

INTERIOR BOARD OF LAND APPEALS

Larry Brown & Associates

133 IBLA 202 (July 27, 1995)

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LARRY BROWN & ASSOCIATES

IBLA 92-519

Decided July 27, 1995

Appeal from a decision of the Medford District Office, Bureau of Land Management, requiring payment of road-use fees for logging road right-of-way permit. M-870.

Set aside and remanded.

1. Administrative Procedure: Administrative Record--Administrative Procedure: Administrative Review--Administrative Procedure: Decisions--Appeals: Generally--Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Permits--Oregon and California Railroad and Reconveyed Coos Bay Grant Lands: Rights-of-Way

It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision. A decision requiring payment of fees for road use under an O & C logging road right-of-way will be set aside where neither the decision nor the case record provide any support for requiring such payment.

APPEARANCES: Robert B. Sorge, Office Manager, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Larry Brown & Associates has appealed from a May 21, 1992, decision of the Medford District Manager, Oregon, Bureau of Land Management (BLM), requiring payment of \$12,086.56 in outstanding road use and maintenance fees. The fees were assessed under 43 CFR 2234.2-3(b)(16)(i) (1969) for an O & C 1/ logging road right-of-way permit (M-870).

Pursuant to Departmental regulations formerly codified at 43 CFR 2234.2-3(b)(1) through 2234.2-3(b)(24) (1969), 2/ BLM issued the permit

1/ Oregon and California Railroad and Reconveyed Coos Bay Grant lands.

2/ These regulations have been recodified at 43 CFR Subpart 2812. See 35 FR 9503 (June 13, 1970).

on August 26, 1968, to the owners of two tracts of lands intermingled with public lands in the area. Under the terms of the permit, BLM granted permittees the right to perpetually use designated BLM roads and rights-of-way across certain public and private lands in Oregon. ^{3/} The grant was made in consideration of a reciprocal grant by the permittees to the United States as set forth in an agreement dated August 22, 1968. In this latter agreement, the permittees granted the United States the right to perpetually use roads and rights-of-way across certain lands owned by the permittees in secs. 1 and 11, T. 33 S., R. 10 W., Willamette Meridian, Curry County, Oregon. ^{4/} Following several assignments of the BLM permit, appellant became permittee by assignment approved July 24, 1986. ^{5/}

Appellant's permit authorized the use of BLM roads and rights-of-way for the purpose of management and removal of timber and other forest products from lands which are owned or controlled by the permittee as of the time of exercise by the permittee of the rights granted by the Government. On May 21, 1992, BLM issued its decision requiring payment of \$12,086.56 for road use and road maintenance fees. BLM stated that 43 CFR 2234.2-3(b)(16)(i) (1969) requires payment to the United States for road use. It appears from the record that appellant had previously paid \$16,082.49 in "road maintenance" fees and that the balance of \$12,086.56 was assessed for "road use" fees. See Letter of BLM Glendale Area Manager dated Oct. 15, 1991 (with enclosures). BLM then asserted that "[n]on-payment of fees is beyond the scope and specific limitations" of the permit. BLM concluded that appellant was liable for road-use fees, road-maintenance fees, and reimbursement of all costs by the United States.

^{3/} The BLM roads and rights-of-way are described in Schedule 1 which is attached to the permit and made a part thereof. The BLM roads across public lands and the BLM rights-of-way across private lands are also set forth on a plat designated exhibit C attached to the permit.

^{4/} The lands owned by the original permittees are described in Schedule 2 which is attached to the permit and made a part thereof. We note that six amendments to the permit or agreement added roads and rights-of-way to Schedules 1 or 2.

^{5/} The assignees named in the latest assignment were LaVerne Laugsand, Allen D. Murray, and Lawrence F. Brown. By decision dated Sept. 5, 1990, BLM terminated the interest of Murray and Laugsand in permit M-870 on the ground that they had conveyed to Brown their interest in the property which was the basis of the reciprocal grant. BLM cited 43 CFR 2812.0-5(i), which defines direct control of a road, right-of-way, or land by an applicant, as the authority to permit the United States and its licensees to use roads or rights-of-way of land. BLM concluded that Murray and Laugsand no longer had the authority to permit such use as they have no interest in the land. BLM declared Brown to be the sole permittee under permit M-870.

In the notice of appeal, appellant contends that the permit grants free road use as it has to previous owners. ^{6/} Appellant asserts that it is liable only for maintenance fees.

Appellant's permit indicates that, except as expressly provided by exhibit A, the road-use fee shall be determined in accordance with the above-cited regulations. The regulation which deals with payment to the United States for road use provides in part as follows:

(a) A permittee shall pay a basic fee of five dollars per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way. * * * Provided, however, That in those cases where the permittee has executed under §§ 2812.3-1 to 2812.3-5 [7/] an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid: Provided further, This paragraph shall not apply where payment for road use is required under § 2812.3-1(b).

43 CFR 2812.5-2(a) (formerly codified at 43 CFR 2234.2-3(b)(16)(i)). The regulations further require payment by the permittee of the amortized replacement costs and maintenance costs of roads used which have been constructed or acquired by BLM. 43 CFR 2812.5-2(b) (formerly codified at 43 CFR 2234.2-3(b)(16)(ii)). This regulation also allows a waiver of the fee by BLM under certain conditions if the permittee grants to the United States and its licensees the right to use permittee's roads. Id.

Exhibit A, which is a part of the permit, sets forth specific provisions regarding road-use fees to be paid by the permittee. This exhibit specifies at paragraph 1 that the permittee shall have free use, except for pro-rata maintenance expense, of any of the roads owned or controlled by the United States which are constructed on lands described in Schedules 1 and 2, when the permittee's percentage share of the replacement cost of such roads has been paid. Exhibit A at paragraph 1 further provides that permittee's percentage shall be the same as the percentage share of the total volume of tributary timber and that the replacement cost of a road shall be computed as of the date when the road is first used by the permittee.

^{6/} In support of this contention, appellant submitted a letter dated Apr. 13, 1986, from BLM to a prior holder of the permit. In this letter, BLM indicated that an assignment of the permit authorizing free use of BLM roads and rights-of-way in exchange for a reciprocal grant must be filed for approval with BLM when the property on which the reciprocal grant is based is sold. ^{7/} The provisions of 43 CFR Subpart 2812 at sections 2812.3-1 to 2812.3-5 refer to a grant by the permittee of a reciprocal right of access across private lands controlled by the permittee.

[1] It is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision, as well as being demonstrated in the administrative record accompanying the decision. Eddleman Community Property Trust, 106 IBLA 376, 377 (1989); Roger K. Ogden, 77 IBLA 4, 7, 90 I.D. 481, 483 (1983). The recipient of a BLM decision is entitled to a reasoned and factual explanation providing a basis for understanding and accepting the decision or, alternatively, for appealing and disputing it before the Board. Kanawha & Hocking Coal & Coke Co., 112 IBLA 365, 367-68 (1990); Southern Union Exploration Co., 51 IBLA 89, 92 (1980). An administrative decision is properly set aside and remanded if it is not supported by a case record providing this Board the information necessary for an objective, independent review of the basis for the decision. Shell Offshore, Inc., 113 IBLA 226, 233, 97 I.D. 73, 77 (1990); Fred D. Zerfoss, 81 IBLA 14 (1984). In this case, the decision and case record disclose only BLM's conclusory determination that appellant was liable for road-use fees. It is clear, however, that both the permit and the applicable regulations provide for free use apart from amortization of replacement costs. BLM has failed to show that appellant does not qualify for free use. Because there is no sustainable basis for BLM's conclusion on the record before us, we are obligated to set aside BLM's decision and remand the matter to BLM to readjudicate appellant's fees, if any, under permit M-870.

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 is remanded to BLM.

C. Randall Grant, Jr.
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge