A. KEITH BARBEN

IBLA 85-243 Decided September 29, 1986

Appeal from a decision of the Sevier River Resource Area Office, Bureau of Land Management, imposing rental charges for water pipeline right-of-way U-41837.

Reversed and remanded.

1. Appraisals--Federal Land Policy and Management Act of 1976: Rights-of-Way--Fees--Rights-of-Way: Generally-- Rights-of-Way: Appraisals--Rights-of-Way: Federal Land Policy and Management Act of 1976

   Where a rental rate for a linear right-of-way is not established in accordance with a BLM Instruction Memorandum, the BLM decision will be reversed and remanded.

APPEARANCES: A. Keith Barben, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On June 19, 1984, the Board reversed the October 20, 1983, decision of the Utah State Office, Bureau of Land Management (BLM), imposing a rental rate of $180/5 years or $900/remaining term of the grant of a right-of-way for a culinary water pipeline to A. Keith Barben. See A. Keith Barben, 81 IBLA 332 (1984). On September 5, 1984, Barben requested a reduction in the width of the right-of-way from 25 to 10 feet. On October 25, 1984, BLM amended right-of-way U-41837 to be 10 feet wide. On December 7, 1984, BLM issued a decision stating in part: "Regulations [sic] 43 CFR 2803.1-2(d)(1) provides for the review of the fair market value for the use and occupancy of the public lands. The review (in accordance with the regulations and Utah State Office Instruction Memorandum No. UT-84-109 and Changes 1-3) supports the imposition of the following rate: $75/5 year term (September 25, 1984, to September 24, 1989) or $375/remaining term of the grant." Barben filed a timely notice of appeal on January 7, 1985, and a statement of reasons on January 24, 1985.

On November 28, 1984, BLM issued Instruction Memorandum No. 84-490, Change 1, providing in part:

> The recent Interior Board of Land Appeals (IBLA) decision, Northwest Pipeline Corp. On Reconsideration, 83 IBLA 204, directed changes in current methods of determining oil and gas pipeline rental payments until an approved appraisal method is adopted. Although the decision specifically relates to rights-of-way issued under the Mineral Leasing Act, assumptions and conclusions supporting the decision are also applicable to FLMPA right-of-way grants--especially since most States have adopted different rental schedules within the last year which vary in method, application and estimated rentals.
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> Accordingly, during the interim period while developing new regulations, Instruction Memorandum No. 84-490 is revised and the following procedures are implemented.
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> 1. Applicants for new rights-of-way should be charged the minimum rental of $25 for 5 years. The grant is to be made subject to a rental determination at a later date and the express covenant that any additional rental that is determined to be due as the result of the rental determination shall be paid upon request.
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> 2. Existing rights-of-way subject to readjustment will be continued at the original rental fee or last uncontested rental fee. Again, the rental payment is subject to review and revision after the new regulations are established. [Emphasis added.]

[1] BLM instruction memoranda are binding on BLM employees, although not on the Board. See Sierra Club, 61 IBLA 329, 334 (1984). Because BLM's December 7, 1984, decision did not conform to the requirements of Instruction Memorandum No. 84-490, Change 1, that existing rights-of-way subject to readjustment will be continued at the original or last uncontested rental fee, it must be reversed. See Margaret A. Ruggiero, 34 IBLA 171 (1978).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded for action consistent with this opinion.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge