

OROVILLE-WYANDOTTE IRRIGATION DISTRICT

IBLA 91-203

Decided January 9, 1995

Appeal from a decision of the Area Manager, Redding, California, Resource Area, Bureau of Land Management, establishing fair market rental value by appraisal and requiring payment of accrued rent for communication site right-of-way CA-19870.

Affirmed as modified.

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

Generally, the proper appraisal method for determining the fair market rental value of nonlinear rights-of-way, including communication sites, is the comparable lease method of appraisal. An appraisal of fair market rental value for a communication site right-of-way will be affirmed on appeal if an appellant fails to show error in the appraisal methods used or fails to show by a preponderance of the evidence that the charges are in excess of the fair market rental value.

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

Where an appraisal is undertaken for the purpose of determining the initial rental for a communication site right-of-way which has already issued, the fair market value must be calculated as of the date of the issuance of the right-of-way and not as of the date of the appraisal.

APPEARANCES: Steven C. Onken, Power Superintendent, Oroville-Wyandotte Irrigation District, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Oroville-Wyandotte Irrigation District (OWID) has appealed from the decision of the Redding Resource Area Manager, Bureau of Land Management (BLM), dated February 6, 1991, establishing the initial rental rate for communication site right-of-way CA-19870, located on Monte de Oro in Butte County, at \$2,800 per year.

The Monte de Oro right-of-way site, which covers 0.23 acre, is located in lot 3, sec. 28, T. 20 N., R. 4 E., Mount Diablo Meridian, Butte County, California. BLM originally granted a 10-year communication site right-of-way to appellant on June 12, 1987, pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1761-1771 (1988). The right-of-way authorized OWID to construct, operate, and maintain "a microwave radio passive repeater (reflector)." Section 4 of the right-of-way grant specifically provided that the grant was issued subject to the holder's compliance with all applicable regulations contained in 43 CFR 2800 and 2880. In addition, the stipulations spelled out the requirement for adjustment of the initial estimated rental to the full fair market rental value upon completion of a formal appraisal. 1/

At the time the right-of-way was issued in 1987, the initial rental rate was set at \$1,500 per year. The rental amount was based on an "estimate" of the fair market value rental for use of the communication site. In its letter dated May 18, 1987, transmitting the proposed right-of-way grant to appellant for its concurrence, BLM noted that the initial estimated rental of \$1,500 was subject to readjustment upon receipt of the formal appraisal and that the holder was required to pay any additional rental that was determined to be due as a result of such appraisal. The appraisal was eventually completed on January 10, 1990. Based upon this appraisal, BLM issued the decision of February 6, 1991, setting the rental at \$2,800 per year retroactive to the original issuance date of the right-of-way and informing appellant that the outstanding balance for use of the site for the period from June 12, 1987, through December 31, 1991, was \$6,833. 2/

In its statement of reasons for appeal (SOR), OWID challenges the BLM appraisal and requests that the rental value for this minimal use of this site be re-evaluated, arguing that:

The site specified in Application CA 19870 is for a passive reflector that is useful only to Oroville-Wyandotte Irrigation District. It is unlikely that the site could be used by anyone

1/ Thus, Stipulation No. 2 provided that:

"In consideration for these uses, the Holder shall pay an estimated rental to the Bureau of Land Management, the sum of one thousand five-hundred dollars (\$1,500.00) for the first year, and thereafter annually one thousand five-hundred dollars (\$1,500.00). Upon receipt of a formal appraisal, this rental payment is subject to adjustment. The Holder hereby agrees to pay upon request any additional rental that is determined to be due as the result of the formal appraisal and thereafter at five-year intervals whenever reappraisals are completed. This right-of-way is not in force unless the Holder has paid the rental in advance."

2/ OWID had submitted a total of \$6,000 in rental payments for the period from June 1987 through May 1991. BLM subtracted these payments from the amount which it had determined was due for the period from June 1987 through December 1991 (\$12,833) to arrive at the figure of \$6,833 which was the amount deemed to be owing.

else. The rental fee of \$2,800.00 per year retroactive back to June 12, 1987, is excessive for the piece of property involved and its intended use. At one time BLM indicated they might be interested in selling the entire 40 acre parcel. It appears that this might be a more economical alternative for O.W.I.D. to consider.

(SOR at 1).

[1] Section 504(g) of FLPMA, as amended, 43 U.S.C. § 1764(g) (1988), requires the holder of a right-of-way issued pursuant to FLPMA to pay annually in advance the "fair market value thereof as determined by the Secretary." Likewise, 43 CFR 2803.1-2(a) requires the holder of a right-of-way to pay "fair market rental value as determined by the authorized officer applying sound business management principles and, so far as practicable and feasible, using comparable commercial practices." Fair market value in the context of communication site rights-of-way is considered the amount "for which in all probability the right to use the site would be granted by a knowledgeable owner willing but not obligated to grant to a knowledgeable user who desires but is not obligated to so use." Questar Service Corp., 119 IBLA 65, 67 (1991), citing American Telephone & Telegraph Co., 25 IBLA 341, 349-50 (1976).

Where BLM has appraised the fair market value of a right-of-way, we have consistently held that such appraisal will not be overturned on appeal unless there is demonstrated error in the appraisal method used or convincing evidence establishes that the appraised value is excessive. See KVPI Channel 6, 122 IBLA 263, 265 (1992); MCI Telecommunications Corp., 115 IBLA 117, 120 (1990). In the absence of a showing of error in the appraisal method used, a BLM appraisal may generally be rebutted only by another appraisal. See generally Quality Broadcasting Corp., 126 IBLA 174, 188 (1993); Idaho Wireless Corp., 120 IBLA 172, 174 (1991); Chalfont Communications, 108 IBLA 195, 196 (1989).

Appellant has not established error in BLM's selection of the comparable lease method of appraisal. We have long held that, so long as adequate data exists, such method is the preferred method for determining the fair market rental value of communication site rights-of-way. See Mountain States Telephone & Telegraph Co., 109 IBLA 142, 145 (1989); Harvey Singleton, 101 IBLA 248, 250 (1988); Full Circle, Inc., 35 IBLA 325, 333, 85 I.D. 207, 211 (1978); see 43 CFR 2803.1-2(c)(3)(i) (rental for nonlinear rights-of-way including communication sites based on "market survey of comparable rentals").

The BLM appraisal utilized the "direct comparison approach" in which the value of the subject tract "is estimated by comparing it with recent rentals of properties which have similar utility in order to estimate * * * the probable rental value of the subject under similar market conditions" (Appraisal Report (AR) at 11). The appraisal noted that, while the California State Office appraisal file contains in excess of 100 leases of communication sites, 6 of these leases were selected for comparison because of "their similarity to the Monte de Oro site in 13th IBLA 438" (AR at 15).

The selected sites were compared with the subject site in terms of certain pertinent factors: time (since lease issuance); location; site amenities (road access and availability of electricity); electronic versatility (suitability of the site for various types of uses); and character of the land (ease of construction). The appraisal notes that the comparable leases rental values "show a fairly wide range of about \$1,200 to \$6,200 per year." However, it further noted that "the Bald Hill and Lucas Hills sites are good indicators as both are quite similar to the subject and the differences tend to be relatively minor and offsetting. They provide a quite narrow range of somewhat below about \$3,250 to near about \$2,800 per year" (AR at 24). Relying primarily on the Lucas Hills site, the appraiser determined that the fair market rental value of the Mount de Oro site was \$2,800 per year as of January 10, 1990.

Although appellant maintains that this rental amount is excessive because the site is useful only to OWID, it has provided no support for such a claim. Indeed, the appraisal recognized that the subject site "has demonstrated its utility only for limited communication use" and, accordingly, determined that "the current rental value can best be determined by comparing the subject with what is being paid for the use of similar sites; single use line of sight locations with limited potential" (AR at 9). Thus, the comparables selected were chosen because they, too, had generally limited utility for broad-based communication use and would thus provide a fair indicia of the relevant market value of the Monte de Oro site. We can find no error in the selection of the comparables used to determine fair market value. Nor can we find any error in the determination that the annual fair market rental value of the subject site as of January 10, 1990, was \$2,800. The one problem which we do have with the decision below is that the rental site was valued as of the wrong date.

[2] Where an appraisal of a nonlinear right-of-way occurs prior to the issuance of the right-of-way, determination of the value of the grant as of the date of the appraisal is absolutely proper. Where, however, as in the instant case, the right-of-way has already issued with an estimated rental being assessed, the proper date for determining the value of the rights granted is

the date of the issuance of the right-of-way.

Herein, the right-of-way issued on June 12, 1987, but the grant was valued as of January 10, 1990. See AR at 24. In adjusting the comparables for the time factor, the appraisal, utilizing the Consumer Price Index (CPI) method (see AR at 12), increased the rental values of all of the comparables to ascertain their values as of January 10, 1990, and then used these adjusted values to determine the fair market rental value of the Monte de Oro site. The date of valuation used, however, should have been June 12, 1987. Thus, when the appraisal concluded that the two most comparable sites, Bald Hill (No. 3) and Lucas Hills (No. 2), "provide a quite narrow range of somewhat below about \$3,250 to near about \$2,800 per year," the values used necessarily overstated the fair market values for these comparables as of June 12, 1987, since they have been adjusted to reflect inflation (as shown in the CPI) from the date of the issuance of the lease comparables to January 10, 1990.

We have recomputed the time adjustments for these two comparables ^{3/} and determined that, as of the date of lease issuance, these two comparables established a range of values of approximately \$2,955 to \$2,530. Since we agree with the appraisal that the Lucas Hills site (No. 2) most closely approximates the subject site, we have determined that the fair market value of the Monte de Oro site as of June 12, 1987, is properly determined to be \$2,530 per year. Using this annual figure, the total amount owed for the period from June 12, 1989, through December 31, 1991, is \$11,595, from which the \$6,000 in payments already tendered must be subtracted, leaving a total amount due of \$5,595. The decision below is hereby modified to reflect this determination. As modified, however, the decision must be affirmed. ^{4/}

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 modified to reflect an annual fair market value of \$2,530 for right-of-way CA-19870 and, as modified, is affirmed.

James L. Burski
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge

^{3/} While the appraisal based its adjustments on the CPI, we have, consistent with the BLM Manual, utilized the Gross National Product Implicit Price Deflator to determine the adjusted values of the comparables as of June 12, 1987. See BLM Manual 2801.41E6 and Appendix 2.

^{4/} Appellant's expressed desire to explore the possibility of purchasing the parcel (which, we note, has been classified as suitable for disposal) has no relevancy to the question of the fair market value of its right-of-way. Regardless of whether it ultimately acquires the tract, it is still liable for payment of the fair market value of its past use.