

BOUNDARIES

VOLUME 6, ISSUE 1 JANUARY 2011

A Discussion Regarding Unregistered Legal Survey Plans



The Alberta Land Surveyors' Association (ALSA), established in 1910, is a self-governing professional association legislated under the *Land Surveyors Act*.

The Association regulates the practice of land surveying for the protection of the public and administration of the profession.

Land Surveyors' Association is attempting to rectify this situation, and needs the help of those in the oil and gas industry that build pipelines and related facilities.

History

There have always been unregistered surveys. Some reasons for this are that field notes may be lost, clients won't pay and that people are forgetful. There are (conservatively) an estimated twenty thousand dormant plans today. Between April 2009 and March 2010 over eight thousand Pipeline R/W plans were registered. This has certainly been a slower than average year, but this number does represent a small but significant percentage of pipeline R/W plans registered over the last twenty years.

By John Haggerty,
ALS, CLS, PEng

Introduction

A problem has been developing in our Province and in our industry over the past two decades. It is the problem of dormant plans. That is, pipeline right of way (R/W) plans are not being registered in the Land Titles Office after the pipeline has been monumented and constructed. This is of concern for a number of reasons, the greatest of which being public safety. The Alberta

Why?

How this problem has grown over the years is quite understandable, natural even. Common practice suggests that the pipeline R/W plan need only be registered after the pipeline has been constructed. This makes sense, as any alteration to the routing during construction should be reflected on the final survey plan of public record. The problem with this is that there is no longer urgency once the pipe is in the ground, the oil, or gas, is flowing and the landowners have been paid. More urgent activities appear, such as new pipelines and drilling programs. The final steps in the legal process tend to be put aside for slower times. They are "clean-up" jobs that will happen when the work slows down again. Some legal plans sit incomplete in surveyors' offices. Other legal plans are complete, but await consent in the corners of surface land offices and engineering departments. Over time, Land Surveyors change companies and Operators buy and sell fields. As time passes, it becomes more difficult to track down who owns the pipe, much less convince them that money should be spent to clean-up these unregistered plans.



Does this matter?

In spite of the large number of dormant plans in Alberta, the majority of pipeline R/W plans do in fact become registered plans. This typically happens in a calmer "non-construction" season, but it happens none the less. Why do a majority of Land Surveyors and Operators feel that plan registration is an important part of the process? There are several good reasons to register.

It's the Law



While the Government of Alberta has not actively enforced plan registration, Section 4 of the Pipeline Act requires the rights of way be surveyed according to the Surveys Act before construction commences. This includes registration at the Land Titles Office. Industry practice has never been that the pipeline R/W plan must be registered pre-construction. This is fortunate, as it is most important that the buried pipe be within the bounds of the surveyed R/W, and a post construction registration is a good way to ensure that and changes to the surveyed R/W are reflected on the registered plan. It should be remembered, though, that this process is an exception in Alberta surface land procedure. Try to build a house before a subdivision plan is registered. Would you be allowed to? I think not. We work

in a privileged situation, which should not be abused.

The intention of Government is for pipeline R/W plans to be registered at Land Titles, and so become a part of the land management system which operates within the Province. This intention deserves some respect, I think, as this system is one of the things that make Alberta such a stable and predictable place to conduct land transactions.

Good Land Management

Maintaining a solid land management system is something that should be near to the hearts of anyone in the surface land business. It certainly is for Surveyors. It is also of importance to the land owning public, though I think that they tend to take the system for granted. The reality is that there is a "sleeping giant" in the many thousands of titles that make up the private land base in this Province.

Allow me to explain an ideal scenario...

1. The oil and gas company gets permission from the landowner to do preliminary work
2. The property is surveyed and a construction plan and Individual Ownership Plans (IOPs) are prepared.
3. The landowner signs off on the IOP and on the final URW document
4. The (non-specific) URW agreement, or blanket caveat, is registered against the Certificate of Title at the Land Titles Office
5. The Plan of Survey gets registered at the Land Titles Office
6. Partial discharges are filed limiting the utility right of way agreement to only the area within the bounds of the registered pipeline R/W plan.

Often, the R/W document registered on title doesn't make it past the blanket caveat stage. This leaves the landowner with an undefined

This newsletter is published by the Alberta Land Surveyors' Association as a public service. If you would like to receive a copy of *Boundaries*, please contact us at info@alsa.ab.ca or 1-800-665-ALSA.

Readers may reprint an ALSA original article as long as credit is given to the *Boundaries* newsletter and the Alberta Land Surveyors' Association. *Boundaries* is also online at www.alsa.ab.ca/boundaries-news/

interest on title that must be addressed should he or she ever want to subdivide the land. This undefined caveat may tell you that there is a pipeline R/W somewhere on the property, but it does not tell you where the R/W actually is. From a land management point of view, this is problematic. It makes it difficult to rectify the title for future work, which leads to increased cost, danger and liability.



Occasionally, an IOP is attached to the R/W document that is registered at Land Titles. This is much more useful to the surface land community than a blanket, or undefined, R/W document. With an IOP attached, there is now an,

informal, spatial reference to the legal agreement. When rectifying a title with numerous caveats it is a real benefit to have the IOP attached. Attaching the IOP does not fulfill the obligation of registering a legal plan in the Land Titles Office, it does not actually limit the utility right of way (URW) to a particular area, and can be difficult for the public to find. This is noteworthy, and worth repeating, that the pipeline operator should discharge the blanket URW document in favour of a specific R/W document limited to the registered plan.

Having a URW referenced to a legal plan, registered at Land Titles, allows one to immediately see that there is a pipeline R/W on

a parcel of land. This provides a clearly explained list of caveats on a title, and a cost savings, as there is no need to order individual caveats. Furthermore, having the URW document referenced to a specific legal plan clears-up a whole host of problems associated with surface land work. It is easier to know what you should do, when you know what you have.

Liability protection/prevention

Should litigation arise from a pipeline hit, could the operator say that they had completed all of their due diligence to avoid the incident if the pipeline R/W plan wasn't registered at Land Titles? I suspect not, given the existing statute and regulation on the matter. The URW document will typically allow one year for the pipeline R/W plan to be registered. Was this provision followed? Why not? The irony is that registering a pipeline R/W plan is not an expensive proposition. By the time of construction, much of the work required has already been completed. The registration fee is approximately \$150.00.

Conclusion

This problem of dormant plans has been a generation in the making and may take as long to clean up. There is a lot at stake though, the safety of our workers and the public, the liability to our corporations and the good name of one of the premier land systems in the world. The status quo is not working as well as it needs to in regards to this issue. We need your help to make it work better.

Court Photo Credit:

<http://www.flickr.com/photos/0742/>
Some rights reserved.

This newsletter is published by the Alberta Land Surveyors' Association as a public service. If you would like to receive a copy of *Boundaries*, please contact us at info@alsa.ab.ca or 1-800-665-ALSA.

Readers may reprint an ALSA original article as long as credit is given to the *Boundaries* newsletter and the Alberta Land Surveyors' Association. *Boundaries* is also online at www.alsa.ab.ca/boundaries-news/

Real Property Requirements

Question: What must be shown on a real property report?

The requirements set out in the Manual of Standard Practice are a minimum standard. We did not attempt to cover all situations that may arise.

I have heard of municipalities asking for specific things to be shown on submissions of RPRs seeking a compliance certificate. If your request to have certain improvements shown that are over and above the minimum standard in our MSP, is accompanied by the reasons you wish to have them shown, I would think that your submitting surveyors will comply with your request.

If you choose to do this, your request should be circulated to all submitting surveyors, as cost of the product prepared by the surveyors will be affected.

In general, I would encourage you to discuss your needs with all of the land surveyors that



submit to you, in order to convey your requirements, and the reasons why you are asking for the improvements you are. If you make it a "level playing field" for all land surveyors involved, I would think they will comply with your requests. Like I said earlier, our MSP sets out the "minimum" standard expected. All, or any, approving authorities may have their own specific requirements in addition to those minimum standards we have in place.

D.R. McWilliam, ALS (Ret.)
ALSA Registrar

Spotlight on Surveying

PBS affiliates in the United States have started airing a segment called Spotlight on Surveying. The airing of this 5:48 video is based on the programming schedules of the respective local stations. The program was put together by the American Congress on Surveying & Mapping.

Free Brochures

"The Real Property Report," "Understanding Easements and Rights of Way," "Alberta's Subdivision Process," and "I destroyed survey evidence—a practical guide to survey markers for the homeowner, handyman and contractor" are free brochures available from the ALSA and can be ordered by visiting our website, www.alsa.ab.ca

Surveyor Place Names

Hangingstone River - Fort McMurray

This descriptive name, noted by A.J. Tremblay, DLS, ALS during his survey in 1912, comes from a big rock that hung out over the edge of the river bank. On hot days, the oil sands used to seep through fissures in the rock.

Surprise Point - Amethyst Lakes

It took the climbing party longer to reach the top of this 2,400 m peak longer than expected. The descriptive name was attached to this feature in 1916 by Alberta Land Surveyor M.P. Bridgland.