

TEXACO TRADING & TRANSPORTATION INC.

IBLA 94-269

Decided March 2, 1994

Appeal from (and request to stay) a decision of the Newcastle, Wyoming, Resource Area Manager, Bureau of Land Management, increasing annual rental for right-of-way grant WYW115004.

Stay denied; decision affirmed.

1. Rights-of-Way: Appraisals--Rules of Practice: Appeals: Stay

Because rights-of-way appeals regulation 43 CFR 2884.1 provides that decisions involving mineral leasing rights-of-way will be given immediate effect and will not be stayed pending appeal unless otherwise ordered, the general stay regulation provided at 43 CFR 4.21(a) does not apply to such rights-of-way appeals.

2. Rules of Practice: Appeals: Burden of Proof

The burden of proof to show that a stay should issue rests with the one who seeks it. An offer of evidence of purchase values for agricultural acreage did not tend to refute a BLM rental-rate determination for a small-acreage right-of-way that was based on a survey of rental values of similar small sites in Wyoming, and a stay pending appeal was denied because of the consequent failure to carry the burden of proof that a stay should issue.

APPEARANCES: Benny R. Bennett, Real Estate Analyst, Texaco Trading and Transportation Inc., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Texaco Trading & Transportation Inc. (Texaco) has appealed from a December 30, 1993, decision of the Newcastle Resource Area Manager, Bureau of Land Management (BLM), increasing annual rental for a 2.05-acre right-of-way grant (WYW115004) at Osage, Wyoming, from \$200 to \$500. The right-of-way site is used for a pipeline and as a truck unloading station. On January 27, 1994, Texaco petitioned for a stay of the December 1993 decision, in apparent reliance on Departmental regulation 43 CFR 4.21(a).

[1] Although this approach was encouraged by BLM's decision, which stated that a stay could be obtained either under the general stay provision of section 4.21(a), or under the more specific stay regulation provided for Mineral Leasing Act rights-of-way appeals (43 CFR 2884.1), that advice was not correct. The specific regulation governing appeals from such rights-of-way decisions is 43 CFR 2884.1. The procedure to be applied if a stay is sought is established by the regulation specific to the class of appeal, if one is provided, because the general remedy afforded by section 4.21(a) governs "[e]xcept as otherwise provided by law or pertinent regulation." See Michael Blake, 127 IBLA 109 (1993) (wild horse regulations provided specific stay procedure that preempted application of general stay regulation). Because 43 CFR 2884.1 provides otherwise insofar as this right-of-way appeal is concerned, rights-of-way decisions are governed by the specific stay regulation governing such appeals. See id. at 110. The rights-of-way regulation provides that all decisions of the authorized officer are effective pending appeal unless otherwise ordered. 43 CFR 2884.1(b). There was not, therefore, an automatic stay of the effect of the decision now before us for review, and it has been in effect since it was issued by BLM. Id. The question now before us is whether a stay should nonetheless be ordered pursuant to 43 CFR 2884.1(b). We find that it should not.

[2] The burden of proof to show that a stay should issue rests with the one who seeks it. See In Re Eastside Salvage Timber Sale, 128 IBLA 114, 116 (1993). In support of the requested stay in this case, Texaco has filed a statement of reasons reciting that the increased rent sought by BLM is unreasonably high if the purchase value of the underlying property affected by the right-of-way is considered, and concluding that the appeal was taken in good faith because of the unreasonable increase sought. Texaco explains that:

[T]he rate that you are charging us for this 2.05 acre tract exceeds the price you expect to pay when buying the property.

I have checked with the county treasurers office and the price per acre is between \$75.00 and \$175.00. You are proposing to charge us \$500 for a 2.05 acre tract for merely renting the property. We have not received such a rental increase from any other BLM office in any other state. For these reasons we believe that your proposed rental rate is excessively high.

This argument misconceives the issue before us on appeal, which concerns the rental value of right-of-way WYW115004. While the purchase price of property may be a relevant intermediate factor when making an appraisal of rentals paid for rights-of-way, proof of purchase price alone does not directly answer questions of what comprises market rental value in a right-of-way. Implicit in the argument advanced by Texaco is an assumption that the purchase price paid for a piece of land establishes a ceiling price that cannot be exceeded by annual rental in any case. The foundation upon which this conclusion rests is not stated, nor is it self-evident. It is clear, however, that this premise is directly at odds with findings made by the BLM appraisal report for small acreage, non-linear rights-of-way (BLM report), that was the basis for the December 30, 1993, BLM decision.

The BLM report, approved July 6, 1993, shows that a market survey was made in Wyoming of rentals paid for rights-of-way leases of less than 5 acres. While 30 landowners and energy companies were surveyed, only 10 reported rights-of-way of less than 5 acres that were rented for uses similar to right-of-way WYW115004 (referred to as "small acreage, unique use sites" by the BLM report); of the 10 owners who reported that they rented such rights-of-way, most reported that they were unwilling to rent any portion of their land for less than \$500 in annual rent. Reasons given for this conclusion, according to the BLM report, indicate that a rural landowner is willing to rent small parts of his land, but only provided such tracts are "valued at a rate commensurate with the disruption of his operation, encumbrance upon his title, and the extra management costs incurred. A prudent owner would desire a rent equal to that which others are charging" (BLM Report at 5 (the original report was not numbered; numbers have been supplied for ease of reference)). After listing the 10 reporting landowners surveyed and describing the rentals charged by them for their small sites, BLM concludes the report with the observation that:

Ten leases of non-linear sites, less than 5 acres in size have been analyzed in this study. One significant observation is that the most frequent rental value is in the \$500/Yr range. Six of the ten leases fall within this range, indicating this to be the most typical rental amount negotiated in the market place. The final conclusion is that the estimated market rental for small sites of less than five acres in rural areas of Wyoming is \$500/Yr.

(BLM Report at 8).

This analysis by the BLM report is not directly challenged by Texaco. Instead, the Texaco argument outlined above is simply irrelevant to the factors shown by the BLM report to be driving the rental market for small rights-of-way sites in Wyoming. Consequently, we conclude that Texaco has failed to carry the burden of persuasion to show that a stay should be granted in this case, and the application for stay is denied. See In Re Eastside Salvage Timber Sale, 128 IBLA at 116 (stay of timber sale denied where challenge to sale was based on unsupported and redundant assertions that failed to show error in the BLM decision).

In finding that Texaco's argument concerning value will not support a stay of this appeal, we have, of necessity, also decided the appeal on its merits, because in doing so we have found that the argument concerning value upon which the success of the appeal depends is defective. Texaco has countered the BLM report concerning rental values by offering evidence of purchase values for agricultural acreage; the offered data is not directly relevant to the question of rental value, but only suggestive of an argument that has not been shown to be sound. Moreover, Texaco has not offered an appraisal to support the conclusions advanced on the strength of the purchase-value argument. Consequently, we find Texaco has failed to show error in the BLM decision under review. See Quality Broadcasting Corp.,

126 IBLA 174, 188 (1993) (BLM communication site right-of-way appraisal affirmed in the absence of proof of error and where appellant failed to submit appraisal report to support appeal). As a consequence of this failure of proof on appeal, we must affirm the decision of December 30, 1993.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the request for stay is denied and the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Gail M. Frazier _____
Administrative Judge