

JOYCE LIVESTOCK COMPANY

IBLA 70-96 Decided June 2, 1971

Grazing Permits and Licenses: Apportionment of Federal Range

Past usage of federal range does not give a licensee a vested right to use a particular area of the range but is a factor to be considered in allocating grazing privileges for the federal range, and this Department has discretion to change areas and seasons of use when necessary for proper range administration.

Grazing Permits and Licenses: Apportionment of Federal Range

A district manager's determination of the allocation of the area of use within a unit will be upheld where its implementation will not result in such hardship as to constitute a serious impairment of the livestock operation of a grazing user, and where the user is granted all the grazing privileges to which he is entitled and is permitted to use them in the vicinity of his privately-owned lands.

Grazing Permits and Licenses: Apportionment of Federal Range -- Grazing Permits and Licenses: Hearings -- Rules of Practice:
Appeals: Burden of Proof

A licensee of the federal range who appeals from a district manager's determination of the area of use of his grazing privileges has the burden of proof to show by substantial evidence that his rights have been impaired by the Bureau action and that the decision was improper.

Appellant requests that the decisions be rescinded and that it be allowed to utilize grazing privileges in accordance with past use and in accordance with representations allegedly made by the area manager in a letter dated March 30, 1967.

In support of this request, appellant generally asserts as follows: that the Bureau's decision is arbitrary and capricious; that it violates the Federal Range Code without regard to the established rights of parties holding grazing privileges; that it discriminates and deprives appellant of the right to continue to use the federal range in accordance with past use of grazing privileges; that it is contrary to representations and assurances made by the area manager of the Bureau in a letter dated March 30, 1967; that appellant relied upon the representations contained in that letter in purchasing certain range and range privileges from M. C. Shelley; that the decisions deprived appellant of its property rights without due process of law; that the other Bureau officers are estopped from ordering a change in the place of use of such grazing privileges; that the decisions appealed from are contrary to applicable law, regulations and published procedure; that they are based upon grounds and reasons which are inequitable, and are in direct violation of the intent and purpose of the Federal Range Code (43 CFR Part 4110) and of the Taylor Grazing Act (43 U.S.C. § 315 (1964)).

Appellant has made these general assertions throughout these appeal proceedings. However, it has not pointed to any specific violation of any regulation, statute, Departmental or court ruling. In the absence of error being specifically shown, these assertions do not afford a sufficient basis for modification of the decision below. Appellant has failed to show affirmatively in what respect the decision appealed from is in error; it is insufficient to merely repeat statements of error already advanced in its appeals to the Director and the hearing examiner without showing their connection with the decision appealed from or their relevance otherwise. James L. Knight, A-27374 (September 19, 1956).

We also note that appellant has failed to point to specific facts shown in the record other than the one letter of March 30, 1967.

As mentioned, appellant's real objection in this case is that it is being deprived of use of land within allotment 6-B in the Bates Creek area. This is the area which it contends was used in the past by Joyce Livestock and its predecessor, M. C. Shelley.

In 1967 appellant purchased certain properties from Shelley. Appellant contends that in making this purchase it relied on the letter of March 30, 1967 (Exhibit A-J-1). This letter by the area manager was addressed to Shelley. It states as follows:

Dear Sir:

Some recent questions have been raised by individuals interested in acquiring some part of your federal range privilege.

Your remaining federal range privileges are broken down as follows:

Oreana Unit

| | |
|--------------------------------------|-------------|
| Area #4 Winter Range | - 747 AUM's |
| Area #6-B Upper Bates Cr. | - 547 AUM's |
| Area #11 A & B Lone Tree & Josephine | -3023 AUM's |

Jess Lease

| | |
|---------------------------|------------|
| Area #5 Spring Range | - 50 AUM's |
| Area #6-B Upper Bates Cr. | -100 AUM's |

If you should have any questions, please feel free to contact this office.

Although appellant contends that it understood that Shelley had an individual allotment in the Upper Bates Creek Area in area 6-B, neither the record generally nor this letter supports that assumption. The letter does not indicate the season of use within the Upper Bates Creek Area, or that the use designated there is an individual allotment. It is clear that other grazing operators were licensed within area 6-B at that time. Indeed, prior to the decision of February 15, 1968, there had been no separate allotments designated in area 6-B. The first division of the Oreana Unit into allotments was in a decision of January 4, 1965. That decision simply listed the operators in the unit, the number of AUM's held by the operator generally within the unit and then listed the allotments by number without designating the number of AUM's in the particular allotment. For example, it showed the total number of AUM's for Shelley as 6,822, with his use being in allotments 4, 5, 6-B, 11-A and 11-B. There is nothing in the Shelley file submitted at the hearing to show that there was any

individual allotment in area 6-B. Unfortunately, the record does not clearly show the utilization of the area historically. However, even if we accept appellant's allegations that its predecessors used the area, this alone does not demonstrate that the decision below was in error. What effect then should be given to the letter of March 30, 1967? Does it prevent the Bureau from allocating the grazing privileges appellant obtained from Shelley to some allotment other than area 6-B, as appellant seems to contend?

The decisions below indicated that the letter factually was in error and should have indicated that the 547 AUM's listed as being in 6-B were in allotment 5, instead. In any event, the letter was not an adjudicative act, such as a decision actually effectuating a determination of privileges or their allocation, but was simply a courtesy, informational in nature. At most, the information it contained was limited to that time. Even assuming, *arguendo*, that estoppel could be invoked against the United States this case would not be one to which the estoppel doctrine could afford any relief to appellant. What would the Government be estopped to deny? At the most, only that the privileges of Shelley were allocated as stated in the letter. Even where licenses have been granted in the past for use of a particular range area, the licensee has no vested right to the use of such lands. National Livestock Company et al., I.G.D. 55 (1938). Although historical use is a factor considered in allocating grazing privileges on federal range, the determination of the particular area in which the range user may exercise his grazing privileges is a matter committed to the discretion of this Department, and changes of area or season of use may be made where it is considered necessary for proper administration of the federal range. Id.; Charles H. McChesney et al., 65 I.D. 231 (1958); Harold Babcock et al., A-30301 (June 16, 1965). Thus, the district manager was well within his authority to make any necessary adjustments or allocations necessary for good range management. Thomas Ormachea and Michael P. Casey, 73 I.D. 339 (1966); Delbert and George Allan, Eldon L. Smith et al., 2 IBLA 35 (1971).

In determining whether allocations of areas of use are arbitrary and capricious, their effect upon all the range users must be ascertained. The district manager considered the effect upon all the users and attempted to allocate the range so as to preclude trespass problems (see Tr. 867), and to facilitate seeding of certain areas to improve the forage for spring and early summer use (Tr. 373). These considerations were reasonably related to sound range management objectives.

As to the effect upon the individual range user a rule has been enunciated, as pointed out by the hearing examiner, that the allocation will be upheld unless it is shown that the user's privately-owned land is rendered valueless and the possibility of its continuation in the livestock business is seriously endangered. National Livestock Company et al., *supra*. However, in Ball Brothers Sheep Company et al., 2 IBLA 166 (1971), a less rigorous standard was applied; i.e., that an allocation will not be disturbed where its implementation will not result in such hardship as to constitute a serious impairment of the grazing user's livestock operation. Appellant showed by testimony of Hugh Nettleton, president of the company, only that the purchase price for the Shelley properties was based upon an expectation of use in area 6-B. Nevertheless, the evidence failed to show that the privately-owned land could not be used (although not quite as intended) or that appellant's livestock operation would be seriously impaired. Thus, even the Ball Brothers Sheep Company test has not been met; *a fortiori*, the more difficult test of National Livestock Company has not been met.

In considering the allocation of range privileges we must also determine whether the range user has been deprived wrongfully of any grazing privileges to which it is entitled. As the decision below correctly pointed out, if a range user is granted all the grazing privileges to which he is entitled and is permitted to use them in the vicinity of his privately-owned lands, he has received all he is entitled to under the Taylor Grazing Act and Federal Range Code, and he has no basis for complaining that he should have been awarded another area of use. William Sellas, I.G.D. 677 (1958); DeVerl Nichols and Gail Lee, A-30401 (September 24, 1965).

The decision below found that appellant had been awarded all of the range privileges attached to the properties it acquired from Shelley, and that the allocation placed those privileges in areas of range actually used by Shelley. It also pointed out that 900 to 1000 acres of the federal range originally within area 6-B have now been fenced off and are included in allotments 2 and 3, where appellant has been allocated use. Appellant has pointed to no error in the fact findings of the decision below, nor has it supported its allegations that the allocation was arbitrary and capricious and a deprivation of property without due process of law. We accept the findings and conclusions of the decision below as being correct.

The appellant had the burden of proof to show by substantial evidence that its rights were impaired by the Bureau action

and that the Bureau's decision was improper. Harold Babcock et al., supra. As the foregoing discussion establishes, this burden has not been met.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Joan B. Thompson, Member

We concur:

Frederick Fishman, Member

Newton Frishberg, Chairman.

