

GEORGE ANNIS

IBLA 75-216

Decided April 25, 1975

Appeal from decision of the District Manager, Casper, Wyoming, District Office, Bureau of Land Management, renewing a grazing lease and rejecting a conflicting lease application.

Affirmed.

1.     Grazing Leases: Applications -- Grazing Leases: Preference Right  
Applicants -- Grazing Leases: Renewal  
A District 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 the regulatory criterion of historical use and there are no convincing reasons warranting a change of lessee.

APPEARANCES: George Annis, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

George Annis has appealed from a decision of the District Manager, Casper, Wyoming, District Office, Bureau of Land Management, dated June 25, 1974, which rejected his 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 lands situated in sections 7, 8 and 18, T. 30 N., R. 82 W., 6th P.M., Wyoming. Appellant filed his application on February 12, 1974. An application for a renewal lease was filed by the Miles Land and Livestock Company on March 13, 1974. Miles' prior 10-year lease was issued May 6, 1964.

The public lands in question have been historically leased to the Miles Land and Livestock Company for over 20 years. For this reason, the District Manager renewed the existing lessee's lease and rejected appellant's lease application.

On appeal, Mr. Annis urges that historical use should not be determinative of the matter and that he has a need for the land in order to expand his grazing operations. He also asserts that the present lessee has been badly overgrazing the subject land and that appellant could manage the grazing to a much better degree.

As a basis for rejecting appellant's application, the District Manager relied upon the guidelines for adjudication of conflicting applications as set forth in 43 CFR 4121.2-1(d)(2):

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 [footnote omitted] (where access is not presently available), and (vii) other land use requirements. (Emphasis added.)

The District Manager held that the primary category upon which his decision was based was "Historical use," and that proper range management and prudence dictated that the area be awarded to one applicant only. Accordingly, appellant's application was rejected and the Miles Land and Livestock Company application was approved.

[1] Miles, the existing lessee, has historically held the lease on the subject land. Despite appellant's unsupported contentions to the contrary, there is no indication in the record of poor range management, abuse of the range, or other reasons of this type which would dictate a need for a change in the range user. Where proper range management will be served by awarding the lease to either of 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. Frederick Gorwill, 17 IBLA 13 (1974); Bernard N. Friend, 15 IBLA 119 (1974); John Ringheim, 10 IBLA 270 (1973); Victor Powers, 5 IBLA 197 (1972). Although appellant has indicated a need for this grazing land, he has not demonstrated a greater need than the Miles Land and Livestock Company. Nor has appellant submitted any convincing reasons which would warrant a change of lessee. Under these circumstances, the decision of the District Manager will not be disturbed. Frederick Gorwill, *supra*; Dick Reckmann, 8 IBLA 227 (1972); Thomas W. Dixon, 1 IBLA 199 (1970).

Therefore, 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

I concur:

Douglas E. Henriques  
Administrative Judge

## ADMINISTRATIVE JUDGE FISHMAN CONCURRING SPECIALLY:

I concur in the main opinion, since the regulatory criterion of historical use would seem to impel the conclusion that Miles Land and Livestock Company (Miles) is entitled to a grazing lease for the same 880 acres.

What concerns me is the consideration of appellant's repeated and vigorous assertion that Miles has overgrazed the land. Concededly, appellant has offered no evidence of such overgrazing and Miles denies it has so abused the land.

The District Manager of the Bureau of Land Management at Casper, Wyoming, in a memo to the Board, a copy of which we served on appellant, states in part:

3. Field examination indicates that the land in question has not been overgrazed and there is no evidence that any improper use has been made of the land other than the occasional feeding of hay to livestock in the wintertime.

It is unfortunate that appellant did not buttress his assertion of Miles' overgrazing by the submittal of evidence to the contrary. In my judgment, it is also unfortunate that the District Manager has afforded us on this issue only a bare conclusory statement.

As we said in Junior Walter Daugherty, 7 IBLA 291, 297 (1972):

If we are to look behind the recommendation for rejection at all, it is the report itself, not the land office's gloss which must be examined.

In the case at bar, the record contains no report of field examination. We do not know when the examination was made, by whom, his methodology, and the factors considered in determining that the land was not overgrazed.

That determination could have been made by what it is euphemistically dubbed "ocular observation," e.g., looking at the grass from a travelling vehicle. There is no sound basis for concluding that the land contains virile plants producing seed which will germinate, in contradistinction to superficially strong plants. Nor does the conclusory statement address itself to the condition of the range at an earlier date, so a comparison could be made. In essence, there is a dearth of evidence upon which any informed judgment can be made as to the condition of the range.

I might point out that if the range were badly overgrazed, it would be error to award the grazing lease to either party. In those circumstances, rest and rehabilitation of the range would seem to be appropriate.

I do not recommend a fact-finding hearing in the case since appellant's showing is not such as to engender the expectation that a hearing would prove productive. Cf. Kathleen M. Smyth, 8 IBLA 425 (1972).

Frederick Fishman  
Administrative Judge

20 IBLA 119

