

VAN RIETMAN
COLUMBIA BASIN ELECTRIC CO-OP., INC.

IBLA 74-288

Decided November 11, 1974

Appeals from decision of Oregon State Office, Bureau of Land Management, rejecting applications for a water pipeline right-of-way (OR 10884), and for an electrical distribution line right-of-way (OR 10885).

Set aside and remanded.

1. Rights-of-way: Applications

Where a right-of-way applicant points out on appeal that the technical evaluations and findings made by the Bureau of Land Management as grounds for rejection are based upon an erroneous premise and the showing of the applicant also tends to refute other grounds for rejection of his application, the decision appealed from will be set aside and the case remanded to the Bureau for further consideration in the light of the actual facts and showings made on appeal.

APPEARANCES: Van Rietman, pro se, and as a Director of the Columbia Basin Electric Co-op., Inc.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Van Rietman and the Columbia Basin Electric Co-op., Inc., have appealed from the decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 21, 1974, rejecting their respective applications for a water pipeline right-of-way and an electrical distribution line right-of-way across certain lands in sections 19 and 20, T. 2 S., R. 19 E., W.M., Oregon.

The application for the water pipeline right-of-way is for a 4-inch pipeline to transport water from a spring on privately owned property in the bottom of Ferry Canyon across public land up Buck Hollow Canyon turning eastward over the canyon wall to applicant's

ranch headquarters and cattle feed lot. The application for a powerline right-of-way is for an overhead 7.2 K.V. transmission line to provide electricity to the pump at the lower end of the pipeline. The route will generally parallel the pipeline. The powerline will serve no other customer.

The decision appealed from states that the pipeline applicant mentioned to BLM personnel the construction of a road down Buck Hollow Canyon was contemplated to provide immediate access for pipeline and powerline construction and future access for maintenance of the pump, pipeline and powerline. BLM found the proposal suggests nearly parallel rights-of-way for a pipeline, a powerline and a road. The decision relates that the lands to be crossed have been found to be remote to primitive, semi-arid, and to have rocky shallow soils and sagebrush-bunchgrass vegetation. It characterized Buck Hollow Canyon as an intermittent drainage, subject to heavy runoff at times with some movement of bedload material during freshets. As viewed from the canyon, the area has a general remoteness undistributed by man and his activities. The lands involved lie 1 to 1-1/2 airline miles east of the John Day River. The river has been identified for potential addition to the National Wild and Scenic Rivers System and was one of the initial components of the Oregon Waterways System. The segment of the John Day River, in close proximity to the subject lands, it states, is the most wild and primitive segment of the river.

According to the State Office decision, the stated reasons for the rejection of the right-of-way application for a pipeline, the right-of-way application for a powerline, and the proposed access development are:

1. The facilities, as requested, would cause significant intrusion into the primitive public land corridor adjacent to the John Day River. It is premature to authorize such an intrusion before studies have been completed for an area having obvious "wild" character under National Wild and Scenic River criteria.
2. Construction of a road down Buck Hollow Canyon as proposed would: a) create significant sidehill and canyon bottom disturbance; b) exceed allowable 8% grades by as much as 15%; c) disturb heavy vegetation in the canyon bottom; d) create a disturbed area requiring continuing maintenance and repair.
3. Construction of pipeline and powerline would degrade aesthetic quality and bisect public lands.
4. Location of facilities in the bottom of Buck Hollow Canyon would create continuing unstable conditions in an area nearly stable at the present.

Appellants contend the decision below is erroneous in that no right-of-way application was filed for the construction of a road. It is asserted that the pipeline and powerline can be installed without building a road. Materials would be brought into Ferry Canyon from the south over a good private road in existence since pioneer days. The pipeline applicant admits he mentioned to BLM personnel he intended to file a right-of-way application for a road, if the pipeline and electrical line rights-of-way were approved. Since road construction appears to be the basic reason for rejection of the applications, the idea of building a road is abandoned. They contend that manpower and horses will be used to move pipe, electric wire and powerline poles. Most of the pipe will be on top of the rocky ground. Excavation by hand of pole holes and of a narrow trench for the burial of pipe at the upper end where soil is adequate and terrain is not steep, is contemplated.

Appellants disagree with the statements in the decision below that the area involved is primitive, remote, and undisturbed by man. They assert that the particular area of public land is a narrow corridor averaging a little over a mile in width extending eastward from the John Day River and they have adjoining tillable land on which farm machinery is used to raise wheat. Although they admit the John Day River is included in the Oregon Scenic Waterway System, they state only the land within 1/4 mile of the river is under strict regulation. They argue that the proposed pipeline and pump will be over a mile from the John Day River and because of the very crooked nature of Ferry Canyon the installation will not be visible.

[1] There is merit to appellants' contentions that no right-of-way application for road construction has been filed and that road construction appears to be the basic reason for rejection of the applications for pipeline and powerline rights-of-way. The Environmental Analysis Report, which is the foundation for the State Office decision, admittedly was prepared upon the assumption that there would be road construction involved. Accordingly, the report and decision are based upon an erroneous premise, as no right-of-way application for road construction is involved.

Since the erroneous assumption of road construction and its effect on the environment is threaded and intertwined throughout the report and resulting decision, it would be an impossible task for this Board to attempt to delete from the report that which is attributable solely to the deleterious effect of road construction.

Further, appellants' statement of reasons for appeal appears to contain statements which tend to refute some of the other reasons expressed as grounds for rejection.

In these circumstances, the decision below must be set aside and the case records remanded to the Bureau of Land Management for resolution of the application for a pipeline right-of-way and the application for a powerline right-of-way, without road construction as a factor, after a further on-the-ground examination of the area and consideration of the applicants' other contentions on appeal.

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 set aside and the case is remanded to the Oregon State Office for further appropriate action consistent with this opinion.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Martin Ritvo
Administrative Judge

