

WILLIAM J. GREENWALD
v.
LAURENCE A. ANDREN

IBLA 73-230

Decided August 28, 1973

Appeal from decision (W1-73-3(15)) by District Manager, Worland, Wyoming, Bureau of Land Management, resolving grazing lease conflict.

Affirmed.

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

Where two preference right applicants apply for a grazing lease for the same area of federal range land, and it is determined that one of the applicants, who held the land under a prior lease, entered into an agreement to sublease federal range land to a third party, the conflict is properly resolved by awarding a lease for the lands in issue to the other qualified applicant.

APPEARANCES: Charles G. Kepler, Esq., Simpson, Kepler & Simpson, Cody, Wyoming, for appellant; J. D. Fitzstephens, Esq., Goppert & Fitzstephens, Cody, Wyoming, for appellee.

OPINION BY MR. FISHMAN

William J. Greenwald has appealed from a decision (W1-73-3(15)) by the District Manager, Worland, Wyoming, of the Bureau of Land Management, dated November 16, 1972, resolving a grazing lease conflict. Laurence A. Andren has filed an answer and a cross! appeal.

Both parties applied for grazing leases under section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970).

Greenwald's application was for a renewal of his existing lease embracing approximately 861 acres. Andren's application was for a lease embracing approximately 421 acres of the same land applied for by Greenwald.

The District Manager, by a decision dated October 22, 1970, rejected Andren's application and allowed the application of Greenwald in toto. Andren appealed on the basis that Greenwald was not a qualified preference right applicant because Greenwald had entered into a lease agreement whereby he leased his private lands, and apparently subleased federal range lands, to a third party, John Fernandez. At the time the appeal was decided, the lease agreement between Greenwald and Fernandez had expired, and the record did not reflect the then existing situation. The case was accordingly remanded to the District Manager to determine whether Greenwald was a qualified preference right claimant. Andren v. Greenwald, 7 IBLA 14 (1972).

On remand, by decision dated November 16, 1972, the District Manager offered a renewal grazing lease to Greenwald embracing 440 acres and awarded the lands in conflict to Andren on the basis that Greenwald violated 43 CFR 4125.1-1(g) which provides in part:

No part of the lease land may be subleased by the lessee.

Appellant argues that the District Manager's decision of November 16, 1972, should be reversed because the Greenwald! Fernandez lease agreement did not include federal lands. In support of his argument appellant asserts that the District Manager, in his decision of October 22, 1970, found that the Greenwald! Fernandez lease did not "effect (sic) the conflict." In response, we only point out that when the decision of October 22, 1970, was appealed by Andren, the case was remanded to the District Manager because the Board was of the opinion that the Greenwald! Fernandez lease agreement did, in fact, affect the conflict. A lessee of a grazing lease is not permitted to sublease any part of the federal range leased to him. 43 CFR 4125.1-1(g). In any event, to dispel all doubt, we find that the Greenwald! Fernandez lease did include federal lands, 1/ and that the District Manager properly

1/ The Greenwald! Fernandez lease agreement provided that the "[l]essor shall pay * * * lease rentals, and grazing fees charged against the leased property * * *." Obviously Greenwald, as lessor, would not pay grazing fees on land which he owns. In view of this language in the lease and the other circumstances in the case, the conclusion is inescapable that the lease agreement included federal range land.

considered Greenwald's violation of 43 CFR 4125.1-1(g) in resolving the conflict in favor of Andren. See J. P. Wilson, A-24183 (April 12, 1946). We note that appellant now owns only 32 head of livestock, in contradistinction to the 161 head he claimed in 1970. Appellee's application showed ownership of 58 head. It appears that appellee can utilize the lands in conflict to better advantage than appellant. See Sage Creek Cattle Association, A-24568 (July 29, 1948); Paul Gray, A-25708 (July 8, 1949).

The cross! appeal filed by Andren is based upon his contention that Greenwald has lost control 2/ of his base lands through an oral agreement with Fernandez. The District Manager found that while Greenwald has a verbal agreement with Fernandez whereby Fernandez uses approximately 82 acres of Greenwald's private land, Greenwald's remaining private land, contiguous to the federal land in issue, is controlled by Greenwald. We perceive no reason to disturb the District Manager's determination on the bald assertion made by Andren that Greenwald has lost control of his contiguous base lands. If the situation changes, however, and Greenwald does lose ownership or control of his base lands, his grazing lease will be subject to termination. Joseph Rebich, A-27491 (January 13, 1958); Orin L. Patterson, 56 I.D. 380 (1938); 43 CFR 4125.1-1(i)(4).

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

Frederick Fishman
Member

We concur:

Joseph W. Goss
Member

Douglas E. Henriques
Member

2/ For a discussion of the word "control" in connection with base lands, see Harry Grabbert, 12 IBLA 255 (1973).

