

SNYDERVILLE BASIN SEWER IMPROVEMENT DISTRICT

IBLA 88-200

Decided October 23, 1989

Appeal from a decision of the Bear River Resource Area Office, Bureau of Land Management, establishing rentals for sewer line rights-of-way U-53702 and U-53723.

Set aside and remanded.

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

Under 43 CFR 2803.1-2(b)(1)(i), no rental shall be collected from a local government or agency or instrumentality thereof, except municipal utilities and cooperatives whose principal source of revenue is customer charges. Where BLM issues a decision requiring rental for a sewer line right-of-way, and on appeal the grantee claims the benefit of 43 CFR 2803.1-2(b)(1)(i) on the basis that it is a "local government," and the record does not disclose whether the grantee qualifies, the Board will set aside the decision and remand the case for BLM to determine the applicability of the regulation.

2. Rights-of-Way: Appraisals

Under 43 CFR 2803.1-2(c)(1)(v), the authorized officer is required to use the fee schedule set forth at 43 CFR 2803.1-2(c)(1)(i) in establishing the rental for a linear right-of-way, unless the authorized officer determines that a substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10 and in the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal. When BLM calculates the rental for a linear right-of-way on the basis of an appraisal, the record should include the determination required by 43 CFR 2803.1-2(c)(1)(i).

APPEARANCES: Rex Ausburn, P.E., General Manager of Snyderville Basin Sewer Improvement District, Park City, Utah, for appellant.

## OPINION BY ADMINISTRATIVE JUDGE HARRIS

Snyderville Basin Sewer Improvement District (SBSID) has appealed from the December 14, 1987, decision of the Bear River Resource Area Office, Bureau of Land Management (BLM), establishing rentals for rights-of-way U-53702 and U-53723. BLM issued right-of-way U-53702 on July 11, 1985, for a sewer trunkline. The right-of-way covered an area 2,240 feet long and 20 feet wide for a total area of 1.03 acres. Right-of-way U-53723 issued on January 28, 1985, for an 8-inch main sewer line 121 feet in length and an 8-inch lateral sewer line 88 feet long. The 25-foot right-of-way covered 0.12 acres. Each right-of-way issued subject to rental being determined at a subsequent date.

In its decision, BLM referred to right-of-way rental regulations at 43 CFR 2803.1-2 as being applicable to SBSID's rights-of-way and that under those regulations, rental is determined by an annually adjustable schedule, except when a substantial segment or area within the right-of-way is more than 10 times the schedule rate and where expected valuations are sufficient to warrant an appraisal. Without further explanation, BLM stated each right-of-way had been appraised and that rental rates for 1988 were \$1,030 per year for right-of-way U-53702 and \$120 per year for right-of-way U-53723. BLM made certain downward adjustments in the rental for the years 1985-87. SBSID filed a timely appeal.

In its statement of reasons, SBSID contends that it is a "local government" created by Summit County, Utah, and is funded, in part, by property taxes. It states that the sole purpose for its existence is to protect the health and welfare of the community by collected and treating wastewater. As such, it asserts, the regulations in 43 CFR 2803.1-2(c) do not apply to it. It also presents a number of factors which it states should clarify the nature of its rights-of-way. With respect to U-53723, it contends that the 25-foot wide right-of-way overlaps itself and reduces the area granted. Regarding right-of-way U-53702, appellant notes that the sewer constructed on BLM land was only 1,200 feet in length. Appellant claims that the length of the right-of-way should be reduced accordingly. The rental for U-53702, appellant argues, indicates a per-acre value of \$3,333 to \$10,000, which is much too high for land that is "wetlands/swamp between Utah Highway 248 and Union Pacific Railroad and is unbuildable" (Statement of Reasons at 2).

[1] We will first consider appellant's argument regarding the applicability of the regulations at 43 CFR 2803.1-2. In essence, appellant is claiming that it should not be charged any rental for its rights-of-way because it is a "local government." The regulations provide at 43 CFR 2803.1-2(b)(1)(i) that no rental shall be collected from a "Federal, State or local government or agency or instrumentality thereof except municipal utilities and cooperatives whose principal source of revenue is customer charges."

Although appellant identified itself as a local government on each of its right-of-way applications, the record does not show that appellant objected at the time of right-of-way issuance to the provision of each of the right-of-way grants that rental was to be ascertained at a later date.

Arguably, however, appellant did not know what charge, if any, there would be.

The question raised is whether appellant is entitled to the benefit of 43 CFR 2803.1-(b)(1)(i). We are not able from the present record to answer that question. Therefore, we find it appropriate to set aside BLM's decision and remand this case to BLM for it to consider whether appellant qualifies under that regulation. In addition, appellant's argument concerning the public benefit of its services presents the issue whether it may qualify for a waiver or reduction in rental under 43 CFR 2803.1-2(b)(2)(ii). <sup>1/</sup> If BLM concludes that appellant does not qualify under 43 CFR 2803.1-2(b)(1)(i), it should review the applicability of 43 CFR 2803.1-2(b)(2)(ii).

[2] Further, we note that the rental charges in this case were arrived at by BLM using the comparable value method of appraisal. In its appraisals, BLM concluded that the highest and best use of the land was for speculative investment for residential subdivision and that the value per acre was \$25,000. This figure was then multiplied by the acreage involved, by the value of the rights conveyed, which BLM deemed to be 40 percent of the fee interest, and by an annual rate of return of 10 percent to obtain a rental value.

The regulations at 43 CFR 2803.1-2(c)(1)(v), state, however, that

[t]he authorized officer shall use the fee schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal."

Although neither case file contains a document which specifically sets forth BLM's justification for utilizing an appraisal, as the regulations would appear to require, each file does contain a worksheet dated December 11, 1987 (completed after the December 8, 1987, approval of the appraisals), which shows that under the regulatory zone schedule the 1988 rental for U-53702 would have been (1.03 acres x Zone 4 rate of \$13.84) \$14.25 and for U-53723 (.12 acre x Zone 4 rate of \$13.84) \$1.66.

If on remand BLM concludes that rental, established by an appraisal, is appropriate for these rights-of-way, it should include in the case records the determination required by 43 CFR 2803.1-2(c)(1)(v). It should also address the arguments raised in this appeal by appellant, with particular

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<sup>1/</sup> The regulation, 43 CFR 2803.1-2(b)(2)(ii), provides that BLM may reduce or waive the rental fee where "[t]he holder provides without charge, or at reduced rates, a valuable benefit to the public or to the programs of the Secretary."

attention to appellant's contention that the lands in question are wetland/ swamp and unbuildable. 2/ If true, that fact would substantially affect BLM's per acre valuation of the land. Finally, appellant's statement of reasons clearly indicates that it did not review the appraisals conducted for these rights-of-way. Thus, any decision by BLM on remand which requires the payment of rental for these rights-of-way based on an appraisal should include, as an attachment, a copy thereof.

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 set aside and the case remanded for further action consistent herewith.

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Bruce R. Harris  
Administrative Judge

I concur:

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James L. Byrnes  
Administrative Judge

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2/ Although BLM may properly charge each user of a site the fair market rental value, BLM assigned a value to the rights-of-way of 40 percent of the fee value. If, as alleged by appellant, U-53723 lies within right-of-way U-46991, granted to Park City, it is not clear that such a figure is warranted. In addition, appellant alleges that appraisers commonly estimate the value of rights-of-way at 10 to 30 percent of the fair market value.