

INTERIOR BOARD OF LAND APPEALS

Bradford R. Bean

140 IBLA 42 (August 6, 1997)

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BRADFORD R. BEAN

IBLA 94-733

Decided August 6, 1997

Appeal from a decision of the Canon City, Colorado, District Manager, Bureau of Land Management, determining that Right-of-Way Application COC-56993 falls into cost recovery Category III.

Affirmed.

1. Rights-of-Way: Generally--Rights-of-Way: Applications

A BLM determination that a right-of-way application falls under Category III because field examinations by a realty specialist and an archaeologist are necessary will be sustained unless BLM has the needed information in its office or it has been furnished by the applicant. A Category I cost recovery designation for a right-of-way application is available only if BLM has the required data in its office or the data has been furnished by the applicant.

APPEARANCES: Bradford R. Bean, pro se; Lowell L. Madsen, Esq., Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Bradford R. Bean has appealed from a Decision of the Canon City, Colorado, District Manager, Bureau of Land Management (BLM), dated June 28, 1994, determining that his Right-of-Way Application COC-56993 falls into cost recovery Category III, which requires a nonrefundable application fee of \$550 and a \$100 monitoring fee. Appellant seeks a right-of-way over a hard-packed clay road across lot 47, sec. 24, T. 1 N., R. 72 W., Sixth Principal Meridian, for access to his private land, a patented mill site. The road has existed for over 40 years and originally had been used by carts carrying ore to the mill site. The BLM's Master Title Plat shows lot 47 as a 0.43-acre wedge of public land completely surrounded by patented mining or mill site claims.

The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a)(6) (1994), authorizes issuance of right-of-way grants for roads across public lands, and 43 U.S.C. § 1764(g) (1994) requires a right-of-way applicant to reimburse the United States for reasonable administrative and

other costs incurred in processing the application and in monitoring construction and operation pursuant to the right-of-way. Departmental regulation 43 C.F.R. § 2808.2-1 establishes five application categories based on the amount of information available in BLM's offices and the number of field examinations needed to verify existing data. Category I (\$125 application fee) is assigned to applications that require no field examination. Category II (\$300) requires one field examination and Category III (\$550) requires two field examinations. In this case, BLM stated on its Right-of-Way Cost Recovery Category and Fee Determination Record that examinations by an archaeologist and a realty specialist are needed and therefore assigned Appellant's application to Category III.

Appellant believes that Category III applies to far more complicated situations than that presented by his application. He states that his use would be "residential," and that "[t]here will be no surface, sociological, historical or cultural disturbances" because the road has existed for more than 40 years.

By Order dated April 30, 1997, we stated that we found nothing in the record to explain why field examinations by a realty specialist or an archaeologist are required, and we requested that BLM file an Answer and provide an explanation. The BLM responded with a May 27, 1997, memorandum from Jan Fackrell, Realty Specialist, and Monica Weimer, Archaeologist. The memorandum explains that an environmental analysis is required prior to issuing a right-of-way grant and that a field examination by a realty specialist to observe the current condition of the road to determine whether stipulations are required to mitigate any adverse environmental effects is also required. The memorandum identifies specific Departmental responsibilities under the National Historic Preservation Act, 16 U.S.C. § 470 (1994), that require a visit by an archaeologist.

[1] Appellant responds that BLM's Answer does not discuss his particular site, and he has included a photograph and contour map of the site. He again stresses that the area he seeks is only 200 feet long and 15 feet wide and that there will be no "surface, sociological, historical or cultural disturbances in connection with granting of this right-of-way." Although we can understand Appellant's frustration with the expense of field examinations for so small a grant, he has not explained how BLM can satisfy its responsibilities without these visits to the site. We note that under 43 C.F.R. § 2808.2-1(a)(1), the Category I designation Appellant seeks is available only if BLM has the required data in its office or the data is furnished by the applicant. That is not the case here. We have sustained a BLM cost recovery category determination when the record contains a reasonable explanation why a particular category was assigned. Northwest Pipeline Corp., 99 IBLA 364 (1987). The BLM's response satisfies our concern in this case.

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 is affirmed.

T. Britt Price
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge