

GARY AND CELIA BOUCHER

IBLA 79-398

Decided June 25, 1981

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

Affirmed.

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

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in absence of sufficient reason to disturb it.

APPEARANCES: Gary and Celia Boucher, pro sese.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is from a decision dated April 18, 1979, by the Oregon State Office, Bureau of Land Management (BLM), rejecting application OR 18626 for a domestic water pipeline right-of-way to convey water from a spring on public lands. The application, filed on May 3, 1978, involved public lands in SW 1/4, SW 1/4, sec. 28, T. 33 S., R. 5 W., Willamette meridian, Josephine County, Oregon.

The decision rejected the application as follows:

The Environmental Analysis Report states that this spring is very important to wildlife since it is the only water available in the area. The Lands Report, Section IV. A. reads "the proposed action will utilize all of the only available water for wildlife in the area."

The BLM planning system identified this area as commercial timber land and as such recommends that no permits for this type right-of-way be allowed. The Wildlife portion of the Management Framework Plan recommends the development of this spring for wildlife use.

Since this spring furnished the only water for wildlife within this area, and the fact that there is not enough water available for both wildlife and domestic and irrigation purposes, your application must be and is herewith rejected.

The decision also instructed appellants to remove their improvements from the lands within 90 days of receipt thereof.

In their statement of reasons, appellants contend that their use of the spring would be beneficial to wildlife, that the pipeline would not interfere with logging, and that the water supply is ample. They also allege that they already possess a permit giving them water rights to the spring.

[1] Under section 507(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1767(a) (1976), approval of an application for a right-of-way is a discretionary matter. A decision by BLM rejecting such an application 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. Department of the Army, 51 IBLA 26 (1980); East Canyon Irrigation Co., 47 IBLA 155 (1980); Stanley S. Leach, 35 IBLA 53 (1978).

In addition to the factors mentioned in the decision, the Environmental Assessment Report points out that diversion of water for domestic use, once permitted, would be difficult if not impossible to terminate. The land report, based on research by a wildlife biologist, hypothesizes that the volume of subsurface water would be insufficient to sustain both domestic and wildlife needs during the summer months. It also states that permanent structures might impede future road construction and logging operations.

BLM's decision to reject the application is amply supported by the record. 1/ The assertions in the statement of reasons raise no doubts

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1/ This case is distinguishable on its facts from Eugene V. Vogel, 52 IBLA 280, 88 I.D. 258 (1981), in which we set aside a BLM decision rejecting an application for a right-of-way for a water diversion project. As we stated in Vogel at 286, 88 I.D. at 261:

"[e]ach application for a discretionary use deserves to be treated on its own merits. The record of this [Vogel] case plainly establishes that it will not have any significant adverse effect on the land or any of the resource values. The allowance of this application does not by any means mandate the allowance of every similar future application regardless of the consequences."

as to the proper exercise of that discretion nor do they significantly challenge the factors of record on which the decision is based.

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.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Douglas E. Henriques  
Administrative Judge

Bruce R. Harris  
Administrative Judge

