

Appeal from a decision of the California State Office, Bureau of Land Management, notifying grantee of transfer of administrative jurisdiction. LA 0163131.

Dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Standing to Appeal

The holder of a right-of-way on lands administered by the Bureau of Land Management is not adversely affected within the meaning of 43 CFR 4.410 by a decision transferring administrative authority over such lands to the Forest Service in the absence of any allegations of facts showing that the Forest Service has taken any adverse action with respect to the right-of-way at issue.

APPEARANCES: Lawrence W. Campbell, Esq., San Diego, California, for appellant; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

James W. Smith appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated November 8, 1983, notifying him of the transfer of administrative jurisdiction over right-of-way LA 0163131 and the lands subject to this right-of-way. As set forth in the notice, jurisdiction was being transferred, subject to valid existing rights, from BLM, Department of the Interior, to the Forest Service, Department of Agriculture, effective January 1, 1984.

Right-of-way LA 0163131 was granted to appellant on September 2, 1959, pursuant to the Act of March 4, 1911, ch. 238, 36 Stat. 1253, repealed by Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 94-579, § 706(a), 90 Stat. 2743, 2793. The grant states that the right-of-way has a term of 50 years at an annual rental of \$55 and is to be used for a radio relay and communication site. The land involved embraces a portion of the

NE 1/4 sec. 23, T. 18 S., R. 1 E., San Bernardino Meridian. This grant has been the subject of considerable litigation within the Department. See, e.g., James W. Smith (On Reconsideration), 55 IBLA 390 (1981); James W. Smith, 46 IBLA 233 (1980); James W. Smith, 44 IBLA 275 (1979); James W. Smith, 34 IBLA 146 (1978).

Appellant objects to the transfer of jurisdiction because, in his view, it is prejudicial to transfer administrative control to an agency unfamiliar with certain issues that BLM is "midstream" in addressing. Appellant refers to the issue of secondary users and to certain enforcement decisions involving grants on lands presumably affected by BLM's decision. Conversations with Forest Service officials, Smith states, revealed that they knew nothing of these grants. Moreover, BLM had earlier stated that it would resolve the secondary user problem, appellant maintains.

The transfer of administrative authority that appellant objects to is described in two agreements between BLM and the Forest Service. An interagency agreement, effective May 25, 1982, states that a decision to transfer approximately 150,000 acres of land administered by BLM in the Escondido Project Area has been made because this acreage did not justify the costs necessary to administer it. The agreement assigned to BLM the duty to identify those lands appropriate for transfer out of Federal ownership and those lands appropriate for retaining as part of the national forest system, inter alia. The Forest Service was to be assigned the administrative responsibility for the entire 150,000 acres, so long as the lands were not transferred out of Federal ownership. ^{1/}

This interagency agreement was followed by an implementation plan effective October 7, 1983. Four classifications of the land within the project are identified. The first such classification, category "A" lands, includes appellant's right-of-way and is identified for addition to the national forest system. Rights-of-way are addressed in two sections of the implementation plan:

OPERATIONS

1. Category A and B lands described in exhibit A will be managed in accordance with current Forest Service rules, regulations, and policies [sic]. BLM will retain its responsibilities for leasable minerals under 43 CFR, as currently administered by the Department of the Interior.

All authorized uses such as permits, leases, rights-of-way, and operating plans, etc., will remain in effect until expiration or termination or until they would normally come due for

^{1/} The Inter-Agency agreement cited section 307 of FLPMA, 43 U.S.C. § 1737 (1982), as authority for the agreement. In light of our disposition of the instant appeal, we do not pass on the question whether this section of FLPMA (and other provisions cited in the implementation plan) provide an adequate statutory basis to support the administrative transfer of jurisdiction.

reappraisal or review. At that time, they would be considered coming under the purview of Forest Service procedures.

The resolution of all unauthorized uses identified and serialized upon execution of this agreement shall be the responsibility of the BLM. After that date, the responsibility for resolution of such cases shall be that of the Forest Service

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4. Administrative procedures for conducting business, such as billing, receipts, fees, damage collections, products disposals, processing of applications, report writing, etc., will be the responsibility of the Forest Service. All fees for existing R/Ws and non-mineral leases shall be collected by the Forest Service and deposited in their accounts. The BLM will continue to collect fees from all leasable minerals. [Emphasis supplied.]

[1] The applicable regulation, 43 CFR 4.410, provides that any party to a case who is "adversely affected" by a decision of an officer of BLM shall have a right of appeal to this Board. Our examination of appellant's pleadings and the case file reveals, however, that appellant has not been adversely affected within the meaning of the regulation. We note, for example, that the Forest Service has yet to take any action with respect to right-of-way LA 0163131 or the land affected thereby. Nor has BLM acted with respect to this right-of-way or land, save transferring the administrative authority to manage it.

Furthermore, appellant has not set forth facts showing that Forest Service actions in the future would necessarily be adverse to him or that future BLM actions would necessarily be in his favor. Although it is reasonable to assume that the Forest Service will have to familiarize itself with the various right-of-way grants in the area and with BLM actions in progress, no facts are alleged showing that it will be unequal to the task. 2/

As for right-of-way LA 0163131, BLM's decision of November 8, 1983, expressly states that the transfer of administrative jurisdiction is subject to valid existing rights. The interagency agreement and implementation plan of BLM and the Forest Service suggest the same result. Appellant's pleadings are devoid of any citation to a Forest Service regulation or policy that will adversely affect his valid existing rights. Injury to appellant is purely speculative at this time. We will not simply assume that such a contingency will arise to appellant's detriment. Cf. Benton C. Cavin, 83 IBLA 107, 131 (1984).

In Lone Star Steel, 77 IBLA 96 (1983), this Board reached a similar conclusion. Therein, Lone Star sought review by this Board of a provision in

2/ Moreover, the transfer, by its own terms, is effective for only a 3-year period unless Congress, in the intervening period, acts to make the transfer permanent. Thus, it is possible that the jurisdiction may ultimately be returned to BLM.

its coal lease subjecting the lease to all regulations of the Secretary which are now or hereafter in force. At page 97, the Board stated:

Moreover, appellant's concern is focused on what it describes as "presently unknown terms embodied in future regulations" which might "govern economic obligations and operating requirements on Lone Star." Appellant has not asserted that it is presently affected adversely; its concern is hypothetical, conjectural and future-oriented. Although it may be argued that the present imposition of the provision as part of readjusted lease terms constitute an exposure to possible harm in the future, we cannot agree that appellant has been "adversely affected" thereby, as required by 43 CFR 4.410 to confer upon a party standing to appeal.

Accord, Mid-Continent Coal & Coke Co., 83 IBLA 56 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal from the decision of the California State Office is dismissed.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

