

COORS ENERGY CO.

IBLA 87-405

Decided September 8, 1987

Appeal from a decision of Grand Junction District Office, Colorado, Bureau of Land Management, terminating in part right-of-way C-33934.

Set aside and remanded.

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

Where BLM issues a right-of-way grant which includes a provision stating that the grant is renewable under certain conditions, the grant does not automatically terminate on its expiration date but is subject to renewal in accordance with the stated terms and conditions, and 43 CFR 2803.6-5(a).

APPEARANCES: R. L. Martin, Vice President, Oil & Gas Operations, for appellant; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Coors Energy Company (Coors) has appealed from a decision dated March 19, 1987, issued by the Acting District Manager, Grand Junction District Office, Colorado, Bureau of Land Management (BLM), terminating in part right-of-way C-33934. The right-of-way was issued under section 501(c) of the Federal Land Policy Management Act of 1976, 43 U.S.C. § 1761(a) (1982), and the implementing regulations at 43 CFR Subpart 2800. The BLM decision states:

On April 19, 1982 the Bureau issued a right-of-way for an access road 9,300 feet in length, 40 feet wide, with a term of 30 years with a right of renewal. On June 21, 1984 the right-of-way was amended to authorize use of a site at T. 10 S., R. 98 W., Sec. 32: NW 1/4 NW 1/4, Sixth Principal Meridian, where injection well (USA 1-32C) was located. The Bureau's decision was to authorize the holder use of the site until May 1, 1986. That term has expired and therefore the amended right-of-way is hereby terminated.

This decision does not affect the original access road right-of-way. That right-of-way is in full force and effect and is valid for the term stated in the right-of-way grant C-33934 dated April 19, 1982.

In its statement of reasons for appeal Coors states that it wishes to retain the right-of-way in question for future usage of the access road in order to use USA 1-32C as a disposal site. BLM filed an answer arguing that the right-of-way grant amendment expired on May 1, 1986, by its own terms, and that BLM's decision merely notified appellant that the grant had terminated. Further, BLM argues that if appellant wished to continue to retain the right-of-way authorized by the 1984 amendment, it should have petitioned BLM for a renewal of the right-of-way amendment as provided in the grant. The tone of the BLM decision indicates that BLM terminated the right-of-way because it considered the right-of-way grant amendment as not containing a provision for renewal. Indeed, BLM's argument on appeal that appellant was required to request renewal of the grant is consistent with that position. ^{1/}

[1] The applicable regulation, 43 CFR 2801.1-1(j), requires each right-of-way grant to have a provision stating whether it is renewable or not and if renewable, the terms and conditions applicable. The amendment grant at issue contains a provision for renewal. The terms and conditions at paragraph B 8 of the grant provide:

This right-of-way may be renewed at the end of its term if the authorized officer deems the use to be compatible with management of the area. If renewed, the right-of-way shall be subject to regulations existing at the time of renewal and such other terms and conditions deemed necessary by the authorized officer to protect the public interest.

Under 43 CFR 2803.6-5(a) where a grant provides for renewal, the authorized officer is required to renew the grant if the authorized use is continuing and the right-of-way is being operated and maintained in accordance with the provisions of the grant and the regulations. The terms, conditions, and special stipulations of the grant, however, are subject to modification prior to renewal in order to reflect any new requirements imposed by current Federal and State land use plans, laws, regulations, or other management decisions. See Jean Mountaingrove, 67 IBLA 154 (1982); Eugene V. Vogel, 65 IBLA 213 (1982).

Neither the provisions of the amended grant relating to renewal nor 43 CFR 2803.6-5(a) specifically require the filing of a request for renewal

^{1/} 43 CFR 2803.6-5(b) provides:

"When a grant does not contain a provision for renewal, the authorized officer, upon request from the holder and prior to the expiration of the grant, may renew the grant at his discretion. A renewal pursuant to this section shall comply with the same provisions contained in paragraph (a) of this section."

by the right-of-way grantee prior to the expiration of the grant or at any other time. BLM's decision to terminate appellant's grant was based on the fact that it expired. Such a basis for termination was improper in light of the renewal provision contained in the amended grant, where the authorized officer failed to make a determination that the use was not compatible with management of the area. Indeed, 43 CFR 2803.6-5(a) entitles appellant to renewal of its grant if the authorized use is continuing. The record establishes, however, that appellant's authorized use is not continuing and, therefore, BLM clearly is not required by regulation to renew the grant. However, the renewal provision of the grant indicates that BLM may renew the grant if the authorized officer "deems the use to be compatible with management of the area." Appellant states that it desires to maintain the amended right-of-way in order to allow it to utilize USA 1-32C as a water disposal well in the future.

In this case, BLM has not made the specific finding required by the renewal provision. In the absence of such a finding, we deem it appropriate to set the BLM decision aside and remand the case to BLM to consider the grant for renewal.

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 set aside, and the case remanded to BLM for further action.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Bruce R. Harris
Administrative Judge