

CHARLES RYDEN

IBLA 90-61

Decided June 6, 1991

Appeal from a decision of the District Manager, Grand Junction District Office, Bureau of Land Management, denying an application for assignment of right-of-way COC-46621.

Vacated and remanded.

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

Although 43 CFR 2801.1-2 authorizes BLM to require that a road right-of-way applicant grant a reciprocal right-of-way to the United States as a condition to receiving a right-of-way pursuant to sec. 501(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761(a) (1988), the reciprocal grants must be equivalent, and a BLM decision denying an application for the assignment of a road right-of-way, based on the purported refusal of the assignee to grant public access across his private land, will be vacated because a Federal Land Policy and Management Act right-of-way does not grant public access.

APPEARANCES: Charles Ryden, New Castle, Colorado, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Charles Ryden has appealed from an October 3, 1989, decision of the District Manager, Grand Junction District Office, Bureau of Land Management (BLM), denying the application filed by Ryden, on behalf of Red Glen Ranch, a partnership composed of Charles and Ted Ryden, for assignment of right-of-way COC-46621, held by Mobil Oil Corporation (Mobil).

On August 11, 1988, pursuant to section 501(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a) (1988), BLM issued right-of-way COC-46621 to Mobil for an initial 30-year period, with renewal rights. The grant authorized Mobil to construct, use, maintain, and terminate a road, and a related telephone line and water pipeline, on 4.848 acres of public land located in the E½ NE¼ sec. 21, T. 5 S., R. 91 W., sixth principal meridian, Garfield County, Colorado. Mobil had requested the 60-foot wide, 3,520-foot long right-of-way to provide access to a wildcat well drilling site on adjacent private land owned by Ryden. BLM accepted Mobil's proposed route because alternatives crossing private

land would have required road grades and switchbacks too difficult for hauling drilling equipment to the well site. The case record indicates that Mobil's drilling efforts resulted in a dry hole. 1/

On August 11, 1989, Ryden filed an application for assignment of right-of-way COC-46621, stating therein that the right-of-way was needed "[t]o salt & water cattle," and that he would maintain the road as it had been done in the past with no use in winter or early spring. 2/

In a memorandum dated September 15, 1989, from the Glenwood Springs Resource Area Manager, BLM, to the Grand Junction District Manager, BLM, the Area Manager recommended that the assignment application be denied. He stated that the road was located in steep terrain on the Grand Hogback; proper maintenance of the road was essential to avoid watershed damage; and Ryden probably had neither the resources nor the incentive to maintain the road to the extent necessary to prevent erosion damage. Additionally, the Area Manager noted that the road crossed approximately 100 yards of Ryden's land, and that Ryden had indicated that he was not interested in granting a general public easement across his land, although he would grant an administrative easement to BLM if the assignment were made. 3/ The Area Manager concluded that Ryden's proposal did not comply with BLM policy of obtaining general public access to public lands. 4/

In his October 3, 1989, decision, the District Manager adopted most of the Area Manager's recommendation. He noted that the right-of-way was located in steep terrain and required proper and diligent maintenance to avoid watershed damage. He found that although the road crosses a portion of Ryden's private land, Ryden, while willing to grant an administrative easement to BLM upon approval of the assignment, would not grant a general public easement across his land. The District Manager denied the application for assignment of right-of-way COC-46621, stating that Ryden's proposal did not comply with BLM's policy of obtaining general public access to public lands. 5/

1/ See note to the file dated Aug. 15, 1989.

2/ In the Aug. 15, 1989, note to the file (see note 1, supra), a BLM employee recounted a conversation with a Mobil employee in which she was told "OK with Mobil to assign it to Ryden, but Mobil would be doing reclamation. He mentioned that he thought BLM was trying for a R/W across Ryden's land for access to public land and we could perhaps work for a reciprocal R/W."

3/ There is no independent evidence in the record to support this statement by the Area Manager. Apparently, he was relying upon some oral communication from Ryden which was not memorialized in writing and included in the case file. In addition, there is no indication in the record that BLM communicated to Ryden that approval of an assignment of the right-of-way would be conditioned on the acceptance of a reciprocal grant. See BLM Manual section 2801.47A.1.

4/ The Area Manager's memorandum contained no citation to the BLM policy.

5/ The BLM decision contained no citation to the BLM policy.

On appeal Ryden argues that general public access to the area already exists. He notes that a road which comes from the west down the Grand Hogback provides public access, and that this road and the road on his land "lack less than 100 yards of intersecting." He contends that an extra road will not benefit the public very much, but that use of Mobil's road will aid him in hauling salt and water to his cattle and satisfy other administrative needs.

Ryden praises the construction and durability of the road and suggests that it will not require diligent maintenance, rather "just proper common upkeep." He asserts that there will be more lasting damage to the terrain if the road is reclaimed. If the road is reclaimed, Ryden indicates that he will be forced to use an old existing road on his property which is in disrepair.

[1] Section 501(a) of FLPMA, 43 U.S.C. § 1761(a) (1988), authorizes the Secretary of the Interior to grant rights-of-way over, upon, under, or through public lands for roads, trails, or other means of transportation. Approval of rights-of-way is a matter of discretion. C. B. Slabaugh, 116 IBLA 63, 65 (1990); Coy Brown, 115 IBLA 347, 356 (1990); Ben J. Trexel, 113 IBLA 250, 253 (1990); Pete Zanetti, 113 IBLA 239, 241 (1990). This Board will ordinarily affirm a BLM decision approving or rejecting a right-of-way application when the record demonstrates that the decision is based on a reasoned analysis of the factors involved, made with due regard for the public interest, and no reason is shown to disturb BLM's decision. See, e.g., C. B. Slabaugh, supra; Coy Brown, supra; Robert M. Perry, 114 IBLA 252, 262 (1990). In this case, we find that BLM's decision denying the assignment of Mobil's right-of-way was not based on a reasoned analysis of the involved factors and must be vacated.

BLM denied Ryden's application because, although he agreed to grant BLM an administrative easement if the right-of-way assignment were approved, he was apparently unwilling to grant a general public easement across his property to public lands.

The provisions of 43 CFR 2801.1-2 authorize BLM to require an "applicant, as a condition to receiving a right-of-way grant, to grant the United States an equivalent right-of-way," if it is in the public interest to do so. If the applicant refuses, BLM may reject the application.

Such reciprocal grants, however, must be equivalent. According to section 2801.47A.2. of the BLM Manual, "[a] FLPMA Title V right-of-way conveys rights similar to those which BLM receives under a nonexclusive easement which gives the United States administrative access and the right to authorize road use by contractors and licensees. It does not authorize public access." (Emphasis added). See also BLM Manual section 2801.47B. Therefore, BLM could not require Ryden to grant a general public easement across his property as a condition to receiving a BLM right-of-way, although it could require some more limited public access as a condition of granting the right-of-way, provided such access would not unduly burden the use of his property. See Ute Water Conservancy District, 47 IBLA 71, 73-74 (1980). For that reason, we vacate BLM's rejection of Ryden's application and remand the case to BLM for further review.

It is clear from the present record, however, that Ryden's application for an assignment is incomplete. The BLM Manual at section 2801.42F 1a.(2) provides that "[a]n applicant for an assignment of a FLPMA right-of-way grant shall complete items numbered 1, 2, 3, 4, 5, 6, 10, and 12 and sign and date the SF [Standard Form]-299. It is unnecessary to complete any item not specifically listed above for a FLPMA reassignment." The application filed by Ryden is an SF-299. It is signed by Ryden and dated. Items numbered 1 through 6 and 10 are completed. Item 12, which states "[g]ive statement of your technical and financial capability to construct, operate, maintain, and terminate system for which authorization is being requested," is blank. Without that information, BLM cannot process the application.

Further, even though he was not required by the BLM Manual to provide any additional information, Ryden stated on the application that he desired to utilize the right-of-way "to salt & water cattle." The right-of-way grant itself states that the holder receives a right to construct, use, maintain, and terminate a road, telephone line, and water pipeline in the described land. There is no indication in Ryden's statement of reasons that he desires to use the related telephone line and water pipeline authorized by the grant. Therefore, the question is raised whether assignment of the present right-of-way would be proper or whether Ryden should be seeking a new right-of-way grant for the road only. That is a question we will leave to BLM on remand.

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 vacated and the case is remanded to BLM for further action consistent herewith.

Bruce R. Harris
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge