GEORGE W. PHILP

IBLA 95-255 Decided November 12, 1997

Appeal from a decision of the Ashland Resource Area Manager, Bureau of Land Management, denying proposed amendment to right-of-way. OR 20444.

Set aside and remanded.

1. Administrative Practice--Administrative Procedure: Decisions--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Federal Land Policy and Management Act of 1976

   Where BLM issues a decision denying an application to amend a water right-of-way by drilling a new well and such decision is merely conclusory in nature and the record is barren of any supporting rationale, the decision will be set aside and the case remanded for BLM to reassess its action and to provide a reasoned analysis in any future decision.

APPEARANCES: George W. Philp, pro se.

OPINION BY ADMINISTRATIVE JUDGE TERRY

George W. (Bill) Philp has appealed from a January 25, 1995, Decision by the Ashland Resource Area Manager (AM), Bureau of Land Management (BLM), Oregon, reconsidering, and denying, Philp's proposed amendment to right-of-way OR 20444.

Right-of-way OR 20444 for a water pipeline, pumping system, including electrical connection and use of a BLM well was granted to Philp on April 7, 1980, pursuant to Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1994), and implementing regulations. The land utilized by the right-of-way is 0.41 acres within the W½SE½NE½ in sec. 1, T. 38 S., R. 3 W., Willamette Meridian. By amendment of August 28, 1989, BLM extended the term of the right-of-way to 20 years, with an expiration date of April 6, 2010.

IBLA - Oregon Case
BLM fails to supply supporting rationale in denying an application to drill a new well on public lands.

Because of the reduced flow from the BLM well, Philp explored the possibility of drilling a new well on BLM land. A memorandum to the file indicates that a BLM realty specialist met with Philp and that the two discussed Philp's proposal to drill a new well. According to the memorandum, Philp was told to submit his proposal in writing and that BLM "would consider his request seriously and make a determination following internal review and deliberation."

By letter of November 17, 1994, Philp wrote to BLM proposing to drill a new well "for domestic service to my home." Philp stated that the well he was presently using had tapered off to 1 gallon per minute (gpm) "leaving my family without water on a regular basis during the summer." Philp proposed to drill another well 80 feet from the existing well using the existing power pole and underground pipeline for transmission of water. Philp stated that the proposed location had been "witched" and according to the witcher, "there is a 4 to 5 gpm vein at 80 feet."

By letter to Philp of December 13, 1994, the AM denied the request to drill a new well. The AM admitted that the existing well flowed at a reduced rate but referred to condition #10 of the grant which provides: "[T]he United States does not guarantee the quality, quantity, nor the potability of water originating from the well covered by this right-of-way." The AM further noted that Philp had other options such as the installation of a holding tank on his own property or trying to locate water on nearby private lands. The AM stated that it was BLM policy not to authorize actions which would reduce the availability of water, including groundwater, on the public lands.

By letter of December 20, 1994, Philp renewed his request to drill a new well. Philp noted that although he had located a potential source of water on private land, he was prevented from drilling because of the cost ($6,000) and a property dispute with the owner of the land. Further Philp indicated that a water storage tank would cost about $3,800 whereas a new well, to a depth of 100 feet, would cost about $1,200. Finally, Philp offered to provide water for wildlife habitat development.

In the Decision on appeal, the AM again denied the request for the reasons stated in his December 13, 1994, letter. In addition, the AM stated that Philp's offer to provide water for wildlife habitat development "was considered but was not deemed of sufficient importance in serving the public interest."

In his statement of reasons (SOR) Philp speculates that a shale pit operation about 1,500 feet from the well may have caused a decrease in the waterflow volume. Philp states that he has had flow tests performed over the years during drought conditions and that until 1994, the well flowed at a rate of 2-3/4 gpm. In 1994, the flow rate tested at less than 1 gpm.

Philp is concerned that the well may completely dry up, which would end the water supply to his residence. If that occurs, Philp would no longer have functional indoor plumbing, a garden, or fire suppression capabilities. Moreover, his property value would decrease.

Philp states that while BLM has based its denial of his project on BLM policy, "[n]o real explanation or written policy has been disclosed to me as to why they refuse to extend a right of way which would have minimal impact on the public domain and would in fact improve the capability of fire suppression and enhance wildlife habitat." (SOR at 4.)

Finally, Philp asserts that BLM's 1989 extension of the term of the right-of-way is inconsistent with its rationale for not allowing another well to be drilled.

The sole rationale for BLM's action in this case is summarily stated in the AM's December 13, 1994, letter and his January 25, 1994, Decision. The AM's January 25, 1995, Decision simply reaffirms his December 13, 1994, letter to Philp in which he stated that BLM would not have allowed a well to be drilled if one had not been in place, and recites the facts that the well was still producing water and that other options were available to Philp. As Philp points out on appeal, BLM's Decision does not explain BLM's policy not to authorize actions which will reduce water availability nor does it state where an explanation of that policy can be found.

In addition, the file contains no document memorializing BLM's discussion and deliberation with respect to Philp's proposal and no explanation why it was in the public interest to deny the proposal. Finally, Philp's allegations on appeal remain unanswered.

[1] As we have previously held, when BLM issues a decision, it must ensure that the decision is supported by a rational basis and that such basis is stated in the decision and demonstrated in the administrative record accompanying the decision. Burnett Oil Co., 122 IBLA 330, 332 (1992); Eddleman Community Property Trust, 106 IBLA 376, 377 (1988); Roger K. Ogden, 77 IBLA 4, 7, 90 Interior Dec. 481, 483 (1983). The recipient of a BLM decision is entitled to a reasoned explanation of the basis for the decision, such that the decision may be understood and accepted or, alternatively, appealed and challenged before the Board. Southern Union Exploration Co., 51 IBLA 89, 92 (1980), and cases cited. Where, as here, BLM's Decision is merely conclusory in nature and the record is barren of any supporting rationale, the Decision will be set aside and the case remanded to BLM for compilation of a complete record to support its action. Any subsequent decision by BLM shall set forth with particularity the facts in the case, the applicable law, and provide a reasoned analysis such that Philp is able to understand the basis for the action being taken.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is set aside, and the case is remanded for further action consistent herewith.

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James W. Terry
Administrative Judge

I concur:

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C. Randall Grant, Jr.
Administrative Judge