

GEORGE BERNADOT

IBLA 90-195

Decided October 28, 1991

Appeal from a decision of the Las Vegas, Nevada, District Office, Bureau of Land Management, rejecting application for right-of-way for an access road. N-51514

Affirmed.

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

A decision rejecting a right-of-way application for an access road will be affirmed where granting the right-of-way would be inconsistent with applicable law and not in the public interest. Application for an access road right-of-way was properly rejected where the water well to which access was sought was neither the subject of an approved mining plan of operations nor authorized through issuance of a right-of-way grant or temporary use permit.

APPEARANCES: George Bernadot, Las Vegas, Nevada, pro se

OPINION BY ADMINISTRATIVE JUDGE HUGHES

George Bernadot (appellant) has appealed from a January 4, 1990, decision of the Las Vegas, Nevada, District Office, Bureau of Land Management (BLM) rejecting his application (N-51514) for a right-of-way for an access road to a water well.

The facts giving rise to the subject appeal are not in dispute. On July 3, 1989, appellant filed right-of-way application N-51514 for an access road across lands in secs. 20 and 28, T. 23 S., R. 61 E., Meridian Diablo Meridian. 1/ The application reveals that appellant sought the right-of-way to construct a 1.9-mile graded roadway 36 feet in width with drainage

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1/ The right-of-way was to run across the E $\frac{1}{2}$  NW $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , and SE $\frac{1}{4}$  sec. 20 and the NW $\frac{1}{4}$  sec. 28 in this township.

ditch and culverts where needed. It appears that the purpose of the road was to provide access to a water well in sec. 28.

The case record indicates that, on July 12, 1989, an unauthorized water well was drilled by appellant on sec. 28, and that BLM logged this action as a trespass (NV-050-5-510) and established a casefile (N-51942) listing the trespass as "unauthorized water well and road on public land."

On January 4, 1990, BLM denied appellant's application for the road right-of-way because no authorization existed for the well facility on sec. 28 either under a right-of-way or under a mining plan of operations.

Appellant states on appeal that he has followed BLM rules, regulations, and directives. He relates that he was informed in July 1989 that he needed an additional right-of-way permit and paid the \$300 permit fee. He avers that the denial of his application by BLM has caused him to lose sand and gravel sales and asserts that he has valid mining claims, an approved technical analysis, and an approved mining plan. Appellant acknowledges that he has sunk a water well per State of Nevada regulations, although he denies that he is "guilty of any trespass." 2/

[1] The only issue presented by the present appeal is whether BLM properly denied appellant's application for a right-of-way for a 1.9-mile graded roadway 36 feet in width with drainage ditch and culverts where needed. BLM is generally authorized to issue rights-of-way for roadways across the public domain by sec. 501(a)(6) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a)(6) (1988), as implemented by 43 CFR 2800.0-7(a)(6). Approval of rights-of-way is 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 or would be inconsistent with applicable laws. 43 CFR 2802.4(a)(2) and (4). When unusual circumstances dictating another

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2/ The issue of whether appellant may be guilty of trespass on Federal lands owing to his activities in sec. 28 is not before us, as the decision under appeal does not address trespass.

Appellant also refers in his statement of reasons to placing "a water line to transport water to the Sloan area adjacent to the Interstate 15." This reference is evidently to appellant's informal, written request to BLM on Sept. 26, 1989, for permission "to transport water by pipeline" from sec. 28. We offer no comment on this question, as this request was not considered by BLM in the decision under appeal. We note that, if any event, on Sept. 5, 1990, appellant notified BLM that he no longer needed permission for a right-of-way for "the water line to the Sloan area adjacent to I-15."

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.

Nothing in the record indicates that the well appellant drilled on public land was authorized under a right-of-way grant or temporary use permit issued pursuant to FLPMA, or via approval of a mining plan of operations prior to constructing the well. See 43 CFR 3809.1-4.

Appellant refers to an approved technical analysis and mining plan. This plan was apparently approved in 1983 for removal of sand and gravel in the N $\frac{1}{2}$  sec. 28 pursuant to material sales contract NV-056-CT3-07. There has been no showing that appellant's 1983 approved mining plan authorized the sinking of a well on public lands. In any event, that material sales contract expired on April 21, 1985, thus terminating appellant's authority to proceed under the mining plan approved for the contract. <sup>3/</sup>

Appellant also filed a proposed mining plan of operations with BLM on January 19 and January 25, 1988, for 19 placer mining claims located in sec. 28 but it was rejected by BLM on February 16, 1988, because BLM determined the claims contained only common variety sand and gravel not locatable under the mining law. The record does not reflect that appellant appealed BLM's adverse decision to this Board. Even if he did not receive BLM's February 16, 1988, decision rejecting his proposed mining plan of operations, no different result would obtain, as appellant has not received an approved mining plan of operations granting him authority to sink a well on public land.

By rejecting appellant's application for a right-of-way, BLM implicitly held that it was not in the public interest. It is basic to orderly management of the public lands under the system of law that, in determining the public interest, BLM consider whether a use that is to be furthered by the granting of the right-of-way is authorized. Here, granting of an access road right-of-way permitting appellant access to an unauthorized water well on public land would be clearly inconsistent with applicable regulations requiring that the well be authorized pursuant to some authority and would not be in the public interest. Accordingly, BLM properly rejected appellant's application. See 43 CFR 2802.4(a)(2) and (4).

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<sup>3/</sup> The record indicates that appellant filed a request for "a renewal or another contract of sale" for more sand and gravel in sec. 28 on Feb. 11 and 14, 1986. However, there is no indication that BLM ever granted his request. It appears that BLM decided in August 1987 that any material sales contract would have "to be competitive" and informally so notified appellant.

Therefore, 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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David L. Hughes  
Administrative Judge

I concur:

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Bruce R. Harris  
Deputy Chief Administrative Judge