

DOUGLAS V. LIVINGSTON, ET AL.

IBLA 71-270

Decided October 26, 1972

Appeal from decision of March 25, 1971, of District Manager, Worland, Wyoming District Office, Bureau of Land Management, (W1-71-2), denying an application for renewal of a grazing lease in part.

Affirmed.

Grazing Leases: Applications

If a new applicant for a grazing lease files his application for lands in an existing lease within the regulatory-required period of not less than 30 days nor more than 90 days prior to the expiration of the current lease, his application is not subject to rejection as being made for land not available for lease.

Grazing Leases: Apportionment of Land--Grazing Leases: Preference Right Applicants--Grazing Leases: Renewal

A division of federal range between two conflicting equal preference right applicants for a lease will not be disturbed in the absence of persuasive reason showing the division was inequitable, and the record supports an award of a parcel of land to a new grazing lessee applicant rather than an applicant for renewal of an existing lease due to factors of topography, proper range management, and history of nonuse of the parcel.

APPEARANCES: Jerry W. Housel, Esq., for appellants; Willard C. Rhoads, pro se.

OPINION BY MRS. THOMPSON

The District Manager's decision of March 25, 1971, denied in part an application for renewal of a grazing lease filed by Douglas V. Livingston, Judy E. Livingston, and Clinton L. Livingston, pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). The decision approved a lease to the Livingstons as to certain lands and took other action not challenged by this appeal. The appeal concerns only the denial of a renewal of lease as to lands designated in the decision as Parcel B, and the award of that parcel to Willard C. Rhoads.

Rhoads filed an application on November 20, 1970, for lands in grazing lease 49016998, which expired February 15, 1971. Appellants on January 27, 1971, filed an assignment of that lease to them from the then lessee of the land, William Reed, and their application for the renewal of that lease and another (49016937). As to the lands in conflict in the renewal application of the Livingstons and in the Rhoads application, the District Manager awarded lands designated as Parcel A, containing 681.43 acres, to the Livingstons; and lands designated as Parcel B, containing 648.61 acres, to Rhoads.

In challenging the partial denial of their application, appellants contend first that the lands in the existing lease were not open to Rhoads' conflicting application. They reason that the assignments of the lease and transfer of interests in the base lands to them on the same date were not the equivalent of a relinquishment and did not open the assigned tracts to further disposal or application by a third party, citing a Bureau of Land Management decision, Kena, Inc., Carl R. Krueger, and E. O. Sowerwine, Jr., Cheyenne 058743 (November 5, 1957). Although that decision held that a proposed assignment of a valid grazing lease is not the equivalent of a relinquishment and does not open the assigned tract to further disposal or application by third parties, the case was only concerned with a conflicting lease application filed at least five years before the lease was to expire. Regulations control the situation before us. As indicated in 43 CFR 4125.1-1(a)(4), there is no right to a renewal even though an application for renewal of an existing grazing lease is timely filed. Furthermore, conflicting applications for lands in existing leases are permitted in accordance with 43 CFR 4125.1-1(a)(3) (1972), which provides:

Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. * * *

As Rhoads' application for a lease for lands within the expiring lease was filed in accordance with this regulation, there is no merit to appellants' contention that the lands in the lease were not subject to conflicting applications.

Appellants also contend that Rhoads is precluded from obtaining a lease for the parcel in question because of his written agreement dated December 10, 1961, whereby he withdrew a conflicting application for lease on these lands, and authorized construction of a pipeline for watering stock in the area in question. There is no

merit to this contention. Nothing in the agreement between two private parties purports to have the effect which appellant ascribes to it. It certainly has no binding effect upon this Department's determination of proper awards of lands years thereafter. At most, it is one fact in the historical milieu of this case which has been considered in trying to resolve the conflicts to the land.

Appellants assert that the parcel of lands in question have been a part of the ranch operation being leased by them since the enactment of the Taylor Grazing Act. They assert that they need the lands in order to operate an economical livestock operation on their ranch. They assert further that they are working on plans to utilize these lands in question with their other lease and deed lands, and they are studying possibilities for other water development in the area through construction of reservoirs, drilling wells, etc.

The historical use of the land and appellants' need for it were considered by the District Manager. He found that both applicants are qualified preference right applicants and display an equal complementary need for Parcel B. Although the parcel had been leased to appellants' predecessors, the District Manager stated that there had been continuous changes in the lessees and assignees of the base property. He stated that " * * * good range management has not been followed throughout this time." The livestock concentration has been in a certain area near water, while the less accessible upper reaches, which include this parcel, have received little or no grazing use, and there has been no development of water there. The District Manager described the parcel as follows:

This parcel is fenced on the north, east, and south. There is an extremely steep ridge just off this parcel on Broken H's contiguous land that limits livestock movement from Mr. Livingston's other properties. The topography on the parcel is rugged but does not contain ridges within its bounds that would restrict livestock movement once they enter onto this parcel. The grade is steep and toward the east and south but does not contain ridges that would restrict livestock movement from Mr. Rhoad's contiguous lands. The federal lands involved contain no surface water. Water found on Broken H's contiguous property could not adequately service this parcel due to the topography. Water located on Mr. Rhoad's contiguous properties could service this parcel of federal land.

He concluded that because of the historical use, topography, and proper range management, the parcel should be leased to Rhoads. Appellants have failed to show a greater need for the land than Rhoads or that the range may be managed better if the parcel is

awarded to them. It appears there are reasons to support the District Manager's determination that proper management of the parcel will be achieved if the change is made, in view of the history of limited use, the topography, access, and water problems involved. See 43 CFR 4121.2-1(d)(2); cf. Victor Powers and Florence Sellers, 5 IBLA 197 (March 20, 1972), which reversed a District Manager's award to a conflicting applicant because proper management of the leased land could be obtained from either equal preference right applicant. The case here is different. As there is no persuasive reason establishing that the division of the land between the conflicting applicants was inequitable, contrary to sound range management, or inconsistent with other regulatory criteria, the decision below will not be disturbed. Thomas W. Dixon et al., 1 IBLA 199 (1970); Camp Creek Cattlemen's Association, Charles D. Miller, Robert E. Miller, A-30418 (October 28, 1965).

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

Joan B. Thompson, Member

We concur:

Frederick Fishman, Member

Anne Poindexter Lewis, Member

