

**Editor's note: Reconsideration denied by Order dated April 6, 1984**

RUSKIN LINES, JR.  
v.  
BUREAU OF LAND MANAGEMENT

IBLA 83-444

Decided September 30, 1983

Appeal from a decision of Administrative Law Judge Michael L. Morehouse affirming a decision of the Safford, Arizona, District Office, Bureau of Land Management, reducing permitted grazing use on Federal grazing allotment. Arizona 040-81-7.

Affirmed.

1. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Grazing and Grazing Lands -- Grazing Permits and Licenses: Generally -- Grazing Permits and Licenses: Appeals -- Rules of Practice: Appeals: Burden of Proof

A decision reached in the exercise of administrative discretion relating to the adjudication of grazing privileges may be regarded as arbitrary and capricious only where it is not supportable on any rational basis, or where it is shown that it does not represent substantial compliance with the grazing regulations. The burden is upon the appellant to show by substantial evidence that a decision is improper or unreasonable.

APPEARANCES: Ruskin Lines, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Ruskin Lines, Jr., appeals from a decision of Administrative Law Judge Michael L. Morehouse, dated February 7, 1983. This decision upheld an August 31, 1981, decision by the District Manager, Safford (Arizona) District, Bureau of Land Management (BLM), which reduced appellant's active Federal grazing use on the Mud Springs Allotment, No. 4642.

The allotment includes, in addition to public lands, a section of State land as well as a section of private land patented to the joint user of this allotment, Mrs. Reynolds. Both joint users have individual Forest

Service allotments on the adjoining Coronado National Forest. Appellant's use of the allotment is seasonal, alternating with use of the national forest. The joint user's allotment is year-round.

On June 2, 1981, appellant received a proposed decision indicating that as of March 1, 1982, his grazing use on the Mud Springs Allotment would be zero animal unit months (AUM's), and that livestock use would be determined annually based on the availability of ephemeral forage. Appellant protested this decision on June 5, 1981.

On August 31, 1981, BLM issued a final decision which reduced appellant's use of this allotment from 80 AUM's to 32 AUM's effective March 1, 1986. The reduction, designed to improve forage conditions, was scheduled over a 5-year period as follows:

Effective Periods	Animal Units/	Percent Federal Land	Public Land	Suspended	Total Preference	
<u>_____</u>	<u>From - To</u>	<u>Kinds</u>	<u>Range</u>	<u>AUMs</u>	<u>AUMs</u>	<u>AUMs</u>
03/01/82	05/01 to 10/31	22 Cattle/ Horses	54	72	132	8
03/01/84	05/01 to 10/31	18 Cattle/ Horses	44	48	108	32
03/01/86	05/01 to 10/31	15 Cattle/ Horses	35	32	92	48

The BLM decision added that the allowed use might be readjusted after the completion of studies conducted by BLM and by the Arizona State Land Department.

Ruskin Lines, Jr., appealed this decision, arguing that historically and currently the allotment supported 80 AUM's without resource depletion or environmental damage and that the decision would render his operation economically infeasible, in part because it would, in effect, halve the number of cattle he was able to graze in the national forest during the other 6 months of the year. At the April 28, 1982, hearing before Administrative Law Judge Morehouse, Lines' representative pointed out that Forest Service studies of the carrying capacity of the area Lines grazed in the Coronado National Forest were not yet complete and argued that BLM's decision was, therefore, premature (Tr. 12). He suggested working out a cooperative rotation program among BLM, the Forest Service, and the Arizona State Land Department when the studies were complete (Tr. 15, 18).

Judge Morehouse's decision upheld the BLM District Manager's decision as to the years 1982 and 1983, but concluded:

The situation is too fluid and there are too many possible factors of change in this particular situation to lock the parties into definite figures for a period of five years. The Forest Service study may well be completed by the end of 1983 and its results may well change the situation as it presently exists. Also, the parties should meet sometime

prior to the end of the 1983 grazing season to evaluate the condition of the ephemeral range as well as the patented land and the State lease land following two years of reduced grazing. It is hoped that agreement may be reached as to the proper grazing level for the 1984, 1985 and 1986 seasons, but if such agreement is not reached, the District Manager should issue another decision reflecting conditions as they then exist.

On appeal to this Board, appellant claims that the Administrative Law Judge's decision unfairly discriminated against him in favor of the other joint user, was based on the erroneous assumption that BLM still regarded the allotment as ephemeral, and was arbitrary and capricious and without factual or legal basis. In support of these claims he argued that he was required to achieve a 25 percent reduction by 1982, while the other allottee was given until 1986 to do so, and that the change between BLM's June 1981 proposed decision and its August 1981 final decision indicated it no longer considered the allotment ephemeral range.

[1] Implementation of the Taylor Grazing Act of June 24, 1934 (the Act), as amended, 43 U.S.C. §§ 315, 315a-315r (1976), is committed to the discretion of the Secretary of the Interior. Claridge v. Bureau of Land Management, 71 IBLA 46 (1983). Section 2 of the Act charges the Secretary with respect to grazing districts on public lands to "make such rules and regulations" and to "do any and all things necessary \* \* \* to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range \* \* \*." 43 U.S.C. § 315a (1976). The Federal Land Policy and Management Act of 1976 (FLPMA), P.L. 74-579, 90 Stat. 2743, amending the Taylor Grazing Act, reiterated the Federal commitments to the protection and improvement of Federal range lands. See 43 U.S.C. §§ 1751-1753 (1976).

The District Manager is responsible for making downward adjustments in existing leases when necessary. 43 CFR 4110.3-2(b). An adjudication of of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental regulations for grazing in 43 CFR Part 4100. A determination by a District Manager of the grazing capacity available for livestock use will not be overturned in the absence of a clear showing of error. Claridge v. Bureau of Land Management, supra; 43 CFR 4.478(b). In this case the District Manager decided to reduce appellant's grazing lease after an on-the-ground survey indicated that the land was ephemeral range, a classification appellant's representative acknowledged at the hearing (Tr. 8, 12, 17).

The claims appellant makes on appeal do not demonstrate error either by BLM or the Administrative Law Judge. While appellant Lines suggests that preferential treatment was accorded to Mrs. Reynolds, the facts do not support his argument. Prior to 1982, Reynolds had 106 Federal AUM's. In 1982, she was authorized only 85 Federal AUM's. This is a reduction in Federal AUM's of almost 20 percent, versus a reduction of only 10 percent for Lines in this same period. In fact, over the entire 5-year period covered by the DM's decision, Reynolds will lose a total of 167 AUM's compared to a reduction of 118 AUM's for Lines. In effect, over the period this is a total reduction of 29.5 percent for Lines and 31 percent for Reynolds.

The figures utilized by Lines to show that he was suffering a greater reduction (which were based on total permitted use) are fatally flawed since they ignore the fact that Mrs. Reynolds has 132 non-Federal AUM's while he has only 60 non-Federal AUM's. Thus Federal AUM's represented a much higher percentage of Lines' total AUM's than of Reynolds' (57 percent versus 44 percent). Since only the Federal AUM's are being reduced, any pro rata reduction necessarily has a greater percentage effect insofar as total AUM use is concerned on Lines than it will on Reynolds. The fact remains, however, that insofar as the Federal AUM's are concerned, there is simply no disparate treatment whatsoever. The August 1981 final decisions permitting both Lines and Mrs. Reynolds to continue grazing, at reduced rates, do not indicate that BLM no longer considers the range ephemeral, only that on the basis of all pertinent information the reduction in AUM's need not be total. At the hearing, for example, it was made clear that cattle would normally not graze onto the Federal range if forage were adequate on the better quality private and state ranges (Tr. 15-17). In sum, appellant has not met his burden of proving by substantial evidence that the BLM decision was in error. Claridge v. Bureau of Land Management, *supra* at 50.

However, we also concur with the Administrative Law Judge that circumstances may have changed and that BLM must therefore "review available information to determine whether the amount of the suspension should be modified (either increased or decreased)" in accordance with 43 CFR 4110.3-2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of Administrative Law Judge Morehouse is affirmed.

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Will A. Irwin  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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James L. Burski  
Administrative Judge

