KHWY, INC.

IBLA 99-200 Decided April 30, 2001

Appeal from a decision of the Barstow Field Office, Bureau of Land Management, setting the 1999 annual rental amount for KHWY, Inc.'s Calico Peak right-of-way site CACA-5963.

Reversed and remanded.

1. Appraisals--Communication Sites--Rights-of-Way: Rights-of-Way: Appraisals

The regulations provide that annual rental payments for communication uses of rights-of-ways will be based on "rental payment schedules." 43 C.F.R. § 2803.1-2(d). However, other methods may be used to establish rental payments for communication uses, including when the State Director concurs in a determination made by the authorized officer that the expected rent exceeds the scheduled rent by five times. 43 C.F.R. § 2803.1-2(d)(7)(iv). When BLM has determined the "expected rent" on the basis of an appraisal containing multiple deficiencies, and, even assuming the validity of the appraisal, a proper calculation of the expected rent based on that appraisal does not exceed the scheduled rent by five times, BLM's decision imposing rental on that basis will be reversed and the case remanded for imposition of rent based on the scheduled amount.

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

BLM may not rely on an appraisal for determining expected rent in accordance with 43 C.F.R. § 2801.1-2(d)(7)(iv), when that appraisal fails to disclose any information regarding the comparable data utilized, thereby precluding independent verification of the lease data, effective challenge as to the accuracy of the data and appraisal, and meaningful review by the Board.

APPEARANCES: Lynn O. Poulson, Esq., Los Angeles, California, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

On October 24, 1979, the Bureau of Land Management (BLM) issued right-of-way CA-5963 (now referred to as CACA-5963) to KIXV Inc., pursuant to section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1976), for communication site uses. The term of grant was 30 years and the initial rental was $1,500 per year. The rental rate remained constant until 1993 when it was raised to $1,725. BLM imposed a rental of $1,897.50 per year for years 1994 and 1995. For 1996, it collected a rental of $1,827.50.

In August 1996, BLM informed KHWY, Inc., successor-in-interest to CACA-5963, of the 1995 promulgation of regulations establishing procedures for setting rental rates for communication sites based upon nine categories of uses (60 Fed. Reg. 57058 (Nov. 13, 1995)), and requested that KHWY complete a "worksheet" to help BLM calculate KHWY's rental payment. KHWY apparently submitted the necessary information because by decision dated December 19, 1996, BLM established the rental for 1997 at $2,827.50 in accordance with the new regulations. 1/ BLM explained that, according to the rental schedule, rent should be $3,605.00, but, because the regulations limited an increase to $1,000 over the 1996 rental rate, the actual rental would be $2,827.50, with the remainder phased in according to the regulations. See 43 C.F.R. § 2803.1-2(d)(4). 2/

By letter dated October 2, 1997, BLM requested authorized communication right-of-way holders to complete a "Use Inventory Worksheet" and return it in order to allow BLM to establish the proper rental for 1998. KHWY completed the worksheet on October 14, 1997, showing its use as "FM Radio Broadcast." It listed seven tenants or customers using its site. By letter dated February 12, 1998, BLM informed KHWY that its rental for CACA-5963 for 1998 would be $3,252.83.

BLM apparently again solicited user information from KHWY in the fall of 1998 for use in establishing the 1999 rental amount. The case record contains a single page "Use Inventory Worksheet for Communications Site Primary R/W Holders," signed by a KHWY employee and dated October 22, 1998. That document listed KHWY's use as "FM Radio" and responded "Yes" to the question whether KHWY rented space to others. That document does

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1/ The case record contains a "Use Inventory Worksheet" for CACA-5963 dated "10/8/98." However, that document bears a BLM date stamp of Oct. 15, 1996. That document appears to have been misdated by KHWY.
2/ That regulation provides that "[t]he amount exceeding $1,000 will be divided into 4 equal installments, and beginning in 1998 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent."

not bear any BLM time or date stamp. At the bottom of that page is the phrase "Page Two of Two." Page one of that filing does not appear in the record. However, on December 14, 1998, BLM received a two page fax from KHWY, the first page of the fax being the "Fax Cover Sheet," stating that the contents of the fax were a "revised Use Inventory Worksheet." Page two of the fax was a worksheet page listing the names of three tenants (L.A. Cellular Telephone Co., Nextel, and Galaxy Engineering) and five customers (the Federal Bureau of Investigation, Southern California Gas Co., Radio Amateur Civil Emergency Service, CalNev Pipe Line Co., and Doering Communications) who used the facility "as of September 30, 1998."

The case record contains a "Communications Site Fee Rental Calculation Sheet" for CACA-5963, dated "12/09/98," prior to KHWY's submission of its revised worksheet. Despite that fact, the tenants and customers appearing on the calculation sheet were the same as those listed by KHWY on its revised filing. On the calculation sheet, BLM assigned schedule values of $963.50 for KHWY's use of the site for FM radio. BLM also assigned schedule values for three tenants: $2,676.39 each for LA Cellular and Nextel for cellular telephone use and $642.33 for Galaxy Engineering's commercial mobile radio service (CMRS). 3/ BLM determined the highest value use to be cellular telephone at $2,676.39. To that, it added 25 percent of the total of the other three uses ($2,676.39 for cellular telephone, $642.33 for CMRS, and $963.50 for FM use) or $1,070.55 for a total rental fee without phase-in of $3,746.94.

That same sheet contained handwritten notes in pencil stating as follows:

> <u>1-5-99</u>
> Appraisal - Calico
> FM = 15,000
> 8 tenants = <u>8,000</u>
> FM= 23,000
>
> Fee schedule
> 3746.94 x 5 = 18,734.70
>
> Appraisal exceeds fee schedule by 5x.
> Use appraisal.
>
> [initials] 1/13/99

The appraisal referenced in the handwritten notes was performed by David J. Yerke, San Diego, California, with an effective date of September 16, 1997. Yerke's appraisal report (Yerke Appraisal) is dated

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3/ The five customers were all engaged in private mobile radio service (PMRS) for which BLM assigned no values from the rental schedule because, as it stated in an Aug. 9, 1996, notice to communication site holders: "You will not be charged for customers in your building."

December 20, 1997. The appraisal covers two sites, one of which is Calico Peak. Calico Peak, as well as the other site analyzed in the appraisal, Flash Two Hill, overlooks the city of Barstow which has a population estimated at 22,850. (Yerke Appraisal at 9). By memorandum dated February 11, 1998, to the Area Manager, Barstow Resource Area Office, a BLM review appraiser on the BLM California State Office Appraisal Staff approved use of the Yerke Appraisal by BLM. 4/

In a decision dated January 20, 1999, the Barstow Field Manager informed KHWY of the Yerke Appraisal, and stated that, based on the information gathered during the course of the appraisal process, the appraiser had determined the annual fair market rent for the telecommunication uses at Calico Peak to be, as follows:

C	Microwave	$6,500
C	CMRS/PMRS	$10,000
C	Cellular/FM/TV	$15,000

BLM continued by stating that those rates only included the ground lease portion of the telecommunications site and that "[c]o-located users (tenants) are assessed $1,000.00 each." BLM explained that, in accordance with 43 C.F.R. § 2803.1-2(d)(7)(iv), "[i]f the rental value arrived at using the appraisal exceeds the rental arrived at using the schedule by five times * * *, the rental must be assessed based on the appraisal. Otherwise, rental will be assessed based on the schedule." (Decision at 1.)

BLM concluded:

> The determination under the 1999 rental schedule established the rental for your Calico Peak site at $3,746.94 for calendar year 1999. Since the appraised value of $15,000 plus $1,000 for each co-located user exceeds this schedule amount by the applicable threshold, the rental shall be assessed using the appraisal. Therefore, the 1999 rental amount due for your Calico Peak site is $23,000.

KHWY filed a timely appeal, and, by order dated March 12, 1999, in response to a request filed by KHWY, the Board stayed consideration of BLM's decision pending the outcome of this appeal. On appeal, KHWY raises a number of challenges to the Yerke Appraisal. KHWY asserts that the appraisal "appears to be based substantially on the analysis and conclusions of Carl Cory, a telecommunications consultant who is not a real

4/ In approving use of that appraisal, the review appraiser admitted that "[e]xcept for a more or less random examination, no attempt was made by the reviewer to conduct a market survey or independently verify the market data used in the report. The review appraiser has not inspected either site." (Memorandum at 2; see Memorandum at 10.)

estate appraiser." (Statement of Reasons (SOR) at 2.) This assertion is based on Yerke's representation at page 3 of his appraisal that "Carl Cory, telecommunications consultant, provided significant assistance in this appraisal report." KHWY charges that Yerke relied on properties far from Calico Peak, which have limited comparable value and that Yerke does not identify the comparable parcels or show their location on a map. It alleges that "it is almost impossible for a reader to evaluate the comparables Yerke used." Id.

KHWY asserts that the Yerke Appraisal assumes that Calico Peak is served by electricity. 5/ KHWY states that Yerke's assumption is incorrect because the site has no electricity or other utilities. According to KHWY, it must haul diesel fuel up an 8-mile long private dirt access road with inclines of up to 30 percent in order to generate its own electricity.

On appeal, KHWY has provided the Board with a Restricted Appraisal Report prepared by Mark S. Justmann, Pasadena, California (Justmann Appraisal). Therein, Justmann stated that on May 18, 1999, he inspected and appraised three telecommunication sites, one of which was Calico Peak. 6/ Justmann's analysis proceeded on the basis of comparable rentals. He listed 11 sites that he used for comparables, providing various information for each, including the location of the site, the lessor and lessee, the date of the lease, which ranged from January 1992 to March 1999, the term of the lease, the amount of acreage involved, the annual rental, and the peak elevation. He set forth the information in table form (Justmann Appraisal at 12, 16) and also provided a narrative about each comparable site. Id. at 18-20. He stated that he tried to appraise each site by comparing it with the 11 comparables, giving some consideration to four factors which appeared to have some influence on rental rates. He listed those factors as population, area, type of use, and access, which included electricity capacity. Id. at 20. He included an adjustment table for Calico Peak. Id. at 22. With regard to the Yerke Appraisal, Justmann listed 9 assumptions made by Yerke with which he disagreed:

1. There is no correlation between population served and rent charged.
2. There is no correlation between current rentals and dated rentals.
3. A physical inspection is not necessary when appraising mountain peaks.

5/ Although Yerke certified that he had "made a personal inspection of the properties that are the subject of this report" (Yerke Appraisal at 3), that inspection was apparently limited to an aerial inspection. "Aerial inspection was conducted on Sept. 16, 1997." (Yerke Appraisal at 26.) Moreover, with regard to utilities, Yerke states "[i]t appears that electricity has been extended to the improvements to the subject parcels." (Yerke Appraisal at 25.)

6/ A cover letter to the appraisal bears a date of May 3, 1999. That date is clearly incorrect based on Justmann's representation that he inspected and appraised the sites on May 18, 1999.

4. It is not necessary to use rental data in the immediate area.
5. All sites have electrical power.
6. Peak useable area is of little consideration.
7. Weather considerations are all universal and have no effect.
8. Supply for peak sites is limited.
9. There is no distinction between private and public land use with respect to sites.

(Justmann Appraisal at 21.)

Based on comparable rentals, allowing for adjustments, Justmann determined the base rental on Calico Peak to be $6,557, rounded to $6,500. Id. at 22. He arrived at that number by adding the rental fees for the 11 comparables and dividing that number by 11. Justmann outlined his fair rental value for KHWY's site at Calico Peak, as follows:

CALCULATION OF FAIR RENTAL VALUE:			
BASE RENT (highest use class)			
cellular phone			$6,500.00
TENANTS (classification type and base rent)			
TENANTS CLASS:			
1. Facility Manager	(1)x $ 642.33	$ 642.33	
2. PMRS	(3)x $ 374.69	$1,124.07	
3. Cell Phone	(1)x $2,676.39	$2,676.39	
Total			$4,442.79
x 25%		=	$1,110.70
Computed Fair Rental Value for 1999			$7,610.70
Rounded		$7,600.00	

Id. at 25; see id. at 1-2.

On the other hand, Yerke established a base rent, not for KHWY's Calico Mountain site itself, but for particular uses. He stated that he used two data sets to estimate fair market rental. One set was a group of leases in the Los Angeles Basin. The second set utilized comparable leasing activities from the "entire State of California." (Yerke Appraisal at 39.) From that second data set, which Yerke stated included 280 leases for mountain-top communication sites, he selected the most comparable leases and analyzed those as a single data set, selecting several "for more detailed comparison with the subject properties." Id. at 36. That analysis involved an in-depth examination of "[t]hirty-five leases in 24 locations * * *." Id. at 39. Yerke stated that "[i]t seems clear for the uses included in this market data set that population and traffic volume/exposure are not overly important variables. Population served and traffic count is important mainly to broadcasters of TV or radio stations. As stated previously there are none of these types of leases within the market data set." Id. at 42.

He then analyzed "a select group of transactions" which were "compared directly with the subject properties." Id. He divided that "group of transactions," into three categories: Microwave, FM/TV/Cellular, and CMRS/PMRS and selected five leases in each category for comparison. Nowhere in the appraisal, however, does Yerke identify the location of any of the comparables or provide the specific dates for lease commencement. 7/ Moreover, BLM apparently undertook only a cursory review of Yerke's comparable data. See note 4, supra. In addition, as part of its petition for stay, KHWY requested copies of photographs taken during the aerial inspection, materials furnished to the appraiser by BLM, materials and documents used to compile Tables 6-11 in the Yerke Appraisal, a list of qualifications of the telecommunications consultant referenced in the Yerke Appraisal, and a certified copy of the appraisal. There is no evidence in the record of a response by BLM to KHWY's request.

Yerke concluded, as follows, at pages 46-47 of his appraisal:

> After considering each category and individual market data but placing more weight on the analysis which selected the most comparable leases, the following annual rental rates are concluded for the subject properties.
>
> - Microwave $6,500
> - FM/TV/Cellular $15,000
> - CMRS/PMRS $10,000
>
> These rates only include the ground lease portion of the telecommunication sites. A significant percentage of improved telecommunication sites have co-located users either erecting their own facilities, using antenna space or vault space.
>
> * * * * * * *
>
> Since there is no market-driven mechanism in place where the lessee must divulge the rental rates of subtenants in the subject properties, a base rent is established; a base rent of $1,000 per co-located user is adopted from our analysis. It is based on the assumption that the average, co-located user pays

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7/ As described by the BLM review appraiser:

"The leases were sorted by three major criteria; the type of use (microwave, TV, cellular, etc.), the commencement date of the lease and location (northern, central, southern and desert areas in the state). After sorting the data a trend in the lease rates was obvious with the newer leases paying higher rent than the older ones. The amount of the rental rate did not appear to be dependent on the term of the lease, size of the site, access, population served and or traffic corridor covered." (Feb. 11, 1998, Memorandum at 5.) The appraisal itself does not support the conclusion drawn by the BLM review appraiser because the appraisal does not provide the lease commencement date for any individual lease.

about $300-$400 per month; 25% of that rate is roughly $1,000 in annual rent.

For CACA-5963, Yerke proposed a base rent of $15,000 and a "Tenant Rent" of $4,000, based on use by four tenants. (Yerke Appraisal at 47, Table XII., "Telecommunication Market Rent Conclusions.") 8/ Although Yerke does not identify the four tenants of CACA-5963 for which he suggested the rental increase, presumably they are the four tenants listed by KHWY on its worksheet received by BLM on October 15, 1996. See note 1, supra.

It is well established that a party challenging an appraisal determining fair market value is generally required to either show error in the methodology used in determining fair market value or, alternatively, submit its own appraisal establishing fair market value. Donna and Larry Charpied, 150 IBLA 314, 339 (1999); Voice Ministries of Farmington, Inc., 124 IBLA 358, 361 (1992); High Country Communications, Inc., 105 IBLA 14, 16 (1988). In this case, KHWY attacks BLM's methodology and it submits its own appraisal.

We first address BLM's methodology in this case. BLM determined on its "Communications Site Fee Rental Calculation Sheet," dated December 12, 1998, that the total scheduled rental fee for CACA-5963 for the 1999 billing year would be $3,746.94, without the phase-in. It multiplied that figure by five to determine that five times the rental schedule would be $18,734.70. It then applied the Yerke Appraisal amount for FM/TV/Cellular of $15,000 and added $1,000 per tenant for eight tenants to conclude that $23,000 exceeded five times the rental schedule fee. A note on the calculation sheet stated: "Appraisal exceeds fee schedule by 5x. Use appraisal."

[1] The regulations provide that annual rental payments for communication uses of rights-of-way will be based on "rental payment schedules." 43 C.F.R. § 2803.1-2(d). However, other methods may be used to establish rental payments for communication uses, including when "[t]he State Director concurs in a determination made by the authorized officer that the expected rent exceeds the scheduled rent by 5 times * * *." 43 C.F.R. § 2803.1-2(d)(7)(iv). In this case, some unidentified BLM employee determined that the "expected rent," based on the Yerke Appraisal, exceeded the 1999 billing year rental schedule payment for CACA-5963 by more than five times. The Barstow Field Manager adopted that determination and issued the January 20, 1999, decision.

We find that BLM erred in concluding that the expected rent exceeded the rental schedule payment by five times. The Yerke Appraisal established

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8/ Although Yerke uses the term "co-located users" in the narrative portion of his appraisal to describe other occupants of the right-of-way, Table XII utilizes the term "Tenant Rent." Yerke adds $4,000 to the base rent for CACA-5963, representing four tenants or co-located users at $1,000 per tenant or user.

a base rent for CACA-5963 at $15,000. The unidentified BLM employee added $8,000 to that base rent ($1,000 for each of eight tenants) for a total of $23,000. We cannot find that the record supports an additional charge of $8,000 for tenants. KHWY's revised 1999 Use Inventory Worksheet lists three tenants and five customers. In its determination of the 1999 total rental fee without phase-in, BLM did not compute any rental charge for the five customers. That was in keeping with its representation that there would be no rental charges for customers. See note 3, supra. 9/ There appears to be no basis for doing so when calculating the "expected rent" under 43 C.F.R. § 2803.1-2(d)(7)(iv). Assuming for the purposes of this discussion that the Yerke Appraisal represents a proper basis for establishing the base rental, adding a charge of $1,000 for each of the three tenants to the Yerke Appraisal base rent of $15,000 totals $18,000. That amount is less than five times the 1999 fee schedule rental ($3,746.94 x 5 = $18,734.70) for CACA-5963.

Thus, the record fails to show that the "expected rent" exceeded the 1999 fee schedule rent by a factor of five, a regulatory predicate for utilizing a method other than the rental schedule for establishing fair market rental. In addition, there is no evidence that the California State Director concurred in the Barstow Field Manager's determination to utilize the "expected rent" in this case, as required by the regulation.

[2] We note further that the record shows multiple deficiencies in the Yerke Appraisal, relied on by BLM to calculate the "expected rent." Yerke used data sets in arriving at his rental rates for various communication uses. None of the comparables was disclosed in the Yerke Appraisal; the BLM reviewing appraiser did not analyze or verify the data relied on by Yerke; there is no evidence that the data was disclosed to KHWY; and that data was not subject to review by this Board. On the other hand, the comparable rentals utilized by Justmann in his appraisal were fully disclosed.

In a recent decision, Kitchens Productions, Inc., 152 IBLA 336 (2000), this Board addressed an appeal filed by a communication site right-of-way holder challenging a BLM decision raising the rental from $5,807.77 to $37,000.00 for a site on El Paso Peak in Kern County, California, based on an appraisal prepared by Yerke. In vacating the BLM decision therein and remanding the case, the Board stated at 344:

> The next significant problem is the asserted confidentiality of the particulars of the leases selected as comparable to appellant's site. This Board has previously addressed and rejected the claim that site-specific information reviewed by an appraiser to establish the fair market rental of a communication site right-of-way is confidential. Thus, in Mountain

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9/ "The rental schedules apply to right-of-way holders and tenants authorized to operate and maintain communication facilities on public lands." 43 C.F.R. § 2803.1-2(d).

States Telephone & Telegraph Co., 107 IBLA 82, 89 (1989), we vacated and remanded BLM's Master Appraisal, stating:

> We agree with Appellant, however, that the Master Appraisal is fatally flawed by the fact that it fails to disclose the location of private lease transactions and the parties thereto, such that Appellant could verify the data obtained. BLM states in the Master Appraisal at page 8: "A summary of lease data is included for each type or group of market rentals. Maps are not included to protect the confidential nature of market data. Lessor and lessee names have also been withheld to protect confidential information obtained." BLM provides no legal basis for its determination to withhold the information it has described as "confidential," nor are we familiar with any. Therefore, we must conclude that failure to disclose the location of the lands covered by the private leases and the identity of the parties to those lease transactions relied upon by BLM in the Master Appraisal precludes independent verification of that lease data and, thus prevents any effective challenge to the accuracy of the data on appeal, as well as any meaningful review by the Board. Cf. Southern Union Exploration Co., 51 IBLA 89, 92 (1980) (decision rejecting competitive oil and gas lease high bid must be supported by record showing the factual basis for the decision sufficient to provide the bidder with the information necessary to understand and accept the rejection or, alternatively, appeal and dispute the determination, and the information must be part of the public record and adequate such that the Board is able to judge its correctness on appeal.) Thus, the Board has no way of determining whether $1,500 represents the fair market rental value of the right-of-way in question.

107 IBLA at 89; see also H.E. Hunnewill Construction Co., 137 IBLA 101, 109 (1996) (appraisal in trespass case following same rule). As was the case in Mountain States Telephone & Telegraph Co., supra, we find BLM's assertion of confidentiality to be unsupported and therefore reject it.

It is incumbent upon BLM to ensure that its decision is supported by a rational basis, and that such basis is stated in the written decision and is demonstrated in the administrative record accompanying the decision. The recipient of the decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Kitchens Productions, Inc., supra at 345, and cases cited therein. In this case, the failure to disclose is an error which compromises the appraisal process. Such an error can only be corrected by disclosure.

Moreover, neither Yerke nor the BLM review appraiser made an on-ground inspection of the rights-of-way that were the subject of the Yerke Appraisal. 10/ Therefore, KHWY's unrebutted allegation that Calico Peak is not served with electricity establishes that the Yerke Appraisal proceeded on an incorrect assumption. See note 5, supra. Clearly, an assumption that the subject site had electricity, when, in fact, it did not, would impact the comparative analysis engaged in by Yerke, since presumably Yerke would have been selecting comparables with electrical service or making adjustments when selected comparables did not have such service. 11/ For these reasons, the Yerke Appraisal may not be utilized by BLM to establish "expected rent," for purposes of 43 C.F.R. § 2803.1-2(d)(7)(iv), for any of the rights-of-way on Calico Peak.

Appellant has offered the Justmann Appraisal to rebut the Yerke Appraisal. Because appellant has shown by a preponderance of the evidence that BLM's appraisal of $23,000 is erroneous, there is no need to engage in a direct comparison of the two appraisals. However, we note that the Justmann Appraisal provided information on 11 comparable leases. Justmann identifies each site, its location, as well as the lessor and the lessee, and provides a map detailing the rental location. Justmann concludes that fair market rental for CACA-5963 is $7,600. Because that amount is not five times the amount of the scheduled rent, we conclude that BLM must

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10/ As we stated in Kitchens Productions, Inc., 152 IBLA at 344, n.5: "If there was any good practical or professional reason for not conducting an on-the-ground inspection of the El Paso site, it was not stated in the appraisal and did not appear from the record before the Board."

11/ The Yerke Appraisal states that once the need for a mountain-top telecommunications site is established various factors must be considered in making a site selection. One of those factors is "power supply." (Yerke Appraisal at 18.) "The availability and cost to extend power are practical considerations when comparing alternative site locations." Id. at 19. Just as the existence of a power supply would be a critical factor in initial site selection, so to would it in comparing sites for purposes of determining fair rental value. In fact, in Yerke's direct comparison of the subject properties with five unidentified comparables in each of Yerke's three use categories, one of the categories for comparison was "Utilities." (Yerke Appraisal at 43-46.) In Yerke's Market Data Comparison Matrix tables, utilities were rated "similar" for 12 of the leases and "inferior" for 3. Id. at 45-46. "Similar" presumably would mean with an electrical supply because Yerke assumed Calico Peak was served with electricity.

apply the phase-in year three (1999) scheduled rent for CACA-5963 in this case. 12/

Therefore, 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 appealed from is reversed and the case remanded for action consistent with this opinion.

Bruce R. Harris
Deputy Chief Administrative Judge

I concur:

R.W. Mullen
Administrative Judge

12/ In Kitchens Productions, Inc., supra, the Board vacated BLM's decision and remanded the matter directing BLM to "conduct a new appraisal in accordance with this decision and * * * render a new decision which shall be subject to appeal to this Board." 152 IBLA at 350. In this case, even accepting the viability of the Yerke Appraisal, 43 C.F.R. § 2801.1-2(d)(7)(iv) is not applicable. We find no necessity for a new appraisal to establish the 1999 rental.