

NOTE: This disposition is nonprecedential.



United States Department of the Interior
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Interior Board of Land Appeals
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February 17, 2016

IBLA 2016-54)	CACA 5232
)	
BIGHORN-DESERT VIEW WATER)	Right of Way
AGENCY)	
)	Decision Affirmed;
)	Petition for Stay Denied as Moot

ORDER

Bighorn-Desert View Water Agency (appellant)¹ has appealed from, and petitioned to stay the effect of, a November 30, 2015, Annual Rent Bill issued by the Barstow Field Office (California), Bureau of Land Management (BLM) for calendar year 2016. BLM charged appellant rent of \$14,408.88 for a 32.88-acre linear ROW, serialized by BLM as CACA 5232.

On December 31, 2015, appellant filed with BLM its notice of appeal (NOA), including its statement of reasons. BLM transmitted the administrative record (AR) to the Board on January 14, 2016. On January 29, 2016, appellant filed a supplemental statement of reasons (SSOR). After receiving an extension of time to do so, BLM filed a Response to Petition for Stay and Answer to Statement of Reasons (Answer) on February 8, 2016.

Because appellant has not shown that BLM issued the 2016 rental fee assessment in error, we affirm BLM's decision and deny the petition for stay as moot.

¹ Appellant provides water service to over 2,500 customers within a 51-square-mile area in San Bernardino County. BLM granted to appellant a right-of-way (ROW) across public lands so that it could install and maintain pipelines, and transport and distribute water to its customers. AR, Tab 8. The ROW area encumbers approximately 32.88 acres (40' x 35,692.8') of public lands all within San Bernardino County, California. *Id.*

The issue in this appeal is whether BLM's 2016 rental assessment is erroneous as a matter of fact or law. The appellant bears the burden of demonstrating that BLM erred in its calculations or did not properly apply the rental schedule to appellant's ROW. *See Treasure Valley Broadcasting Co.*, 165 IBLA 113, 119 (2005). In this case, appellant does not challenge BLM's calculations. Instead, appellant claims the rental fee is excessive because it is approximately \$11,000 more than the amount BLM charged for the same ROW in 2015. According to appellant, the rental increase "is facially unreasonable and bears no relationship to economic reality." NOA at unpaginated (unp.) 1. Appellant also claims BLM's rental schedule is flawed because the basis for local market value is "simply unjustified and defies reality for the Bighorn service area." SSOR at unp. 2. These arguments do not satisfy appellant's burden of proof.

While appellant's 2016 rental amount increased substantially, the Department's governing regulations explicitly explain the basis for such an increase. BLM is required by law to charge fair market value for rental of an ROW. *See* 43 U.S.C. § 1764(g) (2012), 43 C.F.R. §§ 2806.20, 2806.23(a). As mandated by regulation, BLM calculates a linear ROW holder's rental fee based on a pre-established rental schedule. 43 C.F.R. § 2806.20(a). The rental schedule for linear ROWs contains an annual per-acre rent figure for particular zones. BLM has adopted the National Agricultural Statistics Service (NASS) Census to determine zone designations. *See* 43 C.F.R. § 2806.21; *see also* 73 Fed. Reg. 65,040 (Oct. 31, 2008) (explaining BLM's rental fee methodology); *see also* Instruction Memorandum No. 2016-008, "Calendar Year 2016 - 2025 Linear Right-of-Way Rental Schedule."³ Thus, BLM calculates an annual linear ROW rental fee by multiplying the per-acre rent for the appropriate zone by the number of acres contained in the ROW. 43 C.F.R. § 2806.23(a). BLM posts annual ROW rental rates, fee explanations, and other ROW rental-related information on its website.

From 2011 to 2015, San Bernardino County fell into zone 6, as determined by data contained in the 2007 NASS Census. 43 C.F.R. § 2806.21. Beginning in 2016, however, BLM applied the 2012 NASS Census data to its annual per-acre fee schedule for linear ROWs across public lands. *See* 43 C.F.R. §§ 2806.20(a), 2806.22(b). The

³ BLM uses the NASS data because it is reflective of the types of lands BLM administers. The annual per-acre rental for linear ROWs is the product of 80% of the NASS Census data per-acre zone value, multiplied by a 50% encumbrance factor, multiplied by a 5.27% rate of return, multiplied by an annual 2.1% adjustment factor, which represents the average annual change in the Implicit Price Deflator-Gross Domestic Product.

2012 NASS Census provides that the County was re-assigned to zone 9. *Id.* Consequently, the per-acre value in San Bernardino County increased by about \$335 between 2015 and 2016, which, when multiplied by 32.88 acres, results in an \$11,000 rental increase.

We conclude that BLM's 2016 rental assessment was based upon the appropriate rental schedule, which follows duly-promulgated regulations, and therefore the \$335-per-acre increase was properly imposed by BLM. While appellant may disagree with BLM's assessment, such disagreement, without more, is insufficient to render BLM's determination invalid. *See Treasure Valley Broadcasting Co.*, 165 IBLA at 119.

Appellant also argues that it should only have to pay for lands it actually occupies within the ROW grant and its rental should never exceed zone 1 value. *See* NOA at unp. 2 ("The rent charged by BLM should not be for the entire 40 foot wide ROW but only for that portion occupied by the Bighorn water pipeline. . . . [Moreover,] Bighorn, as a not-for-profit, local public agency, that provides a vital public service . . . should only pay rents in the BLM Zone 1 range."). Since there is no indication that appellant raised these concerns with BLM and because the agency did not address these arguments in its Annual Rent Bill, appellant's concerns do not fall within the scope of this appeal and are not properly before us at this time. *See Nevada Outdoor Recreation Association, Inc.*, 153 IBLA 8, 11 (2000). To the extent appellant seeks a waiver or reduction in rent because of alleged hardship caused by zone reassignment, BLM, not the Board, has the delegated authority to first consider waiver or reduction proposals. *See* 43 C.F.R. § 2806.15.⁴

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision is affirmed and the petition for stay is denied as moot.

/s/
Eileen G. Jones
Chief Administrative Judge

⁴ BLM states in its Answer that appellant has submitted a request to the BLM California State Director for a fee waiver. *See* Answer at 6 n.7.

I concur:

_____/s/
James F. Roberts
Deputy Chief Administrative Judge