JAMES E. PAYNE AND EVON PAYNE

IBLA 89-412 Decided July 26, 1990

Appeal from a decision of the Sevier River Resource Area Manager, Bureau of Land Management, setting fair market rental for irrigation pond right-of-way U-51909.

Affirmed.

1. Appraisals--Federal Land Policy and Management Act of 1976: Leases

An appraisal is affirmed where no error was shown in the appraisal, that used market data to establish annual fair market rental value for an irrigation pond right of way, and it was not proved that the appraised rental was excessive.

APPEARANCES: Evon Payne, Monroe, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Evon Payne has appealed from a March 27, 1989, decision of the Sevier River Resource Area Manager, Bureau of Land Management (BLM), approving amendment to right-of-way grant U-51909 that increased the size of the right-of-way to provide for a fenced area around an irrigation pond. The right-of-way originally issued for construction of the pond had not authorized that the pond be fenced. Enlargement of the right-of-way to permit enclosure of the pond was allowed, and fair market annual rental for the grant was set at $150, $100 more than the original lease had provided.

Payne disputes that the annual rental determined by BLM approximates fair market rental for the pond right-of-way. He argues that, although the size of the right-of-way has been increased by about one-third its former area, the rental has tripled. He contends that an acre of land in the vicinity of the pond is worth about $100, and that consequently the increased rental is disproportionate to related land values.

The rental value for the pond right-of-way was established by BLM using a market data approach. BLM explains that:

> In establishing our rental procedure we relied entirely upon market information contained in 282 sales (after eliminating

> those that were situated in high value areas, had residential highest and best use potential, included improvements or water, etc.). From this analysis an average price per acre of about $711 was obtained, which subsequently yielded a rent of $50 per acre. Based upon the more than 1,000 sales in our total data base, this is a very realistic price per acre for small parcels of rural property. Because the $50 per acre per year figure is derived from actual market transactions, and supported by another segment of the market (minimum acceptable rents) we feel it is a fair and reasonable charge for the use of a public resource.
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> Although we agree with the Appellant that land values in the vicinity of the subject are running around $100 per acre, this price is based upon the value of grazing land, and invariably involves larger parcels. In our opinion, the 2.14 acres included in this right of way is not a large parcel of grazing land, but a special use property which, even though associated with an agricultural operation, would not be leased under normal market conditions based upon grazing land values or on the basis of a crop share. The fact that Mr. Payne is using the site for reservoir purposes, has completely fenced it in, and has almost exclusive use of the surface estate, demonstrates it has a superior use potential. During the past couple of years we have use the $50 per acre per year rental in several dozen cases, a number of which being very similar to the subject in that they too were used for irrigation, settling, and cooling pond purposes.

Memorandum to file dated May 16, 1990.

A memorandum dated May 25, 1988, established the minimum rental rates referred to above for rights-of-way "in accordance with BLM Manual, Sections 2801.4.E (reserved) and 2920,81, as well as CFR 43-2803.1-2 and 43-2920.8." The minimum rentals were arrived at using market information "from 326 verified property sales." Payne has not disputed that the sales used in this statistical base for purposes of establishing minimum value were representative of land uses such as the irrigation pond which is the subject of review in this case. Nor has he challenged the comparability of the other sales used by BLM when determining the actual rental value of the right-of-way.

[1] In Phyllis E. Lewis, 113 IBLA 376 (1990), where the fair market rental value of an agricultural lease was reappraised to determine current value, we found that, absent proof that the sales used were incorrect or invalid, a BLM appraisal using a market data approach to value could

properly be used. In that case, like the instant appeal, Lewis objected to the increased rental because it was "not consistent with the values used for the adjoining neighbor's lands." Id. at 379. Finding that the neighboring lands were not comparable because they had been put to a different use than were the Lewis lands, we concluded that Lewis had failed to establish error in the BLM appraisal or to show affirmatively that another value than that set by BLM was correct. Id.

Here also, BLM has distinguished the fenced irrigation pond from grazing lands in the vicinity, pointing out that the use to which the right-of-way has been put, the establishment of an exclusive reservoir, is of a different and higher value than nearby lands used for grazing. As was the case in Phyllis E. Lewis, although neighboring lands are generally agricultural in nature, nonetheless their actual use is different. Payne has not shown that BLM's finding concerning the value of the fenced pond is incorrect, nor has he demonstrated that the values assigned to the fenced pond are not representative of similar uses in the area. Our review establishes that it has not been shown there was error in the appraisal by BLM or that an annual rental of $150 for the fenced pond right-of-way was excessive. 1/

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 affirmed.

Franklin D. Arness
Administrative Judge

I concur:

James L. Burski
Administrative Judge

1/ We note that under the appraisal procedure, factional acreage is rounded to the next highest whole number.