

DONALD R. CLARK

IBLA 82-366

Decided June 29, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, terminating communications site right-of-way. I-5780.

Affirmed as modified.

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

It is unnecessary for BLM to terminate a communications site right-of-way which has expired at the end of its primary term and which is not then subject to renewal because it was originally granted under authority subsequently repealed by the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1976). Nevertheless, BLM properly may provide notice of the expiration and inform the holder that continued use under the expired right-of-way is unauthorized.

APPEARANCES: Donald R. Clark, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Donald R. Clark has appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 22, 1981, terminating communications site right-of-way, I-5780, and declaring that appellant's "continued use" of the right-of-way was "without authorization."

Appellant's right-of-way was originally issued on December 13, 1972, for a term of 5 years, pursuant to the Act of March 4, 1911, as amended, 43 U.S.C. § 961 (1976). On December 13, 1977, BLM issued a decision stating that I-5780 had expired on December 12, 1977, and that if renewal was desired, a renewal application should be filed along with certain information. On January 11, 1978, appellant filed for renewal.

By decision dated June 23, 1980, BLM required execution of certain stipulations as a prerequisite to renewal of I-5780. In addition, BLM

required appellant to submit copies of Federal Communications Commission (FCC) permits for all of the users of his equipment. Appellant appealed that decision to the Board, challenging imposition of the stipulations and stating that he had submitted copies of his customers' FCC permits to BLM. In our decision in that case, Donald R. Clark, 56 IBLA 167 (1981), we held that BLM was without authority either under the Act of March 4, 1911, as amended, which had been repealed by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976), effective October 21, 1976, or under FLPMA, to renew appellant's right-of-way. However, we stated that BLM did have authority under section 501(a) of FLPMA, 43 U.S.C. § 1761(a) (1976), to grant a new communications site right-of-way. Accordingly, we remanded the case "in order to allow BLM to determine whether appellant may receive a FLPMA right-of-way." Donald R. Clark, supra at 169.

Despite our remand, we chose to rule on the question of whether BLM properly might require execution of the specified stipulations. We concluded that there was authority to impose stipulations under section 504(c) of FLPMA, 43 U.S.C. § 1764(c) (1976), and that the specified stipulations would neither be inconsistent with nor tend unreasonably to burden appellant's proposed right-of-way. Accordingly, we held that "should BLM seek to impose these same stipulations on a FLPMA right-of-way grant to appellant, we specifically find them to be consistent with FLPMA and the implementing right-of-way regulations." Donald R. Clark, supra at 170. In addition, we stated that appellant should be given an opportunity to submit copies of the necessary FCC permits.

By decision dated August 21, 1981, BLM offered to grant appellant a communications site right-of-way, pursuant to section 501(a) of FLPMA, subject to the acceptance of certain stipulations and the submission of copies of current FCC permits for each of the users of his equipment. The stipulations were identical to those considered in Donald R. Clark, supra.

Appellant appealed that decision to the Board, once again challenging imposition of the stipulations and objecting to the necessity of submitting copies of his customers' FCC permits. By order dated October 21, 1981, we dismissed the appeal for failure to file a statement of reasons in accordance with 43 CFR 4.412. While noting that it was not necessary to rule on the merits of the appeal, we indicated that the requirement that appellant execute the specified stipulations and submit the necessary FCC permits was in line with our holding in Donald R. Clark, supra. Accordingly, we stated that "BLM, having determined to offer the FLPMA right-of-way, can properly require appellant to execute the stipulations and submit copies of the FCC permits" (Order dated October 21, 1981, at 2).

In its December 22, 1981, decision, BLM states: "Your right-of-way \* \* \* expired on December 12, 1977. You have twice objected to the terms and conditions we have attached to our right-of-way offers. Your expired right-of-way I-5780 is, therefore, terminated and your continued use under the former right-of-way is without authorization."

In his statement of reasons for appeal, appellant again objects to imposition of the specified stipulations and the necessity of submitting

copies of his customers' FCC permits. In addition, he states that, pending completion of the appeals process, his right-of-way "should not be terminated." Finally, appellant states that "all of the equipment, etc., that you have listed in #I-5780" is covered by an "initial" right-of-way, I-603.

[1] It was unnecessary for BLM to "terminate" right-of-way I-5780 in its December 22, 1981, decision. The right-of-way expired by its terms on December 12, 1977. At that time, as we stated in Donald R. Clark, supra, there was no authority in BLM to renew the right-of-way either under the original statutory authority or FLPMA. Accordingly, we remanded the case in order to allow BLM to determine whether a new right-of-way should issue under FLPMA. In its August 1981 decision, BLM did, in fact, offer appellant a FLPMA right-of-way. To the extent that the decision can be construed as affording appellant notice that the right-of-way had expired and that his continued use under that right-of-way was unauthorized, we affirm the decision.

On appeal appellant submits an undated copy of the renewal of right-of-way grant I-603, effective July 12, 1972, for a term of 15 years. The renewal was made pursuant to FLPMA and applicable regulations. This submission is purportedly to support his contention that all the equipment listed under I-5780 is covered by his I-603 right-of-way. This contention is clearly erroneous, and appellant has been informed on a number of occasions by BLM that I-603 does not cover all the radio equipment previously authorized under I-5780 (Letter to appellant dated July 22, 1980, from Chief, Branch of L&M Operations, Idaho State Office, BLM).

Appellant's continued objections to the stipulations and his repeated unreasonable refusal to believe that BLM can require submission of FCC permits serves only to reflect his dilatory attitude. BLM has been more than accommodating in attempting to provide authorization for the equipment involved. If appellant continues the unauthorized use, BLM may require removal of the equipment.

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 as modified.

Bruce R. Harris  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

