

LARRY PULLEY

IBLA 91-357

Decided September 22, 1994

Appeal from a decision of the District Manager of the California Desert District Office, Bureau of Land Management, cancelling two private maintenance and care agreements. 87194385, 90195801.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

A BLM decision cancelling private maintenance and care agreements and repossessing a wild burro and a wild horse is properly affirmed where the evidence establishes that the adopter violated the adoption agreement and the applicable regulation requiring adopter to notify BLM within 7 days of discovery of an animal's escape; that a subsequent adoption was obtained without notice to BLM of the impoundment by animal control authorities of the escaped animal; and the record indicates that the animals were maintained under conditions which threatened their welfare.

APPEARANCES: Larry Pulley, pro se; Gerald E. Hillier, District Manager, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Larry Pulley has appealed from an April 30, 1991, decision of the District Manager, California Desert District, Bureau of Land Management (BLM), cancelling adoption agreements for a wild horse and a wild burro. Specifically, BLM cancelled Private Maintenance and Care Agreement (PMACA) 87194385 covering an adopted burro and PMACA 90195801 covering an adopted horse. Appellant executed PMACA 87194385 for a wild burro on January 24, 1988, and PMACA 90195801 for a wild horse on April 13, 1991.

The BLM decision cited two grounds for cancellation of the adoption agreements. With respect to PMACA 87194385 (wild burro), BLM noted that the "Terms of Adoption" require adopters to notify the authorized officer within 7 days of discovery of an animal's escape. The decision recites that "on April 8, 1991, officers from the City of Los Angeles, Department of Animal Regulation [LADAR], captured the burro running loose in the streets of [Pulley's] neighborhood." Further, the decision found that as of April 24, 1991, Pulley had not notified BLM that he was no longer in possession of the burro. Further, the BLM decision stated that on April 24, 1991, BLM and the City performed an inspection of the facility on Pulley's

property where the two animals were being maintained and found the facilities "to be out of compliance to an extreme degree (i.e. barbed wire fencing, inadequate fencing to contain animals and numerous debris which could prove harmful to animals)." BLM concluded that "the situation at the facility has been unacceptable for a long period of time" based on the report to BLM by LADAR officers and that appellant had refused to correct the deficiencies brought to his attention by local authorities. Further, BLM held that appellant was aware that the burro had been impounded by LADAR and of the deficiencies at the time he applied to adopt the wild horse on April 13, 1991 (Decision at 1). Accordingly, BLM repossessed both of the adopted animals, cancelled the adoption agreements by decision, and placed that decision into full force and effect pending any appeal. See 43 CFR 4770.3(b).

On appeal Pulley maintains that the City entered his property and took the burro from his front yard. He states that his neighbors who were witnesses to the incident deny that the burro was in the street and offered to place her in the corral. Pulley states that he filed a civil rights action against LADAR and the officer who seized the burro. He relates that the Los Angeles Superior Court entered an order restraining LADAR from entering onto his property and from disposing of the burro. Appellant avers that a BLM employee entered onto his property on April 24, 1991, and repossessed the wild horse under his care. Appellant also states that the burro was transferred to a BLM facility in Ridgecrest.

In his appeal, appellant denies that he violated the terms of the PMACA by failing to timely report the escape of the burro as the burro did not "escape." As to the condition of the corral, Pulley contends it was safe for the burro and was "minimally substandard" for the horse. Appellant asserts that the barbed wire referred to by BLM is behind an iron grate and other fencing. Pulley argues that BLM acknowledges that the horse was in good condition, well cared for, and unlikely to jump the fence because she was accompanied by a 14-year old gelding. Further, appellant decries the failure of BLM to act in the past when his "animals were under attack by the adjacent condominium residents." 1/

In answer to the notice of appeal, BLM relates that LADAR on April 23, 1991, advised BLM that they had impounded the burro and stated that the new horse was being boarded in an unauthorized and illegal manner. BLM recounts that LADAR requested BLM to meet with them the next day (Apr. 24, 1991) at Pulley's residence. BLM states it unsuccessfully attempted to contact appellant on April 23 to notify him of their visit and also tried to contact him at the time of their visit by telephone and by ringing the doorbell, failing which BLM proceeded with the inspection, leaving Pulley a note on his door (Answer at 1). The inspection, BLM states, revealed "the horse was in imminent danger of serious injury or death due to highly unsafe and illegal condition of the facility" (Answer at 1). BLM states that

1/ Appellant relates in his appeal that: "On July 9, 1989 three neighbors shot and blinded [the burro]. These same neighbors had previously threatened my animals * * *."

the claim that the corral was only minimally unsafe for the horse is ludicrous for as shown in "photographs 17, 18 and 19" (part of the record in this case) the horse became caught in the board tied to one of the corral panels while our employees were at the facility." Id.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1988), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the agreement and thereafter until BLM issues a certificate of title. 16 U.S.C. § 1333(c) (1988); 43 CFR 4750.4-1(a) and 4750.5. 2/ The regulations provide that the authorized officer "shall" conduct an investigation when a complaint is received regarding the care, treatment, or use of a wild horse or burro. 43 CFR 4760.1(c). In this case BLM, responded to the report received from LADAR.

The record of the BLM compliance inspection supports the BLM decision and shows that the facilities provided by appellant for his animals did not meet the standards established by the regulations at 43 CFR 4750.3-2(a)(3). Thus, the report notes that "there is Barb Wire in some of the fence on the inside of the corral," portions of the fence are chain link with "sharp ends of the wire sticking up," and two fence panels were only 3 or 3-1/2 feet tall (BLM Wild Horse and Burro Compliance Record at 2). 3/ The report also noted the presence of hazardous debris in the corral including barbed wire in which the animals could become entangled. Id.

The regulations also require that BLM be "notified within 7 days of discovery of the death, theft, or escape of wild horses and burros covered by the agreement." 43 CFR 4750.4-1(d). The fact that appellant's adopted burro was found by officers of LADAR to be running loose requiring impoundment contradicts appellant's assertion that the burro did not escape. No notice of the loss of the animal was provided BLM until officials of LADAR contacted BLM on April 23. A period of 15 days elapsed between the impoundment and notification of BLM. This omission becomes particularly egregious when it is recognized that the horse was adopted by appellant in this interval when BLM had no notice. The adopter is required to comply with the terms of the adoption agreement and the relevant regulations. An adopter's failure to comply may result in cancellation of an agreement and repossession of animals covered under the agreement. 43 CFR 4770.2(b). Under the circumstances, we find that cancellation of the adoption agreements and repossession of the animals is supported by the record.

2/ It does not appear from the record that a certificate of title was issued for the animals at issue. An application for title to the burro was filed with BLM on May 1, 1991.

3/ Fence materials shall be protrusion-free and shall not include barbed wire. 43 CFR 4750.3-2(a)(3)(ii).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed is affirmed.

C. Randall Grant, Jr.
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge

131 IBLA 10