

SOUTHERN PACIFIC TRANSPORTATION CO.

IBLA 89-112

Decided July 18, 1990

Appeal from a decision of the California Desert District Office, Bureau of Land Management, readjusting the rental for right-of-way CA-2876.

Affirmed.

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

An appraisal of fair market value for a communication site right-of-way will not be set aside on appeal if an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charges are excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

APPEARANCES: Edward A. Fisher, Property Manager, Southern Pacific Transportation Company, Los Angeles, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Southern Pacific Transportation Company (Southern Pacific) has appealed from a September 30, 1988, decision of the California Desert District Office, Bureau of Land Management (BLM), readjusting the rental for right-of-way CA-2876.

On June 16, 1977, BLM issued communication site right-of-way CA-2876 to Southern Pacific, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1982). The site, for a microwave repeater station and access road, is located on Quartzite Mountain, in the secs. 15 and 16, T. 6 N., R. 4 W., San Bernardino Meridian, San Bernardino County, California. BLM granted the right-of-way subject to payment of an estimated annual rental of \$500 pending completion of a formal appraisal. In accordance with a formal appraisal performed in 1978, BLM required a rental of \$1,000 per year for the site.

Rental remained the same until 1988 when BLM completed a new appraisal of a number of communication sites located on Quartzite Mountain, including CA-2876. That appraisal, approved by the District Manager on September 22, 1988, appraised the value of the sites as of July 27, 1988, by comparing them to six similar communication site leases on six other mountains. The appraisal states that on Quartzite Mountain itself, there is an area of

"some 10 or 12 facilities on public and private land" on "a narrow rocky ridge about half a mile long." BLM compared the other leases to the Quartzite Mountain sites on the basis of factors such as time, location, character of the land, site amenities, and electronic versatility. BLM's appraiser determined that three of the comparable sites were inferior, and three superior, to the Quartzite Mountain sites. The comparables ranged in annual rental from \$2,616 to \$10,080. He concluded that the fair market rental value of a communication site on Quartzite Mountain was \$6,300 annually. Southern Pacific's fair market rental valuation was determined to be \$4,725, because it shared use of its site with an FM radio station (CA-6361), whose fair market rental was calculated as \$1,575.

Prior to filing its statement of reasons, Southern Pacific filed a request with the Board that it be allowed to review all documents in the case file. The Board granted the request on January 13, 1989, and for-warded the case file to BLM.

On April 10, 1989, Southern Pacific filed its statement of reasons asserting that because the decision failed to cite an applicable section of the regulations, it failed to receive proper notice of the decision; that the appraisal was not prepared in accordance with Departmental procedures; that the appraised value is incorrect; and that right-of-way CA-2876 contains a fixed rental rate for its entire term.

On May 1, 1989, BLM returned the case file to the Board. Upon reviewing the case file following its return, the Board discovered that BLM had placed a memorandum in the file relating to Southern Pacific right-of-way CA-20213, which was also the subject of the July 27, 1988, BLM appraisal report, which served as the basis for the decision under review in this case. That memorandum, dated March 20, 1989, purported to detail the results of a March 2, 1989, meeting between BLM personnel and representatives of Southern Pacific. It appeared from the memorandum that BLM refused to allow Southern Pacific to review the appraisal report in regard to CA-20213. It was not clear whether Southern Pacific had also been denied access to the appraisal as it related to right-of-way CA-2876. Because the regulations provide at 43 CFR 4.24(a)(4) that "[i]n any case, no decision on appeal \* \* \* shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal \* \* \*," the Board accordingly found it necessary, by order dated May 11, 1989, to direct BLM to make the entire appraisal report available to Southern Pacific for a period of 30 days following receipt of the order. We also observed that Southern Pacific's statement of reasons was general in nature and did not point out any specific errors in BLM's appraisal methodology and that it was not accompanied by another appraisal. We allowed Southern Pacific 45 days from receipt of the order to file any supplemental statement of reasons.

Although Southern Pacific received the Board's May 11, 1989, order and sought and received an extension of time to file a response, no supplemental statement of reasons or other communication in support of the appeal has been received from Southern Pacific.

[1] Pursuant to 43 U.S.C. § 1764(g) (1982), the holder of a right-of-way is required to pay rental annually in advance for the fair market value of the right-of-way when this value is established by an appraisal, although BLM may allow use of a right-of-way prior to a formal appraisal. Jim Doering, 91 IBLA 131, 133 (1986). An appraisal of fair market value for a communication site right-of-way will not be set aside on appeal unless an appellant is able to show error in the appraisal method or demonstrate by convincing evidence that charges are excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal. MCI Telecommunications Corp., 115 IBLA 117, 120 (1990); Big Sky Communications, Inc., 110 IBLA 213, 214 (1989); Chalfont Communications, 108 IBLA 195, 196 (1989). The preferred method for determining the fair market value of nonlinear rights-of-way is the comparable lease method of appraisal. Big Sky Communications, *supra*.

Southern Pacific has not shown that there was error in the appraisal methods used by BLM or that the appraised rental charge is excessive. Its allegation that it did not receive proper notice because BLM's decision did not cite an applicable section of the regulations must be rejected. Although BLM's decision cited "43 CFR 2803.1-2, (1)(e) (1985)" as the authority for undertaking a reappraisal of the right-of-way, that clearly was not a proper citation. It probably intended to reference 43 CFR 2803.1-2(d)(1) (1986), which provided that rental fees could be adjusted whenever necessary to reflect current fair market value. However, at the time of BLM's reappraisal the regulations governing appraisals for rights-of-way were found at 43 CFR 2803.1-2(c)(3)(i). 52 FR 25818 (July 8, 1987); 52 FR 36576 (Sept. 30, 1987). While the applicable regulation was incorrectly cited in BLM's decision, there can be no question regarding BLM's authority to appraise or reappraise a right-of-way to determine its annual fair market rental value. Nor did the miscitation deprive appellant of notice of the increased rental. The decision informed it of the increase; it was granted the right of appeal; it had the opportunity to examine BLM's appraisal; and it provided no meaningful rebuttal.

Appellant's other arguments are also general allegations for which there is no support in the record.

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.

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Bruce R. Harris  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge