

STANLEY S. LEACH
ROXANNA M. LEACH

IBLA 77-509

Decided May 9, 1978

Appeal from decision of the California State Office, Bureau of Land Management, rejecting application CA 3948 for a right-of-way for a domestic water pipeline from a spring on public land.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Act of February 15, 1901 -- Rights-of-Way: Applications -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Approval of a domestic water pipeline right-of-way application filed under the Act of February 15, 1901, is within the discretion of the Secretary of the Interior. Approval of such an application remains a discretionary matter under the Federal Land Policy and Management Act of 1976, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). Neither an application for a right-of-way nor the building of a pipeline on public land without prior authorization earns an applicant a right to a right-of-way under these statutes.

2. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Act of February 15, 1901 -- Rights-of-Way: Applications -- Rights-of-Way: Federal Land Policy and Management Act of 1976

A decision rejecting an application for a domestic water pipeline right-of-way 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.

3. Environmental Quality: Generally -- Rights-of-Way: Applications

It is appropriate for the Bureau of Land Management to reject a right-of-way application for a pipeline to convey water from a spring on public lands to private lands where it has determined that the overall effect of granting similar applications in a given area would be adverse to the public interest and allowance of one application might establish a precedent contrary to the public interest.

APPEARANCES: Stanley S. Leach and Roxanna M. Leach, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Stanley S. Leach and Roxanna M. Leach have appealed from the July 11, 1977, decision of the California State Office, Bureau of Land Management (BLM), rejecting their application for a right-of-way for a water storage tank and a pipeline from a spring on public land. The record indicates that appellants already diverted water from the spring and constructed a pipeline and water storage tank without authorization.

On September 23, 1976, appellants filed an application for a right-of-way pursuant to the Act of February 15, 1901, 43 U.S.C. § 959 (1970), repealed, Federal Land Policy and Management Act of 1976 (FLPMA), § 706(a), 90 Stat. 2793. Issuance of a right-of-way is now governed by Title V of FLPMA, 43 U.S.C.A. §§ 1761-1771 (West Supp. 1977). On September 17, 1976, appellants filed an application with the California Water Resources Control Board for a permit to appropriate 1,200 gallons of water per day from the spring on public land, and the California Department of Fish and Game filed a protest with the Water Board. The California State Office of the BLM issued a notice of trespass to appellants on January 31, 1977. On July 11, 1977, that office rejected appellants' right-of-way application.

In rejecting appellants' application, the BLM office indicated the land had been classified as suitable for retention and management in Federal ownership for multiple use. It referred to management objectives prescribed in 43 CFR 1725.3-3(b) and section 102(a)

of FLPMA, 90 Stat. 2745, 43 U.S.C.A. § 1701 (West Supp. 1977). These include fish and wildlife management, watershed protection and recreational and other public values. It concluded that allowance of the application would be contrary to the public interest, specifically setting forth the following:

The field examination discloses this area provides habitat for wildlife, including winter range for the French Gulch deer herd sub-unit. The subject spring provides potential for Federal development to benefit the smaller wildlife, such as rodents, reptiles, birds and fish, also. The granting of right-of-way CA 3948 would result in the loss of 1200 gallons of water per day from availability for wildlife and fisheries, lower the water quality and watershed values, and be in conflict with BLM programs to protect these values.

Appellants contend that the management values stated by BLM would be achieved by granting their application. They contend that there will be no loss to the downstream watershed that the spring contributes to because there will be as much or more surface water running after diversion than there was before development of the spring. For the same reason they contend there is more water for wildlife than before they developed the spring because of the overflow from their tank. They also assert that the State of California Fish and Game Department failed to meet a procedural deadline in its protest against their application to the State for a water right, and that a representative orally told them the protest was not justified and the wildlife had more water than before. They also assert the BLM area manager agreed that the wildlife and other resources would not be detrimentally affected, but that he did not want to set a precedent for granting rights affecting water resources in Shasta County.

[1, 2] Approval of a domestic water pipeline right-of-way application filed under the Act of February 15, 1901, is within the discretion of the Secretary of the Interior. Jack M. Vaughn, 25 IBLA 303 (1976). Approval of such a right-of-way remains a discretionary matter under FLPMA, 43 U.S.C.A. §§ 301, 1761-1771 (West Supp. 1977). Neither appellants' application for a right-of-way nor their building of a pipeline without prior authorization have earned them a right to a right-of-way under these statutes. A decision rejecting 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. Jack M. Vaughn, supra.

[3] Protecting fish and wildlife, watershed, and other natural resources are vital concerns under the regulations referred to above and FLPMA. In addition to the specific matters referred to in the

BLM decision, the field and environmental assessment reports in the case record disclose a policy by the Redding District Office of BLM to maintain the productivity of springs on the Federal public lands within that district and to keep them available for public use and for potential future development for wildlife and/or other natural resources. Granting appellants' right-of-way application would have the effect of giving them an exclusive right to use the water from the spring for their own personal use. ^{1/} It may well be that granting this one right-of-way would have only a limited adverse impact upon the wildlife, watershed, water and other resource values. However, if additional rights-of-way were granted in the area for similar purposes there would be a cumulative effect which would be significant and adverse, especially in times of water shortages. This Department may prevent private exclusive use of waters on public lands by denying applications for rights-of-way essential for the exploitation of the waters. William A. Lester, Executor, 2 IBLA 172, 175 (1971); Solicitor's Opinion, 55 I.D. 371, 377 (1935).

The rejection of appellants' application is somewhat akin to Donald J. Laughlin, 25 IBLA 41, aff'd on reconsideration, 26 IBLA 154 (1976), where an application for a special land use permit for a parking lot along a riverfront was rejected in part because allowance of the permit would create a precedent whereby others would demand similar rights to use the public lands in the area. We conclude that it is appropriate for BLM to reject a right-of-way application for a pipeline and other facilities to carry water from Federal public lands to private lands where it has determined that the overall effect of granting similar applications in the area would be adverse to the public interest and allowance of the application might establish a precedent contrary to the public interest. We are not persuaded from what appellants have stated that BLM's determination that allowance of their application would be contrary to the public interest is in error. Cf. Jack M. Vaughn, supra; William A. Lester, supra.

^{1/} We assume for the purpose of this decision that the spring does not fall within the scope of the withdrawal by Executive Order of April 17, 1926, preserving for general public use and benefit unreserved public lands containing springs or waterholes needed or used by the public for watering purposes. 43 CFR 2311. A determination that land is not embraced within the withdrawal would be necessary before any right-of-way could be granted affecting a spring on public lands.

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
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Newton Frishberg
Chief Administrative Judge

