



SPRINT CORPORATION

186 IBLA 132

Decided September 8, 2015



United States Department of the Interior  
Office of Hearings and Appeals

Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 2 2203

SPRINT CORPORATION

IBLA 2013-224, *et al.*

Decided September 8, 2015

Appeal from two non-willful trespass decisions dated July 23, 2013, and issued by the Assistant District Manager, Division of Multi-Resources, Las Cruces District Office (New Mexico), Bureau of Land Management (BLM) for placing equipment cabinets (NMNM 130476) and an equipment shelter (NMNM 130477) on public lands without BLM authorization to do so.

Affirmed in part; set aside and remanded in part; reversed in part.

1. Communications Sites -- Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Generally -- Trespass: Generally -- Trespass: Measure of Damages

When an entity owns a building, equipment shelter or tower on public lands pursuant to a sublease with the holder of a BLM-authorized communication site right-of-way, it must obtain a right-of-way grant to occupy those lands in accordance with 43 C.F.R. § 2806.36(b), even if the entity is already a tenant at a permitted communication site. Failure to do so constitutes a trespass against the United States, for which that entity is liable for administrative costs, damages, and penalties pursuant to 43 C.F.R. §§ 2808.10(a), 2808.11.

APPEARANCES: Robert J. Uram, Esq., and Alexander L. Merritt, Esq., San Francisco, CA, for appellant, and Joan D. Marsan, Esq., Office of the Regional Solicitor, Albuquerque, NM, for BLM.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

Sprint Corporation (Sprint) appeals from two non-willful trespass decisions, dated July 23, 2013, that were issued by the Assistant District Manager, Division of Multi-Resources, Las Cruces District Office (New Mexico), Bureau of Land Management (BLM). These trespass decisions were for placing equipment cabinets

(NMNM 130476) and an equipment shelter (NMNM 130477) on public lands without BLM authorization to do so. We docketed the appeals as IBLA 2013-224 and IBLA 2013-225, respectively, and by Order dated December 20, 2013, consolidated them for final disposition.

As detailed below, we conclude that BLM's trespass decisions are, in part, not supported by the record. While we affirm BLM's determination that a trespass occurred with respect to the equipment cabinets, we reverse BLM's assessment of trespass damages prior to June 21, 2005, and remand for an appropriate re-computation. We reverse BLM's trespass decision for the equipment shelter in its entirety because we conclude that Sprint preponderated in showing it does not own the equipment shelter in dispute.

### *Background*

In 1990, BLM granted to Crown Castle GT Company, LLC's (Crown) predecessor in interest a right-of-way (ROW) grant for a communications site in the SW $\frac{1}{4}$  sec. 11, T. 22 S., R. 8 E., Orogrande, Otero County, New Mexico, New Mexico Principal Meridian (the Orogrande South Comm Site). See Supplemental Administrative Record (Supp. AR) 535-54 (ROW Application); 385 (ROW Amendment Approval, dated Mar. 28, 1995); 108 (ROW Assignment Approval, dated Dec. 18, 2000). This 3,250-square-foot ROW grant authorizes a 125' self-supporting steel monopole microwave antenna, a 140' tall self-supporting lattice tower, plus supporting facilities – 2 equipment shelters (11'4" x 27'5" and 13'4" x 20"), a stand-by generator, and a fuel tank – as well as an access road. Supp. AR 215 (facility map), 538 (ROW Application). BLM serialized the ROW grant as NM 83847. BLM approved an amendment to the ROW grant on January 24, 2001, in which BLM authorized subleasing by Crown. Supp. AR 208 (BLM Amendment Approval, dated Jan. 24, 2001).

Crown “rents space on both towers to cellular service providers.” Supp. AR 136. Crown claimed for rental purposes that Nextel and Alamosa (wholly-owned Sprint subsidiaries) were tower occupants. In addition to renting space on the towers, Sprint contracted directly with Crown to install “equipment on the floor space within [Crown's 13'4" x 20"] Closed Equipment Shelter.” Statement of Reasons (SOR) at 3. The sublease between Crown and Sprint explicitly stated that the equipment shelter would “be provided by Crown.” *Id.* at Ex. A (Sublease 1, ¶ 6). Sprint and Crown entered into a second sublease on January 24, 2003, that permitted Sprint “to install equipment cabinets” within NM 83847's footprint. *Id.* at 4; *see id.*, Ex. C (Sublease 2, ¶ 1).

From 2002 until 2013, Crown's annual inventory submitted to BLM listed Sprint as a cellular telephone and/or an internet service provider. See Supp. AR 25-27

(2012-2010), 30 (2009), 32 (2009), 34 (2009), 37 (2008), 52 (2007), 57 (2006) 133 (2005), 168 (2004), 173-4 (2003), 178 (2002), 200 (2002). BLM prepared rental calculation worksheets reflecting that Sprint was a tenant of the Orogrande South Comm Site and billed and collected from Crown rent for Sprint's use. *See* Supp. AR 28 (2010), 33 (2009), 51 (2008), 55 (2007), 132 (2006), 167 (2005), 172 (2004), 176 (2003), 199 (2002).

BLM conducted a compliance check of the Site on March 10, 2005, and the inspector found "1 outside cabinet not on lease, possibly owned by . . . Sprint. White building owned by Nextel. . . . Recommendation: . . . issue a separate lease to Nextel for their white building. Issue separate lease to owner of outside cabinet." Supp. AR 155. Several years later, BLM approved the Orogrande South Comm Site Plan, dated July 25, 2008, which "governs development and management of Orogrande" South Comm Site. SOR, Ex. D at 4, § I.B. It specified that

[t]enants . . . may not construct their own equipment shelter (building, shelter or cabinet) . . . . [Crown] must own all communication shelters . . . under their lease or grant. If that is not possible, a separate SF-299 application [Application for Transportation and Utility Systems and Facilities on Federal Lands], cost-recovery deposit, analysis, and authorization are required. This will also result in the use being a tenant/customer of the original lease/holder in addition[] to being a separate facility for billing purposes.

*Id.* at 8 § III.B.7. The Site Plan identified Nextel as using an equipment shelter and Alamosa as using equipment cabinets, and noted that a BLM serial number had not yet been issued for them. *See id.*, App. B at 25; *see also* Supp. AR 149. Agency personnel inspected the Site again on November 18, 2009, and found that neither the equipment shelter nor the outdoor cabinets had been authorized by BLM. *See id.*, App. B at 31.

BLM performed another inspection at the Orogrande South Comm Site on April 23, 2013, and again confirmed that Sprint "had communications equipment at the . . . Site. Further investigation of LR2000 [BLM's electronic database] and the Master Title Plats confirmed that Sprint does not have an authorization to use communications equipment at this location or an authorization to occupy the location." NMNM 130476 AR 49 (Initial Report of Unauthorized Use, dated Apr. 29, 2013); NMNM 130477 AR 49 (same); *see also* Supp. AR 6. BLM then notified Sprint, on May 29, 2013, that the company was in trespass on public lands, and gave it an opportunity to present "evidence that shows that your company is not responsible for the alleged trespass." NMNM 130476 AR 41; NMNM 130477 AR 41 (same). In a letter dated July 2, 2013, Sprint responded that it has "an authorized sublease . . . and therefore did not use, disturb, or occupy the . . . public lands without authorization."

NMNM 130476 AR 38-39; NMNM 130477 AR 38-39 (same) (internal quotation omitted). Sprint further stated:

Nextel and Sprint each entered into a separate sublease with C[rown], on March 15, 2001 and January 24, 2003, respectively. The Sprint Entities' shelters were constructed in accordance with the terms of their respective subleases. Pursuant to 43 C.F.R. § 2806.36(b), "... BLM does not require a separate grant or lease for tenants and customers using a facility authorized by the BLM grant or lease that contains a subleasing provision." As noted, the [Lease] under which the subleases were created includes such a subleasing provision, and the Sprint Entities are permissibly subleasing a portion of C[rown's] communications facility, as allowed by law and regulation.

NMNM 130476 AR 38-39; NMNM 130477 AR 38-39 (same).

By decision dated July 23, 2013, BLM informed Sprint that, regardless of whether the company had a subleasing agreement with Crown, it was required to have an authorization from BLM for use of the equipment shelter and equipment cabinets, "even if you are also a tenant or customer in someone else's facility." NMNM 130476 AR 19 (quoting 43 C.F.R. § 2806.36(b)); NMNM 130477 AR 19 (same). BLM assessed Sprint \$49,321.47 for the equipment shelter and \$42,635.47 for the equipment cabinets, which covered back rent for both cellular and internet provider services since 2001 and 2003, respectively. BLM required the company to pay the same amounts in penalties (for a total of \$91,956.94), assessed Sprint administrative costs associated with investigating the trespass that amounted to \$3,322.04 (\$1,661.02 x 2), and instructed the company to remove its equipment and structures from the Orogrande South Comm Site.<sup>1</sup> Sprint appealed.

#### *Legal Framework*

BLM is authorized by Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (2012), to issue ROW grants for communication sites. Section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (2012), requires that holders of an ROW grant pay as rent the fair market value of the ROW. To facilitate calculation of proper rental amounts, the regulation at 43 C.F.R. § 2806.31(c) requires the ROW grant holder to submit to BLM annually a certified statement listing any tenants in its

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<sup>1</sup> Sprint paid all monies owed, \$187,235.92, under protest. See SOR at 11. The parties entered into an agreement to stay that portion of the decision requiring equipment removal pending the outcome of this appeal. *Id.*

facility and the category of use for each tenant.<sup>2</sup> BLM determines rent based on the certified statement provided and charges the facility manager rent based on the highest value use within the facility, plus 25 percent of scheduled rent for each of the other uses subject to rent. 43 C.F.R. § 2806.34(a).

[1] When an entity owns a building, equipment shelter, or tower on public lands pursuant to a sublease with the holder of a BLM-authorized communication site ROW, it must obtain an ROW grant to occupy those lands in accordance with 43 C.F.R. § 2806.36(b), even if the entity is already a tenant at a permitted communication site. Failure to do so constitutes a trespass against the United States for which that entity is liable for administrative costs, damages, and penalties pursuant to 43 C.F.R. §§ 2808.10(a), 2808.11.

BLM does not require a separate ROW authorization for tenants that merely use a facility authorized by a ROW, provided such ROW grant allows subleasing. 43 C.F.R. § 2806.36(a). In 2005, BLM amended its ROW regulations to add a provision requiring a tenant at a permitted facility that “own[s] a building, equipment shelter, or tower on public lands for communication purposes,” to have a BLM ROW authorization for these improvements, “even if you are also a tenant or customer in someone else’s facility.” *Id.* § 2806.36(b) (emphasis added).<sup>3</sup> In such a case, BLM will charge a tenant that holds a separate ROW grant at a facility the full annual rent for its use based on the BLM communication site rent schedule. *Id.* § 2806.36(c).

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<sup>2</sup> For a communications site, the ROW holder may be a “facility manager,” which is defined in 43 C.F.R. § 2801.5 as an entity that does not own or operate its own equipment, but rather leases space within the communications site to tenants. “A tenant means an occupant who is paying a facility manager . . . for occupying and using all or any part of the facility.” 43 C.F.R. § 2801.5. A “facility” is defined as “the building, tower, and related incidental structures or improvements authorized under the terms of the grant or lease.” *Id.*

<sup>3</sup> Prior to 2005, the applicable regulation, 43 C.F.R. § 2801.0-1(f), provided that “the holder of a [ROW] grant for communication purposes may authorize other parties to use a facility, without prior written consent of the authorized officer, if so provided by terms and conditions of the grant.” *See* 60 Fed. Reg. 57058 (Nov. 13, 1995). The preamble to the 2005 final rule stated that BLM “added a new paragraph (b) to this section to make it clear that when someone owns a building, equipment shelter, or tower on public lands for communication purposes, they must have a BLM [ROW] authorization for their improvements, even if they are a tenant or customer in someone else’s facility.” 70 Fed. Reg. 20970, 21015 (Apr. 22, 2005). The regulation became effective on June 21, 2005. *Id.*

The agency will also include tenant uses in calculating the rent the facility owner must pay. *Id.*

While the “holder of an ROW’ has rights founded in an approved ROW grant,” an entity without an approved ROW grant or lease “is not a ‘holder of an ROW’” and therefore does not have authority to use the public lands. *Copper Valley Electric Association*, 177 IBLA 289, 306 (2009) (internal quotes in original). “[U]sing, occupying, or developing the public lands or their resources without a required authorization” is a trespass, which is a prohibited act. 43 C.F.R. § 2808.10(a); 43 U.S.C. § 1733(g) (2012) (“The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary [of the Interior] . . . is unlawful and prohibited.”). A trespasser’s liability for damages is set forth in 43 C.F.R. § 2808.11(a) and (b), and includes reimbursing the United States for all costs incurred in investigating and terminating the trespass and payment of fair market rental for the lands. For non-willful trespass, BLM may assess a penalty that “is an amount equal to the rent.” 43 C.F.R. § 2808.11(b)(2).

When BLM determines that a trespass has occurred, the record must contain “reliable, probative, and substantial evidence,” which establishes the facts supporting BLM’s decision. *Ron Hummel*, 176 IBLA 225, 232 (2008). The party challenging BLM’s trespass decision bears the ultimate burden of proving by a preponderance of the evidence that BLM erred in its determination that a trespass occurred. *See Lon Thomas*, 180 IBLA 182, 190 (2010).

### *Discussion*

#### *A. The Equipment Shelter*

On appeal, Sprint states that it does not own the equipment shelter, but subleases with Crown to use it. As a tenant in Crown’s facility, Sprint argues that under BLM’s regulations, it does not need a separate BLM authorization to use the equipment shelter. Sprint declares that

BLM has not offered any factual evidence in either its Trespass Decision[] or the Administrative Record to support its allegation that Sprint owns the Closed Equipment Shelter. Crown built the Closed Equipment Shelter and subleases space within it to Sprint. . . . The Closed Equipment Shelter simply is not a separately-owned Sprint Facility. At all times, the Closed Equipment Shelter has been a facility of the holder of the [ROW] Lease, and was properly subleased to Sprint without a separate authorization.

SOR at 21-22 (footnote omitted). We agree.

The regulation at 43 C.F.R. § 2806.36(b) requires Sprint to apply for a separate ROW grant only if it *owns* the equipment shelter. BLM argues that Sprint “admitted to ownership of two equipment shelters” when making statements in correspondence to BLM that the company has “acted in good faith to resolve this matter by preparing assignment documents to transfer both the Nextel and Sprint shelter to CROWN.” Answer at 7 (quoting NMNM 130476 AR 38 and NMNM 130477 AR 38 (Letter from Sprint to BLM, dated July 2, 2013)). Sprint responds that it does not own the equipment shelter and that “[a]t all times, the Closed Equipment Shelter has been a facility of [Crown], and was properly subleased to Sprint without a separate authorization.” SOR at 22. Further, Sprint states that its offer to assign any interest in the equipment shelter was made as part of settlement discussions to resolve the alleged trespass and it “did not admit that it owned the Closed Equipment Shelter.” *Id.* at n.4. The sublease states that Crown is providing the shelter for Sprint’s use, and the permit to construct the equipment shelter was issued to Crown, not Sprint. SOR at Ex. A (Sublease 1, ¶ 6) (lease between Crown and Sprint, noting that the “Equipment building/floor space” was “to be provided by Crown”); SOR at Ex. E (identifying construction permit owner as Crown).<sup>4</sup>

Because we find that Sprint has preponderated in demonstrating that it does not own the equipment shelter, we reverse BLM’s finding of trespass with regard to the shelter.

### *B. The Equipment Cabinets*

Sprint contends that its outdoor cellular cabinets within Crown’s ROW grant do not constitute a “building, equipment shelter, or tower” and therefore, in accordance with 43 C.F.R. § 2806.36(b), it does not need a separate BLM authorization for those cabinets. SOR at 22. Sprint argues that the equipment cabinets are neither a building nor a tower, and because they “are pieces of equipment in themselves, . . . they cannot be an equipment shelter.” *Id.* at 23. BLM counters by noting that Sprint has previously acknowledged that the cabinets are “shelters.” Answer at 17 (quoting

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<sup>4</sup> BLM argues that the construction permit does not provide evidence that Crown owns the equipment shelter because, among other things, the first page of the permit identifies the square footage of the facility as “0,” and the square footage identified on the second page of the permit, 204 square feet, does not match the 266 square-foot size of the equipment shelter depicted in the sublease. Answer at 8 n.6. We do not find these arguments persuasive in light of Sprint’s clear statement that it does not own the equipment shelter and the fact that the construction permit was issued to Crown.

NMNM 130476 AR 38 and NMNM 130477 AR 38 (Letter from Sprint to BLM, dated July 2, 2013)).

Although the regulations do not specifically mention cellular “cabinets,” the cabinets at issue here clearly house equipment and therefore fall under the regulation’s purview. The governing Site Plan supports our interpretation, explicitly identifying a cabinet as an example of an equipment shelter. SOR, Ex. D at 8, § III.B.7.b (“[a tenant] may not construct their own equipment shelter (building, shelter *or cabinet*).” (Emphasis added.) Because Sprint owns the equipment cabinets, which constitute “equipment shelter[s],” 43 C.F.R. § 2806.36(b) requires the company to have a separate ROW authorization for them to be on the public lands.

Sprint argues that BLM’s approval in 2008 of the Orogrande South Comm Site Plan “expressly authorized” its equipment cabinets, obviating the need for a separate BLM authorization. SOR at 15. We reject this reasoning. The Site Plan expressly states that its purpose is to provide guidance to BLM in administering communications uses at the Orogrande South Comm Site, and specifies that its terms are to “be incorporated into all leases, grants, and reservations issued (now and/or in the future) for this communications site and must be used in conjunction with the *granting authorization*.” *Id.*, Ex. D at 7 (emphasis added). We find that the Site Plan makes clear it is to be used in conjunction with instruments authorizing uses, but that it is not, itself, an authorization. We conclude that the record supports BLM’s finding that Sprint’s equipment cabinets are in trespass on public lands, and we therefore affirm this portion of BLM’s trespass decision.

### C. *Back Rent and Trespass Penalties for the Equipment Cabinets*

Sprint installed the equipment cabinets in 2003, but the regulation requiring their separate authorization did not become effective until June 21, 2005. 70 Fed. Reg. at 20970. When promulgated, the regulation provided notice to all facility owners that certain equipment must be separately authorized; the regulation makes no exception for entities that installed equipment prior to the regulation’s effective date.<sup>5</sup>

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<sup>5</sup> Pointing to language in the preamble for the 2005 regulation, BLM argues that when it was promulgated, the regulation was “consistent with current policy,” and therefore Sprint was required to seek a separate authorization from BLM for the cabinets even before 2005. Answer at 9. BLM also cites to two BLM Information Bulletins issued in 2001 and 2003 that explained that facilities owned by tenants required BLM authorization. *Id.* at 9-10, 12-13. There is nothing in the record, however, that shows that BLM made Sprint aware of its policy, and the regulation prior to 2005 did not include any requirement for tenant owners of facilities to obtain a separate ROW

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Consequently, Sprint was required to submit to BLM an application for an ROW grant for its communication site equipment cabinets within a reasonable period of time after the regulation became effective, and its failure to do so means that its cabinets have been in trespass. No trespass, however, could have occurred prior to the regulation's effective date, and we therefore remand to BLM for a recalculation of trespass damages.<sup>6</sup>

Sprint argues that BLM's calculations of trespass damages, even after the regulation requiring a separate authorization became effective, are improper. Sprint states that BLM is attempting to collect "double rent for Sprint's use of public lands: once under the grant holder's right-of-way, and then again under a separate tenant right-of-way." Reply at 2. This is incorrect. Under the regulations, BLM properly charged rent to Crown for Crown's facility, including a portion of the rent attributable to its tenants. See 43 C.F.R. § 2806.36(a) (facility owner is charged rent based on "the highest value use within the facility . . . and 25 percent of the rent from the rent schedule for each of the other uses subject to rent (including any tenant or customer use a separate grant or lease authorizes)").<sup>7</sup> As the owner of the equipment cabinets, Sprint is also required to pay rent, under a separate authorization, for its use of the public lands; the rent charged to Sprint is the full annual rent based on the BLM communication site rental schedule. See 43 C.F.R. 2806.36(c). This process of collecting fair market value for each tenant's use of public lands is required by regulation and does not constitute "double rent."<sup>8</sup>

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authorization. Moreover, BLM's internal bulletins are not binding on the public. See, e.g., *Wyoming Outdoor Council*, 171 IBLA 153, 167 (2007).

<sup>6</sup> Sprint claims that the 6-year statute of limitations should apply to this trespass action. SOR at 25 (citing 28 U.S.C. § 2415(b) (2012), which provides that "[a]n action to recover damages resulting from trespass on lands of the United States must be brought within six years after the right of action accrues."). This Board, however, has stated that a "statute establishing time limitations for the commencement of judicial actions for damages on behalf of the United States does not limit administrative proceedings within the Department of the Interior." *Bolling Constr. Co.*, 125 IBLA 303, 303 (1993).

<sup>7</sup> The record establishes that the rent charged to Crown included compensation for Sprint's use as a tenant, calculated as 25 percent of the rental schedule for Sprint's uses. See Supp. AR 25-28, 30, 32-34, 37, 51-52, 55, 57, 132-33, 167-68, 172-74, 176, 178, 199-200.

<sup>8</sup> BLM's Manual on ROW rents also explains that for communication sites, BLM  
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Trespass liability includes payment of back rent for the current and past years of trespass. 43 C.F.R. § 2808.11(a)(2). The appropriate amount of back rent therefore is based on the annual rent Sprint would have owed if it had properly obtained a BLM authorization for the equipment cabinets. In addition, for non-willful trespass, BLM may assess a penalty that is an amount equal to the rent owed. *Id.* § 2808.11(b)(2). Finally, trespass liability includes the administrative costs for investigating and remedying the trespass. *Id.* § 2808.11(a)(1).

The record shows that BLM followed the procedures set forth in 43 C.F.R. §§ 2806.36(a) and (c), and 2808.11 in calculating Sprint's trespass damages. BLM's "Trespass Cost Calculation Sheet" for the equipment cabinets shows that BLM identified the use type for both services provided by the equipment housed in the cabinets: cellular and internet provider services. BLM then established the rental amount, based on the respective years' rent schedule, for "Use 1, Cellular" and "Use 2, ISP;" calculated 25 percent of Use 2 ("Use 2 @ 25%"), which is the lower use amount; and then added that 25 percent figure to the base rent for Use 1, yielding a total rental cost. NMNM 130476 at 8. BLM doubled that amount to reflect the non-willful nature of the trespass, and added the administrative costs for investigating and remedying the trespass.

Sprint argues that BLM should be estopped from assessing against it any back rent or trespass damages because of the agency's "affirmative misconduct in this matter," as evidenced by allowing Sprint's use to continue for nearly 12 years before issuing a trespass notice. SOR at 17; *see id.* at 18. This Board has held that estoppel against the United States is an extraordinary remedy, especially as it relates to management of the public lands. *See Jack C. Scales*, 182 IBLA 174, 180 (2012); *Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007). Here, Sprint has not shown that BLM's actions constituted affirmative misconduct, a requirement for invoking equitable estoppel. *See Ron Coleman Mining, Inc.*, 172 IBLA at 391 (estoppel "must be predicated on a crucial misstatement in an official written decision"). Moreover, BLM is never barred by laches from enforcing public land laws. *See* 43 C.F.R. § 1810.3(a) ("[T]he authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties."). We reject Sprint's argument to the contrary.<sup>9</sup>

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calculates rent for multiple uses as follows: "Establishing the rent for the highest use and adding to that 25% of the schedule rent for all other tenant uses." BLM Manual 2806.31.A.2 (undated).

<sup>9</sup> To the extent Sprint is arguing that BLM should have waived or reduced the trespass (...continued)

We conclude that BLM's calculation of trespass damages for the period between June 21, 2005, and June 21, 2013, was correct and supported by the record, and Sprint has not met its burden to show that BLM erred in its calculations. We therefore affirm BLM's calculation of trespass damages for this period.

*Conclusion*

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 decisions appealed from are affirmed in part, set aside and remanded in part, and reversed in part consistent with this Decision.

\_\_\_\_\_/s/  
Amy B. Sosin  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
James K. Jackson  
Administrative Judge

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penalty set forth in 43 C.F.R. § 2808.11(b) because the agency did not issue a trespass notice as soon as the agency knew of Sprint's unauthorized use, we find that Sprint has not shown BLM abused its discretion in assessing that penalty. We have held that "any exercise of discretionary authority must have a rational basis supported by facts of record so as not to be arbitrary, capricious, or an abuse of discretion." *Terry Kayser*, 136 IBLA 148, 150 (1996); *see U.S. v. Zweifel*, 11 IBLA 53, 96 (1973) ("To constitute an abuse of discretion, the action must be arbitrary, fanciful, or clearly unreasonable."). Disagreements and differences of opinion do not demonstrate that BLM has in some way abused its discretion. *See In Re Suce Creek Timber Sale*, 131 IBLA 206, 211 (1994). Here, the regulation provides BLM with discretion to impose a penalty for non-willful trespass of up to "an amount equal to the rent." Sprint's disagreement with how BLM exercised its discretion in this case of a non-willful trespass is not sufficient to establish error; nor is the fact that BLM could have assessed a lesser penalty an independent basis to set aside BLM's determination. We therefore deem BLM's exercise of its discretionary authority to be reasonable.