

DELBERT JONES

IBLA 86-125

Decided December 16, 1987

Appeal from a decision of the Worland District Office, Wyoming, Bureau of Land Management, setting rental charges for reservoir right-of-way W-81744.

Affirmed.

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

An appraisal of a reservoir right-of-way granted pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), will be upheld on appeal if no error is shown in the appraisal method used by BLM and the appellant fails to show by convincing evidence that the annual rental charge is excessive.

2. Appraisals--Rights-of-Way: Appraisals

Sec. 504(g) of the Federal Land Policy and Management Act of 1976 and 43 CFR 2803.1-2(c)(3), permit BLM to charge less than the fair market rental value if the right-of-way holder provides a valuable benefit to the public or to the programs of the Secretary without charge or at reduced rates.

APPEARANCES: Stanley Jones, for appellant Delbert Jones; Marla E. Mansfield, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Delbert Jones has appealed from a decision of the Worland District Office, Wyoming, Bureau of Land Management (BLM), dated September 29, 1985, determining the annual rental charges of \$880 for his reservoir right-of-way, plus \$700 for a monitoring fee.

Effective March 5, 1985, BLM granted a nonexclusive right-of-way to appellant for a term of 30 years pursuant to section 501 of the Federal Land

Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1982). 1/ The right-of-way was granted for the construction, operation, and maintenance of the Harrington Reservoir and its appurtenant irrigation ditches. The area encumbered by the reservoir and ditches includes a reservoir site of 184.9 acres and 20.6 acres of 30-foot right-of-way for ditches, or a total of 205.5 acres.

The right-of-way was issued with the rental amount being subject to an appraisal of fair market rental value. By memorandum dated October 31, 1984, the Chief, Branch of Appraisal, informed the District Manager, Worland, that the fair market rental value of the site had been determined to be \$1,175. By letter dated July 5, 1985, BLM informed appellant that, following a preconstruction conference between appellant and BLM, a rental reduction of 25 percent had been approved to reflect the benefits to BLM programs resulting from the project. The letter also provided a breakdown of the charge for appellant's right-of-way indicating that the rental was \$880 (\$1,175 less 25 percent) and \$700 was for a monitoring fee. 2/ A \$25 deposit was credited to the amount due and \$1,555 was deemed to be owing for the period commencing on March 5, 1985, and ending March 4, 1986. See 43 CFR 2803.1-2(a). Appellant was notified that this determination was final in the September 1985 BLM decision, which required payment as per a billing dated June 27, 1985. BLM stated: "The payment of \$1555.00 as soon as possible is required to maintain the right-of-way in good standing."

In his statement of reasons for appeal, appellant objects to the rental charges claiming them to be excessive. He contends the required maintenance of a minimum of 12 feet of water in the Harrington Reservoir, imposed by BLM, created an additional expense which should be taken into consideration when setting annual rental fees. Appellant further contends that the rental rate charged for his right-of-way, \$5.72 per acre, is excessive in light of the \$.10-per-acre return BLM would receive for the land if employed in its highest and best use as grazing land. Appellant argues that the cost of construction of the reservoir should be prorated with the proportional cost of the water which would remain in the reservoir as dead storage being credited

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1/ The legal description of the subject reservoir and ditches occupied parts or all of the following:

- T. 51 N., R. 95 W., Sec. 30: Lots 6, 7, and 8, NE 1/4 NE 1/4,  
SW 1/4 NE 1/4, E 1/2 SW 1/4, SE 1/4,  
NW 1/4, SE 1/4
- Sec. 31: Lots 5, 6, and 7, NW 1/4 NE 1/4,  
E 1/2 W 1/2, S 1/2 SE 1/4
- Sec. 32: Lots 6 and 7
- T. 51 N., R. 96 W., Sec. 25: Lots 9, 12, and 13, SE 1/4 NE 1/4  
Sec. 36: Lot 1

Sixth Principal Meridian, Wyoming.

2/ The record is silent as to the basis for the \$700 monitoring fee, and we assume this to be a one-time charge to cover the cost of overseeing compliance with the right-of-way agreement during the period of construction of the reservoir. If so, the charge appears to be reasonable.

against the rental charges. After deducting the improvements for wildlife and public use, BLM would owe him money, according to appellant's calculations.

[1] Section 501(a)(1) of FLPMA, 43 U.S.C. § 1761(a)(1) (1982), provides that the Secretary is authorized to grant a right-of-way upon public lands for reservoirs. In addition, section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1982), requires the holder of a FLPMA right-of-way "shall pay annually in advance the fair market value thereof as determined by the Secretary granting \* \* \* such right-of-way."

When it appraised the subject land, BLM used the market comparison approach to estimate the land value. The sales price of three comparable tracts were analyzed and compared to the subject for location, access, size, time, water availability, and economic potential. BLM noted that the first comparable parcel was superior to the subject parcel indicating a value less than \$100 per acre. The second comparable parcel was considered slightly superior to appellant's indicating a value not far below \$63 per acre. The third comparable was considered inferior to the subject parcel indicating a value above \$37 per acre. Based upon those comparables, the fair market sale value was determined to be \$60 per acre. Using a 10.25-percent rate of return and a reduction factor in recognition that the right-of-way grant was not exclusive (5-percent reduction for reservoir lands and 25-percent reduction for ditches), the appraiser then calculated the rental to be \$5.8425 per acre per year for the reservoir site, or \$1,080.28 per year, and \$4.6125 per acre per year for the ditches, or \$95.02 per year. The total fair market rental value was set at \$1,175 per year, before adjustments in recognition of benefits to BLM or the public. As previously noted, a 25-percent reduction was made in recognition of these benefits.

In making the calculation BLM used a 95-percent factor for the reservoir and a 75-percent factor for the ditches. These factors are an adjustment in recognition of the fact that the right granted to appellant is not exclusive. It is not, as appellant apparently believes, an attempt to calculate the amount of time the holder will be using the land. Stated another way, the use of the land for a reservoir was estimated to be about 95 percent exclusive of all other uses. The use of the land for ditches was deemed to be about 75 percent exclusive of all other uses.

The general standard for reviewing appraisals is to uphold the appraisal if the appellant is unable to show error in the appraisal method used by BLM or fails to otherwise show by convincing evidence that the charge is excessive. Meyring Livestock Co., 69 IBLA 110 (1982); Western Slope Gas Co., 61 IBLA 57 (1981). Ordinarily, in the absence of compelling evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal. Id. Appellant has neither shown error in the method of appraisal nor provided another appraisal.

[2] Appellant argues that greater consideration should be given to the cost of construction of the Harrington Reservoir and maintenance of "dead storage" to facilitate BLM's desire to create a migratory bird and fish habitat. Appellant states: "We were led to believe that because of the benefits to

the public that would be provided by the multi-use of the reservoir area, we would not have to pay any or a minimal amount of annual rent."

Section 504(g) of FLPMA provides for instances in which the Department may charge a reduced fee or no fee for a FLPMA right-of-way. See also 43 CFR 2803.1-2(c). One instance in which the holder of a right-of-way may be entitled to a reduced fee is "[w]hen a holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary." 43 CFR 2803.1-2(c)(3). BLM took the benefit to its conservation program into consideration and reduced the right-of-way rental by 25 percent.

In his statement of reasons appellant notes that the reservoir will contain 1200 acre-feet of water. The "dead storage" requirement will, by appellant's calculations, require 233 acre-feet of water, or approximately 20 percent of the total capacity. BLM allowed a 25-percent reduction of the fair market rental value to adjust for the benefit to BLM and the public. Considering the method used by BLM when making the appraisal, we find the reduction made by BLM to be reasonable and supported by the facts.

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.

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R. W. Mullen  
Administrative Judge

We concur:

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Franklin D. Arness  
Administrative Judge

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Will A. Irwin  
Administrative Judge

