

EDWIN L. RUMPF, JR.

IBLA 77-111

Decided August 1, 1977

Appeal from decision of the Craig, Colorado, District Office, Bureau of Land Management, denying Special Land Use Application S-CO-010-76-9.

Affirmed.

1. Public Land: Special Use Permit--Federal Land Policy and Management Act of 1976

Under the Federal Land Policy and Management Act of 1976 and interim guidelines issued pursuant thereto, special use permit applications for access roads over public land are properly processed as right-of-way applications. 43 U.S.C. § 1761. The Bureau of Land Management correctly denies such an application where it has determined, in conformance with the Act and interim guidelines, that an access road would neither be in the public interest nor facilitate land management policy.

APPEARANCES: Edwin L. Rumpf, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Edwin L. Rumpf, Jr., appeals from the December 3, 1976, decision of the Craig, Colorado, District Office, Bureau of Land Management (BLM), denying a special land use application to construct an access road on national resource lands in Eagle County, Colorado.

Appellant wished to build the access road over one-quarter mile of national resource land to private property he purchased from one Henry Hinton. Appellant's property is described as the southern portion of the Hinton Ranch. As a result of the

transaction, Hinton retained ownership of the northern portion of the ranch bordering Forest Service Access Road No. 401. Appellant's present access to his property is over a road on the property retained by Hinton.

In support of his application for the special use permit, appellant asserted that the existing road was inadequate during adverse weather, too steep, and subject to washouts where it crosses Sheephorn Creek.

The BLM inspected the existing road and found it to be well compacted and useable despite some snow cover. It also found that while terrain features limited realignment alternatives, changes could be made to channel runoff and lessen the grade.

Based upon an environmental analysis report and land report, 1/ the District Office denied the application submitting the following reasons for its determination:

1. According to District policy, private roads on national resource lands would be authorized only where other means of access were either unavailable or impractical;

2. The proposed road would adversely affect wildlife, aesthetics and a portion of the watershed;

3. Under the Federal Land Policy and Management Act of 1976 authority is provided for issuing rights-of-way rather than special use permits for private roads. However, no implementing regulations are yet available and it would no longer be appropriate to issue a special use permit.

In his statement of reasons, appellant alleges that the existing road is unacceptable because of its grade and the risk of washouts and because it will not accommodate semi-trucks for hauling cattle. Appellant asserts that in constructing the proposed road he would include the placement of topsoil and the planting of natural vegetation as well as other conservational and aesthetic measures.

[1] The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the Secretary to issue rights-of-way with

1/ The reports, compiled after a field examination was conducted, state that the proposed road would neither provide additional public access, nor facilitate BLM management.

respect to public lands. 2/ On December 14, 1976, the Associate Director, BLM, issued Organic Act Directive No. 76-15 which provides "interim guidance for the timely processing of pending and new right-of-way and temporary use permit applications through the use of existing regulations and BLM Manual procedures." Specifically, the directive gives the following instructions pertinent here:

Rights-of-way and temporary use permits (TUPS) will be processed in accordance with the following guidance:

* * * * *

Prior to granting, each case file must contain documentation of the following:

- 1. Wilderness Review.

An analysis of available inventory data (URA, MFP, special studies, etc.) must be made to ascertain

2/ 43 U.S.C. § 1761 provides in pertinent part:
SUBCHAPTER V-RIGHTS-OF-WAY
"§ 1761. Grant, issue, or renewal of rights-of-way; authorized purposes; procedures applicable

"(a) The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for --

* * * * *

"(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

"(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

"(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. * * *"

whether or not the lands involved have wilderness characteristics as described in the Wilderness Act of September 3, 1964. This applies to roadless areas of 5,000 acres or more and roadless islands of public land. For the majority of cases, data available in the EAR/ES and land report should suffice to make this determination. If the area is determined not to have such characteristics, the record is to so indicate, and the right-of-way may be granted.

If the area has potential wilderness characteristics, you are to be guided by the language of Sec. 603. (Supplemental guidance will interpret § 603.)

2. Areas of Critical Environmental Concern.

An analysis in the case file will reflect that the lands involved in the right-of-way application have been reviewed against available information for impact on "areas of critical environmental concern." (Supplemental guidance will be issued.)

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Having examined the land and environmental reports as well as the BLM's supplementary comments, we find its analyses and conclusions comprehensive, reasonable, and in conformance with the interim guidelines. We conclude that the BLM adequately assessed the public interest and find no error in the denial of the application. Our determination herein is without prejudice to any future filing of a right-of-way application pursuant to the regulations implementing the Federal Land Policy and Management Act when such regulations become available.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge