

BUREAU OF LAND MANAGEMENT, Appellant  
ALLARD CATTLE COMPANY, Appellee

IBLA 71-248

Decided April 20, 1972

Appeal from a decision of Robert W. Mesch, hearing examiner, remanding the case to the district manager who had rejected application for transfer of grazing privileges. (Colorado 2-70-2.)

Affirmed.

Grazing Permits and Licenses: Base Property: Transfers

A letter from the owner of base property, stating that such owner has no objection to a former owner applying to the Bureau of Land Management for reassignment of his former grazing privileges, is construed as written consent within the meaning of 43 CFR 4115.2-2(b)(3) which provides that no transfer of grazing privileges will be made without the written consent of the owner of the base property from which the transfer is to be made.

APPEARANCES: George E. Longstreth for appellant. Sonja E. Warburg, for appellee.

OPINION BY MR. STUEBING

The Bureau of Land Management appeals to the Board of Land Appeals from a decision of the hearing examiner, Salt Lake City, Utah, issued March 26, 1971, remanding the case to the district manager (Glenwood Springs District) for further action on a transfer application. The district manager had rejected the application because, in his opinion, the owner had not obtained the written consent of the buyer of the base property as required by 43 CFR 4115.2-2(b)(3).

The facts, set forth in the hearing examiner's decision 1/, are not in dispute. Having considered the entire record, we find that the hearing examiner's opinion properly resolved the issues and we therefore adopt his decision and incorporate it herein.

We add the following:

In this appeal from the hearing examiner's decision, the Bureau of Land Management's main contention is that the Allard Cattle Co. failed to comply with 43 CFR 4115.2-2(b)(3) which provides in part:

\* \* \* No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made \* \* \*

The Bureau of Land Management claims this section is applicable because the Allards sold the property to which their grazing privileges were attached to the Bureau of Sports Fisheries and Wildlife by a deed executed September 26, 1967.

Even though the deed included a reservation to the Allards permitting them to occupy and use the property for ranching purposes until July 1, 1969, and even though the application for transfer was made prior to this date, the Bureau of Land Management claims that such a reservation does not give the Allards sufficient control or interest in the base property to permit them to transfer their privileges. Therefore, the Bureau of Land Management contends that the consent of the Bureau of Sports Fisheries and Wildlife is necessary in order to satisfy the requirement of the regulation.

The Allards contend that a letter written in their behalf by the Bureau of Sports Fisheries and Wildlife constituted consent.

In this letter, the Bureau of Sports Fisheries and Wildlife stated that it had no objection to the Allards applying to the Bureau of Land Management for reassignment of their former privileges to other base property. This letter was in lieu of the Bureau of Land Management's 'Application and Transfer of Grazing Privileges' form. The Bureau of Sports Fisheries and Wildlife did not sign this

-----  
1/ See attached, Appendix A.

form because it did not think it was proper for that agency to involve itself in the administration of the public domain, a duty entrusted to the Bureau of Land Management.

In examining 43 CFR 4115.2-2(b)(3) we find no language requiring a special form of written consent. 'Written consent' is the only specification and we construe the letter written by the Bureau of Sports Fisheries and Wildlife to be written consent within the meaning of this regulation.

Therefore, 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 of the hearing examiner is affirmed.

Edward W. Stuebing, Member  
We concur:

---

---

Douglas E. Henriques, Member

---

Anne Poindexter Lewis, Member

APPENDIX A

March 26, 1971

DECISION

ALLARD CATTLE COMPANY,	:	COLORADO 2-70-2
	:	
Appellant	:	Appeal from District Manager's
	:	Decision dated April 13, 1970,
	:	Glenwood Springs Grazing
	:	District.

This appeal questions the action of the District Manager, Glenwood Springs Grazing District, Bureau of Land Management, in rejecting an application filed by the appellant for the transfer of grazing privileges. The District Manager rejected the application because, in his opinion, the appellant had not obtained the written consent of the owner of the base property from which the transfer was to be made as required by 43 CFR 4115.2-2(b)(3). 1/

A hearing was held on December 8, 1970, at Denver, Colorado. The appellant presented testimony and documentary evidence. The Bureau of Land Management did not offer and evidence. The uncontradicted evidence is as follows.

On September 26, 1967, the Allards conveyed base property with recognized qualifications of 835 animal unit months to the United States of America. The property was acquired by the Bureau of Sport Fisheries

-----  
1/ This section provides in part:

. . . No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made . . .

and Wildlife, Fish and Wildlife Service, Department of the Interior, for the purpose of creating a sanctuary for the protection of wildlife. The instruments of conveyance did not specifically mention the grazing privileges. During the course of negotiations, the acquiring agency informed the Allards that it had no use for the grazing privileges and could see no reason why the privileges could not be transferred by the Allards to other base property. The Allards did not intend to transfer the grazing privileges with the conveyance of the ranch. The purchase price of the ranch did not include any enhanced value arising from the grazing privileges, and the Allards were not compensated in any way for the grazing privileges.

In the fall of 1967, a meeting was held with representatives of the Bureau of Land Management, a representative of the Bureau of Sport Fisheries and Wildlife, and the Allards. The purpose of the meeting was to discuss the transfer of the grazing privileges to new property acquired by the Allards. The representative of the Bureau of Sport Fisheries and Wildlife attended the meeting in order to assure the Bureau of Land Management that his agency had no interest in the grazing privileges and no objection to the transfer of the grazing privileges by the Allards. At the meeting the representatives of the Bureau of Land Management advised the Allards that they could apply for a transfer of the grazing privileges at any time before they lost control of the base property on July 1, 1969. There was no indication at the meeting of any foreseeable problem in connection with the transfer of the grazing privileges.

In the conveyance of the base property, the Allards reserved the right to occupy and use the property for ranching purposes until July 1, 1969. Following the conveyance of the property, the Bureau of Land Management continued to license the Allards for the grazing privileges attached to the base property.

On June 10, 1969, the Allards filed an application to transfer the grazing privileges. By a letter dated June 23, 1969, the Acting Regional Director of the Bureau of Sport Fisheries and Wildlife advised the Allards:

You may use this letter for whatever reference purpose may be appropriate and I am enclosing extra copies in case you need them.

My staff and I have reviewed the BLM Form 4115-15 and have concluded that it would be inappropriate to execute this form. As a Government agency, we cannot project our Bureau's thinking into the reassignment of public domain lands outside of our control, and which is properly the prerogative to the Bureau of Land Management.

I wish to advise, however that we would have no objection to you making application to the Bureau of Land Management for reassignment of your former permit land to new base property . . . 2/

The advisory board of the Glenwood Springs Grazing District considered the Allards' transfer application on February 24, 1970, and recommended that the District Manager approve the requested transfer. The District Manager rejected the application on the ground that the Bureau of Land Management had not received the written consent of the owner of the property as required by 43 CFR 4115.2-2(b)(3).

The Bureau of Land Management admitted at the hearing that written consent would not be necessary if the instruments of conveyance contained an express reservation of the grazing privileges in favor of the Allards. I can see no logical reason for the Bureau of Land Management to adopt a different position under the facts as set forth above. The undisputed evidence shows (1) that it was not the intent of the Allards to transfer the grazing privileges with the sale of the ranch, (2) that the Bureau of Sport Fisheries and Wildlife did not intend to acquire the grazing privileges, (3) that the payment for the ranch did not include any compensation for the grazing privileges, and (4) that the Bureau of Sport Fisheries and Wildlife apprised the Bureau of Land Management that it had no objection to the requested transfer of grazing privileges by the Allards.

On the basis of the record in this proceeding, I can only conclude that the decision of the District Manager was arbitrary and capricious. The case is remanded to the District Manager for further action on the transfer application.

---

Robert W. Mesch  
Hearing Examiner

-----  
2/ The Bureau of Land Management form referred to in this letter is entitled 'Application and Transfer of Grazing Privileges'.

Enclosures:  
Appeal procedures w/attachment

Distribution:  
By Certified Mail

Sonja E. Warberg  
314 Poudre Valley Bank Building  
Fort Collins, Colorado 80521

Office of the Regional Solicitor  
Department of the Interior  
Federal Center, Bldg. 67, Room 1400  
Denver, Colorado 80225

5 IBLA 372

