

PATRICK O. BROWN

IBLA 80-355

Decided June 26, 1981

Appeal from decision of the California State Office, Bureau of Land Management, denying application for right-of-way CA 6214.

Reversed and remanded.

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. Where, however, an applicant significantly controverts BLM's reasons for rejecting his application, the case will be remanded to allow BLM to respond to the issues raised on appeal and to reconsider the application in light thereof.

APPEARANCES: John S. Buchter, Esq., Camptonville, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is taken from a decision dated December 20, 1979, by the California State Office, Bureau of Land Management (BLM), denying Patrick O. Brown's right-of-way application CA 6214 for an access road to his property across public lands in the NW 1/4 NE 1/4 Sec. 32, T. 18 N., R. 9 E., Mount Diablo meridian, Nevada County, California.

The decision appealed from denied the application for the following reasons:

A field examination reveals an alternate more feasible route exists on private land which has been developed and is believed to be used by the applicant. The proposed access road right-of-way would allow development of public land identified for intensive forest management. Since the applicant appears to have adequate access, the application CA 6214 is herewith denied.

Appellant filed his application on May 8, 1979. He stated therein that he needed the right-of-way for "ingress and egress to adjacent private lands from public roadway." He stated that the road would be used for access to his private residence and that it was necessary because "a driveway through private lands to the roadway is prohibitive due to 40 ft. embankment." The file contains a land report and map which indicate that appellant's proposed right-of-way would cross public land for about 300 feet from sec. 32 to sec. 29. The land report states that the subject public land has been classified for intensive timber management, that appellant's proposed route would serve only him, and that it would cause a loss of good timber growing land. The report further states that appellant has adequate access to his private property over "an alternate, more feasible route," an existing road which crosses a portion of his neighbor's land and part of which already crosses public land in the vicinity of the requested right-of-way. According to the report, appellant, along with other area residents, had hired a contractor to improve this existing access road. As an additional basis for recommending against the application, the report mentioned that it was the policy of the Folsom District, in implementing Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1761 (1976)), to grant rights-of-way "with minimal environmental impacts, over the most direct, feasible route based on need." 1/

Appellant challenges BLM's assertion that an alternate, more feasible route is available. Appellant concedes that such a route was available over the private land of one Eggenberger, appellant's neighbor. Appellant states that Eggenberger revoked permission to use this route when BLM denied the application. Appellant does not respond directly to BLM's position that he participated in improving this route along with other local residents, but further asserts in his statement of reasons:

Mr. Brown needs a right of way because the County re-aligned the county road so that there is now a steep

1/ The land report also states that appellant failed to observe several formalities in filling out his application for the right-of-way. None of the items listed, however, are cited as grounds for rejecting the application.

bank where Mr. Brown's driveway used to be. There is a very steep driveway up and through the bank, and a pick-up can make it, but a car has great difficulty and it is impossible with a trailer. It is not practical and reasonable access to his property.

The road Mr. Brown desires a right of way over has been in existence at least forty years. It is part of an old logging road and was last used in harvesting beetle infested trees off of BLM property a couple of years ago. In fact, Mr. Brown let the logger park his equipment on his property in sight of his house so as to protect it from theft and vandals.

Appellant also takes issue with BLM's conclusion that the proposed right-of-way would lead to development which would be detrimental to intensive forest management. Appellant stresses that the road which is the subject of his application has existed for over 40 years and the area it traverses contains only "widely scattered pine trees," hardly suitable for intensive management. Appellant further states that he was required by BLM to file an agreement whereby he agreed that the right-of-way, if granted, would not run with his land or be used to anyone else's benefit. 2/

Appellant's final comment concerns another private owner, one Gillette. According to the statement of reasons, appellant at one time refused to grant Gillette access across a corner of his (appellant's) property. In response, Gillette constructed an improvised road across BLM land. The BLM official involved found this road hazardous and closed it. In connection with this incident, appellant alleges that he was asked by the BLM official to grant Gillette access to the latter's land if he wished to obtain a right-of-way for himself. Appellant charges that in requiring such a condition BLM abused its authority and discretion.

[1] Approval of an application for a right-of-way under FLPMA is a discretionary matter. Department of the Army, 51 IBLA 26 (1980); 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. We believe, in light of the allegations made on appeal, that BLM's determination herein does not meet this standard. We will therefore reverse the decision and remand the case file to the State Office for further consideration.

One of the major conclusions of the land report, that intensive forest management might suffer if the right-of-way were granted, is

2/ See BLM's letter of May 30, 1979, and appellant's response and agreement filed June 22, 1979, contained in the file.

sharply controverted by appellant's allegations concerning the prior existence and use of a logging road and sparseness of tree growth. The other justification for rejecting the application is BLM's assumption that appellant had adequate alternate access. Appellant's assertions as to county road realignment, excessively steep driveway, and revocation of access across the Eggenberger property, place this assumption in considerable doubt. Moreover, appellant's projected exclusive use of the right-of-way tends to refute BLM's anticipated "development" of the affected area. We conclude that a proper disposition of appellant's application requires an amplification of the record and a full consideration of the issues raised in the statement of reasons.

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 reversed and the case file is remanded to the California State Office for further consideration in accordance with the views expressed herein.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge

