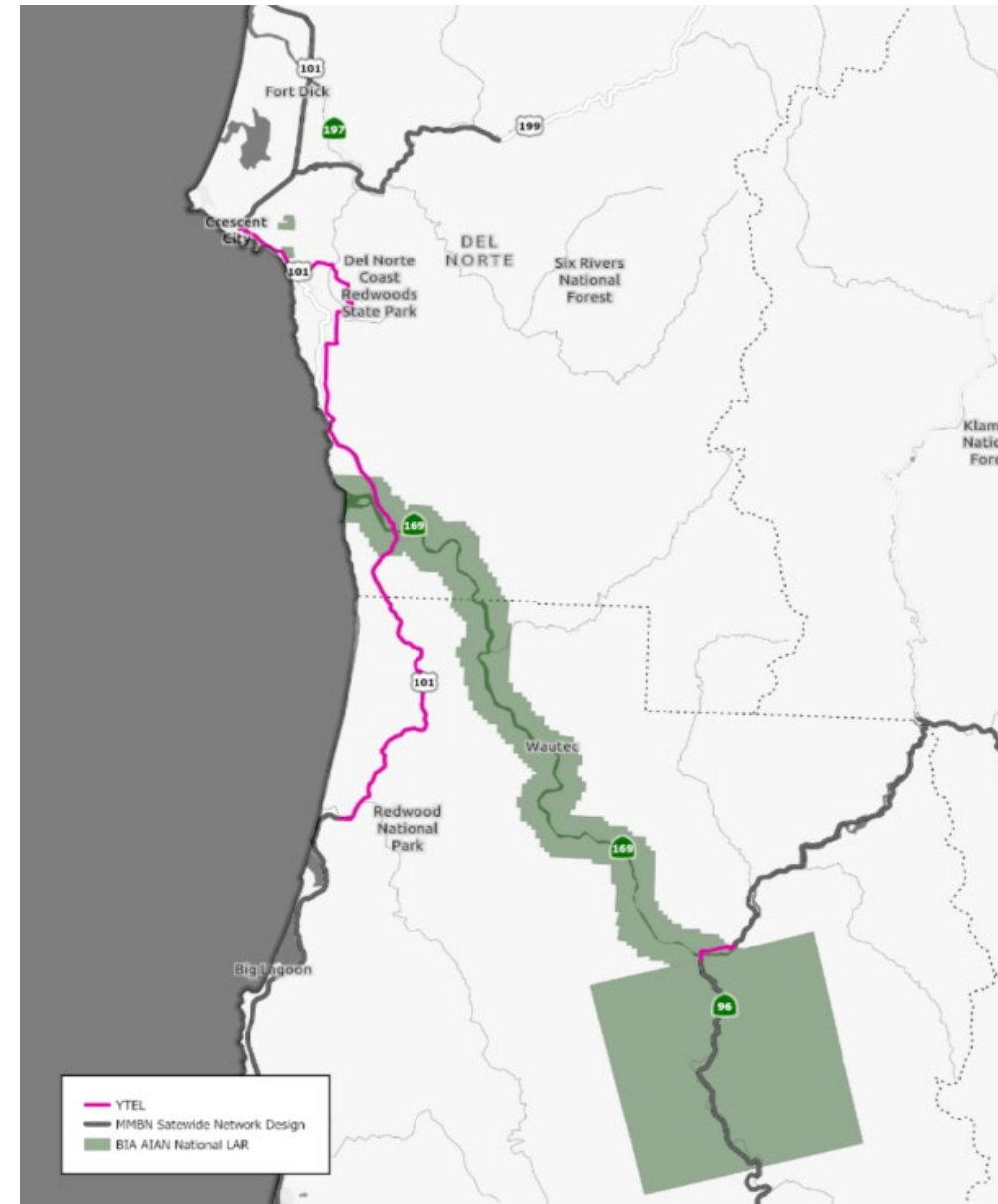
- CDT has purchased this network along Hwy-395, and CBC holds the existing permits. CDT is working to take ownership of these permits.
- BIA ROW application, for Washoe Tribe CA & NV easement meeting scheduled with Tribal Chairman in December to review the tribal policy and to ask for tribal resolution to allow for the transfer of right of way to CDT.



MMBI OVERVIEW

Joint Builds - YTEL

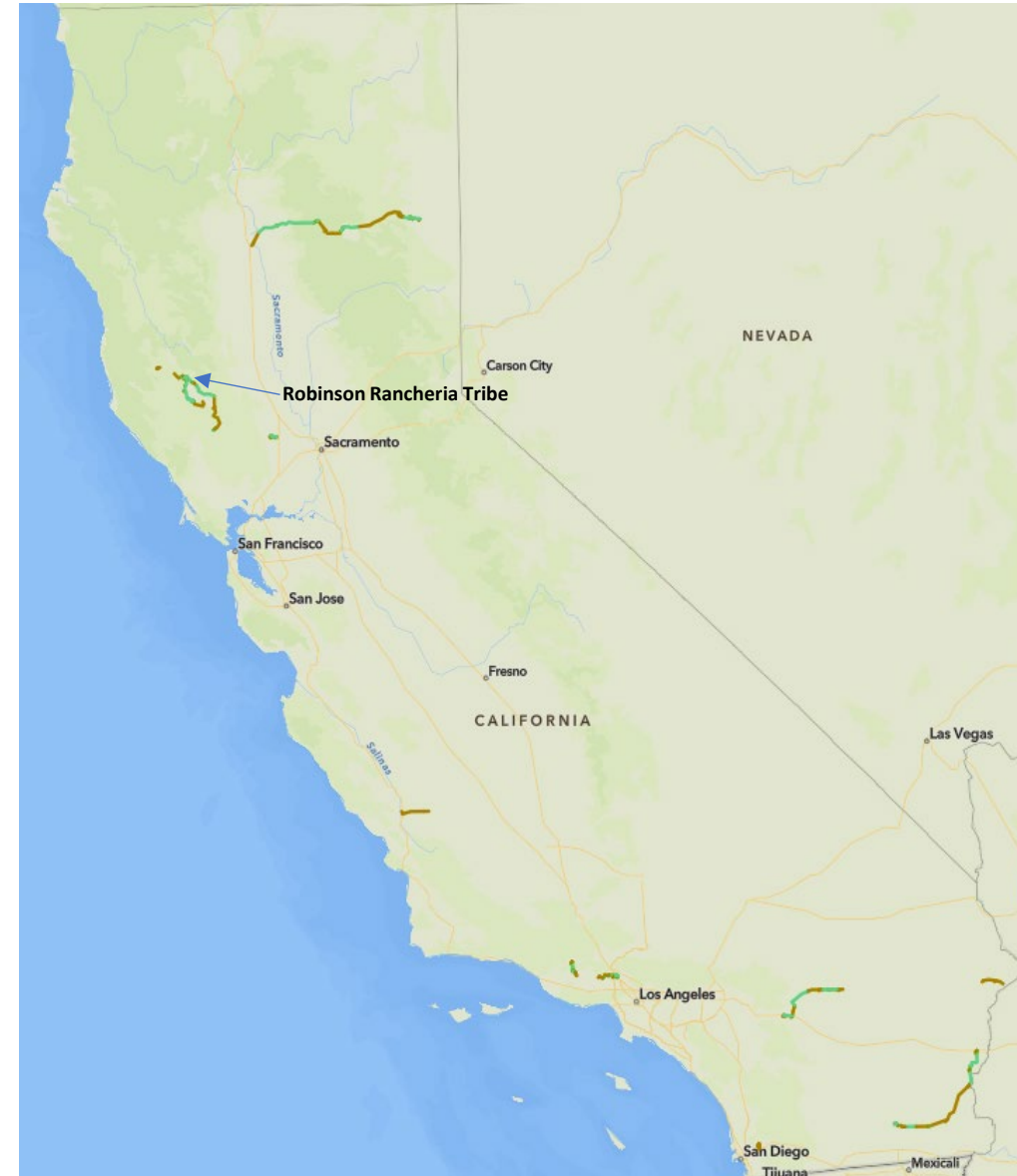
- YTEL joined as a new partner in late July, leasing 46.5 miles from Orick to Crescent City and 2.7 miles at Weitchpec, crossing Yurok tribal land at Humboldt and Del Norte Counties.
- They are in preconstruction, working to obtain permits to begin installation by beginning of the new year.



MMBI OVERVIEW

Joint Builds – American Dark Fiber

- ADF partnered with CDT in late August 2024; new greenfield build with approximately 400 miles across the State
- BIA application will be submitted by 11/30/2024 to the Robinson Rancheria Tribe in Lake County.
- Forecasted to begin installation by beginning of 2025.



MMBI OVERVIEW

Hub Collaboration – Active Engagements

- Twenty-Nine Palms Band of Mission Indians
- Fort Yuma Quechan Indian Tribe
- Coyote Valley Band of Pomo Indians



MMBI OVERVIEW

MMBI Resources and Contacts

- **Interactive Map:**
[Project | Network Interactive Map](#)
- **MMBI Project Delivery Manager**
Shannon.MartinGuzman@state.ca.gov
- **VP of Tribal Broadband, *Golden State Net***
Matt.Rantanen@goldenstatenet.org

Sign up:
Broadband for All Newsletter



Right of Way Process Infrastructure on Tribal Lands

Caltrans Division of Right of Way and Land Surveys and Traffic Operations

November 14, 2024



Transportation Infrastructure

Transportation Projects

Follow the Department of Interior Regulations as described in 25 CFR 169

BIA Tribal Lands - Grant of Right of Way from BIA

Non-BIA Tribal Lands – Negotiation occurs directly with the Tribe

Utility Infrastructure



Utility Infrastructure

Caltrans and BIA recognize utility infrastructure as a separate use case and therefore utility companies are required to obtain their own rights through the application process



Encroachment Permits

Caltrans Encroachment Permits

- Caltrans encroachment permit needs to be obtained for all encroachment activities within State highway right of way limits, under federal and state laws/regulations.
 - Utilities
 - Special events – marathons, parades, local celebrations, etc.
 - Driveways, vegetation management, etc.
 - Collection of seeds (Consent letter).
- Caltrans encroachment permit is a revocable permissive authorization for temporary encroachment.
 - Caltrans encroachment permit doesn't provide any property rights.
 - Caltrans encroachment permit is not transferable to another entity or individual.

Caltrans Encroachment Permits

- Encroachment requests are reviewed for:
 - Impacts on highway operations,
 - Traffic safety and worker safety, and
 - Compliance with applicable federal and state laws/regulations.
- Caltrans requires the applicant to obtain all necessary approvals/permissions from various regulatory agencies and entities involved.
 - This includes consent from land or easement owners within the state highway right-of-way.
- Encroachment Permit Office verifies to see if tribal consultations happened or if there are established communications between the permittee and the tribe.
- Encroachment Permit Office also confers internally with Caltrans environmental team and the Native American Liaison, as needed.

Thank you

Rene Fletcher
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Right of Way and Land Surveys
Caltrans
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Deputy Division Chief
Division of Traffic Operations
Caltrans
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Tribal Representative Presentations & Panel

Pilar Thomas, Quarles & Brady

Michelle Lee, The Circle Law Group

Denise Turner Walsh, Attorney General, Rincon Band of Luiseño Indians

November 14, 2024

CPUC-BIA Right-of-Way Workshop

Overview of Federal Right-of-Way Requirements: Setting Context for Discussion

Agenda

1. Background Federal Laws
2. Key Legal Considerations

Overview of Federal Laws

- Non-Intercourse Act, 25 USC 177
- ROW Acts, 25 USC §§ 323-328, 357
- ROW Regulations, 25 CFR Part 169

Non-Intercourse Act – 25 U.S.C. 177

- Originally enacted in 1790 (Trade and Intercourse Act); last amended in 1894
- Grounded in efforts to keep non-Indians from acquiring Indian lands

"No purchase, grant, lease or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution"

Walker River Paiute Tribe v. Southern Pacific Transp. Co., 543 F.2d 676 (9th Cir. 1976)

Agreements to convey interest in lands not approved by the federal government are invalid under federal law; cannot have an "implied" license or right

Right of Way Statutes

- 311 – 322 Original ROWs for specific purposes (late 1800's) – still effective
- 323 – Right of Way for all purposes – 1948 Act
 - General authority to approve ROW, subject to conditions set by the Secretary
- 324 – ROW requires approval of tribe
- 325 – just compensation required
- 326 – doesn't affect the Federal Power Act, nor repeal any existing authorities
- 328 – Secretary will issue rules and regulations for the approval of ROWs

ROW Issues Related to Individual Indian Lands (Allotments)

- 25 USC § 357 – authorizes “lands allotted in severalty” to be condemned for any public purpose under state laws, “in same manner as land owned in fee”
 - Remaining provision in General Allotment Act
- Public Service Co of New Mexico v. Barboan, 857 F.3d 1101 (10th Cir. 2017)
 - Issue: Whether electric utility company could condemn allotted lands on the Navajo Nation in New Mexico under 357
 - Held: Could not condemn when Navajo Nation held a partial interest in the allotted lands
 - Rationale: provision limited to individual Indian owned lands; in severalty not intended to apply to tribal ownership interest

Fractionated Interests – American Indian Lands Consolidation Act, 25 USC § 2201 et seq.

- § 2213 - If Tribe owns partial interest, treated as tenant in common, so right to consent to ROW (but not required)
- § 2218 - Approval of ROWs
 - Allotted owners approval – percentage based on number of interest holders
 - Secretary can approve on behalf of certain allottees
 - If Tribe owns partial interest, not required to consent

Right of Way Regulations, 25 CFR Part 169

- Subpart A - Purpose, Definitions, General Provisions (§§ 169.1 - 169.14)
- Subpart B - Service Line Agreements (§§ 169.51 - 169.56)
- Subpart C - Obtaining a Right-of-Way (§§ 169.101 - 169.130)
- Subpart D - Duration, Renewals, Amendments, Assignments, Mortgages (§§ 169.201 - 169.212)
- Subpart E - Effectiveness (§§ 169.301 - 169.305)
- Subpart F - Compliance and Enforcement (§§ 169.401 - 169.415)

ROW Regs – Key General Provisions

- Covers the following energy infrastructure:
 - Transmission and distribution lines (but doesn't apply to Federal Power Act easements)
 - Access roads
 - Pipelines
- Doesn't apply to congressionally granted ROWs (such as railroads)
- Retains tribal jurisdiction
 - But see, A-1 v Strate, 520 U.S. 438 (1997)
- Does not allow state taxation, confirms tribal taxation
 - But see, Big Horn County Electric Cooperative Inc. v. Adams, 219 F.3d 944 (9th Cir. 2000)

ROW Regs – Service Line Agreements (Subpart B)

- Last mile – utility connection between distribution lines to customer's home – 169.51
 - 14.5 kv for house, business
 - 34.5 kv for irrigation or commercial/industrial uses
- Need Tribe approval before construction
- Generally don't need BIA approval
 - But must file with BIA after execution of SLA

Key Legal Considerations

- Scope of state versus tribal law and jurisdiction over easements
 - Regulatory
 - Taxation
- Utility practice and rules
 - tariffs related to EV charging stations
 - Service line agreement
- Intersection with multiple uses
 - i.e., broadband/telecom use of electric power lines
 - Applicability of CPUC rules vs FCC

Thank you



THE CIRCLE LAW
GROUP

Rights-of-Way, Easements, & Service Line Agreements

Michelle Lee, Attorney
The Circle Law Group





Tribal Trust Land

1. Tribal trust land is land that is owned by the United State of America and held in trust for the benefit of a particular tribe.
2. Tribal trust land is managed by Tribe in collaboration with Bureau of Indian affairs.
 - Land title records, for that land is recorded in the land title and records office or LTRO.
 - Easements and ROW recorded with a county are not enforceable against the United States.

Title to trust land(s) is held by the United States of America for the benefit of a Tribe(s) or an individual Indian(s).

This type of title document will usually read, “To the United States of America in trust for *name of Tribe (from Federal Register published list of Tribal Entities Eligible to Receive Services) or individual.*”

Unfortunately, roads have been built, powerlines have been constructed, and infrastructure has been developed that cuts through Tribal trust land without proper documentation or approval.





Definitions

Right of Way (ROW): A right-of-way is an easement or a legal right to go over or across tribal land, individually owned Indian land, or BIA land for a specific purpose, including but not limited to building and operating a utility line or road.

- An easement for ROW creates a non-possessory interest in land owned by another person,
- consisting of the right to use or control the land,
- on an area above or below it, for a specific limited use or enjoyment;
- can be protected against third parties; and is not terminable at will by the Indian landowner(s).

- However, title to the property remains with the landowner(s) regardless of how a ROW encumbers the title. Easements can be created by a grant, reservation, agreement, Tribal Authorization, or an Act of Congress.

- **A ROW application is required under Part 169 - Rights-of-way Over Indian Land (5 U.S.C. 301; 25 U.S.C. 323-328; 25 U.S.C. 2201; 80 FR 72534).**





Definitions

Easement: An easement is a voluntary and perpetual legal agreement between a landowner and another party that grants a use right to the easement holder and limits the uses of the land by the landowner.

- Easements granted by the BIA over trust lands, or by the Tribe (not requiring a grant by BIA) over Tribal trust lands, will be submitted to the BIA for its records and for recordation by the LTRO.
- Most ROWs are granted as an easement by the Secretary of the Department of the Interior (DOI) (as redelegated down to the appropriate Indian Affairs (IA) approving official) pursuant to the Act of February 5, 1948 (25 U.S.C. 323-328),
- with consent of the Indian landowner(s) (or consent supplied by the Secretary in certain cases).
- There are also an increasing number of conservation easements over lands that protect the land from development. This is an evolving area of land use restrictions on Tribal trust land that may come up during the fee-to-trust process.





Definitions

Service line agreement: A service line agreement is an agreement signed by a utility provider and landowner 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. A service line agreement originates from a ROW.

- Service lines generally branch off from facilities for which a valid ROW was obtained. A service line is a utility line running from a main line, transmission line, or distribution line that is used only for supplying telephone, water, electricity, gas, internet service, or other utility service to a single house, business, or other structure.
- In the case of a power line, a service line is limited to a **voltage of 14.5 kv or less, or a voltage of 34.5 kv or less** if serving irrigation pumps and commercial and industrial uses.
- To obtain access to Indian land for service lines, the ROW grantee must file a service line agreement (SLA) with BIA, to include the requirements of Subpart B (25 CFR 169.51-56). **NOTE:** Compensation not required.

§ 169.54 What are the consent requirements for service line agreements?

- (a) Before the utility provider may begin any work to construct service lines across tribal land, the utility provider and the tribe (or the legally authorized occupants or users of the tribal land and upon request, the tribe) must execute a service line agreement.
- (b) Before the utility provider may begin any work to construct service lines across individually owned land, the utility provider and the owners (or the legally authorized occupants or users) must execute a service line agreement





Title Status Report

A title status report will show all valid recorded encumbrances on tribal trust land.

- The Federal Government's fiduciary responsibility, under 25 U.S.C. 5, is to administer title on behalf of the Indian landowners by ensuring lawful and proper recordation of title documentation for transactions on trust and restricted Indian lands.
- The official recordation of the legal description, owners, and existing encumbrances of these lands is recorded and maintained by the BIA LTRO in accordance with 25 CFR 150. LTRO is also responsible for issuing a certified TSR verifying ownership and any or all restrictions, encumbrances, and/or limitations.



United States Department of the Interior
Bureau of Indian Affairs
Title Status Report

Report Certification Time and Date: 11/13/2000 08:00:00 PM

Requestor: JHECTOR Date/Time: 11/16/2023 12:22:27

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>
536	PIT RIVER	T 5118	SACRAMENTO, CA	PACIFIC REGIONAL OFFICE	NORTHERN CALIFORNIA AGENCY	Both

Original Allottee:

See Appendix A for Land Legal Descriptions

Title Status

Tract 536 T 5118 is held by the United States of America in trust for the land owner(s) with trust interests and/or by the land owner(s) with restricted interests and/or fee simple interests, as listed in Appendix "B" attached to and incorporated in this Title Status Report.

The title to Tract 536 T 5118 is current, complete, correct, and without defect. Ownership is in unity and interests are owned in the following title status: trust.

The tract ownership is encumbered by the title documents which have been approved by a properly delegated Federal official and are required to be recorded by law, regulation, or Bureau policy as listed on Appendix "C" attached to and incorporated in this Title Status Report.

See Appendix D for all other documents that are required to be recorded by law, regulation or Bureau policy.

No Tract Notes or Coded Remarks for this tract.

This report does not cover encroachments nor any other rights that might be disclosed by a physical inspection of the premises, nor questions of location or boundary that an accurate survey may disclose. This Report also does not cover encumbrances, including but not limited to irrigation charges, unpaid claims, not filed or recorded in this Land Titles and Records Office. This report does not state the current ownership of the interests owned in fee simple but states the ownership at the time the interest ceased to be held in trust or restricted ownership status.

This Title Status Report is a true and correct report of the status of title to the real estate described herein according to the official land records recorded and maintained in this office.

TSR pg. 1

Appendix "A"

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>
536	PIT RIVER	T 5118	SACRAMENTO, CA	PACIFIC REGIONAL OFFICE	NORTHERN CALIFORNIA AGENCY	Both

Land Legal Descriptions

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>State</u>	<u>County</u>	<u>Meridian</u>	<u>Legal Description</u>	<u>Acres</u>
33	043.00N	013.00E	CALIFORNIA	MODOC	Mount Diablo	SW NW	40.000
						N NW	80.000
TOTAL TRACT ACRES:							120.000

Appendix "B"

<u>Land Area</u> 536	<u>Land Area Name</u> PIT RIVER	<u>Tract Number</u> T 5118	<u>LTRO</u> SACRAMENTO, CA	<u>Region</u> PACIFIC REGIONAL OFFICE	<u>Agency</u> NORTHERN CALIFORNIA AGENCY	<u>Resources</u> Both
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Effective Ownership as of 10/23/2004

----- OWNER -----				---- DOCUMENT ----			NAME ACQUIRED	FRACTION	AGGR SHARE	AGGREGATE	
Tribe & Code	ID No. / DOB	Indian / NonIndian	Title	Interest*	Class	Type	Number	SURNAME / FIRST NAME	AS ACQUIRED	CONVERTED TO LCD	DECIMAL
536 PIT RIVER TRIBE, CALIFORNIA (INCLUDES XL RANCH, BIG BEND, LIKELY, LOOKOUT / MONTGOMERY CREEK AND ROARING CREEK RANCHER IAS)	T000010	Tribe	Trust	All	Deed-TS	ACT 1934	243	BANDS OF PIT RIVER INDIANS OF CALIFORNIA	1 1	1 1	1 1.0000000000

* "All" means the equitable beneficial interest and the legal title interest merged together.

IN TRUST:	1	1.0000000000
IN FEE:	0	.0000000000
TOTAL:	1	1.0000000000

Appendix "C"

<u>Land Area</u>	<u>Land Area Name</u>	<u>Tract Number</u>	<u>LTRO</u>	<u>Region</u>	<u>Agency</u>	<u>Resources</u>
536	PIT RIVER	T 5118	SACRAMENTO, CA	PACIFIC REGIONAL OFFICE	NORTHERN CALIFORNIA AGENCY	Both

Ownership of Tract 536 T 5118 is encumbered by the following:

NO REALTY DOCUMENTS FOUND

NO REALTY DEFECTS FOUND

NO TITLE DEFECTS FOUND

NO ENCUMBRANCES FOUND



Roadway Easements

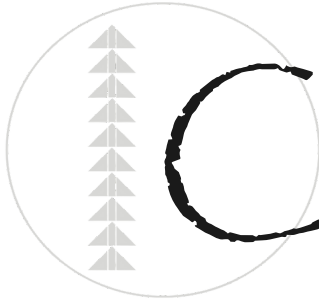
25 U.S. Code § 311 - Opening highways

The Secretary of the Interior is authorized to grant permission, upon compliance with such requirements as he may deem necessary, to the proper State or local authorities for the opening and establishment of public highways, in accordance with the laws of the State or Territory in which the lands are situated, through any Indian reservation or through any lands which have been allotted in severalty to any individual Indian under any laws or treaties but which have not been conveyed to the allottee with full power of alienation.

(Mar. 3, 1901, ch. 832, § 4, [31 Stat. 1084](#).)

See, United States v. Oklahoma Gas & Electric Co.- Permission to install electric lines in road easement established pursuant to 25 USC §311 through an individual Indian allotment.



The logo features a circle containing a vertical stack of seven upward-pointing triangles. To the right of this circle, the text "Caltrans ROW" is written in a stylized, hand-drawn font.

Caltrans ROW

1. If a Caltrans right of way was established under the jurisdiction of the 1941 statute, other utilities may install infrastructure into the Caltrans right-of-way.
2. However, if not, other utilities may not install infrastructure into the Caltrans right-of-way, but they must obtain their own right of way from the Indian Tribe.
3. In addition, even if Caltrans right-of-way was established under the 1941 statute, sometimes the utility infrastructure is not built completely within the Caltrans easement but is located on tribal land outside of the Caltrans easement.
4. In such a case a new right-of-way with the Indian tribe is necessary.
5. Today, it might be best to evaluate and if there is any question establish the ROW for the full line through Tribal trust land.





Caltrans

One concern of Indian tribes is that there may not be a valid and recorded Caltrans right-of-way at all.

To determine whether there is a valid Caltrans easement, one must look to the title status report or TSR of the land in question. A TSR may be requested for a particular tract of Tribal trust land from the Bureau of Indian Affairs.



UTILITIES USE OF HIGHWAY RIGHTS-OF-WAY ON TRIBAL LANDS ¶

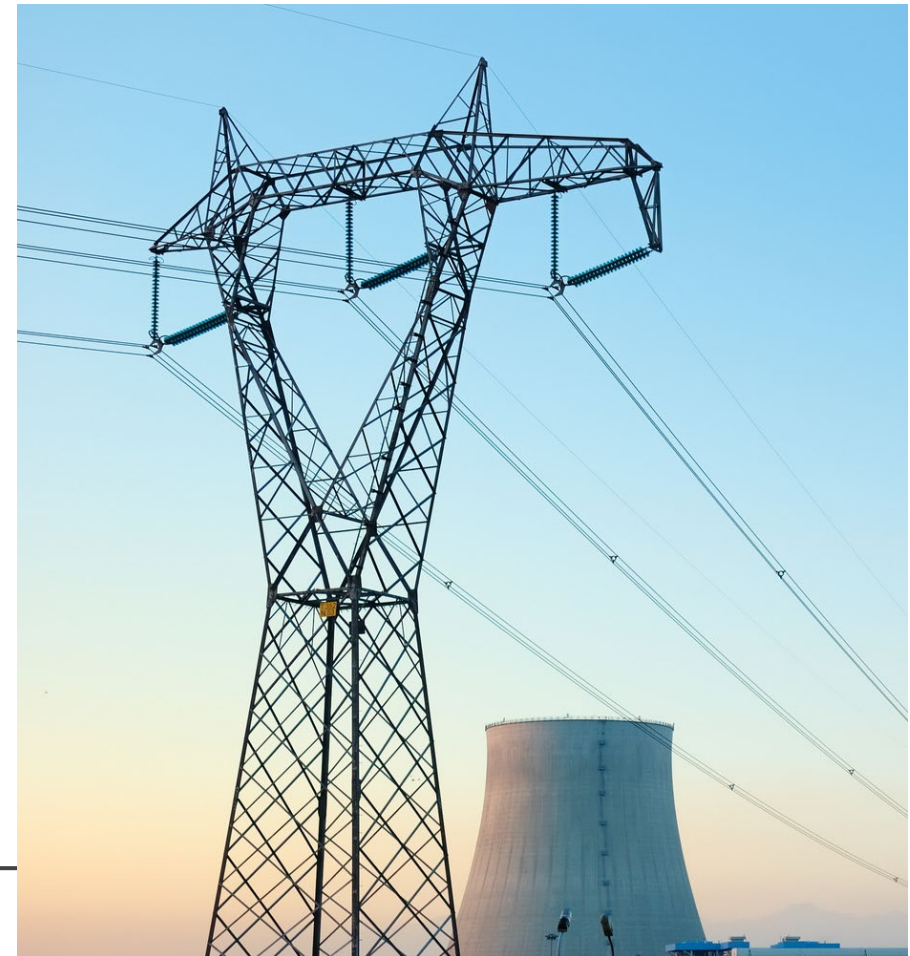
✕	<u>1901 Act Section 3 Telecom Easement</u> ✕	<u>1901 Act Section 4 Highways (SR96)</u> ✕	<u>1948 Act</u> ✕	<u>No BIA Grant Exists</u> ✕
Tribal Consent Required? ✕	No ✕	No ✕	Yes ✕	Yes, depending on how title is held ✕
Compensation to Tribe? ✕	No ✕	No ✕	Yes ✕	Yes, depending on how title is held ✕
Extent of Utilities' Rights in Rights-of-Way ✕	May install telecom facilities only to extent of rights granted in easement ✕	Grant under Section 4 of 1901 Act has been interpreted to allow all utilities to install facilities in the 1901 highway rights-of-way without BIA's consent or consultation ✕	No cases on point? ✕	No rights until agreement is signed. ¶ Grant could be BIA right-of-way, Tribal consent or easement. ¶ There is no independent right to use state, county or tribal roads without some type of grant. ✕
Facilities installed outside of Highway Rights-of-Way ✕	Must have grant from BIA, Tribe or property owner ✕			✕





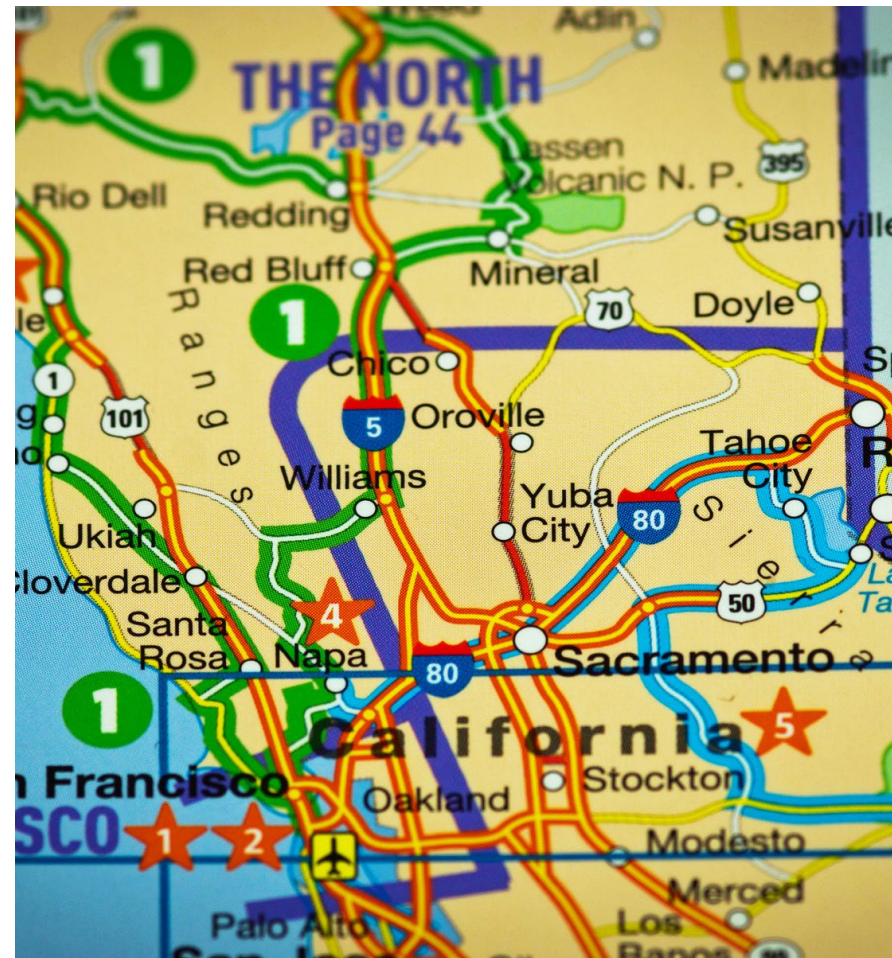
Telecommunications, Broadband & Fiber (25 USC 319)

- Grants of easement for several types of communications and facilities are limited to a term not to exceed 50 years from the date of issuance of the grant.
- The width of these grants vary in size from 50 feet each side of the centerline to a 400x400 feet area depending on the Act under which the ROW is granted and the intended use.
- Any ROW granted in excess of 50 feet must be fully justified and clearly identified in the application.
- NOTE: 25 USC § 319 covers pre-1948 ROW's or ROW's specifically created by that statute. It cannot be used for new ROW's under the current regulations.



PG&E

1. There are 52 tribes in northern California that are in the PG&E service area who have tribal trust land. We know of several tribes in this group that have PG&E infrastructure including powerlines, but there is no recorded service line or right of way on the TSR. What do we do?
2. Initiate a right of way application.
3. Prepare service line agreements for those segments that disperse, power or utilities from the right of way to another point on Indian land.





Many types of easements

1. Railroads
2. Public roads and highways
3. Access roads
4. Service roads or trails
5. Public and community water lines
6. Public sanitary and storm sewer lines
7. Water control and use projects
8. Oil and gas pipelines
9. Electric transmission and distribution systems (power lines, poles, towers, etc.)
10. Telecommunications, broadband and fiber optic lines
11. Aviation and air rights
12. Conservation easements
13. Temporary construction easements
14. Utility corridors
15. Power projects
16. FERC licensing
17. Irrigation



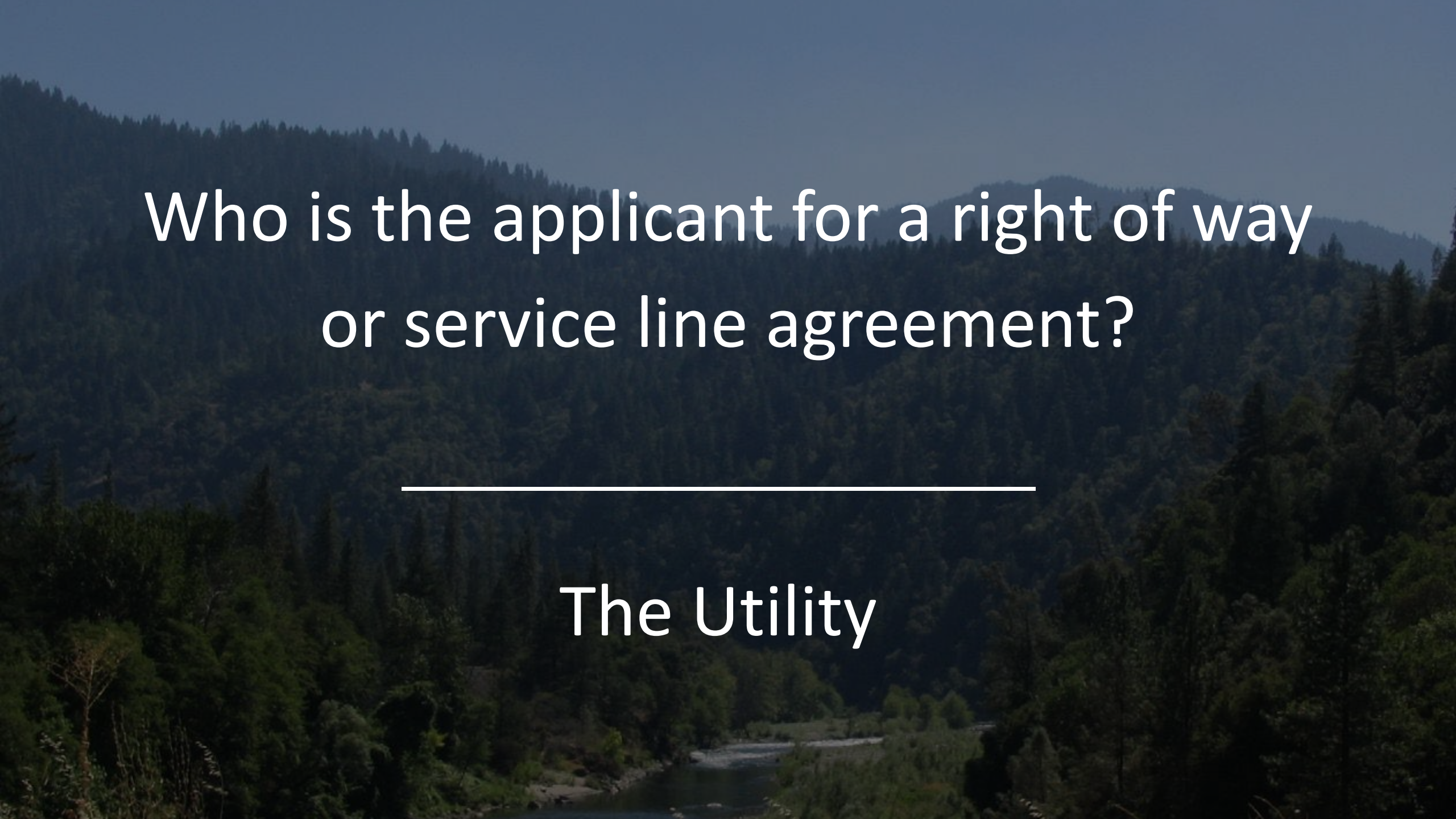


Navigating the Process

The following items will be addressed in more detail by the next panelists:

- ROW documents required from the applicant
- Requesting a certified Title Status Report (TSR)
- Process for reviewing a ROW application
- Completion of the BIA ROW checklist for the required documents
- Review of the applicant's appraisal
- Reviewing certified TSRs for land status and encumbrances
- Preparing the Regional Director's or Agency Superintendent's Decision Letter
- Recording process in the Land Titles and Records Office (LTRO)
- Actions taken in the event of amendments, assignments, and mortgages





Who is the applicant for a right of way
or service line agreement?

The Utility

Is compensation always required for a Right-of-way through Indian Lands?

Compensation is required under 25 CFR part 162 however it may be waived by a tribe in certain limited circumstances.



Where To Go From Here

1. The first step is to identify any easements right of way or service line agreements that are recorded on the TSR for a particular parcel.
2. If infrastructure exists on the parcel, and there is no recorded in conference on the TSR, then the parties must work together to determine which instrument will be required for the infrastructure that is there. In the case where there is no recorded easement, the parties need to work together to identify which form of easement is required and proceed quickly to the application process.

In summary, it is important that the utilities, service providers and CalTrans work with Tribes to record the necessary easements for infrastructure that is located within Tribal trust lands.



Any Questions?





RINCON RIGHTS-OF-WAY

*Protectable Tribal Interests for
Water, Broadband & Power
on the Reservation*

RESERVATION OVERVIEW

Rincon Reservation was established in 1875 by Executive Order, surveyed in 1891 pursuant to the Mission Indian Relief Act as permanent homelands for the Rincon Band of Luiseno Indians.

The Reservation is approximately 5,000 acres located within the San Luis Rey Basin in northern San Diego County.

Reservation land is in a high wildfire risk area and sits atop a pristine aquifer that is the sole source of water for the community.

The Tribal Council consists of 5 democratically elected leaders with no separation of powers.

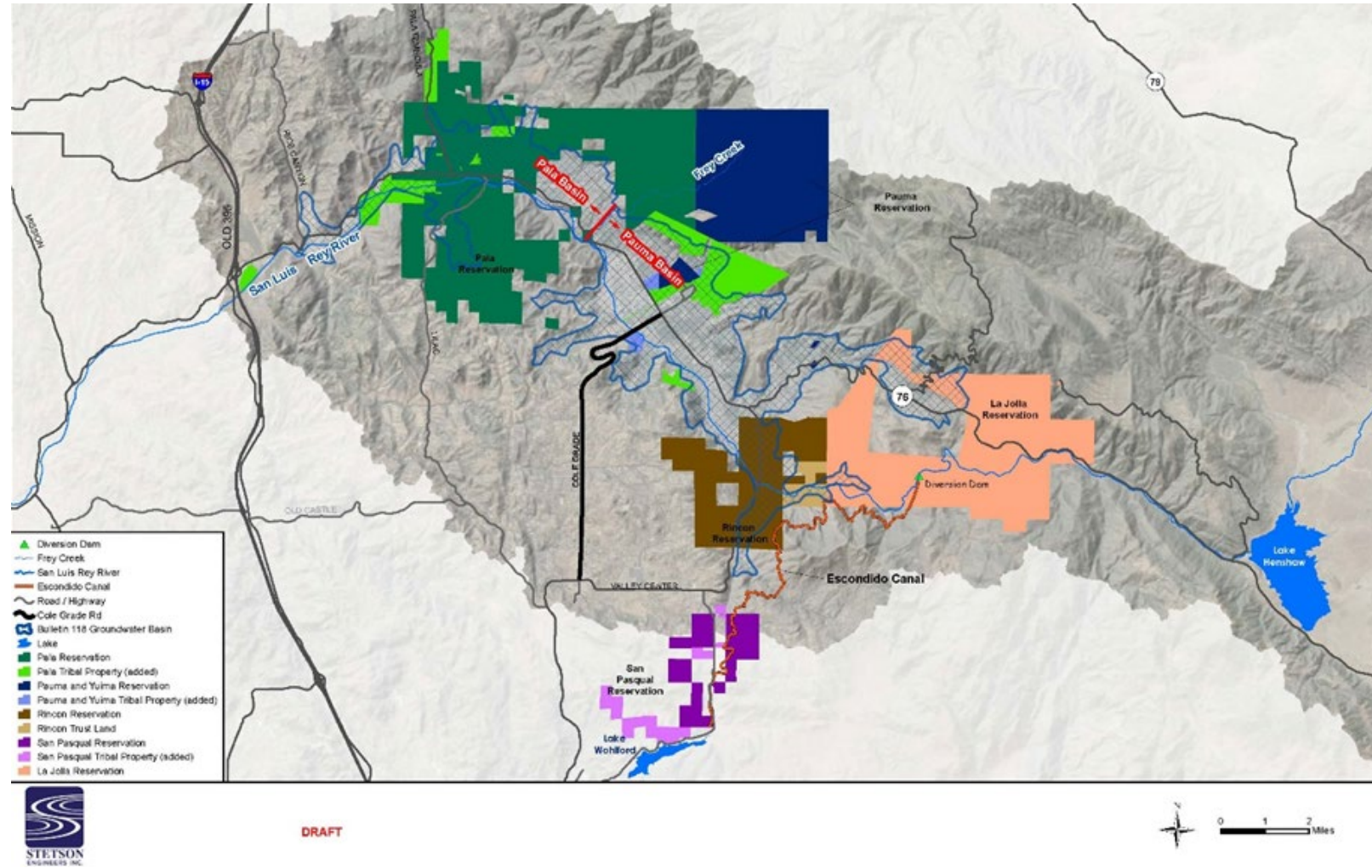
The Articles reserve consent for ROW and land assignments to the General Membership.



Mission Indian Relief Act Initial Authorization for ROWs on the Reservation

The MIRA authorized ROWs for conveyance facilities to be constructed on the reservations subject to the condition that the Indians who own and occupy the land consent and be supplied with sufficient water for domestic and irrigation use.

In 1894, 1914 and 1922, the United States (BIA and FERC) approved contracts, ROWs and licenses with non-Indians to impound SLR water and construct ROWs for canals over the Rincon and La Jolla reservations and a hydroelectric plant at Rincon which resulted in diverting 90% of the SLR River water to the City of Escondido and Vista Irrigation District.



LAKE HENSHAW DAM AND CANAL





RINCON WATER RIGHTS LITIGATION SAN LUIS REY RIVER 1969—1988

In 1969, Rincon sued the City of Escondido/Escondido Mutual Water Company to stop the diversion of SLR water.

1972, Rincon sued Vista Irrigation District and the United States filed its own suit.

The cases were consolidated and made it all the way to SCOTUS in 1984, *Escondido Mut. Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765 (1984), however the practical effect of SCOTUS' decision was to remand and restart the litigation at the district court.

The tribes went to Congress for legislative solution that resulted in the San Luis Rey Water Settlement Act of 1988.



SAN LUIS REY WATER SETTLEMENT ACT 1988—2017

The Act required the parties to execute a settlement agreement to resolve all claims and controversies in the pending district court case and FERC proceedings, P.L. 100-675, §104.

Once executed, the Act authorized payment of \$30M to the Bands and delivery of up to 16,000 af of supplemental water annually, P.L. 100-675, § 105(b)(1), 106(a).

The Act established the San Luis Rey Indian Water Authority (“IWA”) as a federal tribal entity with a trust relationship with the United States, P.L. 100-675, § 107.

The Act was amended in 2000 to secure the 16,000 af of supplemental water by earmarking the water saved through the lining of the Coachella Branch of the All American Canal.

The Act was further amended in 2015 when Congress approved settlement agreement and became final in 2017 when Congress approved the San Luis Rey Settlement Agreement Implementation, WINN Act, P.L. 114-322, S. 612, 114th Congress.

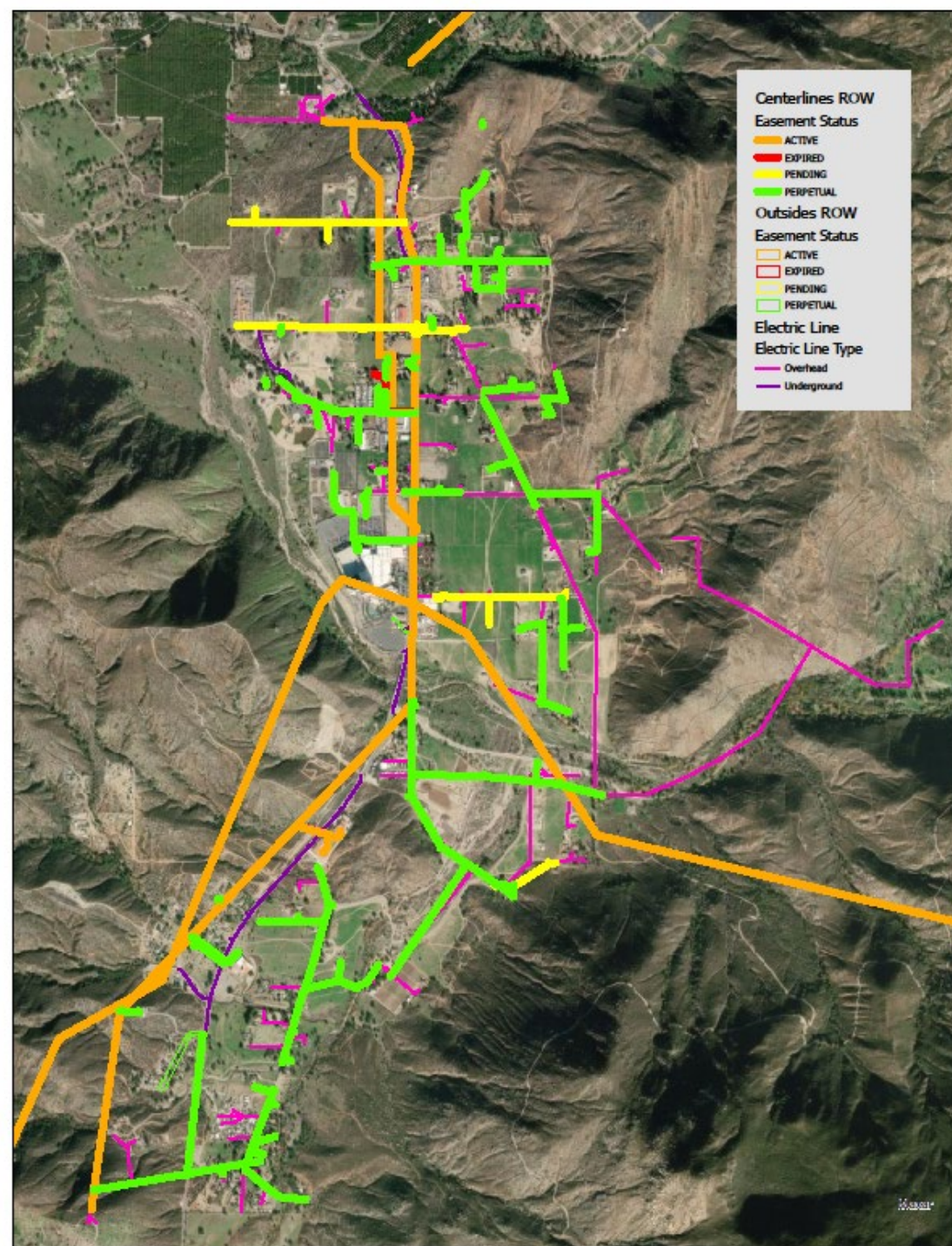
ELECTRICAL ROWS UNDER 25 U.S.C. 323 - 328

The 1948 statutory framework for approving ROWs across Indian lands specifically preserved any ROW approved under the 1920 Federal Power Act or any other statutory authority empowering the Secretary to grant ROWs.

Rincon General Membership consent must be obtained before the Secretary can approve ROWs at Rincon.

Under the Housing Act, the AMIHA built 80 homes on the Reservation in the late-70s, some in subdivisions through a lease, with outliers outside of the lease footprint without approved ROWs for electrical service.

Approval of land assignments for residential purposes has doubled the number units on the reservation.





RINCON'S RESPONSE TO NON-COMPLIANT ROWS, HOW & WHAT WE KNOW

To understand the extent of non-compliant ROW, Tribal staff copied all BIA ROW files, hired surveyors to map existing ROWs on reservation to understand nature and scope of unauthorized use of Indian land.

In doing so, surveyors found BIA data inaccurate – ROW file data does not match facilities location in the field, e.g., variations of up to 10' from center of ROW in the field is not uncommon.

SDG&E and BIA are under-resourced in terms of staffing, deficiencies that are largely falling on tribal governments to resolve the ROW gaps to expedite residential service.



IMPLICATIONS OF NON-COMPLIANT ROWS FOR RESIDENTIAL & BROAD BAND

- The lack of approved ROWs means some residences lack power and are dependent on generators to power homes – even after General Membership consent has been obtained. Homeowners are still waiting on SDG&E submission and BIA approval of ROW applications before SLAs can be obtained.
- The Band’s design for Broadband deployment on the reservation includes co-location on SDG&E utility poles, some of which lack approved ROWs.



IMPLICATIONS OF NON-COMPLIANT ROWS & SDG&E PROCESSES FOR MICROGRID PROJECTS

Rincon is developing four microgrid projects for a total of 1.8 MWs to reduce energy costs and increase reliability during a PSPS.

From 2017-2019, SDG&E cut the power to the reservation 18 times, many were not long duration, but some lasted between 12-34 hours causing forced evacuations of patrons/employees from Harrah's, shutting down N/S water supplies and WWTP, costing the Band millions in revenue that was not covered by business interruption insurance b/c outages were not in excess of 36 hours.

From a financing perspective, the microgrid projects are extremely time sensitive, almost 50% the funding is through the Direct Pay option under the Inflation Reduction Act.

The projects need to reach PTO at the end of 2025 in order to file early in 2026 for Direct Pay to avoid unbudgeted carrying costs for an entire year until 2027.



NEED FOR A FIRM COMMITMENT OF RESOURCES TO IMPROVE SDG&E TIMEFRAMES & PERFORMANCE

Upon submission of 90% plans, SDG&E needs:

- 16-18 wks to prepare preliminary design for any upgrades;**
- 3-4 wks for final design;
- 8-12 wks to complete land surveys for new easements for SDG&E upgrades following completion of preliminary designs;
- 8-12 wks for environmental review for new easements before the package is submitted to BIA for approval which takes 60 days (after completion of surveys);
- 16-24 wks for land surveys and environmental review for non-compliant easements for existing SDG&E facilities (this should start immediately);
- Unknown timeframe to install the SDG&E upgrades.

**The Tribe's Articles require General Membership approval which takes at least one month minimum.



QUESTIONS?

Denise Turner Walsh
Attorney General

Rincon Band of Luiseño Indians

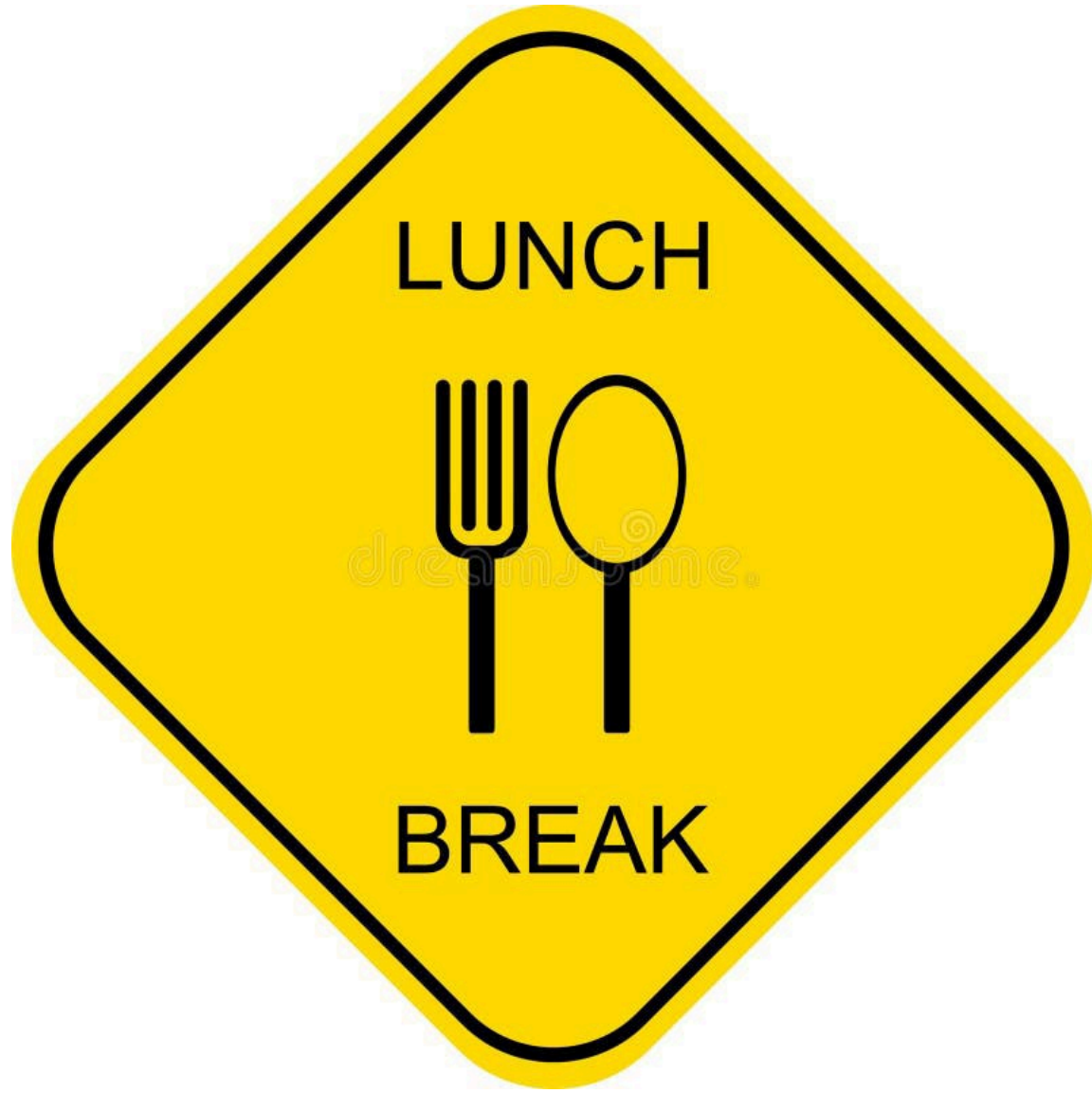
dwalsh@rincon-nsn.gov



*Rincon Band of
Luiseño Indians*

www.rincon-nsn.gov

Tribal Panel - Q&A Discussion Session



Energy Utilities / Telecommunications Providers Presentations

Larry Chung, Vice President, Customer Engagement Division, Southern California Edison

James Mackenzie, Principal Manager, Permitting, Joint Pole Authorization, & Real Properties, Southern California Edison

Jennifer Jett, VP of Operations , San Diego Gas & Electric

Estela de Llanos, VP of Land & Environmental Services, San Diego Gas & Electric

Jennifer Summers, VP of Design & Project Management, San Diego Gas & Electric

Julio Figueroa, Director of External Affairs & Tribal Liaison (CA/NV), AT&T

Ted Gilliam, General Counsel, Zayo

Joint State-Federal Rights of Way Workshop

Southern California Edison

Larry Chung Vice President, Customer Engagement Division

James Mackenzie Principal Manager, Permitting, Joint Pole, & Real Properties

Energy for What's AheadSM



Introduction to SCE

About Southern California Edison

- We deliver power to approximately 15 million people in a 50,000 square mile service area
- We provide electricity to 13 tribes and have over 40 tribes within our service area

Tribe and SCE Common Requests

SCE Programs and Requests on Tribal Lands

- Covered Conductor
- Targeted Undergrounding
- Deteriorated Poles Replacement and Operations & Maintenance
- Vegetation Management
- Inspections
- Tribal Lands Transfer Review

Tribal Requests to SCE

- Service Line Agreements
- Development
- Generation/Battery Storage
- EV Charging



Environmental/Cultural Analysis and Work Authorization

Prior to any work requiring ground disturbance, SCE Environmental Services Department will conduct environmental and cultural/archaeological analysis:

- On **Reservation/Allotted Lands**, environmental and cultural analysis will be done in accordance with National Environmental Policy Act (NEPA) and/or applicable **federal** regulations.
- On **private lands**, environmental and cultural analysis will be done in accordance with California Environmental Quality Act (CEQA) and/or applicable **state** regulations.
- Mitigation requirements to protect species or historic sites, including those documented through consultation, are recorded as part of SCE's Project.
- An Environmental Requirements Document (ERD) is given to construction teams prior to any ground disturbing work.
- An Environmental Requirements Document will indicate whether any environmental or cultural monitors must be present for the Project.
- SCE Government Lands team will send an application/request to the associated Tribe to request approval of necessary work.
- Most Operations and Maintenance (O&M) activities are categorically or statutory exempt from NEPA or CEQA and are conducted in compliance with other federal requirements, including Section 106 of the National Historic Preservation Act and state regulations.

Challenges

Long lead times in processing Service Line Agreements

- Additional facilities and rights may be needed

Delays in processing SCE's O&M requests

- Numerous SCE requests
- Tribal staffing/support
- NEPA Process

SCE scheduled power outages and work

- Tribes requesting affected addresses for notifications
- Unforeseen circumstances with Tribes requiring cancellation of work

Accomplishments

Agua Caliente – The Agua Caliente Casino Cathedral City – Removed 20+ poles within 6 months during the beginning of the pandemic

- Working closely with the Tribe and their Cultural Department
- Direct communication and collaboration between SCE and the Tribe
- In person site meetings to discuss and overcome issues

Morongo – Multiple service line extensions for their new builds

- The partnership between SCE, Morongo Administration and their district office, we were able to complete the work in 3-6 months

Soboba – 20+ outstanding projects within their lands

- Soboba taking the time to meet with SCE on all outstanding projects
- Receiving their input on how best to submit the work for their review

SCE Contacts

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Manager, Government Lands

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Aaron Thomas

Tribal Liaison

aaron.m.thomas@sce.com

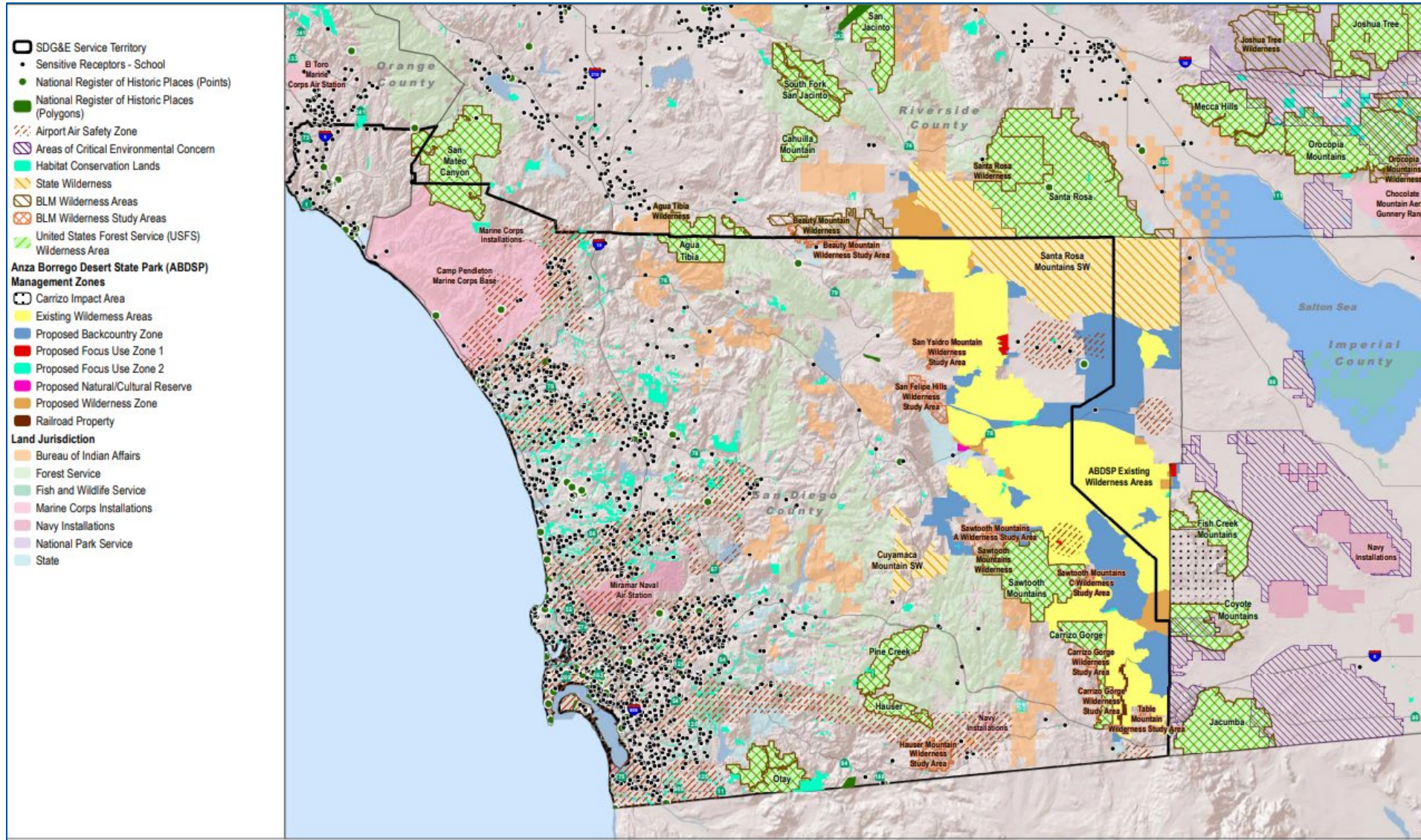
(760) 423-2392



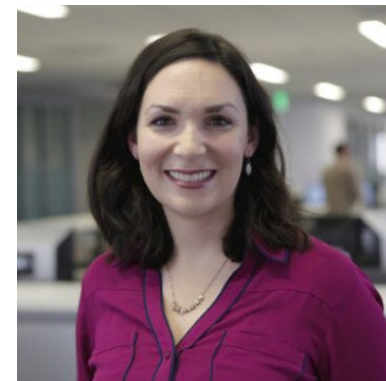
Facilitating Electrical Service on Tribal Lands



SDG&E is Proud to Serve Tribes and Support Stewardship in this Region



SDG&E Leaders In the Room Today



Estela de Llanos

Chief
Sustainability
Officer
VP – Land &
Environmental
Services

Jennifer Jett

VP – Operations
Support and
Tribal Affairs

**Jennifer
Summers**

Director – Design
and Project
Management

**Vanessa
Vandever**

Senior Tribal
Affairs Manager

John Ritter

Land Services
Manager

Shannon Foglia

Cultural
Resources Team
Lead

SDG&E's Tribal Lands and Cultural Resources Strategic Initiative

Key Focus Areas:



Cultural Resources

Enhance awareness, understanding, respect, stewardship, and compliance around cultural resources on tribal lands



Tribal ROW Strategy

Develop and implement proactive tribal rights of way (ROW) strategy



Tribal Customer Connections

Streamline customer new service connections on tribal lands

SDG&E New Service Connection: Stakeholders

Internal SDG&E Parties



Design and
Project
Management



Environmental
Services



Land
Services



Call Center



Electric
Regional
Operations



Construction

External Parties



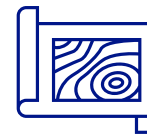
Customer



Electrician



Tribal
Government



BIA

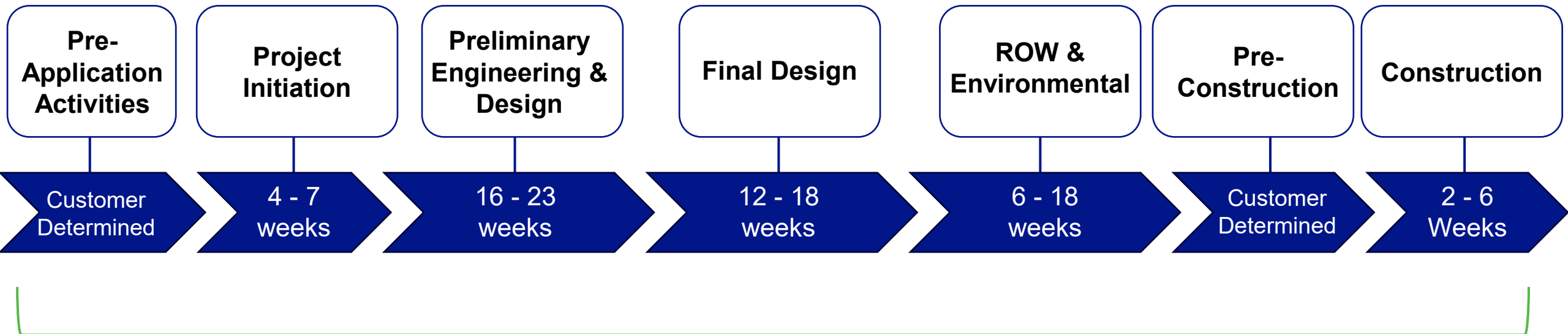


Consultant



AMIHA*

SDG&E New Service Connection: Typical Timeline



Total Time: Between 40 – 72 Weeks + BIA Survey Review Times

When is acquisition of a new right of way required?



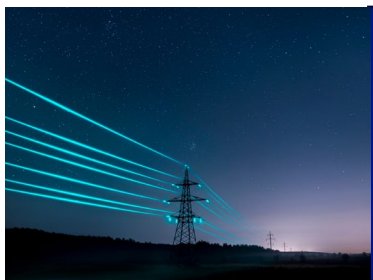
Installing a new distribution line that serves more than one home or building

Generally requires a new right of way



Upgrading existing distribution facilities

May or may not need an amended right of way, depending on the upgrade and circumstances



Installing a new service line, connecting from existing electric distribution not in an easement

BIA requires a new right of way up to the point of service

ROW Acquisition Process

SDG&E New Service Connection Process



Deep Dive: SDG&E ROW & Environmental Review Process



Environmental Services completes required assessments and documentation



Land Services conducts prior rights research and interprets to determine if a Service Line Agreement (SLA) or ROW is required



Land Services obtains Consent or Tribal Resolution approving a ROW



Land Services requests Survey Plat & Legal description. Submits to BIA (BILS) Surveyor



Land Services receives approved survey from BIA (BILS) Surveyor and environmental documents from Environmental



Land Services submits ROW Application to the BIA, including environmental documents



Land Services receives ROW Grant from the BIA and releases the project to DPM

Service Line Agreement Acquisition Process

SDG&E New Service Connection Process



Deep Dive: SDG&E Service Line Agreement Process



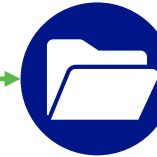
Land Services conducts prior rights research and interprets to determine if a Service Line Agreement (SLA) or ROW is required



Land Services obtains a SLA and a Tribal Resolution



Land Services sends signed SLA to the BIA group for recording. Land Services also releases the job to Design and Project Management



BIA records the signed SLA and stores at their federal facility and provides a copy of the recorded SLA to Land Services



Thank You!

SoCal CPUC-BIA Tribal Workshop Utility Infrastructure on Tribal Lands

November 14, 2024
Rincon Band of Luiseño Indians Reservation

AGENDA

- ❑ CURRENT PROJECTS WITH SOUTHERN CA TRIBES
- ❑ ROW PROCESSES
- ❑ ROW TRACKING
- ❑ CHALLENGES AND SOLUTIONS

CURRENT
AT&T
TRIBAL
LANDS
PROJECTS

SAN PASQUAL BAND OF MISSION
INDIANS FIBER BUILD

RINCON BAND OF LUISEÑO INDIANS
FIBER BUILD

BARONA BAND OF MISSION INDIANS
FIBER BUILD

ENTERPRISE RANCHERIA FIBER BUILD

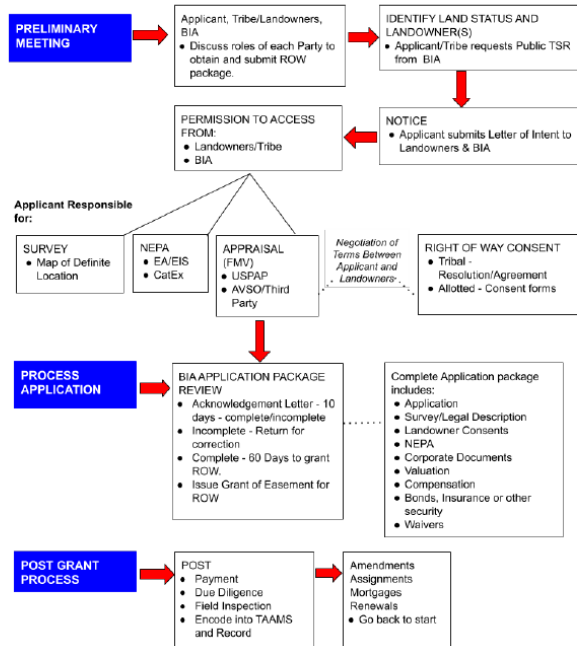
ROW PROCESSING

RIGHTS-OF-WAY ON INDIAN LANDS HANDBOOK

52 IAM 9-H



General Flowchart To Obtain ROW



BIA RIGHT-OF-WAY CHECKLIST

Applicant: _____	Purpose: _____		
Land Status: Tribal _____ Allotment _____	Location: _____		
New <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Assignment <input type="checkbox"/> Mortgage <input type="checkbox"/>	YES	NO	N/A
DATE: _____	DOCUMENTATION:		
Preliminary Documents			
_____ Applicant's Letter of Intent to Obtain ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Title Status Report, Landowner Name and Address	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Permission to Survey from Landowners	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Field Inspection (Photos, Maps, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Right-of-Way Application Package			
_____ Acknowledgement Letter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Incomplete/Complete Letter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Consent(s):			
_____ Tribal Resolution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Landowner(s) Consent to Grant ROW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Spreadsheet - consent percentage calculation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Superintendent/Regional Director per 25 CFR 169.108	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maps:			
_____ Survey Plat/Legal description	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Location Map showing adjacent existing facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental Compliance:			
_____ Categorical Exclusion (CatEX)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Environmental Assessment (EA)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Finding of No Significant of Impact (FONSI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Environmental Impact Statement (EIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Record of Decision (ROD)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ NHPA Section 106	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ ESA Section 7 review	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valuation:			
_____ Valuation Report received	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Valuation Review requested (OASIS)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Certification of Valuation Review by OST Appraisal Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Fair Market Value _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Applicant's Offer _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Letter(s) to Landowner(s) re: FMV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Corporate Documents:			
_____ Authority of Officers to Execute Documents	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Articles of Partnership or Association	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ State-certified corporate charter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ License to do business (Tribe and/or State)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Waivers, if applicable:			
_____ Valuation (Appraisal, market analysis, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Bond(s), insurance, and/or alternative form of security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____ Permission to cross existing rights-of-way, if applicable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- AT&T ENDEAVORS TO TRACK ROW DOCUMENTATION PER PROJECT AND PER RESERVATION IN OUR NATIONAL RIGHT OF WAY TOOL
- AT&T CONSULTS WITH THE BIA FOR OFFICIAL RECORDS

ROW TRACKING

CHALLENGES & SOLUTIONS



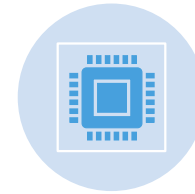
FEDERAL AGENCY
PROCESSING LEAD
TIMES



ENVIRONMENTAL &
CULTURAL
RESOURCES



TRIBAL LANDS
KNOWLEDGE
& TRAINING



AT&T JOINT UTILITY
COORDINATION



Zayo and Southern California Tribal Lands

California Public Utilities Commission
Bureau of Indian Affairs



2024

Agenda

1. Zayo Introduction

Ted Gilliam, General Counsel

Frank Lavorato, Head of Regional OSP, Southern California

Mayank Goel, Sr. Program Manager, Gov't Stimulus and Product Strategy

Mark Allen, Program Manager, Gov't Stimulus and Product Strategy

Zayo in North America

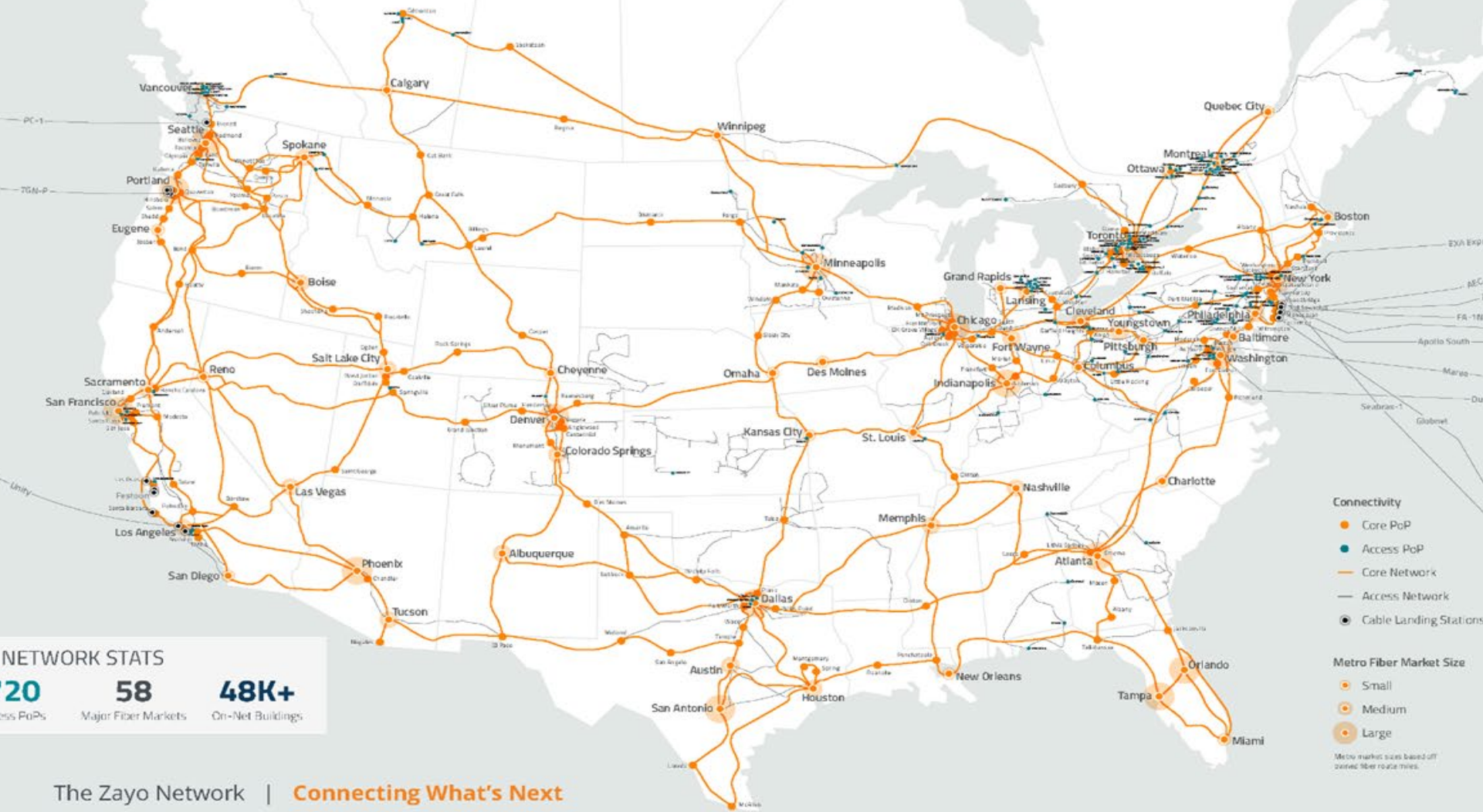
Zayo in California

Zayo and Tribal Lands

Q & A



Zayo North America



- Connectivity**
- Core PoP
 - Access PoP
 - Core Network
 - Access Network
 - Cable Landing Stations

- Metro Fiber Market Size**
- Small
 - Medium
 - Large
- Metro market sizes based off owned fiber route miles.

NETWORK STATS

250 400G PoPs	720 Access PoPs	58 Major Fiber Markets	48K+ On-Net Buildings
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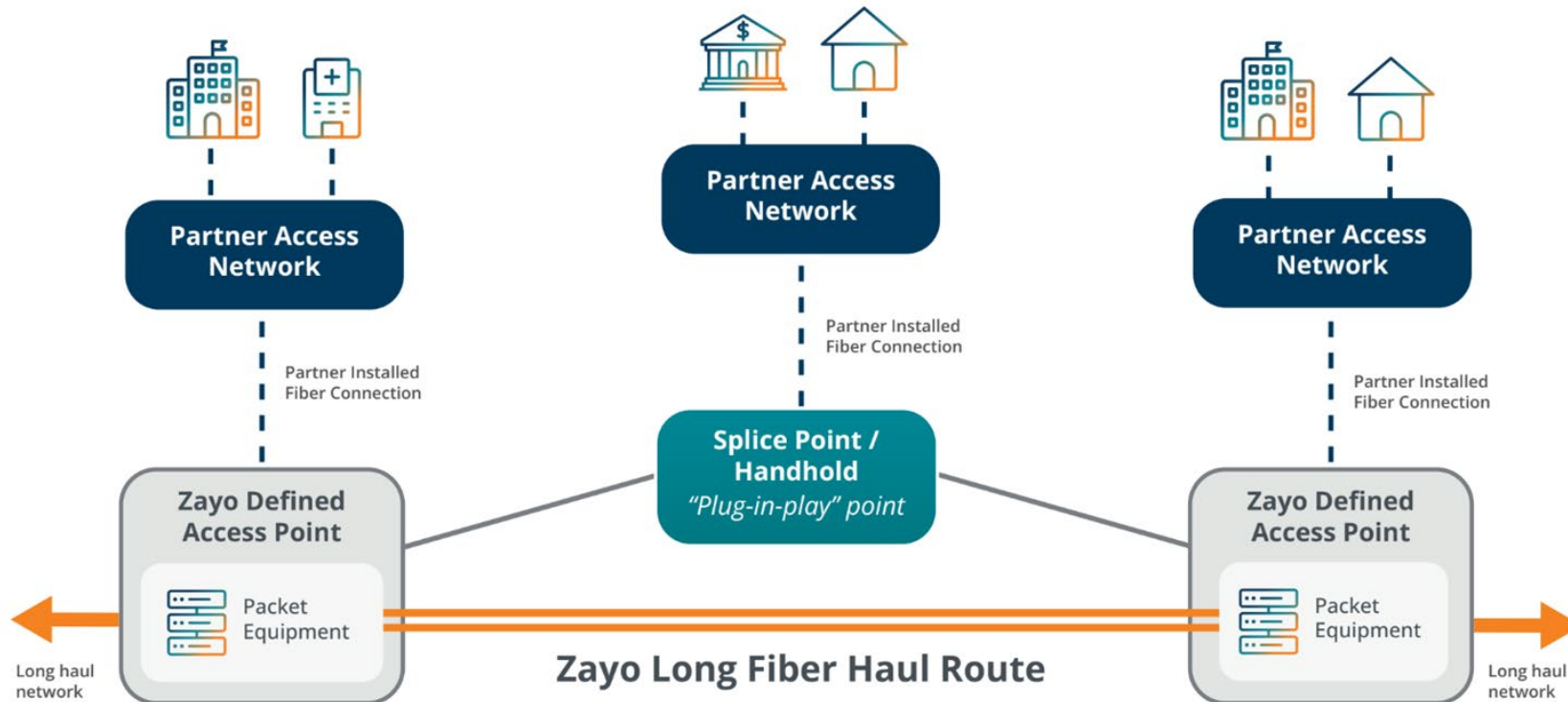
The Zayo Network | Connecting What's Next

Zayo's Innovative Architecture: Digital Equity Access Network

Metro Pricing in Rural Areas

Digital Equity Access Network ("DEAN") architecture:

- Enables flexible connectivity for last-mile Internet Service Providers (ISPs) and local communities.
- Expands the number of on-ramps for access closest to the ISP-supported community and reduce the total costs to interconnect to unserved and underserved areas.
- Enables ISPs to directly connect to any interconnection point to provide an affordable and reliable last-mile network to Broadband Serviceable Locations (BSLs), like a residential location or community institutions. This results in improved economics models for ISPs



- Carrier-neutral open-access
- Pre-provisioned equipment and dedicated fiber
- Highly available access points
- Competitive carrier rate cards
- Plug-and-play architecture

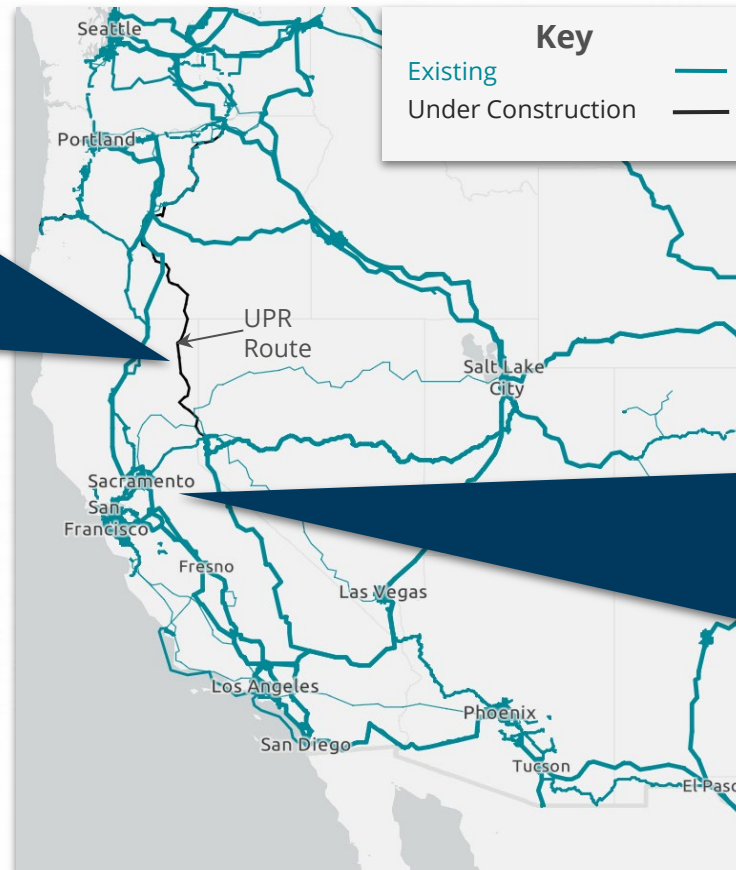
Recent & Continuous Network Expansion

Zayo is leading California's network expansion with the first NTIA-backed route between Umatilla & Reno, and further expanding in partnership with the state. Our new network reaches key hubs like Sacramento

UPR Route - NTIA Funded

NTIA-funded UPR route for Nevada and bridging the digital divide

- Provides a middle mile fiber network (645 miles) to serve rural areas across OR, CA and NV.
- 23 access points to provide ready access points to local ISP partners
- Enables more than 20,000 households, 10 unserved communities, 143 community anchor institutions, and 1 tribal area with quality broadband.



Sacramento

- Principle Data center connectivity
- Recent & Continuous metro market investments – most recent network investment 2022 with 5 metro expansion
- 4 primary routes expanding into key markets with Long haul connectivity
 - Sacramento - Seattle
 - Sacramento - Reno
 - Sacramento - Los Angeles
 - Sacramento - San Francisco



Tribal Land Policy

- Zayo's Code of Business Ethics and Conduct applies to all Zayo employees and their dealings with third parties, including Tribes
 - Respect all
 - Deal honestly
 - Earn trust and own outcomes
- When constructing long haul routes that may cross Tribal Land:
 - Reach out to the Tribal right-of-way management or office
 - Determine if the Tribe is willing to allow Zayo to traverse Tribal land and under what conditions
 - Ask the Tribe if there are any communication needs the Tribe would find useful
 - Be mindful that ancestral land is more than current Tribal Land



Thank You!

Q&A Discussion Session

Wrap Up & Conclusion of Public Session

Government-to-Government Consultations