

ANDREW J. MYERS

IBLA 71-252

Decided September 22, 1972

Appeal from the cancellation of a grazing lease (Sacramento 035773) issued by the Folsom district manager, Bureau of Land Management, pursuant to Section 15 of the Taylor Grazing Act for the reason that the land in question was conveyed out of Federal ownership.

Affirmed as modified.

Grazing Leases: Cancellation -- Grazing Leases: Generally -- Patents of Public Lands: Effect

A grazing lease will not bar disposal of the leased lands under the public land laws, and the issuance of a patent deprives the Department of all jurisdiction over the land so that where the leased land has been patented pursuant to the exchange provision of the Taylor Grazing Act cancellation of the lease will be sustained despite the fact that the grazing lessee was not given direct notice of the impending exchange, but the grazing lessee will be reimbursed for the unearned balance of the rental paid to the Bureau of Land Management.

APPEARANCES: Andrew J. Myers, pro se.

OPINION BY MR. STUEBING

Andrew J. Myers had appealed from the March 9, 1971, decision of the manager of the Folsom district office of the Bureau of Land Management, which canceled Myer's grazing lease because the land involved had been conveyed out of federal ownership through an exchange of these lands for certain private lands previously owned by one Grant Squire.

Appellant's grazing lease was issued pursuant to section 15 of the Taylor Grazing Act of June 28, 1934, 48 Stat. 1269, 43 U.S.C. 315(m) (1970), for a period of ten years from July 9, 1965, through July 8, 1975. The lease covered 160 acres in Monterey County, California, and advance rental for the entire term had been paid by appellant.

Appellant asserts that he first leased this land in 1955, that he tried to purchase it in 1961 and was refused, and that his interest in the land is matter of record and well-known to the Bureau. He further contends that his use of it is the most beneficial because access from the east is impeded by steep cliffs and there is no water on the tract. He implies that the Bureau discriminated against him when it conveyed the land to Squire without giving him advance notice and an opportunity to object.

The district manager admits that his office failed to notify appellant of the proposed exchange, but maintains that this failure was merely inadvertent, stating, "It certainly was not the intention of BLM to deny Mr. Myers or anyone else knowledge of the exchange." The district manager states that the grazing lessees of other federal lands included in this exchange were informed in advance. In addition, he reports that the following actions were taken to inform the public of the proposed exchange:

A Notice of Proposed Classification for Exchange (S-3503) was published on February 4, 1970 on pages 2537 and 2538 of Volume 35, Number 24 of the Federal Register. A final Notice of Classification was published April 16, 1970 on pages 6192 and 6193 of Volume 35, Number 74 of the Federal Register. Both Notices listed Myer's leased lands.

Additionally, legal notices were published in the Salinas Californian, Hollister Evening Free Lance, and the Fresno Bee newspapers publicizing both the proposed and final classifications. Finally, legal notices were published in these three newspapers advertising the filing of the private exchange application by Grant Squire.

The Counties of Fresno, San Benito, and Monterey were kept fully informed of this exchange through their respective Planning Departments and Boards of Supervisors. State agencies such as the Department of Fish and Game and Department of Parks and Recreation received proper notice. Various recreational organizations such as the Western Rockhound Association were also cognizant of this exchange.

The exchange was made, according to the district manager, to weld fragmented parcels into the multi-thousand acre New Idria block

of public land. He states that the exchange has eliminated intermingled ownerships, provided public access to the New Idria lands, and reduced conflicts between hunters and private owners south of the Los Gatos Creek Road. In light of the fact that the land under appellant's grazing lease was a part of this exchange, the district manager reports that its value for purposes of the exchange was so great that even if appellant had been given direct advance notice of the exchange, the land could not have been classified for sale.

There is no question that appellant should have been given reasonable notice of the pending or proposed classification. Such notice is required by regulation. See 43 CFR 4121.3-3(d). However, without excusing the District Manager's failure to afford proper notice to appellant, we cannot perceive that any remedial action can be taken at this stage of events.

No rights in public land are initiated by the issuance of a grazing lease or by the use of public land under a grazing lease which will bar the lawful disposal of the leased land. Medowbrook Lodge, Inc., A-30432 (October 27, 1965); Henry Pretzetal, 62 I.D. 33 (1955). The Department's regulations specifically provide that lands embraced in a grazing lease are subject to disposition under the public land laws. 43 CFR 4125.1-4(a)(8) (1972). ^{1/} Furthermore, this provision is incorporated into the terms of the grazing lease, which constitutes actual notice. See section 2(e) of the lease terms.

Moreover, the exchange transaction has been consummated and the land at issue has been patented. Where public land has been patented, this Department has no further jurisdiction over it. Clarence March, 3 IBLA 261 (1971). The failure of the Bureau to comply with a regulation which is directory in nature does not furnish adequate grounds for recommending to the Attorney General the institution of a suit to cancel the patent. John W. Purvis, A-30968 (February 7, 1969).

Appellant alludes repeatedly to the fact that he has paid the rental for the full period. That fact does not invest him with any continuing right to use property after cancellation of the lease. However he is entitled to receive a pro-rata refund of the fee paid. 43 CFR 4125.1-1(1)(3, 5, 8) (1972), and the Bureau is directed to process this refund.

^{1/} Formerly 43 CFR 4122.3-5(a) (1968).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals, 43 CFR 4.1, the decision is affirmed as herein modified.

Edward W. Stuebing
Member

We concur:

Douglas E. Henriques
Member

Anne Poindexter Lewis
Member

