

FLPMA 304(b) Reasonableness Factors

Section 304(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734(b), lists six factors that the BLM must consider in deciding what is a reasonable processing fee. As explained in the proposed cost recovery rule at 70 FR 41532, 41537 (July 19, 2005), the BLM has interpreted the FLPMA reasonableness factors as follows:

(1) The BLM's actual costs to process a document. As noted in the final cost recovery rule at 70 FR 58860 (October 7, 2005), "BLM's actual costs are the sum of both direct and indirect costs. However, under FLPMA, BLM cannot recover the costs of management overhead. We have interpreted this to mean the costs of BLM State Directors and Washington Office staff, except when a member of this group works on a specific authorization such as a contract. We have not excluded the costs of Deputy State Directors or other supervisory staff because they are typically involved in day-to-day decision making. BLM's cost accounting system is intended to reflect this distinction."

(2) The monetary value, or objective worth, of the right or privilege that the applicant seeks. This factor is the value to the applicant, not the revenue value to the government. For example, do not use a BLM price for "in place" sand and gravel of \$1 per cubic yard times the number of cubic yards for the sale as the monetary value. Instead, depending on quality, use the retail price for unprocessed fill (e.g., \$4 per cubic yard) or unprocessed sand and gravel (e.g., \$6 per cubic yard).

(3) The efficiency with which the BLM processes a document, meaning with a minimum of waste by carefully managing agency expenses and time.

(4) Whether any of the BLM's processing costs, for actions such as studies or data collection, benefit the general public or the Federal Government, rather than just the applicant.

(5) Whether the project provides any significantly tangible improvement, such as a road, or other direct service to the public. Occasionally, a negative factor, such as an adverse impact on wildlife or surface drainage, may prevent an improvement from being regarded as a public service. Data collection that the BLM needs an applicant to perform so that it can monitor an activity is not a public service.

(6) Other relevant factors.