

ALAN G. HAIGH

IBLA 73-409

Decided December 31, 1974

Appeal from a decision by the Folsom, California, District Office, Bureau of Land Management, partially canceling appellant's grazing lease 04046948.

Affirmed.

1. Grazing Leases: Base Property (Land): Transfers

The provisions of 43 CFR 4115.2-2(b) are applicable only to land within grazing districts and are not applicable to leases held under section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970).

2. Grazing Leases: Cancellation and Reductions

Under 43 CFR 4125.1-1(i)(4), a preference right grazing lease will be terminated pro tanto upon loss of control by the lessee of non-Federal lands which have been recognized as the basis for the grazing lease, and where lessee has not applied to substitute other preference land which he controls, it is not necessary to consider whether section 4125.1-2(a) could be construed to authorize substitution.

APPEARANCES: Alan G. Haigh, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Alan G. Haigh has appealed from a decision issued April 5, 1973, by the Folsom District Office, Bureau of Land Management, partially canceling his preference right grazing lease. 1/ The reason for

1/ The portion of the lease based on lands contiguous to appellant's home ranch was not canceled.

such cancellation was that appellant had lost control of a portion of non-Federal land which was recognized as a basis for part of his lease.

In June 1969, appellant made proper application for all national resource lands previously under preference right lease to his deceased father. ^{2/} In the application, the Dunn Ranch lease and the Haigh Ranch were listed as private lands upon which appellant based his preference right. The Dunn Ranch is contiguous to three separated parcels of national resource lands which are the subject of this appeal. The grazing lease, covering 6338.64 acres in Tuolumne and Mariposa Counties, was renewed for nine years, eleven months. By its terms, the preference lease was subject to the Haigh Allotment Management Plan which cited appellant's control of most of Dunn pasture. Subsequently, appellant's lease on the Dunn Ranch expired. Appellant continued to run his cattle on such land for two years. In 1972, two other livestock operators began grazing the ranch and appellant was excluded.

On January 26, 1973, the District Office, acting pursuant to 43 CFR 4125.1-1(h) and (i)(4), ^{3/} sent appellant a show cause notice stating that the Dunn Ranch was the recognized base land for the area in question and requesting appellant to submit reasons why his lease should not be partially canceled. After appellant responded to such notice, ^{4/} the District Office issued its decision on April 5, 1973, canceling 1910.20 acres of appellant's grazing lease, that acreage being the grazing land tied to the Dunn Ranch. The decision concluded that, since appellant had lost the lease on the Dunn Ranch, the grazing lease should be terminated to the extent that such non-Federal lands had been recognized as the basis for the grazing lease.

In his statement of reasons appellant admits the Dunn Ranch is now under the management of a recreational planning group and is not base land, and he requests a transfer of the lease to his home ranch as base land "as in Sec. 4115.2-2(B)." The home ranch is not contiguous to the leased land under consideration.

[1] Part 4110 of 43 CFR, including section 4115.2-2(b), relates to section 3 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315b (1970), which governs permits and licenses within a grazing district.

^{2/} See Grazing Lease Expiration Notice, May 29, 1969.

^{3/} 43 CFR 4125.1-1(i)(4) provides:

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

^{4/} In appellant's response he mentioned that he controlled other contiguous land but did not specify where it was located, nor did he request that the lease be transferred or assigned to such land.

Appellant holds a section 15 lease, Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). For that reason, section 4115.2-2(b) is not authority for a transfer. Because appellant's home ranch is not contiguous to the leased land in question, and appellant has not applied for substitution of other preference land, it is not necessary to determine whether section 4125.1-2(a) could be construed to authorize any such substitution.

[2] Appellant's arguments on appeal have been reviewed and are found not to warrant reversal of the decision below. Under the facts of record, section 4125.1-1(i)(4) requires termination of the lease, for appellant has lost control of the non-Federal lands which have been recognized as the basis for the preference right lease.

While the District Office acted as required in canceling a portion of appellant's lease, such action does not prevent appellant from reapplying for such lands.

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.

Joseph W. Goss
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING SPECIALLY:

I agree that the result is mandated by the regulations. I would only add that I believe a lease must be cancelled because of loss of the contiguous lands which gave the preference for the lease even if other contiguous lands have been acquired by the lessee. I reject any implication raised by posing the question whether other lands could be substituted for the lost contiguous lands so as to give a right to continue the lease. Rather, I believe a new application would have to be made which would require a new adjudication by the Bureau. Such adjudication would include considering any conflicting applications and a determination made in accordance with 43 CFR 4121.2-1(c) and (d).

Joan B. Thompson,
Administrative Judge.

