

JOSE ANTONIO SANCHEZ, APPELLANT

THOMAS M. POUNDS, APPELLEE

IBLA 74-293

Decided September 16, 1974

Appeal from the decision of the Albuquerque District Manager, Bureau of Land Management, by which a division of land was made between two applicants for grazing leases of the same land.

Affirmed.

1. Grazing Leases: Apportionment of Lands

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.

APPEARANCES: J. A. Sanchez, pro se., G. W. Hannett, Esq., Albuquerque, N. M., for appellee.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal concerns a parcel of public land comprising 1120 acres in the Albuquerque, New Mexico, district of the Bureau of Land Management. Thomas M. Pounds held a grazing lease covering the entire tract from 1963 to 1973. 1/ Upon expiration of his

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1/ In his brief Pounds alleges that he has actually held grazing leases on this entire tract since 1946, although this cannot be verified from the record before us.

lease Pounds applied to renew the lease and Jose Antonio Sanchez also filed an application to lease the entire tract for grazing. Both Pounds and Sanchez own and control lands contiguous to the subject parcel, Pounds' lands adjoining on the northwest and northeast, and Sanchez' land adjoining the south boundary.

In accordance with the regulation, 43 CFR 4121.2-1(d), Bureau personnel provided an opportunity for the conflicting applicants to arrive at an amicable agreement for a division of the lands. Bureau representatives met with the parties once at the district office and once on the land in question. As a consequence of these discussions each of the parties agreed to amend his application somewhat, Sanchez yielding the northern 280 acres which lies between the lands controlled by Pounds, and Pounds yielding the 240 acres at the southern end of the tract, adjacent to the Sanchez land. Even so, this left 600 acres still in conflict, which the parties were unable to resolve by mutual agreement.

Thus the District Manager was obliged to determine what division, if any, was equitable and appropriate. By his decision of March 8, 1974, the Manager awarded a lease for the southern portion, comprising 440 acres with a grazing capacity of 53 animal unit months (AUMs) to Sanchez, and allocating the northern portion, comprising 680 acres rated at 93 AUMs, to Pounds. The Manager's decision further required that the division line of 1.25 miles length be fenced by Sanchez.

Sanchez has appealed from this decision, stating:

I am unable to accept the decision made by the District Manager on the amount of land allocated to me because of the following reasons:

1) The amount of land is not enough and suitable for my livestock operation. I believe that at least 3/4 of this land is of alkali formation and therefore not suitable for livestock grazing.

2) Construction of 1.25 miles of fence is required by me, and I have estimated the cost to be \$ 1,105.00 not including labor. I believe that it would be useless to construct a fence around an alkali bed lake.

3) I believe that I have more need for this land and that this land is excessive to the present lessee's need.

In general

With amount of land allocated I cannot accept any condition required in this decision.

Pounds, through his attorney, has filed an answer to the Sanchez appeal in which he asserts that he, too, is dissatisfied with the decision but refrained from taking an appeal because he "was trying to get along." Pounds asserts that he has used this land since 1946, that it is an integral part of his operation, that he normally runs 400-450 cattle but that the loss of the leased land or a portion thereof will force him to cut his operation by at least 70 animal units. He further states that the value of one of his private properties, known as the Sapp Ranch, will be diminished if the leased lands are lost to his use, as the leased lands provided winter grazing for this ranch. Pounds points out that the exterior boundary of the entire federal tract is now fenced and that he himself built part of this fence and rebuilt most of the rest of it. Pounds also alleges that Sanchez has not conducted ranching operations until the last year or two. Pounds argues that the entire tract, by its very nature, can best be utilized by one operator, and he asks that the District Manager's decision be vacated and the entire tract be leased to him so that he might continue his existing operations. Alternatively, he asks that the District Manager's decision be affirmed.

The Area Manager's report of the physical circumstances show that Pounds has a water well on his private land nearly two miles from the south boundary of the tract in question, and as the examination of the land progressed from north to south there was evidence of ever-lighter use, until the south end appeared to be unused by Pounds' cattle. Sanchez has a spring on his deeded land near the southern boundary of the federal land which could serve the cattle grazing the southern portion of the tract. The tract contains two dry alkali lake beds which are regarded as unusable for grazing, and the Area Manager found that it would be appropriate to fence between the lake beds. (The District Manager's decision notes that the Sanchez allocation includes 150 acres of unusable alkali lake bed, while Pounds' allotment includes 170 acres of such land). Based upon the information gathered and the appearance of the land, the Area Manager concluded that Sanchez has greater need of the southern portion of the tract than does

Pounds. Sanchez' use, he found, would complement the use of his private land, whereas the use of the southern portion by Pounds would serve only a supplemental need.

Appellant's contention that he is not being given enough land to meet his need is immaterial, since the United States cannot be expected to provide sufficient land to meet the requirements of an applicant's livestock operation, particularly a new or expanding operation such as appellant apparently has. His statement that it is mostly of alkali formation and not suitable for livestock grazing is not borne out by the Area Manager, who reported the southern portion of the range to be virtually unused, the vegetation in excellent condition, and better than the northern portion, which was allotted to Pounds. Appellant complains of the cost of constructing the division line fence, saying that it would be useless. However, he does not explain why it would be useless, nor does he acknowledge that the exterior boundaries of his lease are already fenced over a distance of 2.75 miles, from which he will benefit. Moreover, after the division fence is constructed, Pounds is required by the decision to accept the maintenance responsibility for the west half of the fence.

Appellant's stated belief that the northern portion is excessive to Pounds' needs and that he (Sanchez) has greater need for it is totally unsupported by anything in the official record or anything submitted by the appellant.

The District Manager was obliged by regulation to allocate the use of the land on the basis of any or all of the factors enumerated in 43 CFR 4121.2-1(d)(2). These factors are:

(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.

Considering the factor of historical use in isolation, Pounds would be preferred to receive a lease of all the land and Sanchez would get none. Similarly, it appears that Pounds has never abused his grazing privileges on this land over the past 20 years and the range has been maintained in good condition, so that proper range management does not require that any of Pounds' former lease be given to Sanchez. However, the location of the water sources

does indicate that cattle in the southern portion of the tract could better utilize the forage if they had water available to them from Sanchez' spring. By the same token, cattle in the northern part of the tract would not make the best utility of that forage if deprived of the water from Pounds' well. The general needs of each of the applicants appears to have been met to the extent possible by the compromise reached by the Manager. The alkali lake beds are so situated that unless the division line and fence is placed between them, the only other line which would not cross a lake bed would have to be placed so far north as to practically eliminate any use by Pounds, or so far south as to eliminate most of the intended use of Sanchez. Access to the land at either end is apparently not a factor, nor are there other land use requirements which bear on the result.

[1] 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 of the factors involved indicates that the division was equitable. Thomas W. Dixon, 10 IBLA 19 (1973); Dick Reckman, 8 IBLA 227 (1972); Douglas V. Livingston, 8 IBLA 61 (1972); Thomas W. Dixon, 1 IBLA 199 (1970).

Our review indicates that all of the relevant factors were properly taken into account by the District Manager in reaching his decision, and that the division of the land between the parties is as equitable as the circumstances and conditions will allow.

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.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Frederick Fishman  
Administrative Judge

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Martin Ritvo  
Administrative Judge

