

PETE ZANETTI

IBLA 88-381

Decided February 28, 1990

Appeal from a decision of the Green River Resource Area Manager, Bureau of Land Management, rejecting right-of-way application for a sewage stabilization lagoon. WYW-101967

Affirmed.

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

A Bureau of Land Management decision rejecting a right-of-way application for sewage stabilization lagoons filed pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1982), will be affirmed when the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

APPEARANCES: Pete Zanetti, pro se, Rock Springs, Wyoming; Lowell L. Madsen, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Pete Zanetti has appealed from a decision of the Green River, Wyoming, Resource Area Manager, Bureau of Land Management (BLM), dated March 22, 1988, which rejected his right-of-way application (WYW-101967) for a sewage lagoon system in the N½ of sec. 14, T. 18 N., R. 106 W., sixth principal meridian, Sweetwater County, Wyoming.

The record shows that Zanetti originally filed the application with BLM on April 24, 1987, for a waste stabilization pond and sewage lagoon system to provide waste treatment for the proposed Phase I development of the Purple Sage Mobile Home Park located on his own land in the S½ of sec. 11, T. 18 N., R. 106 W., sixth principal meridian, Sweetwater County, Wyoming. The proposed system would consist of one pond (725 by 300 feet) and approximately 1,200 feet of buried 12-inch outfall pipeline from the mobile home park to the lagoon site. The total area of public land needed for the entire system, including access, would be approximately 12 acres. The initial land requirement for the sewage lagoon would be approximately 5 acres.

On March 10, 1988, an environmental assessment (EA) and land report (WY-48-EA8-50) was prepared which recommended against approval of Zanetti's application. BLM issued its March 22 decision rejecting the application based on the rationale of the EA report, stating:

This application is rejected because of objections from local residents and at least one land owner along with the availability of private land for the facility. Federal land use planning regulations and guidelines indicate the proposed use must be in the public's best interest and actually required.

You have the alternative of building a sewage lagoon or a sewage treatment plant on your own property or tying into the City of Rock Springs municipal system. We realize the last alternative may be uneconomical at this time.

We have given careful consideration to your application and are satisfied the public's best interest is served by this decision.

In his statement of reasons (SOR), Zanetti objects to the denial of his application because he contends "There is not a sufficiently sized piece of private land which satisfies the design needs of an evaporative sewage lagoon to serve the Purple Sage Subdivision." He suggests the only alternative for private land is to locate a package treatment plant on the southeast portion of his property which he feels is not environmentally in the public interest (SOR at 1-2). He also asserts that the objections of local residents are based on misinformation and therefore the public opposition to the project is not valid (SOR at 2).

BLM has responded to appellant's allegations arguing that the record supports a finding that BLM's action has been taken with due regard for the public interest in this matter. BLM states:

Having the sewage lagoon on public land is attractive to Mr. Zanetti because: (1) all of his land can be used for mobile homes; (2) construction and operating costs will be less than building on his own land, and (3) it will be aesthetically more attractive for marketing the park if residents do not have a sewage lagoon next to their homes.

Based on the following reasoning, no other decision could be justified. Approval of this proposal is contrary to present management direction and would encourage future development of adjacent private lands in other areas. My conclusion is that the public's interest is best served by the applicant using his land to dispose of the sewage.

Direction issued under 43 CFR 2800.0-7 and 2802.4, indicates that the land must be actually required and the use be in the public's best interest when considering a right-of-way application for a facility such as a sewage lagoon system. Public

interest or benefit is defined by BLM Manual 2800 to mean "factors which serve to promote the good of the public in general rather than the exclusive benefit of the applicant." The only advantage (economic or otherwise) for allowing the proposed facility appears to be a benefit only to the applicant. 1/

[1] The Federal Land Policy and Management Act of 1976 (FLPMA), authorizes the Secretary of the Interior to grant rights-of-way on public lands. 43 U.S.C. sec. 1761 (1982). However, in order to grant a right-of-way, the Secretary requires full disclosure as to the details of the intended use:

(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

43 U.S.C. § 1761(b)(1) (1982). See also 43 CFR 2802.

The Board has repeatedly recognized the discretionary nature of the review and approval of such right-of-way applications. We reemphasized that standard of review in Edward J. Connolly Jr. 94 IBLA 138, 146 (1986) as out-lined in FLPMA and in Dwane Thompson, 88 IBLA 31, 35 (1985), as follows:

Approval of a right-of-way by the Secretary under section 501 of FLPMA, 43 U.S.C. § 1761 (1982), is a wholly discretionary matter. William A. Sigman, 66 IBLA 53 (1982); Nelbro Packing Co., 63 IBLA 176 (1982). A BLM decision rejecting an application for a right-of-way will ordinarily be affirmed by the Board when the record shows the decision to be based on a reasoned analysis of the factors involved, made with due regard for the public interest. Nelbro Packing Co., supra at 185.

In this case the record supports BLM's action rejecting appellant's application as necessary and proper to serve the public interest. Appellant has presented nothing with this appeal to persuade us that the facility he seeks to construct on public land is a needed improvement that will benefit the public as much as it will enhance the value of his mobile home park.

Although appellant argues that the area residents were misinformed as to the relative value of the sewage lagoon versus the package treatment plant alternative on his own property, he has provided no evidence to over

1/ Memorandum to the Office of the Regional Solicitor, dated June 10, 1988, from the BLM Rock Springs District Manager.

come BLM's notations in the record of general negative reaction and lack of public support for his project. The petition presented to BLM in October 1987, indicated the general concern of neighbors and landowners in the affected area that the facility would have "a negative effect on the land value and quality of life" in the area. At best, appellant has merely presented a picture of his own needs as against the needs and concerns of the rest of the community. The only indication in the record that the community does not understand the significance of his plan and how they would benefit from its approval is appellant's unsupported statements to that end. Accordingly, appellant has failed to show that BLM's decision was not based on a reasoned analysis of the key factors involved or that BLM did not act with due regard for the public interest.

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.

John H. Kelly
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge