

LAVETA ACRES

IBLA 74-232

Decided September 16, 1974

Appeal from a decision partially rejecting a section 15 grazing lease application (Colo.).

Affirmed.

1. Grazing Leases: Generally--Grazing Leases: Applications

A decision of a District Manager rejecting an application for a section 15 grazing lease will be affirmed in the absence of a showing that the decision is arbitrary or capricious because it does not have a rational basis.

2. Grazing Leases: Generally--Grazing Leases: Applications

An application for a grazing lease is properly rejected where the District Manager has determined that the land is unsuitable for grazing because it is mostly barren talus slope, the topography is excessively steep and no forage is available for grazing purposes.

APPEARANCES: George A. Dubois, Esq., Branch, Dickson, Dubois & Wilson, P.A., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

On April 2, 1973, LaVeta Acres, a partnership, applied for a grazing lease under section 15 of the Taylor Grazing Act, 48 Stat. 1275, as amended, 43 U.S.C. § 315m (1970). On January 29, 1974,

the Canon City District Manager, Bureau of Land Management, partially rejected the application. The decision stated:

The acreage that can be determined at this time as unsuitable for grazing is as follows:

T. 28 S., R. 69 W., 6th P.M., Colorado

Sec. 31: NE 1/4, NE 1/4 NW 1/4, NE 1/4 SE 1/4, and Lot 1

Sec. 32: N 1/2 NE 1/4, SW 1/4 NE 1/4, NW 1/4, N 1/2 SW 1/4, NW 1/4 SE 1/4

The above described lands are mostly barren talus slope, and topography is excessively steep. By virtue of these factors, application for lease on this portion should be rejected.

Appellant asserts that despite the barrenness and steepness of the tract, the land is susceptible to use as grazing land and has, in fact, been leased as grazing land in the past. Appellant concludes, "No other person or persons have apparently applied for a lease of the above described land and even though the grazing use may be minimal, there is no reason that the lease should be completely denied."

[1] A decision of a District Manager rejecting an application for a section 15 grazing lease will be affirmed in the absence of a showing that the decision is arbitrary or capricious because it does not have a rational basis. Claudio Ramirez, 14 IBLA 125, 127 (1973). We do not feel that appellant has made this showing. Appellant has only indicated that it is willing to accept and pay for a lease which has little if any value for grazing; it has not shown that the decision of the District Manager is arbitrary or capricious. Although appellant alleges that the land is "susceptible" to use as grazing land, there is no indication how it may be used or how appellant is injured in its grazing operations by denial of this parcel of land. In addition, appellant's contention that the area is "susceptible" to grazing is not credible in the face of the field report which states the area is 90 percent talus, or rock. There is no showing in the record that the area has any grazing capacity whatsoever. It is implicit in the regulations that land with no grazing capacity should not be leased. See 43 CFR 4121.2-1. Past leasing of a tract for grazing does not mandate its continued leasing where the land is not suitable for such use.

[2] We find that the District Manager's decision that the land is unsuitable for grazing because the land is mostly barren and its topography is excessively steep is supported by rational considerations, and we affirm the decision. See Irvin Baker, 15 IBLA 92, 94 (1974); Douglas F. Peterson, 13 IBLA 351, 353 (1973). The lack of forage available for grazing also supports this conclusion. See 43 CFR 4121.2-1.

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.

Joan B. Thompson
Administrative Judge

We Concur:

Martin Ritvo
Administrative Judge

Douglas E. Henriques
Administrative Judge

