

BEN J. TREXEL

IBLA 88-479

Decided March 8, 1990

Appeal from a decision of the Canon City District Office, Bureau of Land Management, rejecting access road right-of-way application C-44126.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Applications--Rights-of-Way: Federal Land Policy and Management Act of 1976

FLPMA grants the Secretary of the Interior discretion-ary authority to issue rights-of-way. A Bureau of Land Management decision rejecting a road right-of-way application filed pursuant to sec. 501(a) of FLPMA, 43 U.S.C. § 1761(a) (1982), will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest, and no reason for disturbing the decision is shown on appeal.

APPEARANCES: Ben J. Trexel, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Ben J. Trexel (Trexel) has appealed from a May 5, 1988, Canon City District Office, Bureau of Land Management (BLM), decision rejecting right-of-way application C-44126.

The record reflects that Colorado Land and Grazing Corporation (Colorado Land), a land developer, had subdivided a large tract of land in Huerfano County, Colorado, into lots of approximately equal size, with each containing about 35 acres. As a part of the subdivision plan Colorado Land reserved 60-foot-wide access and utility easements to allow for access to the various lots. The Colorado Land subdivision plan (which was submitted to and approved by Huerfano County) envisions the use of the reserved rights-of-way for lot owner ingress and egress, construction of the roads within the subdivided tract, and distribution of construction and maintenance costs among the subdivision lot owners.

Trexel owns a lot located on the northerly side of a group of 17 tracts served by a reserved right-of-way that commences at a county road to the southeast of the Trexel tract, runs approximately 3,700 feet to Trexel's parcel, and continues westerly for approximately the same distance. The county road continues in a northerly direction from the point of takeoff of the reserved right-of-way.

On March 26, 1987, Trexel filed an application for a right-of-way across public land situated in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , sec. 26 and the E $\frac{1}{2}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , sec. 35, T. 26 S., R. 70 W., sixth principal meridian, Huerfano County, Colorado. 1/ His application, which was filed with BLM pursuant to section 501(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a) (1982), described a 20-foot wide, 0.9-mile-long right-of-way which would permit direct access from the county road. As described, the right-of-way would commence at the county road to the northeast of his tract, go southerly and then southwesterly to a point on his tract which is also on the northerly boundary of the Colorado Land subdivision.

It appears from the record that Trexel can gain access to his tract using the right-of-way reserved by Colorado Land, but the road had not been improved when Trexel filed his application. In his application, Trexel recognized that an alternative route to his property existed, but stated that use of the planned community access road was restricted by weather and terrain conditions and could not be traversed by a family car, requiring the purchase of a special vehicle. He explained that he needed the right-of-way because "the right to cross Federal land makes my property immediately accessible [sic] by crossing relatively flat land that can be negotiated in a family car."

BLM undertook an assessment of the environmental impact of granting the right-of-way and prepared an environmental assessment/land report (EA/ LR), dated May 21, 1987 (EA No. CO-050-RG-87-38). 2/ In its assessment, BLM analyzed three alternatives: (1) the unimproved access road proposed by Trexel; (2) the construction and use of an improved road along the route requested by Trexel; and (3) the no-action alternative. 3/ The EA/LR summarized the impacts of granting Trexel's request:

This action would depart from the community planned access development and be unequal treatment of seventeen lotowners [sic] in both social and economic participation. The proposed action

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1/ The application describes the requested right-of-way as following an existing trail for approximately 0.5 mile and then establishing a new trail for about 0.4 mile. According to BLM, the route staked by Trexel is approximately 4,300 feet in length.

2/ The EA/LR was approved by the Associate District Manager on July 30, 1987.

3/ BLM initially noted that the route requested by Trexel crossed approximately 50 feet of private land in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of sec. 25 between the county road and Federal land, and that an easement across this land would be required before any Federal right-of-way could be granted.

is not consistent with the BLM land use planning. This action would probably increase soil erosion and gullyng. As a result of granting this right-of-way numerous (approximately 15) other applications would be expected creating a maze of access roads in the area.

(EA/LR at 1). The BLM assessment team recommended the no-action alternative because that alternative would foster the development and improvement of the community access route, in accordance with the community development plan envisioned when the land was subdivided by Colorado Land; would be consistent with BLM's land-use planning; would minimize the risk of erosion (assuming proper design, construction, and maintenance of community roads); and would eliminate the development of a maze of private access roads across public lands.

In its May 5, 1988, decision, BLM accepted the EA/LR's recommendations and rejected Trexel's application, stating the following reasons for rejection:

1. Alternative access is already available. The existing alternative access was included in the overall subdivision plan and was approved by Huerfano County. Seventeen lot owners will eventually use the designated road.
2. The proposal would require 0.8 mile of additional road initially; as other landowners begin to use the area, the road would be used by many of them and several branches off the road would be expected to develop. The result would be an unnecessary maze of roads on public and private land, destruction of vegetation, and increased erosion.
3. The proposed right-of-way is therefore in conflict with the objectives for right-of-way management of the Secretary of the Interior (43 CFR 2800.0-2) and is not in the public interest.

On appeal, Trexel asserts that BLM personnel caused him to believe that his application was normal, would present no problems, and that he was being encouraged to seek the proposed right-of-way. He states that access to his property via the Colorado Land road is over three and one-half times longer than the route described in his application. He also contends that the right-of-way described in his application is a "worst case" scenario, as he might only need a 0.7-mile-long right-of-way. Trexel also alleges that an existing unimproved road is currently being used along the proposed right-of-way. He argues that only he and the owner of the adjacent lot would use the proposed route, because the terrain precludes any westerly extension of the proposed road. He believes that BLM did not intend to have its right-of-way management objectives penalize owners of land adjacent to BLM-managed land, and states that it would be to BLM's advantage "to have concerned citizens available to monitor the condition of the land that is managed by [BLM] and to notify the agency of pirating and poaching of the natural resources that are part of the public domain."

[1] Section 501(a)(6) of FLPMA, 43 U.S.C. § 1761(a)(6) (1982), grants the Secretary of the Interior the discretionary authority to issue rights-of-way over, upon, under, or through public lands for roads, trails, or other means of transportation. See also 43 U.S.C. § 1761(a)(7) (1982). Approval of rights-of-way is, therefore, a matter of discretion. Glenwood Mobile Radio Co., 106 IBLA 39, 41 (1988); Kenneth W. Bosley, 101 IBLA 52, 54 (1988); Edward J. Connolly, Jr., 94 IBLA 138, 146 (1986); High Summit Oil & Gas, Inc., 84 IBLA 359, 364-65, 92 I.D. 58, 61 (1985). Departmental regulations provide that an application may be denied if the authorized officer determines that the proposed right-of-way would not be in the public interest. 43 CFR 2802.4(a)(2). When unusual circumstances dictating another result are not shown, this Board will affirm a BLM decision rejecting a right-of-way application if the record demonstrates that the rejection decision is based on a reasoned analysis of the facts and was made with due regard for the public interest. See, e.g., Glenwood Mobile Radio Co., supra at 41-42; High Summit Oil & Gas, Inc., supra at 365-66, 92 I.D. at 61-62.

The record indicates that BLM carefully analyzed the facts relevant to Trexel's application and concluded that issuance of the requested right-of-way would not be in the public interest. BLM based its determination on the existence of alternative access to Trexel's property, the increased potential for soil erosion if the right-of-way were granted, and the inconsistency with the existing land-use plans of BLM, Huerfano County, the developer, and the other lot owners.

This Board has upheld BLM's rejection of similar right-of-way applications when feasible alternatives were present. See, e.g., Dwane Thompson, 88 IBLA 31 (1985); High Summit Oil & Gas, Inc., supra (and cases cited therein); Lower Valley Power & Light, Inc., 82 IBLA 216 (1984). Trexel purchased his land knowing the location of the approved access easement and now predicates his need for a separate right-of-way on the fact that this access route is three and one-half to four times longer than the additional route he now seeks, i.e., approximately 2.8 miles long as opposed to 0.7 to 0.8 mile long. This greater distance does not make the route planned by Colorado Land infeasible, and the grant of the right-of-way sought by Trexel would not eliminate the need for the road along the right-of-way reserved by Colorado Land. BLM's rejection of Trexel's request for a separate right-of-way conforms to Congress' expressed preference for common rights-of-way "[i]n order to minimize adverse environmental impacts and the proliferation of separate rights-of-way," 43 U.S.C. § 1763 (1982), and the Departmental regulations reflecting this preference. See 43 CFR 2800.0-2. The record in this case amply demonstrates that BLM based its rejection decision on a reasoned analysis of the factors involved with due regard for the public interest. Trexel has failed to establish error in that decision. 4/

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4/ Had BLM deemed it appropriate to grant the right-of-way, one could not be issued until Trexel had shown that he had a right to cross the private land located between the county road and the Federal land. See Edward J. Connolly, Jr., supra at 145.

IBLA 88-479

Accordingly, 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 affirmed.

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R. W. Mullen  
Administrative Judge

I concur:

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Franklin D. Arness  
Administrative Judge

113 IBLA 254