

DESERT FARMS, INC.

IBLA 99-74R

Decided November 8, 1999

Request for reconsideration of dismissal of appeal of a Bureau of Land Management decision adjusting rental for an airport site on public land to reflect fair market rental value following a 1997 appraisal. N-057637.

Reconsideration granted; appeal reinstated; decision reversed.

1. Airport Site Leases: Lease Terms: Lease Amendments: Rental Rate

BLM's grant of a 15-year airport site lease in 1963 was initially subject to a \$15 per year rental rate; but was thereafter amended to a 20-year lease term which was renewed effective Feb. 25, 1983, with an expiration date of Feb. 25, 2003, subject to lease terms and applicable regulations authorizing BLM to reasonably raise the rental if, during any 3-year period, annual gross receipts exceeded \$5,000.

2. Airport Sites: Lease Rentals: Lease Terms

BLM is bound by a lease provision that does not authorize a rental rate increase during its term unless annual gross receipts exceed \$5,000 and, where annual gross receipts did not exceed \$5,000, BLM is precluded from applying a 1986 amendment to the airport rental rate regulation providing for a minimum \$100 annual payment and fair market value assessment until the lease terminates in 2003.

APPEARANCES: Tom Taylor, Treasurer, Desert Farms, Inc., Tempe, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Desert Farms, Inc. (appellant) has requested reconsideration of the Board's dismissal of its appeal (for failure to timely file a Statement of Reasons) from a September 24, 1998, decision of the Assistant Field Manager, Las Vegas Field Office, Bureau of Land Management (BLM),

which determined that the annual lease rental rate of \$15 for 860 acres encompassing an airport lease on Federal land, in effect for 35 years, should be increased to \$4,000 per year to reflect current appraised fair market value in accordance with 43 C.F.R. § 2911.1(e). (Decision at 1.) In light of the Board's determination, upon further administrative review, that appellant has timely filed its Statement of Reasons, reconsideration is granted and the appeal is reinstated.

The decision appealed from adjusted the annual rental for lease N-057637 for an airstrip in Lathrop Wells, Nevada. The decision stated, in pertinent part:

An appraisal review was completed on May 12, 1997. According to the appraiser's report, the subject property of about 860.0 acres has an estimated fair market value of \$65 per acre or a total market value of \$55,900.00 (860 acres X \$65 per acre) as of February 26, 1997. That value is further reduced by rights held by the government considered to be 5 percent or \$53,105.00 (55,900 X .95). As mentioned before, another 5 percent is taken due to other use and safety factor[s] or \$50,449.75 (\$53,105 X .95), rounded to \$50,000. The rental is calculated by taking the FMV (\$50,000.00) times the rental rate of 0.08 percent which yields \$4,000.00 per year.

Therefore, the lands will now be leased at \$4,000 per year effective February 25, 1998. The \$15.00 received on March 4, 1998 has been credited toward the requested rental. A bill in the amount \$3,985.00 is enclosed for payment. Thirty days from receipt of this decision are allowed in which to remit the rental. This lease is not due to expire until February 25, 2003. Therefore, rental in the amount of \$4,000.00 will be due on or before the anniversary date of February 25 for the next four years.

(Decision at 2.)

[1, 2] The record reflects that the 15-year airport lease was initiated on February 12, 1963, under 43 C.F.R. § 251.10 (1963), calling for a standard \$15 per year rental payment. ^{1/} Section 3(a) of appellant's 1963 lease, which parallels the language of the above-cited regulation, provides:

That a rental charge for the first three years shall be \$15.00 per annum, that the charge shall be subject to revision at three-year intervals; that the lessee shall submit a report to the lessor showing the facts as to the gross receipts

^{1/} The applicable regulation, 43 C.F.R. § 251.10 (1963), provided, in relevant part, that "[e]very lessee * * * shall pay to the lessor an annual rental of not less than \$10 for an area not exceeding 640 acres, and not less than \$5 for each additional 640 acres or fraction thereof."

within 90 days after each anniversary date of the lease, that in the event the average annual gross receipts exceed \$5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the lessor but not exceeding one percent of such average, and that due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained.

(Emphasis supplied.) The lease and regulation provided for a fixed-rate rental system operating in 3-year intervals, which allowed BLM to reasonably raise the rental if, during any 3-year period, annual gross receipts exceed \$5,000. If the receipts did not exceed this figure in any given 3-year period, BLM was not authorized to increase the rental rate. If gross receipts did exceed \$5,000, BLM's authority to increase the rental rate was constrained by a 1-percent cap.

The record reflects that the lease was amended on March 1, 1965, to provide for a 20-year lease term, vice the 15-year term initially provided. Under this amendment, the lease would expire, by its own terms, on February 25, 1983. On July 16, 1980, BLM approved another amendment to this lease "to provide for a new 20 year lease effective February 25, 1983." The provisions of this lease would remain effective until 2003. No other provision of the lease was changed, although BLM had the authority to impose any changes it desired when the lease terminated in 1983. We note, however, that the applicable regulations both in 1980, when the lease was amended, and 1983, when the amendment took effect, still provided, as they did when the lease originally issued in 1963, for rental revisions in 3-year intervals subject to the conditions set forth above (\$5,000 trigger amount; 1-percent cap). See, e.g., 43 C.F.R. § 2911.1-2(e) (1981) and 43 C.F.R. § 2911.1-2(e) (1983). It was not until November 10, 1986, that the regulations were amended to provide for a minimum \$100 rental rate and fair market value assessments at 5-year intervals for leases issued thereunder. See 43 C.F.R. § 2911.1(e) (1987).

We find that the express rental provisions incorporated in appellant's lease govern in this case. There is nothing in the 1981 or 1983 regulations cited above, in 43 C.F.R. § 2911.1(e) (1987), or in the lease itself which provides that specific lease terms negotiated by the Department are to be affected by implementation of the new regulations prior to the conclusion of an existing lease term. See, e.g., Southern California Sunbelt Developers, Inc., 148 IBLA 19, 29 (1999). The new regulation, 43 C.F.R. § 2911.1(e), with its increased rent provision, can be applied upon lease termination on February 25, 2003, should the parties desire to renew the lease. Under the existing lease provisions, no increase is possible unless the lessee (appellant) has had gross receipts in excess of \$5,000 per annum over the preceding 3-year period, and then the increase is subject to the 1-percent cap. The record before us reflects that the subject airport has never realized a profit of \$5,000 per annum in any of its 35 years of operation. It is clear from the record that no increase can be applied under the current lease at the present time.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision of the Assistant Field Manager is reversed and the case is remanded for action consistent herewith.

James P. Terry
Administrative Judge

I concur:

James L. Burski
Administrative Judge

