

JEFFERY RANCHES, INC.
v.
BUREAU OF LAND MANAGEMENT

IBLA 86-1135

Decided June 17, 1988

Appeal from a March 4, 1986, decision by Administrative Law Judge John R. Rampton, Jr., granting summary judgment upon the motion by the Bureau of Land Management, and affirming a joint decision issued by the Managers, Henry Mountain and Sevier River Resource Areas, Utah, cancelling the Jeffery Ranches, Inc., grazing preference to those portions of the Jeffery Ranch, Inc., allotment lying within the Capitol Reef National Park. UT 050-85-4.

Set aside and remanded.

1. Administrative Authority: Estoppel -- Estoppel -- Grazing Permits and Licenses: Cancellation or Reduction -- Latches -- National Park Service: Land: Use

Even though the elements necessary for invoking estoppel against the United States may be present, estoppel will not lie if to do so would interfere with underlying Government policies or unduly undermine the enforcement of a particular law or regulation. An approval of an assignment of grazing rights within the Capitol Reef National Park to a party not an heir of the holder of those rights on Dec. 18, 1971, contrary to the express provisions of 16 U.S.C. § 273b (1982) may be rescinded after a lapse of 9 years, as the Bureau of Land Management had no authority to approve such assignment, and to do so would be directly contrary to the intent of Congress when establishing the park.

2. Grazing Permits and Licenses: Assignment -- Grazing Permits and Licenses: Cancellation or Reduction

A transfer of a grazing permit is not effective unless and until approved by the Bureau of Land Management. If a transfer of a grazing lease is prohibited by law, the proper action is to deny approval of the transfer. A decision cancelling a lease because the transfer is not authorized will be set aside and the case remanded for a determination regarding the ability of the assignor to retain the lease if the transfer is denied. Likewise, if a transfer is improperly approved, the action to be taken is to rescind the transfer, and not to cancel the permit.

APPEARANCES: George A. Hunt, Esq., and Thomas A. Thomas, Esq., Salt Lake City, Utah, for Jeffery Ranches, Inc.; David K. Grayson, Office of the Regional Solicitor, Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Jeffery Ranches, Inc. (Jeffery), has appealed from a decision by Administrative Law Judge John R. Rampton, Jr., granting a motion for summary judgment submitted by the Bureau of Land Management (BLM). Judge Rampton's decision affirmed a joint decision issued by the Managers of BLM's Henry Mountain and Sevier Resource Areas, Utah, cancelling those portions of the Cathedral and Rock Springs grazing allotments lying within the Capitol Reef National Park (Park). Jeffery holds the permit issued for those allotments.

The facts of this case are not in dispute. The starting point for the purpose of this decision is December 18, 1971, when the Park was established by P.L. 91-207. Section 3 of P.L. 97-207, 85 Stat 740, 16 U.S.C. § 273b (1982), provides:

Where any Federal lands included within the park are legally occupied or utilized on December 18, 1971, for grazing purposes, pursuant to a lease, permit, or license for a fixed term of years issued or authorized by any department, establishment, or agency of the United States, the Secretary of the Interior shall permit the persons holding such grazing privileges or their heirs to continue in the exercise thereof during the term of the lease, permit, or license, and one period of renewal thereafter. [1/]

As previously noted, two allotments are the subject of this appeal. They are the Rock Springs Allotment with a total of 4,414 animal unit months (AUM's), having 185 AUM's located within the boundaries of the Park, and the Cathedral Allotment, with a total of 1,528 AUM's, and 266 AUM's within the Park. These allotments were owned by Carlyle Baker.

In 1974 Baker assigned his interest in certain grazing permits owned by him to Jeffery. As a result, applications for assignment of the permits were submitted to and subsequently approved by BLM. The effect was to vest the AUM's in Jeffery. Neither party to the appeal has alleged that the transfers of those AUM's within the Park was authorized or that BLM properly approved the assignments. Jeffery alleges that "[b]ecause this statute, [16 U.S.C. § 273b (1982)] would have prohibited the initial transfer of the permits to [Jeffery], the BLM seeks to strictly enforce it 9 years later to remedy its negligent act" (Jeffery Reply Brief at 2).

^{1/} The right to retain the grazing privileges was extended to Dec. 31, 1994, by Act of Congress. P.L. 97-341, 96 Stat. 1639 (1982).

On April 12, 1985, a Notice of Final Decision was issued by the Henry Mountain Resource Area Manager and the Sevier River Resource Area Manager. This decision noted that a proposed decision had been issued on September 15, 1984. In addition, the decision held that "[s]ince only persons holding permits within the Park boundary at the time it was created, or their heirs, would have grazing privileges, * * * BLM erred [sic] by processing transfers to Jeffery Ranch, Inc. for grazing preference in Cathedral and Rock Springs" (Notice of Final Decision at 1). The final decision was to "cancel the portions of [Jeffery's] permits on Cathedral and Rock Springs Allotments within Capitol Reef National Park Boundaries. This will be effective May 31, 1985" (Notice of Final Decision at 3).

[1] The issue on appeal is whether BLM is now barred from cancelling the those portions of the Jeffery permits represented by the AUM's within the Park by reason of its failure to deny the assignment of the permits to Jeffery in 1974. Appellant argues that BLM cannot now cancel the permits by reason of the doctrine of equitable estoppel. This doctrine is designed to protect the legitimate expectations of a party who has relied upon the conduct of another to their own detriment. Russell v. Texas Co., 238 F.2d 636, 640 (9th Cir. 1956), cert. denied, 354 U.S. 938 (1957). Generally, four elements must be present in order to allow equitable estoppel. These elements are: (1) the party to be estopped know the facts; (2) he must intend that his conduct shall be acted upon or must so act that the party asserting the estoppel has the right to believe it is so intended; (3) the latter must be ignorant of the true facts; and (4) he must rely on the former's conduct to his injury. United States v. Wharton, 514 F.2d 406, 412 (9th Cir. 1975). In addition, in order to invoke equitable estoppel against an agency of the Federal Government, a fifth element must be proven. This fifth element is that the Government must have engaged in affirmative misconduct. United States v. Harvey, 661 F.2d 767, 774 (9th Cir. 1981).

In his decision Judge Rampton states:

[Jeffery's] equitable estoppel arguments are based upon the following assertions; that BLM knew or should have known of Public Law 92-207 forbidding the assignment of grazing privileges inside the Park when it processed Baker's transfer to [Jeffery], that for 10 years [Jeffery] in good faith innocently relied on BLM's actions in processing the assignments, and that [Jeffery] has made business plans based upon the assignments. * * *

BLM recognizes that all of the technical elements of equitable estoppel are arguably present in this case. However, BLM relies on [Utah Power & Light Co. v. United States, 243 U.S. 389 (1917)] in which that court held:

The United States is neither bound nor estopped by acts of its officers or agents in entering into an arrangement or agreement to do or cause to be done what the law does not sanction or permit.

[Id. at 408-09]. See also Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380 (1947).

(Decision at 2). Judge Rampton then noted that the all-encompassing holding set out above has been somewhat eroded by subsequent decisions, but that the doctrine is applied with much reluctance and only in cases where to invoke equitable estoppel would "not interfere with the underlying Government policies or unduly undermine the correct enforcement of a particular law or regulation." United States v. Browning, 630 F.2d 694, 702 (10th Cir. 1980), cert. denied, 451 U.S. 988 (1980).

Appellant alleges that the five elements are present. The thrust of the arguments by BLM is that, even if they are, estoppel will not lie. BLM cites Emery Mining Corp. v. Secretary of Labor, 744 F.2d 1411, 1416 (10th Cir. 1984), in support of the argument that "application of the doctrine is justified only where it does not interfere with underlying Government policies or unduly undermine the correct enforcement of a particular law or regulation." We find this argument to have merit. The stated purpose for 16 U.S.C. § 273b (1982) was "the gradual phasing out of grazing activities within the Park." H.R. Rep. No. 537, 92d Cong., 1st Sess. (1971), reprinted in 1971 U.S. Code Cong. & Admin. News at 2273. The obvious purpose was to afford some relief to the permittees and their heirs. It was not intended that an assignee could benefit by assignment of a permit. The action by BLM in approving the assignment was contrary to the law and to now state that BLM is estopped from rescinding that assignment would frustrate the intent of Congress when establishing the Park. The judicial (and quasi-judicial) process should not invoke the doctrine of estoppel if doing so would undermine the purpose of a statute expressing the will of Congress. Che-Li Shen v. I.N.S., 749 F.2d 1469, 1474 (10th Cir. 1984). Estoppel will therefore not be invoked against BLM in this case.

[2] Having found that BLM is not estopped from rescinding the assignment it is proper to reexamine the actions actually taken. BLM cancelled the AUM's, rather than rescinding the assignment. The arguments advanced by BLM do not support this action. There can be no question that the law recognized the rights held by Baker or that Baker could continue to hold those rights. In fact, 16 U.S.C. § 273b (1982) specifically provided that grazing rights in existence on December 18, 1971, would continue in the holder or their heirs.

The regulatory provisions in effect at the time of the assignment provide that no assignment will be recognized until approved by the authorized officer. 43 CFR 4115.2-2(b)(3) (1974). If the assignment of the AUM's within the Park had been denied rather than approved in 1974, BLM would then

have been required to make a determination of whether the assignor remained qualified to hold those rights prior to taking steps to terminate those rights. See 43 CFR 4115.2-2 (1974). However, there is nothing in the record to indicate that BLM has determined that Baker could no longer hold the grazing privileges appurtenant to the AUM's in question prior to cancelling those AUM's. If this had been done, Baker would properly be a party to this appeal. He is not. The proper course of action would have been to rescind the assignment, rather than to cancel the AUM's.

By cancelling the AUM's rather than rescinding the assignment BLM has crossed the line established by the Browning and Emery Mining cases. To allow Baker to hold the AUM's would not interfere with underlying Government policies or undermine the correct enforcement of the law. The "arrangement or agreement" which was not sanctioned by law was the assignment of the permit to Jeffery. It was not the issuance or continuance of a permit which included AUM's on land subsequently made a part of the Park. BLM has cancelled the permit as to those AUM's, and for that reason, we must set aside the decision and remand the case for further action. On remand, BLM will determine whether Baker or his heirs can once again qualify to hold a permit for those AUM's within the Park. If they qualify, the AUM's within the Park can be retained. 2/ If not, BLM may undertake action to cancel the AUM's. They cannot be cancelled for the reason stated in the April 12, 1985, Notice of Final decision.

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 set aside and the case is remanded to the Bureau of Land Management for further action consistent herewith.

R. W. Mullen
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

2/ Under the circumstances of this case, we are of the opinion that the Jeffery use and occupancy would allow Baker to qualify under the Act of Oct. 15, 1982, if other requirements for holding a grazing permit can be met.

ADMINISTRATIVE JUDGE VOGT CONCURRING:

I agree that there is no estoppel here. I also agree that, in order to correct its error in approving the transfer of grazing privileges from Baker to Jeffery, the Bureau of Land Management (BLM) probably should have rescinded its approval of the transfer rather than cancel the grazing privileges outright. However, it is difficult to see what interest Baker, who assigned his privileges in 1974, retains in this matter. It is possible that BLM took the course of action it did because it knew that Baker's right to retain grazing privileges under 16 U.S.C. § 273b (1982) had expired, or even that Baker had no rights under that section because he did not have a grazing permit on December 18, 1971. Because there is no copy of Baker's permit in the record, it is not possible to tell what Baker's rights might have been. Presumably, Baker could not benefit from the Act of October 15, 1982, P.L. 97-341, 96 Stat. 1639, and therefore retain grazing privileges until December 31, 1994, because he was not legally occupying or utilizing Federal lands within the Capitol Reef National Park on October 15, 1982. In any event, while the majority contemplates that BLM must either allow Baker to exercise grazing privileges in the Park or cancel those privileges, it is also possible that Baker might be found to have no surviving privileges.

Anita Vogt
Administrative Judge
Alternate Member