

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS

IBLA 79-590

Decided October 28, 1980

Appeal from decision of the California State Office, Bureau of Land Management, rejecting an application for a right-of-way across public lands. CA 4540.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Applications -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Under the Federal Land Policy and Management Act of 1976, a Bureau of Land Management rejection of a road right-of-way is discretionary and will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved, made with due regard for the public interest.

APPEARANCES: Colonel Paul F. Kavanaugh, Department of the Army, Corps of Engineers.

OPINION BY ADMINISTRATIVE JUDGE GOSS

The Corps of Engineers, Department of the Army, appeals from a decision, dated August 22, 1979, of the California State Office, Bureau of Land Management (BLM), rejecting application CA 4540 for a road right-of-way across public lands.

Application was made pursuant to section 507 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1767 (1976). The Corps sought the right-of-way, to be used in conjunction with adjacent nonpublic land, for construction of a permanent access road from State Highway 49 to the Tuttle town Recreation Area, New Melones Lake Project, Tuolumne County, California.

In support of the application, the Corps prepared and submitted an Environmental Analysis Record (EAR). The EAR notes that previously access to the recreation area was to be along the alignment of the existing Reynolds Ferry Road. The EAR continues:

Due to the need to avoid the social impacts of disturbing or displacing the residents living along the Reynolds Ferry Road and to avoid the economic impacts of taking more private lands from the county tax base for project purposes, the proposed alignment for the Tuttle town access road has been modified so as to utilize existing public lands whenever possible.

A land report prepared by BLM examined the route favored by the Corps and the alternative of improving the existing Reynolds Ferry Road. In addition, environmental considerations and other potential uses of the area encompassing the route favored by the Corps and the existing road were analyzed in the land report.

The land report conclusions and rationale were incorporated into the decision rejecting the application. The decision states in part:

The field report prepared after on-the-ground examination and consideration of viable alternatives, recommends rejection of the application for the following reasons:

1. Authorizing a new, parallel road over undisturbed lands is poor resource management when the physical attributes of the existing county road are superior to the proposed road.
2. Fee purchase of private property, over which the existing road traverses, is considered to be more in the public interest than to simply restrict the use of the private property, because of the insignificant difference in cost of the property as opposed to the cost of construction of a new road.
3. The revised EAR downplays the impacts of the proposed road.

The decision concludes that based on the above reasons the granting of the right-of-way would not be in the public interest.

On appeal, the Corps argues that the authorizing legislation for the project, the Flood Control Act of 1962, P.L. 87-874, 76 Stat. 1191, places responsibility for choosing and acquiring the lands with the Department of the Army. The specific language relied upon by the

Corps is: "Provided further, That the Secretary of the Army, in connection with the New Melones project, construct basic public recreation facilities, acquire land necessary for that purpose, * * *." Additionally, the Corps presents the many factors that led the Corps to the conclusion that the route through BLM land is superior to utilizing the existing roadway.

The Corps' application for a right-of-way was made pursuant to section 507(a) of FLPMA, 43 U.S.C. § 1767(a) (1976), which provides: "The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose."

[1] Approval of an application for a right-of-way under FLPMA is a discretionary matter. Lowell Durham, 40 IBLA 209 (1979); Stanley M. Leach, 35 IBLA 53 (1978). A decision by BLM rejecting an application for a right-of-way will be affirmed when the record shows the decision to be a reasoned analysis of the factors involved made with due regard to the public interest. Lowell Durham, supra.

The decision adopts the conclusions of the field report without setting forth the underlying rationale supporting the conclusions. Support for the conclusions is found in the field report which notes that the proposed road will be steep and require extensive cuts and fills with grades up to 8.25 percent. The construction would accelerate soil erosion and could cause sedimentation. In contrast, the existing road benefits from good drainage and does not have as severe a grade as the proposed road. The report further notes that the Tuolumne County supervisors appear to favor the improvement of the existing road.

The Corps argues that improving the existing road will leave the owner of the land with uneconomic remnants that the Corps will be obligated to buy or condemn, remove additional land from the county tax rolls, result in adverse publicity and strain relationships with local governments.

We recognize the concerns of the Corps that the utilization of the existing road will require acquisition of 10 additional acres of private property; the BLM land report, however, is a reasoned analysis of the environmental factors and the recognition of an acceptable alternative.

Appellant's assertion that P.L. 87-874, 76 Stat. 1191, authorizes the Corps' acquisition of BLM land is directly addressed in sections 501 and 510 of FLPMA. Section 501, 43 U.S.C. § 1761 (1976), provides that with respect to public lands, the Secretary of the

Interior is authorized to grant, issue, or renew rights-of-way over, upon, under or through such lands. Section 510 of FLPMA, 43 U.S.C. § 1770 (1976), pertains to the effect of the provisions of FLPMA on other laws and provides in part: "Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title * * *."

Sections 501 and 510 of FLPMA make it clear that it is the Secretary of the Interior who is responsible for ultimately determining the public interest with respect to rights-of-way over public lands.

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 affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

