

JOHN J. CASEY

IBLA 81-635

Decided August 26, 1982

Appeal from the decision of Administrative Law Judge Michael L. Morehouse, affirming a decision of the Winnemucca District Manager, Bureau of Land Management, assigning maintenance responsibility for the Granite Mountain Drift Fence. Nevada 2-79-8.

Affirmed.

1. Administrative Procedure: Administrative Review-- Grazing and Grazing Lands--Grazing Permits and Licenses: Appeals

Where facts and law are properly set forth and applied in Administrative Law Judge's decision affirming the BLM District Manager's decision requiring appellant to maintain a drift fence on public land within his grazing area, and appellant has made no showing that the decision is in error, the decision will be affirmed.

APPEARANCES: Thomas L. Belaustegui, Esq., Reno, Nevada, for appellant; Burton J. Stanley, Esq., Office of the Regional Solicitor, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John J. Casey has appealed from a decision dated April 8, 1981, by Administrative Law Judge Michael L. Morehouse, affirming a decision of the Winnemucca (Nevada) District Manager, Bureau of Land Management (BLM), assigning maintenance responsibility to Casey for the Granite Mountain Drift Fence in the Buffalo Hills allotment.

The record shows that the Granite Mountain Drift Fence, originally constructed in the 1930's, runs in an east-west direction across the Buffalo Hills Allotment dividing it into north and south portions. The area to the north is summer range and the area below winter range. Appellant Casey has historically used the area and controls approximately 93 percent of the grazing on both sides of the fence. Large segments of the fence run close to Cottonwood Creek. In 1974, a fire occurred south of the fence and that area has since been closed to grazing to allow the forage to recover. The fence was reconstructed by BLM during 1975 and 1976 and BLM subsequently assigned Casey the maintenance responsibility for the fence. Casey objected to the

BLM determination that he should maintain the fence, contending that he was not consulted before reconstruction of the fence and that elimination of the original jogs in the old fence would cause him undue hardship because cattle north of the fence will break the fence trying to get to water.

A hearing was held before Judge Morehouse on November 17, 1980, in Reno, Nevada. From the evidence presented, the Judge concluded that the BLM determination was authorized by 43 CFR 4120.6-1(c) and supported by the record and that Casey had not demonstrated that it was arbitrary or unreasonable. He concluded that:

This fence has served for years as a line dividing the allotment into winter and summer range. The uncontradicted evidence is that even without the jogs there is adequate water to the north and if the jogs were present it might well cause damage to forage in those areas which would be detrimental to the wildlife population. Mr. Casey controls 93 percent of the grazing rights on both sides of the fence and under the circumstances, it is certainly not arbitrary and unreasonable to require him to maintain the fence.

(Decision at 2-3).

[1] On appeal, appellant takes issue with the Judge's conclusions, basically reiterating the arguments considered below. We have thoroughly reviewed the record of this case and the arguments advanced by the parties. Judge Morehouse's decision sets out a full summary of the testimony, the relevant evidence, and applicable law. The record indicates that the jogs in the fence were eliminated when the fence was reconstructed in order to avoid trampling of the forage within the vicinity of Cottonwood Creek which would be detrimental to the wildlife values found in the area. Moreover, Judge Morehouse noted that it was uncontradicted that sufficient water for the cattle exist north of the fence line as it now exists. Appellant has clearly failed to show that the decision of the District Manager was arbitrary or capricious.

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.

James L. Burski
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

