

FREDERICK & NIDA GORWILL

IBLA 74-221

Decided August 26, 1974

Appeal from decision of the Area Manager, South Dakota Area Office, Bureau of Land Management, renewing a grazing lease and rejecting a conflicting lease application.

Affirmed.

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

An Area Manager's renewal of a grazing lease and the denial of a conflicting lease application will not be disturbed where both applicants have equal preference rights and the award was based upon regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

APPEARANCES: Frederick and Nida Gorwill, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Frederick and Nida Gorwill have appealed from a January 23, 1974, decision of the South Dakota Area Manager, Bureau of Land Management, which rejected their application for a grazing lease, under section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970).

The decision appealed from was an adjudication of two conflicting applications for the same 80 acres described as the E 1/2 NE 1/4 Sec. 17, T. 9 N., R. 2 E., B.H.M., Butte County, South Dakota. The Gorwills filed their application on December 17, 1973. An application for a renewal lease was also filed by Norman E. Durr on January 16, 1974.

The public lands in question have been historically leased to the Durr family. The land is also fenced into Durr's pasture and fenced off from Gorwills' land. For these reasons the Area Office renewed the Durr lease and rejected the Gorwill application.

On appeal the Gorwills indicate they are aware of Durr's historical use but they still express their need for the land in connection with their own grazing operation.

The action of the Area Manager in this instance was taken in consonance with the guidelines for adjudication of conflicting applications set forth in 43 CFR 4121.2-1(d)2 as follows:

The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements. (Emphasis added.)

Durr and his family have historically held the lease to this land. There is no indication in the record of poor range management, abuse of the range, or other reasons of this type dictating a need for a change in the range user. Where proper range management will be served by awarding the lease to either of the two conflicting applicants, it has been held that there should not be a change from the long-time user to a new applicant unless there are convincing reasons to support the change. John Ringheim, 10 IBLA 270 (1973); Victor Powers and Florence Sellers, 5 IBLA 197 (1972).

Although appellants have indicated an obvious need for this grazing land, they have not demonstrated a greater need than Norman Durr. Nor have they shown that the range would be managed any better than it has been if the land was awarded to them. Under these circumstances the decision of the Area Manager will not be disturbed. Dick Reckman, 8 IBLA 227 (1972); Thomas W. Dixon, 1 IBLA 199 (1970).

Accordingly, 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.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

