

LAURA E. HUNT AND CHAUNCEY G. HUNT

IBLA 71-54

Decided September 26, 1972

Appeal from decision of acting district manager, Bureau of Land Management, giving notice of proposed spur road to be constructed under road easement grant (RE-R-55).

Reversed and remanded.

Conveyances: Interest Conveyed -- Rights-of-Way: Generally --
Rights-of-Way: Nature of Interest Granted

An easement to the United States which authorizes use of an existing road, and location and construction of extensions and spurs to that road, does not authorize construction of a proposed road which would not be an extension nor spur of the existing road, but instead would be a relocation and by-pass of a portion of the existing road.

APPEARANCES: J. V. Long of Long, Neuner, Dole & Caley, attorneys for appellants.

OPINION BY MRS. THOMPSON

This appeal by Miss Laura E. Hunt and Mr. Chauncey G. Hunt is from a decision dated August 7, 1970, by the acting district manager, Roseburg district office, Bureau of Land Management, Oregon, which gave notice that a proposed spur road "may be constructed in approximately two years" under the Government's existing easement (RE-R-55), dated April 19, 1957, for a term expiring January 1, 2017, from the Hunts over certain described land.

Appellants object to the proposed road construction as being a taking of their property without compensation in that the proposed road does not fall within the terms of the easement.

From our review of the facts of record, we agree that the proposed road construction is not authorized by the easement. As pertinent here, the easement conveyed to the United States "the right to use, maintain, and repair roads now located" on certain described

land shown on an attached map, "[t]ogether with the right to locate, construct, use, maintain, control and repair spur roads and extensions to said road over and across the above described land."

The proposed road is a new road, as shown on a map accompanying the decision, which would begin at one point along the existing road covered by the easement, then run in a more direct line opposite a creek, and roughly parallel to the existing road, to another point on the existing road. A portion of the existing road would be by-passed if the proposed road were to be constructed.

Under the easement, new road location and construction is permissible only for spur roads and extensions of the existing road. An extension or a spur of a road implies, at least, the continued existence of a main road. Cf. Detroit & Toledo Shore L.R. Co. v. New York Cent. R. Co., 233 F.2d 168 (6th Cir. 1956). An extension would lengthen the road at one or both ends. A spur would extend outwardly from the main road, but would not be a substituted location of a portion of that road. The effect of the proposed road would not serve to lengthen or extend or serve the main road as it exists. Instead, it would be a relocation or a by-pass of a portion of that road. We do not believe such an effect is within the ambit of the easement terms as an extension or spur of the existing road. The Bureau should consider solutions to this right-of-way problem other than this proposed unauthorized enlargement of the existing easement. Cf. Jones v. Edwards, 347 P.2d 846 (Ore. 1959).

Accordingly, pursuant to the authority delegated to this panel by the Director, Office of Hearings and Appeals, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded to the Bureau of Land Management for further appropriate action consistent with this decision.

Joan B. Thompson
Member

We concur:

Newton Frishberg
Chairman

Edward W. Stuebing
Member

