

NORTHWEST TIMBER AFFILIATES, INC.

IBLA 90-239

Decided October 22, 1991

Appeal from a decision of the Roseburg District Office, Oregon, Bureau of Land Management, denying a request that certain roads be designated as "tie roads." OR M-605.

Affirmed.

1. Rights-of-Way: Generally--Regulations: Generally

The Departmental regulation applicable to payment to the United States for logging road use, 43 CFR 2812.5-2(b), provides that where a right-of-way permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of BLM, the permittee will be required to pay a fee the amount of which is to be determined by the authorized officer. Where BLM denies a request that certain roads utilized for timber hauling be designated as tie roads and, thus, exempt from the payment of fees, that decision will be affirmed where the record shows that it was based on a reasoned analysis of the facts made with due regard for the public interest, and the permittee fails to show error in BLM's determination.

APPEARANCES: T. H. Mehl III, President, Northwest Timber Affiliates, Inc., Glendale, Oregon, for appellant; James A. Moorhouse, District Manager, Roseburg District Office, Bureau of Land Management, Roseburg, Oregon.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Northwest Timber Affiliates, Inc. (NTA), has appealed a December 18, 1989, decision of the District Manager, Roseburg District Office, Oregon, Bureau of Land Management (BLM), denying a request to reclassify as "tie roads" certain BLM roads (Nos. 33-7-2.0 Segment B, 32-8-1.1 Segment A, and 30-6-32.0 Segment D) encompassed in right-of-way and road use agreement M-605, as amended. NTA sought tie road status for the roads because such a designation would have resulted in elimination of use fees.

On June 8, 1989, BLM sent a letter to Douglas Timberlands of Oregon (Douglas), announcing use fees and dollar shares for the three roads in question. <sup>1/</sup> On June 27, 1989, Douglas accepted and agreed to those use fees and dollar shares. In August 1989, Douglas assigned right-of-way M-605, as amended, to NTA. The BLM Roseburg District Manager approved the assignment on August 30, 1989, and the BLM Medford District Manager approved the assignment on October 30, 1989.

In a letter to BLM, dated December 5, 1989, NTA explained that as a recent purchaser of part of Douglas' property west of Glendale, Oregon, in the lower Cow Creek area, it had discovered "a timber road use problem requiring your assistance to resolve." It indicated the "problem" related to the movement of timber. It stated that Roseburg Resources Company had purchased part of Douglas' land and "will probably elect to take its volume West to Riddle," and that "[v]olume moving West was not originally tributary to the roads in question." It further explained that its timber would move "East to Glendale as originally calculated, but not over the exact original roads."

NTA proposed that the three roads in question be "classified as tie roads, and all road use fees be eliminated." NTA stated that the "original purpose of these roads was to improve competition by providing access to the Roseburg, Riddle, and Glendale mills into the Roseburg and Medford District timber areas in the West Fork and lower Cow Creek area." NTA asserted that since that was the original purpose, it would make no sense to attempt to track tributary volumes of timber going in both directions over these roads. In its December 18, 1989, response, BLM stated that it would continue to charge a fee for the use of the roads because the roads did not meet the definition of a "Tie Road."

In its statement of reasons (SOR), appellant contends that the District Manager failed to consider the historic development and original intent of the construction of the roads. It claims that other roads serving similar purposes have been declared tie roads, and also that because logging road development had already taken place in the West Fork, Mule Creek, and Riffle Creek drainage areas with logging roads directed at Glendale, there is no primary timber access development needed for two of the roads in question (Nos. 32-8-1.1 Segment A and 33-7-2.0 Segment B), except to tie together the Riddle and Glendale timber market areas. NTA asserts that each of those roads meets the definition for tie roads found in the BLM Oregon State Office Road Right-of-Way Handbook.

Appellant further contends that BLM timber on both sides of a tie road system move in a crossing pattern to the benefit of the citizens of the United States through higher timber sale bids. Finally, appellant contends

---

<sup>1/</sup> The use fees were as follows: No. 30-6-32.0 D--\$0.03 per thousand board feet (Mbft); No. 32-8-1.1 A--\$0.74 Mbft; No. 33-7-2.0 B--\$2.22 Mbft.

that private timber "cross flows" cause road use fee calculation problems requiring greater BLM administration of the road system.

In its answer, BLM states that a tie road designation is a discretionary management tool used to reduce or eliminate unreasonably high use fees due to small tributary areas. BLM further states that while road 30-6-32.0 Segment D may have been built to increase demand through additional markets, it fails to meet the tie road definition in that it does not have a small tributary volume or high use fees. BLM states that NTA's fee for use of road 30-6-32.0 Segment D is \$0.03 Mbft, while the fees for use of roads 32-8-1.1 Segment A and 33-7-2.0 Segment B, both administered by the Medford District Office, were \$0.74 Mbft and \$2.22 Mbft, respectively. BLM points out that, in contrast, use fees for the roads for temporary permittees based on the State average was \$0.27 Mbft, \$2.16 Mbft, and \$2.25 Mbft, respectively, indicating, BLM contends, that the fees, while not inexpensive, are very reasonable. Therefore, BLM argues the roads do not meet the criteria for designation as tie roads, based on the minimal use fees charged and the fact that large tributary volumes exist.

[1] The Departmental regulation applicable to payment to the United States for logging road use, 43 CFR 2812.5-2(b), provides that where a permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of BLM, the permittee will be required to pay a fee the amount of which is to be determined by the authorized officer. According to the regulation, that determination is to be based on the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance, if furnished by the United States, and any extraordinary costs peculiar to the construction or acquisition of the particular road. 2/ The regulation further provides that for Federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreation or other authorized uses is to be deducted from the replacement costs of the road before the amortization item is computed.

As explained in the Oregon State Office BLM Manual Handbook (Handbook) at H-2812-1 H, "[a]llocation of appropriate costs to non-logging uses was adopted by the Bureau in an attempt to limit the replacement costs shared by permittees in the use of BLM controlled roads to those costs directly associated with logging." The Handbook discusses various methods of adjusting replacement costs and then states:

In 1977, a third concept was authorized which is also a form of replacement cost adjustment. This is the so-called "tie-road" or "road interconnection" concept. It provides the means to totally delete tie road connections from amortization. A tie road is defined as a road available for log hauling use and normally

---

2/ In this case, the United States does not provide maintenance for any of the three roads. The roads are maintained by Douglas County.

connecting two tributary areas. Tie roads have been constructed for BLM purposes, primarily to make BLM timber available to more than one marketing area. The road investment was considered to have been returned by increased stumpage prices resulting from additional competition. Once a tie road is identified, use of the tie road is free, except that charges are made for maintenance of the mileage used. [Emphasis added.]

On page 4 of a staff report attached to Oregon State Office Instruction Memorandum No. OR-77-179, dated April 28, 1977, BLM explained:

Tie roads are generally at the head of drainages resulting in high construction costs. There is little timber tributary to the road. This combination produces an exorbitant fee. The road was built for reasons other than moving the tributary timber; therefore[,] amortization of this road is not reasonable.

Exhibit A of right-of-way permit M-605 specifies the formula to be utilized in calculating use fees for the roads in question. That formula provides that the road use fee per Mbft will equal replacement cost of the road divided by the tributary timber plus an interest allowance. <sup>3/</sup> BLM represents that fees were calculated for the roads using that formula. Douglas, NTA's predecessor in interest, accepted those fees in June 1989. Thus, at the time of the assignment of M-605 to NTA, NTA was aware of the fees. <sup>4/</sup>

In support of its decision, BLM asserts that the tie road concept was developed as a method to eliminate unreasonable use fees in areas where there were high construction costs and little tributary volume. BLM contends that road No. 30-6-32.0 Segment D does not qualify because, although the road provides access to additional markets, it has a large tributary volume and low use fees. It states that the other two roads also have low fees and large tributary volumes.

BLM's decision to deny tie road status to the three roads in question involved an exercise of discretion. The record demonstrates that the tie road determination was based on a reasoned analysis of the facts and was made with due regard for the public interest. NTA has failed to show error in BLM's determination.

---

<sup>3/</sup> "Tributary timber" is defined in Exhibit A of M-605 as "the volume of timber which has been moved over the road and the volume of timber currently merchantable which probably will be moved over the road."

<sup>4/</sup> In its decision denying tie road status, BLM informed NTA that since it had purchased only a portion of the timber volume used to calculate the dollar shares assigned to Douglas, BLM would recalculate dollar shares if NTA informed it regarding tributary volume purchased.

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.

---

Bruce R. Harris  
Deputy Chief Administrative Judge

I concur:

---

James L. Burski  
Administrative Judge