

WILLIAM A. LESTER,  
EXECUTOR OF THE ESTATE OF  
FRED W. SPRUNG

IBLA 70-88 Decided April 19, 1971

Rights-of-Way: Act of February 15, 1901 – Water and Water Rights: Generally

It is proper to reject an application for a right-of-way for a pipeline to transport water from a spring on public land to private land for private use where the public land has high resource value to the development of which the water may be vital.

IBLA 70-88: S-1680

WILLIAM A. LESTER,	:	
EXECUTOR OF THE ESTATE OF	:	Right-of-way
FRED W. SPRUNG	:	application denied
	:	
	:	Affirmed

DECISION

William A. Lester, executor for the estate of Fred W. Sprung, has appealed to the Secretary of the Interior from a decision dated September 4, 1969, of the Office of Appeals and Hearings, Bureau of Land Management, which affirmed the rejection by the Sacramento land office of an application filed by Sprung pursuant to the act of February 15, 1901, as amended, 43 U.S.C. § 959 (1964), for a right-of-way for a pipeline in Lot 3 sec. 14, T. 7 N., R. 12 E., M.D.M., California.

Lot 3 is part of a tract of 230 acres of public land most of which lies in the east half of sec. 14. Another 200 acre tract of public land corners it to the northeast in sections 12 and 13. The lands are in a rough, mountainous area in the lower foothills of the Sierra Nevada Mountains, some 50 miles east of Sacramento. While the public lands in the vicinity are scattered, the region as a whole is heavily used for hunting, hiking, and rockhounding. It also serves as winter range for deer. There are reservoirs, existing and proposed, and rivers within a 3 to 20 mile range.

At the time he filed, Sprung was the owner of three patented mining claims. The most northerly claim lies partly in the south half of NE 1/4 SE 1/4 sec. 14 and the others abut each other to the south. Lot 3 constitutes the remainder of the NE 1/4 SE 1/4 sec. 14. Sprung maintained a home on the most southerly claim situated in the NE 1/4 SE 1/4 sec. 23. The appellant states that Sprung, as early as 1959, had located a spring in lot 3, referred to as Spring "B," <sup>1/</sup> had developed it, and laid a pipe from it across

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<sup>1/</sup> Sprung originally filed for a right-of-way from each of two springs. On this appeal Lester has withdrawn his application for the right-of-way from Spring "A" and asks only for one from Spring "B."

lot 3 to his mining claims and then on to his home. Sprung used the water for domestic purposes and to irrigate an acre of garden.

On September 16, 1959, Sprung and John Rodriguez located a placer claim for all of lot 3 and the "E 1/4" of the adjoining NW 1/4 SE 1/4 sec. 14.

The right-of-way applied for, as amended, is 10 feet wide and approximately 610 feet in length in which there is now, or will be, laid a 3/4" to 1" pipeline. On November 7, 1969, the State of California State Water Resources Board issued the Estate of Fred W. Sprung a permit to divert and use 10,000 gallons per day from two springs in the NW 1/4 SE 1/4 (Spring "B") and in the NE 1/4 SE 1/4 (Spring "A") of sec. 14.

The land office found that the public land had high resource values and that several public agencies and private groups were interested in it. It concluded that it would not be in the public interest to approve the right-of-way.

The Bureau of Land Management pointed out that under the statute and pertinent regulation, 43 CFR 2802.2-1, 35 F.R. 9637, formerly 43 CFR 2234.1-4(a), a right-of-way application will be rejected if approval would be inconsistent with the public or Government interest. It pointed out the land office had relied upon a field investigation of the land which indicated that the water supply of this segment of the public lands is critical to the value and ultimate utility of the land. It agreed with the land office that whatever the future use of the land might be, removal of water from it would not enhance its value and would adversely affect the Government's interest. It also noted that prior use without a right-of-way of the land constitutes trespass.

The appellant contends that Sprung's prior use was not a trespass because Sprung and one Rodriguez were locators of an unpatented placer mining claim which included the spring and desired right-of-way. The mining claim was located in 1959. The act of July 23, 1955, 30 U.S.C. § 612(a) (1964), prohibits the use of a mining claim located after the date of the act for any purpose other than prospecting, mining, or processing operations and uses reasonably incident to such purposes. If the use of the water does not fall within one of the permitted categories, it constitutes a trespass.

He also says that the denial of the application would frustrate the right-of-way statutes. On the contrary, a denial

of a right-of-way application on the ground that the public interest will be served by such action carries out the congressional intent, if the public interest has been properly conceived.

He also cites the issuance to him by the State of California Water Resources Control Board of a permit to use and divert not more than 10,000 gallons a day per year. The State's action has little bearing in ascertaining whether the grant of a right-of-way by the Federal Government would be in the public interest.

He next alleges that the right-of-way would not interfere with the uses to which the land is being put, that such uses have continued for the many years since Sprung laid the pipeline and that the right-of-way should be granted subject to the right to cancel it if public needs in the area make such action necessary.

Since the reports and decisions below were concerned with the effect on development of the resources contingent upon water, appellants' contentions that Sprung's pipeline and diversion of water had not interfered with present use of the public land are beside the point. The appellant's willingness to accept a right-of-way subject to cancellation ignores the difficulties that might arise if a domestic water source, once established and recognized, were to be cut off.

The granting of a right-of-way under the 1901 act, *supra*, lies within the discretion of the Secretary. While the application is for a right-of-way, the heart of the dispute is the use of the water. The Secretary may prevent the use of waters on public lands by denying a right-of-way essential to their exploitation. Solicitor's Opinion, 55 I.D. 371, 377 (1935). We agree that the public interest warrants a denial of the right-of-way applied for until the potential use of the land becomes more fully explored. 2/

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2/ We note that a report from the state director, California, to the district manager, Folsom, dated February 27, 1969, says a land use plan for the area will be devised following a Unit Resource Analysis scheduled for fiscal year 1971. Lester can renew his application if the right-of-way he desires is consistent with the plan.

We also suggest that any further consideration of use of water from this land, so long as it remains in public ownership, take into account the possible relevancy of the regulations dealing with public water reserves. 43 CFR 2311; 35 F.R. 9552, formerly 43 CFR 2321.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the secretary of the Interior (211 DM. 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Martin Ritvo, Member

We concur.

Joan B. Thompson, Member

Anne Poindexter Lewis, Member.

