

SOMBRERO RANCHES, INC.

IBLA 78-598 Decided December 19, 1978

Appeal from decision of District Manager, Bureau of Land Management, Craig, Colorado, canceling grazing lease for failure to make rental payment. Lease # 05017513 C.

Affirmed.

1. Grazing Leases: Cancellation or Reduction— Regulations: Generally

The regulations of this Department have the force and effect of law, and are binding upon the Secretary and those who exercise his delegated authority. A grazing lease is properly canceled where the lessee fails to pay the rental pursuant to 43 CFR 4125.1-1(h) and 4125.1-1(m)(3). The Boards of Appeal of this Department have no authority to declare a Secretary's regulation invalid.

APPEARANCES: Stanley F. Johnson, Esq., Johnson, Doty, Johnson & Bierbaum, Boulder, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Sombrero Ranches, Inc., appeals from a decision dated June 5, 1978, of the District Manager, Bureau of Land Management (BLM), Craig, Colorado, which canceled its grazing lease for failure to make rental payment.

The 10-year lease was issued pursuant to section 15 of the Taylor Grazing Act, 43 U.S.C. § 315(m) (1970), 1/ to appellant on

1/ That Act has been amended by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 et seq. (West Supp. 1978). See sections 401-403 of the Act, 43 U.S.C. §§ 1751-1753 (West Supp. 1978). See also the Public Rangelands Improvement Act of 1978, 92 Stat. 1803, 43 U.S.C. § 1901, amending FLPMA.

June 1, 1975, for 1,596.40 acres in Moffat County, Colorado. The lease specified grazing use for "210 AUMs horse use."

On May 1, 1978, the billing for the 1978 fee year in the amount of \$523.97 was sent to appellant.

A memorandum dated May 18, 1978, from the area manager to the district manager, states that appellant grazed both cattle and horses on the lease, and that on May 18, a representative of appellant visited the BLM office and advised that the rental had not been paid because appellant objected to the "double fee on horse aums," but offered to pay "at the current rate of \$1.51/aum, or \$317.10 for 210 aums." BLM refused to accept the offer based on the following regulations:

43 CFR 4125.1-1(m)(1)(ii):

The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

43 CFR 4110.05(o):

"Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2-1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice [2/] the rate charged for one cow grazing for the same period.

2/ The grazing regulations have been revised substantially in 43 FR 29058-29076 of July 5, 1978 (Circular No. 2433). Under the revised regulations, 43 CFR 4130.5-1(c), "[f]or billing purposes, one cow, one horse, one burro, five sheep, or five goats shall be considered as one animal unit." Hence, in future billings appellant's objection to the "double fee" would not obtain. Since the billing in issue was made on May 1, 1978, prior to the adoption of the new regulations, the former rate governs.

43 CFR 4125.1-1(m)(3):

[A] lease may be cancelled pursuant to Sec. 4125.1-1(h) for failure to make timely payment.

On May 19, 1978, BLM issued a notice advising appellant that payment was due on May 1, 1978, and requesting it to show cause why the lease should not be cancelled. According to the decision appealed from, appellant responded by asserting that the double fee for horse use was prejudicial and discriminatory.

On appeal, appellant states that section 4110.05(o) is unreasonable and discriminatory since there is no evidence that a horse consumes more pasturage than a cow, or is more detrimental ecologically to the land than a cow. Appellant maintains that the rate for horses should be the same as for cows.

[1] We find that the decision appealed from properly held appellant's lease for cancellation for nonpayment pursuant to the regulations cited. Appellant's arguments are not directed to the decision but specifically challenge the provisions in section 4110.05(o) prescribing the charge for one horse grazing on the Federal range for one month to be twice the rate for one cow grazing for the same period. BLM is not at liberty under the regulation to charge the same rate for both kinds of animals. Once the Secretary of the Interior has promulgated a regulation having the force and effect of law, he must comply with it. Beehive Telephone Co. Inc., 38 IBLA 80 (1978); Wilfred Plomis, 34 IBLA 222 (1978); Leonard E. Simmons, 12 IBLA 196 (1973). Even if we were to agree that the rental rates were askew, Boards of Appeal of this Department have no authority to declare a regulation invalid. Donald E. Jordan, 35 IBLA 290, 295 (1978). Appellant's lease was properly canceled for nonpayment of rental.

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.

Frederick Fishman
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

