

JACK M. VAUGHAN  
JUDITH L. VAUGHAN

IBLA 76-501

Decided June 28, 1976

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting right-of-way application OR-13859.

Affirmed.

1. Rights-of-Way: Act of February 15, 1901-- Rights-of-Way: Applications

A decision of the Bureau of Land Management, made in the exercise of its discretion, to reject a right-of-way application pursuant to the Act of February 15, 1901, will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown.

APPEARANCES: Jack M. Vaughan, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Jack M. Vaughan and Judith L. Vaughan have filed application OR-13859 for a domestic water pipeline right-of-way under the Act of February 15, 1901, as amended, 43 U.S.C. § 959 (1970). The pipeline is intended to divert water from a spring on national resource land in lot 3, sec. 21, T. 33 S., R. 5 W., W.M., and carry it across that land to the Vaughans' property. This appeal is taken from the January 27, 1976, decision of the Oregon State Office, Bureau of Land Management (BLM), rejecting the application.

Following receipt of appellants' application, BLM prepared a Land Report, an Environmental Analysis Report and a Water Standards Report. In its decision, the BLM State Office adopted the recommendation of the Land Report and rejected appellants' application for the following reasons:

1. The water source does not meet State standards for human consumption since a Coli-aerogenes group presence test showed positive.
2. The volume of water is not great and from observation could not sustain both domestic and wildlife needs in the summer months.
3. The applicant has other sources of surface water on his private lands in the immediate vicinity.
4. A timber sale is marked and is ready to be sold in the area. Road #33-5-21.2 is to be constructed on this sale. It will pass through the existing water diversion structure which is within the road construction limits. It will also pass through the proposed location of the pipeline.

In attempting to dispute these conclusions, appellants argue first that, according to the Josephine County Health Department, no water "that has reached the surface" will meet the BLM standards, that the water has been in use for 3 years without incident and that they have not asked for a guarantee of pure water in any event. Second, they assert that the spring will produce sufficient water for both their use and the small local wildlife. Larger wildlife, they argue, have other year-round water sources in the area. Third, they argue that the proposed logging road will not interfere with the spring. Last, appellants argue that surface water sources available on their land are more contaminated than the spring at the proposed point of diversion and that one source is subject to other state water rights.

[1] Approval of a domestic water pipeline right-of-way under the Act of February 15, 1901, is within the discretion of the Secretary of the Interior. 43 U.S.C. @ 959 (1970). A decision by BLM, made in the exercise of this discretion, to reject such an application will be affirmed by the Board when the record shows the decision to be a reasoned analysis of the factors involved made in due regard for the public interest, and no sufficient reason to disturb the decision is shown. See Hazel Kincaid, 25 IBLA 257 (1976); Boulder City Aero Club, Inc., 21 IBLA 343 (1975).

The general concerns expressed in the reasons for rejection of the application set forth above are legitimate factors in considering whether the public interest will be served if a water pipeline right-of-way application is allowed. For example, this Board has sustained the following concerns: protection of wildlife, Scott Hampson, 18 IBLA 230 (1974); effect upon environmental health and

welfare by use of water to be conveyed by rights-of-way across public lands, Hazel Kincaid, supra; preservation of water resources until the proper use of the particular public land is determined, William A. Lester, 2 IBLA 172 (1971).

There could be better and more compelling substantiation in the record to support the reasons stated in the BLM decision; nevertheless, in considering the record together with appellants' appeal, we are not persuaded there is sufficient reason for setting aside the decision. The fact alternative water sources available to appellants may also be contaminated is not a sufficient reason to overcome this Department's concern over the quality of this particular source of water which would be a necessary component to granting the right-of-way across public land. Appellants' mere statement of belief that the spring will produce sufficient water for both their use and use by small local wildlife also is not persuasive by itself. Furthermore, their statement that the proposed logging road will not interfere with the spring does not satisfactorily counter the reason given by the BLM State Office that the proposed pipeline would interfere with the proposed road and timber sale for the area.

In sum, appellants have not persuasively shown that the public interest would best be served by allowing their application rather than rejecting it for the reasons stated by BLM. Therefore, the rejection will be sustained. Hazel Kincaid, supra.

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 affirmed.

Joan B. Thompson

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Administrative Judge

We concur:

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Martin Ritvo  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

