

GOLD MOUNTAIN LOGGING CO.

IBLA 78-83 Decided April 25, 1978

Appeal from decision of the Oregon State Office, Bureau of Land Management, requiring payment of damages for past occupancy in trespass. OR 11361.

Affirmed.

1. Trespass: Generally

Where there has been an unauthorized use of the public lands, BLM may assess damages against the trespasser and serve him with a demand for payment thereof, prior to turning the matter over to the Department of Justice for initiation of judicial proceedings.

2. Trespass: Measure of Damages

Where BLM assesses trespass damages based on the reasonable value, extent, and duration of an unauthorized use of the public lands, this assessment will not be disturbed unless the trespasser submits convincing evidence that it is incorrect.

APPEARANCES: Maurice V. Engelgau, Esq., Coquille, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Gold Mountain Logging Co. has appealed from the October 18, 1977, decision of the Oregon State Office, Bureau of Land Management (BLM), requiring that the company pay \$1,300 for unauthorized occupancy of Federal land between the fall of 1970 and the latter part of March 1977. We affirm.

On November 23, 1973, the company filed an application for a right-of-way for use as a communications site. On February 11, 1974,

BLM employee Edward G. Stauber reported that he had visited the site on September 27, 1972, prior to the filing of this application and found three unauthorized communication transmission facilities there, including one operated by Gold Mountain Logging Co. Stauber's report indicates that he spoke to one George Carlson, who told him that the equipment had been at the site for 2 years, or from around September 1970.

On February 11, 1977, BLM issued an appraisal report, which indicates that the value of the company's past use of the site is \$1,300. On May 12, 1977, BLM notified Gold Mountain Logging Co. that it would have to pay \$1,300 for this past occupancy before its application could be approved. On October 18, 1977, since the company had not paid this amount, BLM issued a decision rejecting its right-of-way application, and renewing its demand for payment of \$1,300 for past occupancy of the site, from which decision this appeal followed. Appellant does not challenge the propriety of the rejection of its right-of-way application, ^{1/} but is concerned only with the demand for payment of \$1,300 in damages for past occupancy.

[1] Under 43 CFR 2801.1-4, "[a]ny occupancy or use of the lands of the United States without authority will subject the person occupying or using the land to prosecution and liability for trespass." Where there has been unauthorized use of public lands, BLM may assess damages against the trespasser, including a business entity, and serve it with a demand for payment thereof, prior to turning the matter over to the Department of Justice for initiation of judicial proceedings. 43 CFR 9239.0-9(b); 9239.2-3; see Feliciano Y. Jimenez, 30 IBLA 82, 85 (1977); Southern Pacific Transportation Co., 23 IBLA 232, 256-7, 83 I.D. 1, 11-12 (1976); Lloyd L. Clark, 17 IBLA 201, 214, 81 I.D. 548, 552 (1974); Richard O. Morgan, 10 IBLA 141, 143 (1973). See also 43 CFR 9239.7-1.

Reports by BLM employees in the record indicate that appellant occupied the land, without authority to do so, from the fall of 1970 until March 1977. Nothing in the record suggests, and appellant has not shown, either that it did not occupy this land during the period in question or that its occupancy was authorized. Accordingly, we hold that BLM properly issued a demand for payment of assessed damages.

^{1/} Appellant apparently has no further interest in this right-of-way, as it abandoned the site upon receipt of BLM's demand for payment, and, according to a BLM report dated April 18, 1977, "left a mess at the site." The record indicates that appellant was requested to clean up the site, but does not indicate whether it did so.

[2] We also affirm BLM's assessment of the amount due for these damages. Where supported by facts of record, BLM's assessment of the amount of trespass damages due will not be disturbed if the trespasser does not present evidence establishing clearly that it is in error. Hub Lumber Company, A-29527 (September 17, 1963). Moreover, where BLM's decision shows that the assessment is based on the reasonable value, extent, and duration of the unlawful occupancy, it will be affirmed. Frank A. Gorman, A-23683 (December 6, 1943). BLM's decision was based on facts of record, specifically a comprehensive assessment appraisal report, which took into account all of the necessary factors set out above. Apparently because the exact date of the initiation of appellant's occupancy is unclear, BLM assessed damages for only 5 years' occupancy, i.e., from March 1972 to March 1977. The record is clear that appellant occupied the land during this period. Appellant has presented no evidence indicating that this amount was not correct. Accordingly, we affirm BLM's holding that appellant is liable to the United States for \$1,300 for its unauthorized use of the public lands.

Appellant argues that it is not liable for past rental, as it did not agree to pay such rental. This argument is without merit. Strictly speaking, it is not rental, but damages for unauthorized use, which are being sought from appellant, although the rental value has been used to calculate the amount of the demand. ^{2/} The United States stands as any other land owner against trespassers, and has the right to collect appropriate damages for unauthorized use of the public lands. Obviously, it is no defense to a trespass action that the trespasser did not consent to be liable for damages on account of his trespass.

Appellant also argues that BLM advised it that it could use these lands prior to the granting of a right-of-way, at the sufferance of the United States, without incurring liability, and that BLM is accordingly estopped from claiming damages from it. This argument is also without merit. Appellant has offered no proof of its assertion that BLM so advised it, and the argument thus fails as a matter of fact. In any event, even if appellant did receive such advice from BLM, it could gain no right thereby. The United States is not bound or estopped by the acts of its officers or agents when they cause to be done what the law does not sanction or permit. 43 CFR 1810.3(b). Unauthorized use of public lands without incurring liability for so doing is not sanctioned or permitted by the public land laws.

^{2/} We do not mean to imply that the calculation of straight rental values is the only basis for assessment of damages in such cases.

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.

Edward W. Stuebing
Administrative Judge

We concur.

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

