

BENNY LUCERO, APPELLANT
RESTIE SANDOVAL AND
MATIAS GARCIA, INTERVENORS

IBLA 71-114

Decided October 12, 1972

Appeal from decision (New Mexico 1-69-1) by L. K. Luoma, Hearing Examiner, affirming rejection of petition for reinstatement of grazing privileges.

Affirmed.

Grazing Permits and Licenses: Adjudication

An application for reinstatement of grazing privileges denied many years ago is properly rejected where the forage on the federal range is entirely allocated to permittees and licensees whose base property qualifications were adjudicated and have been recognized and license issued thereon for a period of three consecutive years prior to the application.

Grazing Permits and Licenses: Adjudication

Although other applicants or licensees may have lost their right by reason of 43 CFR 4115.2-1(e)(13)(i) to have their or anyone else's license readjudicated, the Bureau of Land Management retains discretionary authority to make adjustments in a license at any time when necessary to comply with the Federal Range Code for Grazing Districts.

APPEARANCES: David F. Boyd, Jr., and Roy F. Miller, Jr., for the appellant; Gayle E. Manges, Field Solicitor, U.S. Department of the Interior, for appellee.

OPINION BY MR. RITVO

Benny Lucero has appealed from a decision by a hearing examiner, dated November 4, 1970, dismissing his appeal from rejection by the District Manager, Albuquerque, New Mexico, Grazing District No. 1, of his application for reinstatement of a former license for grazing rights for 10 head of cattle year long.

Lucero filed his application on August 16, 1968. In a letter accompanying it, he reviewed the history of grazing in the area from the days when a large area was grazed by the Cabezon Community, through the changes that transpired after the passage of the Taylor Grazing Act of June 28, 1934 as amended, 43 U.S.C. § 315 et seq. (1970), under which he was awarded the right to graze 10 head year long, to his loss of that privilege in 1957. He asked that his rights be restored to him.

In denying Lucero's request, the District Manager stated:

The Advisory Board of the Albuquerque, New Mexico, Grazing District Number 1, on February 5, 1969, reconsidered your application for 1969 grazing privileges in the light of additional information or protest filed by you and recommended as follows: That the initial recommendation (per Notice of 1/15/69) be sustained, that your application for the grazing of 10 cattle for the period of July 1, 1968 to June 30, 1969 on the Cabezon Community Allotment be rejected.

The Cabezon Community Allotment was completely readjudicated in 1955 and 1956 and the range apportioned to those who offered an adequate water base property. At this time you were denied privileges in the allotment. This rejection of your application was confirmed by a decision of the Hearing Examiner, dated February 18, 1957. The license granted to those who did qualify by having a suitable water have [sic] become established and cannot be reduced or affected in any manner by the application of another person. These qualified grazing licensees have all of the available Federal range adjudicated just now recovering from the past heavy use and draught. We cannot grant grazing privileges in excess of the grazing capacity of the Federal range.

The recommendation, together with information and data in possession of the Bureau of Land Management has been considered by me, and you are hereby notified that my decision is as follows: I have adopted the above recommendation as my decision. This decision was made in accordance with 43 CFR, Sections 4115.2-1(e)(3) and 4111.3-1(d)(2).

At the hearing, the Bureau of Land Management renewed its motion to dismiss the appeal, which had been denied by the hearing examiner for being filed late, on the grounds that all the issues in the appeal had been thrice decided adversely to Lucero: first, in a decision of a hearing examiner dated February 18, 1957, from which no appeal was taken; then in decision of a hearing examiner dated July 28, 1958, granting a motion to dismiss Lucero's appeal from a rejection of his application for grazing privileges for the same reasons, from which no appeal was taken; and, finally, in a decision of the District Manager dated October 25, 1961, from which no appeal was taken.

The Bureau also contended that all of the available federal range had been adjudicated to qualified grazing licensees whose licenses or permits were protected against readjudication by the provision of the grazing regulation 43 CFR 4115.2-1(e)(13)(i) which provides:

No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

After reviewing in detail the past proceedings, the hearing examiner concluded:

Progressing now to the present appeal, it is apparent from the pleadings and the record of the hearing that there are no issues to be resolved which have not been previously adjudicated, as recited above. The offered base waters are the same waters of the Rio Puerco, previously adjudicated, and no evidence was presented to indicate that the allotment contains forage in excess of existing licensed demand. To grant Appellant's application for grazing privilege would of necessity require a downward adjustment in the licenses of other users who have been licensed in the allotment for a period of at least three years. Accordingly, I am precluded from granting favorable action on Appellant's application by the doctrine of res judicata as well as by section 4115.2-1(e)(13)(1) [sic] of the Code of Federal Regulations, supra.

He then commented that Lucero was really seeking equitable relief from a situation which has existed for over 30 years and quoted extensively from appellant's briefs detailing the history of the grazing administration of the Cabezon Community. While he concluded that he had no legal basis for disturbing the District Manager's decision, he stated that the same regulation which deprives Lucero of the right to attack established privileges grants authority to the Bureau of Land Management to "make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts." 43 CFR 4115.2-1(e)(13)(ii).

He then dismissed Lucero's appeal.

In his appeal to the Board, appellant first confined himself to quoting from and commenting on the portions of his brief that the hearing examiner had quoted in his decision and then in a reply brief made some observations about the New Mexico water law and repeated his contentions of past and repeated wrongs inflicted upon the Cabezon Community.

This proceeding originated in Lucero's request to be reinstated to his right to graze 10 cattle year long in the community allotment. For the reasons given by the District Manager, his request was properly denied, that is, Lucero had been found not to be qualified owner of water base property, that all the available federal range was allotted to qualified grazing licensees, whose rights were immune to attack by other applicants, and that there was not sufficient forage available for additional livestock. If all Lucero's allegations of mistake and impropriety were accepted, there might be reason to reexamine the present adjudication of grazing privileges; they do not, however, justify awarding him the personal relief he seeks on an isolated basis.

However, as the hearing examiner observed, the regulation, supra, empowers the Bureau of Land Management to make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code, even though no one else can complain of existing dispositions. Malvin Pedroli, 75 I.D. 63, 69, 70 (1968).

The record before us is completely inadequate to serve as a basis for the thorough and widespread readjudication that Lucero insists is needed to set right all past injustices. We do not presume to intimate that there is a basis for Lucero's complaints, or if there is, whether a readjudication would create more injustices than it relieved. We only note that the Bureau has authority to

make amends if it finds the circumstances warrant them. Lucero, too, is, of course, free to petition the Director for an extensive review of the situation.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, 43 CFR 4.1, the decision of the hearing examiner is affirmed.

Martin Ritvo, Member

We concur:

Douglas E. Henriques, Member

Edward W. Stuebing, Member

