

WESTERN FIELD PRODUCTION, INC.

IBLA 88-195

Decided October 12, 1990

Appeal from a decision of the District Manager, Grand Junction District Office, Bureau of Land Management, requiring payment of increased rental for natural gas compressor station site right-of-way C-36728.

Affirmed.

1. Mineral Leasing Act: Generally--Rights-of-Way: Appraisals

An appraisal of fair market value for a natural gas compressor site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

2. Mineral Leasing Act: Generally--Rights-of Way: Appraisals

Where BLM has conducted an appraisal of fair market value of a natural gas compressor site right-of-way by utilizing comparable sales data for other compressor sites, its rental determination based thereon will not be overturned based on allegations that such sales are outdated, where the appraisal made negative adjustments for time and the sales presented by the right-of-way holder as comparable were not sales for compressor sites.

APPEARANCES: B.H. Hastings, President, Western Field Production, Inc., Lomo, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Western Field Production, Inc. (Western), has appealed from a December 9, 1987, decision by the District Manager, Grand Junction District, Bureau of Land Management (BLM), increasing the annual rental rate for natural gas compressor site right-of-way (ROW) C-36728. That

decision provided for an annual rental of \$190 per year for a 5-year period commencing March 2, 1988, and ending March 1, 1993, an increase of \$185 from the previous annual rental of \$5 per year.

On March 3, 1983, in accordance with section 28 of the Mineral Leasing Act of February 25, 1920, 30 U.S.C. § 185 (1988), BLM issued C-36728 to Mitchell Energy Corporation (Mitchell) for a natural gas compressor station site 330 feet in length and 100 feet in width, situated in sec. 6, lots 11 and 12, T. 8 S., R. 102 W., sixth principal meridian, containing 0.76 acre. BLM determined the rental to be \$5 per year for the first 5 years of the 30-year grant. Mitchell paid the rental in advance for the 5-year period. Subsequently, Western purchased Mitchell's interest in the gas wells served by the compressor station, and Mitchell sought BLM approval of an assignment of C-36728 to Western. On December 9, 1987, BLM approved the assignment and, on the same day, issued the decision under appeal.

An appraisal report, dated October 20, 1987, forms the basis for BLM's December 9, 1987, decision. 1/ The appraiser states that she identified seven sales of properties for compressor station sites and used the three most comparable sales to estimate the fair market value of the subject site. 2/ All sales used were cash transactions.

Sale 19-1 consists of three parcels, totalling 11.818 acres, situated 3-4 miles west of Rifle, Colorado, which were purchased by Northwest Pipeline Corporation in July 1980 as sites for three compressor stations. The BLM appraiser found that the subject was similar to sale 19-1 in physical character, superior in size, and inferior in time and access. She determined that overall the subject site was inferior to sale 19-1, which sold at \$3,500/acre.

1/ That report describes the subject site as follows:

"The subject compressor station is located approximately 15 miles north of Loma, Colorado, in Garfield County. It is located about 1/2 mile west of Highway 139, and several parcels of private land must be crossed to reach the site. The site is situated on the gentle crest of a low terrace or ridge bordered on the west by a small intermittent stream gully. Vegetation consists of low open sagebrush and native grasses. Right-of-way C-31078M authorizes Northwest Pipeline's compressor station adjacent to the subject site. The property is zoned open space by Garfield County."

(Appraisal Report at 1).

2/ Commenting on the demand for compressor station sites, the appraiser stated:

"There does not appear to be a demand for compressor station sites in the open market. Purchases are based on the energy company's need for the site in a specific location resulting in the energy company paying a premium. Energy production was up in the early 1980's, resulting in more sales of these type properties. With today's somewhat depressed economy, the decrease in energy production, and the lack of more recent sales, it is believed that similar properties would bring a slightly lower price today, resulting in a negative adjustment for time."

(Appraisal Report at 2).

Sale 10-2 is a 1.238-acre parcel located 2 miles west of DeBeque, Colorado, which sold in December 1982 for \$3,500 per acre to Koch Exploration for use as a compressor station site. The BLM appraiser found that the subject was similar to sale 10-2 in access, physical character, and size, but inferior in time and, therefore, overall inferior to sale 10-2.

In comparing the subject to sale 19-3, a 2.322-acre parcel situated 11 miles south of Silt, Colorado, which sold to Northwest Pipeline Corporation in February 1983 for use as a compressor site for \$2,500 per acre, the appraiser described the subject as superior in physical character and size and inferior in time and access. Overall, she considered the two sites to be similar.

The appraiser determined the value of the subject by direct comparison to the three sales and found it to be equal in value to sale 19-3, \$2,500 per acre. She calculated the rental value by multiplying that per acre value times 0.76 acre, which yielded \$1,900, and multiplying the \$1,900 by 10-percent return rate to arrive at an annual rental of \$190.

On appeal, Western contends that the comparables used by BLM in its appraisal are outdated and unrealistic. In support of its contention, Western argues that BLM's appraisal is based on three properties "which were sold in the early 1980's, when land values were at their peak; many due to a thriving oil and gas industry, which is not the case today" (Western's Statement of Reasons (SOR) at 1). Additionally, Western argues that the sales utilized by BLM are not comparable because they are as much as 60 miles away from the subject site. In lieu of the three comparables relied on by BLM, appellant offers copies of three warranty deeds representing sales between April 30, 1986, and January 27, 1987, which it asserts are within 15 miles of the subject property (SOR, Exhs. A, B, and C.) ^{3/} Those deeds, Western urges, reflect properties having similar vegetation and water rights.

The regulations governing rentals for Mineral Leasing Act rights-of-way provide at 43 CFR 2883.1-2 that: "Holders of right-of-way grants and temporary use permits issued under this part shall make rental payments in accordance with § 2803.1-2 of this title, except that the provisions of § 2803.1-2(b) of this title shall not apply." The cited regulation, 43 CFR 2803.1-2 is the regulation governing rentals for rights-of-way issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761-1771 (1988). ^{4/}

^{3/} Those three sales reflect sales prices of \$142.86, \$277.78 and \$112.50 per acre, according to Western.

^{4/} Section 504(g) of FLPMA, 43 U.S.C. § 1761 (1988), as amended, 43 U.S.C. § 1764(g) (1988), requires the holder of a ROW issued pursuant to FLPMA to pay annually in advance the "fair market value thereof as determined by the Secretary [of the Interior]," except in certain circumstances where the Secretary finds a lesser charge "equitable and in the public interest."

Rental for non-linear right-of-way grants and temporary use permits is addressed in 43 CFR 2803.1-2(c)(3)(i), which states: "Said rental shall be based on either a market survey of comparable rentals, or on a value determination for specific parcels or group of parcels unless such rental is reduced or waived as provided in paragraph (b) of this section." 5/

BLM correctly employs the comparative value method of appraisal, where, as here, there is adequate data for determining the fair market value of a non-linear ROW. This method contemplates a site specific analysis of comparable sites with appropriate adjustments being made for differences between the subject site and other sites. Communications Enterprises, Inc., 105 IBLA 132, 134 (1988); see American Telephone & Telegraph Co., 77 IBLA 110 (1983). This was done by the BLM appraiser. She made appropriate adjustments for time, access, physical characteristics, and size, before determining the overall comparability of the subject and each of the sites.

[1] The Board has stated on numerous occasions that an appraisal of fair market value for a communication site right-of-way will not be set aside on appeal unless an appellant is able to show error in the appraisal method or demonstrate by convincing evidence that charges are excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal. MCI Telecommunications Corp., 115 IBLA 117, 120 (1990); Big Sky Communications, Inc., 110 IBLA 213, 214 (1989); Chalfont Communications, 108 IBLA 195, 196 (1989). The burden on one challenging the appraisal of a natural gas compressor site right-of-way is the same.

[2] Western's inclusion of the copies of warranty deeds with its statement of reasons is an attempt to show that land sales closer to the subject site and more recent in time represent lower per acre prices than the sales utilized by BLM. We do not disagree that the copies of the deeds reflect lower prices; however, appellant fails to show how such sales are comparable to the subject site. 6/ Western does not maintain nor do the copies of the warranty deeds reveal that the respective properties were purchased as compressor station sites. As BLM noted in the appraisal report, sales of land for compressor sites tend to command a premium price because of the need for a specific location. Moreover, in other contexts, this Board has held that BLM properly limited the scope of comparable sales to similar communication sites in determining a reappraised rental for a microwave transmission site ROW. See American Telephone & Telegraph Co., supra at 117. Thus, we find no basis for requiring BLM to consider the

5/ As provided in 43 CFR 2883.1-2, the provision of 43 CFR 2803.1-2(b) allowing for waiver or reduction of rental is inapplicable to Mineral Leasing Act rights-of-way.

6/ Appellant represents that the warranty deed sales are similar "in vegetation and water rights to the subject property." That may be true; however, such factors, in this case, do not establish the comparability of the sites for purposes of determining market value.

sales urged by appellant as comparable, despite the fact that they were in closer proximity to the site than those utilized by BLM and of more recent vintage. 7/

Therefore, 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.

Bruce R. Harris
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

7/ The record shows that the BLM appraiser made negative adjustments for time in her comparability analysis due to factors which she concluded would result in "a slightly lower price today" (Appraisal Report at 2).