

THOMAS W. DIXON

IBLA 72-376

Decided February 22, 1973

Appeal from a Bureau of Land Management District Office, Casper, Wyoming, decision denying a grazing lease renewal application (W6-72-1(15)).

Affirmed.

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

A division of lands for leasing purposes among preference-right applicants on an equal plane of preference, made in accordance with the pertinent regulation, will not be disturbed where a review of all factors involved indicates that the division was equitable.

Rules of Practice: Appeals: Generally

A district manager's decision will not be altered where the appellant submits no evidence to support his contention that it was in error.

APPEARANCES: Charles R. Spratt, Esq., Buffalo, Wyoming for the appellant.

OPINION BY MR. RITVO

Thomas W. Dixon has appealed to the Secretary of the Interior from a decision dated March 17, 1972, by the Bureau of Land Management District Manager, Casper, Wyoming, denying his application for a grazing lease pursuant to section 15 of the Taylor Grazing Act, 43 U.S.C. § 315(m) (1970), on the grounds that (1) a portion of the lands applied for are properly leased to a neighboring rancher, and (2) the remaining lands which he has held under a one-year lease were not to be released to him because he had failed to comply with the stipulations and conditions imposed in his prior lease.

The current controversy involves two grazing lease applicants with conflicting claims for section 21, T. 51 N., R. 78 W., 6th P.M., Wyoming. The conflict between Dixon and the Lawrences was considered

by this Board in a recent decision. In Thomas W. Dixon, Charles K. and Dorothy Lawrence, 1 IBLA 199 (1970), we affirmed a 1968 District Manager's decision, which awarded Dixon a lease for 345 acres of section 21 including portions of the NE 1/4 NW 1/4, NW 1/4 NW 1/4; the SW 1/4 NW 1/4 in entirety; portions of the SE 1/4 NW 1/4, NE 1/4 SW 1/4; the W 1/2 SW 1/4, SE 1/4 SW 1/4 in their entirety; portions of the NE 1/4 SE 1/4, NW 1/4 SE 1/4; the S 1/2 SE 1/4 in entirety. The decision leased the remaining acreage of section 21 to Charles K. and Dorothy B. Lawrence. Section 21 was divided roughly in half by a diagonal line running from a bit north of the southeast corner to a bit east of the northwest corner.

On January 24, 1972, Dixon filed a lease renewal application for all of section 21. On February 9, 1972, the Lawrences filed an application to renew their grazing lease on the portions of section 21 previously awarded to them. These included the NE 1/4 in entirety; portions of the NE 1/4 NW 1/4, NW 1/4 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4, NE 1/4 SE 1/4, NW 1/4 SE 1/4. Since Dixon has applied for a lease covering all of section 21, the two lease applications are in conflict over the lands formerly awarded to the Lawrences.

The present division of section 21 was established by the District Office in 1968 to resolve conflicting lease applications filed by Dixon and the Lawrences. In that decision, the District Office concluded that neither party had any positive need for the lands and that in both instances the public lands were to supplement rather than to complement the private lands. Therefore, the Bureau presented a new range line agreement which divided the lands along the best line available and stipulated that each user would share in building a division fence. The District Office opinion stated:

It is a condition to the granting and continued effectiveness of any future grazing lease that Mr. Thomas W. Dixon and Charles K. and Dorothy D. Lawrence shall each construct their designated one half of a division fence * * * within the effective lease period. A division fence shall be constructed under signed cooperative agreement with the Bureau of Land Management. The Bureau of Land Management will furnish the land, staked fence line and fence specifications. The cooperators will furnish the materials and labor necessary to construct the fence. This action is provided for under 43 CFR 4125.1-1(i)(11), 43 CFR 4125.1-1(h); 43 CFR 4125.1-4(a)(6).

Dixon and the Lawrences entered in a cooperative agreement with the Bureau of Land Management to construct the division fence.

An inspection made on August 27, 1971, found that the Lawrences' part of the fence had been completed according to specifications. However, no work had been done on Dixon's portion of the fence. A later investigation made on March 10, 1972, revealed that the Dixon share of the fence had not been completed and no evidence was visible that an attempt had been made to construct the fence.

In his decision denying Dixon's application to lease that portion of section 21 previously awarded to the Lawrences, the District Manager held the previous Departmental decision resolved the issue of who was entitled to lease which portions of section 21 and by reapplying for the lands awarded to the Lawrences, Dixon was attempting to reopen and maintain a prolonged conflict. The decision further denied that portion of Dixon's application which sought renewal of his existing grazing lease. Relying on the inspections by the two Bureau of Land Management employees, the District Manager found that Dixon had failed to comply with the lease stipulations and conditions.

Dixon's appeal, filed on April 18, 1972, listed the following reasons for requesting a reversal of the District Manager's decision. First, Dixon argues that he is entitled to a lease preference for section 21 due to his position as an adjoining landowner. Second, the failure to construct a fence as required by the lease agreement allegedly was not his fault. Dixon gives three justifications which include the Lawrences' removal and destruction of his fencing, a heart attack suffered during the fall of 1971, and excessive amounts of moisture during 1971 making the area totally inaccessible. Third, the appellant charges that the 1968 land division by the Bureau of Land Management effectively denied him access to tracts under his control.

This Board has carefully considered the appellant's arguments on appeal and concludes that the District Manager's decision should be affirmed. The appellant's first argument that he alone has a preference right to section 21 due to his ownership of adjoining lands is without merit. It is clear from section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970), that the Lawrences are entitled to a preference equal to Dixon. While Dixon owns lands adjoining section 21, the Lawrences have a state lease on section 16, T. 51 N., R. 78 W., which also adjoins section 21. The Taylor Grazing Act states that "preference should be given to owners, homesteaders, lessees, or lawful occupants of contiguous lands." (Emphasis added.) Therefore, Dixon has no greater preference than the Lawrences to the lands of section 21. Since both are preference-right applicants on an equal plane of preference, the division by the District Manager, if made in accord with the pertinent regulation, 43 CFR 4121.2-1(d), will not

be disturbed since all the factors indicate an equitable division. Abraham Lorenz, A-29918 (May 25, 1964); Hamilton H. Fox, A-28882 (May 24, 1962); Paul A. Kropp, Larson Brothers, A-27490 (October 25, 1957).

The District Manager also properly refused to renew Dixon's lease for that portion of section 21 previously leased to him. A future lease of this area was conditioned on Dixon constructing his portion of the fence. This he failed to do. His explanations for his failure are not persuasive. The District Manager, in commenting on Dixon's appeal, informs us that fence building and repairing are usually done from June through October, Dixon's illness came after the fence building season had passed, and the area received less precipitation than usual during the fence building season.

Dixon's final contention that the 1968 division created natural barriers to his lands will not be considered anew since it was settled by the prior proceeding and Dixon now presents nothing not considered before. Dixon was aware of his obligations under the previous lease agreement and he failed to meet them.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Manager is affirmed.

Martin Ritvo, Member

We concur:

Douglas E. Henriques, Member

Frederick Fishman, Member

