

DOYR CORNELISON

IBLA 76-204

Decided March 15, 1976

Appeal from decision by District Manager, Idaho Falls, Idaho District, Bureau of Land Management, rejecting a section 15 grazing lease application (I 3-75-1(15)).

Affirmed.

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

A decision renewing a section 15 grazing lease and rejecting a conflicting application, rendered in compliance with the standard prescribed by 43 CFR 4121.2-1(d)(2), will not be overturned in the absence of convincing reasons that the award is not warranted.

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

Where conflicting applications have been filed for a section 15 grazing lease and proper range management can be obtained from either applicant, and where both have an equal need for the land, the applicant seeking a renewal based on historical use generally will be favored.

APPEARANCES: Leonard O. Kingsford, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Doyr Cornelison has appealed from a decision of the Manager of the Idaho Falls, Idaho, District of the Bureau of Land Management (BLM), dated July 21, 1975, which rejected his application for a grazing lease of section 19 lots 3 & 4, SE 1/4 NW 1/4, E 1/2 SW 1/4; section 30, lots 1 & 2, E 1/2 NW 1/4 of T. 13 S., R. 43 E., Boise Meridian, Idaho. The District Manager granted the conflicting application of Malcolm C. and Dee B. Young for renewal of their prior existing leases for the same lands.

The conflicting applications were filed in August and September of 1974 under the authority of section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). Section 15 of the Act authorizes the Secretary of the Interior, in his discretion, to lease for grazing purposes certain public land not within an established grazing district. Owners and lessees of contiguous private land have a preference right to lease if certain requirements are met. Both appellant and the Youngs have been determined by the District Manager to be qualified preference right applicants by virtue of their ownership or lease of private lands contiguous to the applied for lands. 43 CFR 4121.2-1(c)(1).

The conflicting applicants were given an opportunity to reach a mutually acceptable agreement for a division of the lands in accordance with 43 CFR 4121.2-1(d)1. When no acceptable agreement could be worked out between the parties a meeting was held with them on May 31, 1975. The District Manager thereafter issued his decision awarding a renewal lease for the entire area to the Youngs for the stated reasons:

1. Young Brothers has held prior lease on the National Resource lands and historically the National Resource Lands have been used with the preference lands owned by the Young Brothers.
2. Young Brothers have exhibited proper range management on the area.
3. Mr. Cornelison has not shown a greater need for the National Resource Lands in conflict.

The appellant has protested the award of the entire area to the Youngs stating he has a greater need for the land because of a need for access to water on the south end of the applied for tract. He argues that the criteria of historical use is an unfair and improper basis on which to grant a lease and that he was led to believe that "a division was, in effect, mandatory in a case of conflicting applications."

[1] An award of a section 15 grazing lease is in the discretion of the Secretary of the Interior. The regulations do not provide for a mandatory division of grazing lands among qualified grazing applicants. That determination is to be made by the District Manager as the circumstances of the individual case dictate. However, where there are conflicting applicants enjoying equal preference rights and qualifications, the BLM considers the factors 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 (where access is not presently available), and (vii) other land use requirements. (Emphasis added.)

The record shows that the land applied for has been grazed under a section 15 lease (lease No. 11027-14), by the Youngs since September 4, 1970, and since 1938 by their predecessors. During this time, the range has been maintained in a sound condition. Therefore, in the view of the District Manager, the criterion of historical use coupled with good range management by the former lessees was controlling in his award of the grazing use.

From our review of the case we can find no compelling reason for us to take the grazing use of the lands from the Youngs and confer it upon appellant. A decision renewing a grazing lease and rejecting a conflicting application, rendered in accordance with the governing regulatory standard, will not be overturned in the absence of convincing reasons that the award is not warranted. George T. McDonald, 18 IBLA 159 (1974); see John Ringheim, 10 IBLA 270, 274 (1973); Dick Reckmann, 8 IBLA 227, 229-30 (1972). No such reasons have been shown that would warrant the substitution of our judgment for that of the District Manager.

Appellant's allegation on appeal that his need for the land is greater than the Youngs because it would give him easier access to water on the south end of the land in issue, is not supported by any substantial evidence. From the record it appears that the District Office inspected the land prior to the decision and apparently did not find this a persuasive factor.

[2] Where proper range management can be obtained from either applicant, and where both have an equal need for the land, the applicant seeking a renewal based on historical use generally will be favored. Victor Powers, 5 IBLA 197 (1972). The District Manager's decision is consistent with both the regulatory standard and with previous holdings in such circumstances.

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.

Martin Ritvo
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

