

ROBERT D. LIUDAHL and  
GRETA M. LIUDAHL

IBLA 74-154

Decided September 12, 1974

Appeal from decision (OR-01-74-1) of Acting District Manager, Lakeview, Oregon, Bureau of Land Management, denying appellant exclusive grazing privileges on some 900 acres.

Reversed and remanded.

1. Grazing Leases: Applications--Grazing Leases: Preference Right Applicants

Where a person, claiming a preference right to a section 15 grazing lease for a tract of public land of some 900 acres, is not an owner, lessee, or other lawful occupant of private land contiguous to the public land tract, such person does not have such a preference right, even though he holds, as a BLM lessee, contiguous public land previously leased to him.

2. Administrative Practice--Grazing Leases: Generally--Grazing Leases: Apportionment of Land--Grazing Leases: Preference Right Applicants

Where a district manager's decision divides the section 15 grazing use of a 900-acre tract between the two applicants therefor on the assumption that both are qualified preference right claimants, and it is found on appeal that one of the applicants, B, is not so qualified, the entire tract is properly awarded to A, the preference right claimant, where it is found that the lands in issue are necessary "to permit the proper use of such contiguous lands." 43 CFR 4121.2-1(c).

APPEARANCES: Robert D. Liudahl and Greta M. Liudahl, Bonanza, Oregon, pro se; Mr. and Mrs. Bruce M. Robertson, Bonanza, Oregon, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Robert D. Liudahl and Greta M. Liudahl have appealed from a "final" decision dated November 9, 1973, issued by the Acting District Manager, Bureau of Land Management, Lakeview, Oregon. That decision in essence adopted the District Manager's "proposed decision" of September 28, 1973.

Those decisions offered appellants and Ronald and Greg Williams 1/ 45 AUMs for each group for joint or common use of a parcel of some 900 acres, called the Harpold Chaining tract.

Appellants object to this procedure, asserting that running cattle of two or more owners together poses difficult problems.

We find it unnecessary to discuss appellants' contentions at length, since there is another matter in the record dispositive of the appeal.

Appellants own two 40-acre tracts which adjoin Harpold Chaining for 3/4 of a mile. These tracts are described as the SE 1/4 SW 1/4 sec. 22, and the SW 1/4 NE 1/4 sec. 27, T. 39 S., R. 11 E., W.M., Oregon. The Williamses do not own any fee land contiguous to the Harpold Chaining, but do have a contiguous BLM grazing lease covering the E 1/2 NE 1/4, NE 1/4 SE 1/4 sec. 29, T. 39 S., R 11 E., W.M., Oregon.

[1] The governing regulation concerning allocation of lands between conflicting section 15 grazing applicants is 43 CFR 4121.2-1(c), which reads as follows:

(c) Applicants. Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of

---

1/ The Williamses have disposed of their ranch to Bruce M. and Elizabeth Robertson.

such tract, upon terms and conditions prescribed by the Secretary: Provided, That the preference right be asserted during a period of 90 days after such tract is offered for lease. (Emphasis supplied.)

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

Since the tract consists of more than 760 acres, the first sentence of the regulation applies. Appellants, as the only "owners, lessees, or other lawful occupants of contiguous private lands," are the sole preference right claimants. Harry & Marjory Grabbert, 11 IBLA 313 (1973). Applicants for grazing privileges on areas aggregating more than 760 acres can claim a preference right only if the base lands possess three coexistent qualifications: nonpublic land status, contiguity to the lands to be leased, and need for the leased lands. Claude G. Burson, 59 I.D. 539, 544 (1947). The District Manager found that appellants and the Williamses had a need for supplementary feed. Only appellants meet the other two criteria.

[2] It follows that appellants are the sole qualified preference right claimants. However, this status does not necessarily vest in them the right to section 15 grazing use for the entire 900-acre tract. The regulation, 43 CFR 4121.2-1(c)(1), grants them a preference "to the extent necessary to permit proper use of such contiguous lands." The rights of the contiguous applicants are to be determined before any consideration is given to the noncontiguous applicants. This procedure is in consonance with Winchester Land & Cattle Co., 65 I.D. 148, 156 (1958):

As between contending applicants who are both owners of contiguous land and who therefore stand on the same plane of equality, an award must be made to the one who has the greater need of the public land to permit proper use of his contiguous land. As between contending applicants only one of whom owns contiguous land, an award must be made to him if he needs the public land for proper use of his contiguous land, even though if all factors could be considered the non-owner of contiguous land has a far greater need of the public land for grazing purposes. The rights of the contiguous applicant are to be determined before any consideration is given to the noncontiguous applicant. See Roscoe L. Patterson v. Craig S. Thorn, 60 I.D. 11 (1947); E. Ray Cowden and Violet F. Kuns, A-24559 (November 22, 1948).

To the same effect see Patterson v. Thorn, 60 I.D. 11, 14 (1947).

The record supports the view that the lands in issue (the 900-acre tract) are necessary "to permit the proper use of such contiguous lands" as are owned by appellants.

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 reversed and the case remanded for appropriate action not inconsistent herewith.

---

Frederick Fishman  
Administrative Judge

We concur:

---

Douglas E. Henriques  
Administrative Judge

---

Anne Poindexter Lewis  
Administrative Judge

