

GLANVILLE FARMS, INC.
v.
BUREAU OF LAND MANAGEMENT

IBLA 89-598

Decided January 14, 1992

Appeal from a decision of Administrative Law Judge Ramon M. Child, affirming decisions of the Northern Malheur Resource Area Manager of the Vale District, Bureau of Land Management, denying in part an application for increase in active preference and exchange of use animal unit months, and reducing spring grazing in Allotment #3 of the Westfall Grazing Unit of the Vale Grazing District, Oregon.

Affirmed.

1. Administrative Procedure: Administrative Review--Rules of Practice: Appeals: Burden of Proof--Rules of Practice: Appeals: Statement of Reasons

An appellant who does not with some particularity show adequate reason for appeal, and, as appropriate, support the allegation with argument or evidence showing error cannot be afforded favorable consideration. Conclusory allegations of error, standing alone, do not suffice.

2. Grazing Permits and Licenses: Assignment

Where application is made to BLM for transfer of grazing preference, transfer applications shall evidence assignment of interest and obligation in range improvements. The terms and conditions of the cooperative agreements and range improvement permits are binding on the transferee. 43 CFR 4110.2-3(a)(2).

3. Grazing and Grazing Lands--Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals

An Administrative Law Judge's decision adjudicating grazing privileges will not be set aside on appeal if it correctly determines that a BLM decision reducing grazing is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100.

APPEARANCES: William F. Schroeder, Esq., Vale, Oregon, for appellant; Barry Stein, Esq., Office of the Solicitor, Pacific Northwest Region, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Glanville Farms, Inc. (Glanville), has appealed from a decision of Administrative Law Judge Ramon M. Child, dated June 30, 1989. Judge Child's decision affirmed two decisions issued by the Northern Malheur Resource Area Manager, Vale District, Bureau of Land Management (BLM), dated January 22, 1988, denying in part an application for an increase in active preference and exchange of use animal unit months (AUM's) in Allotment #3 of the Westfall Grazing Unit, Vale Grazing District, Oregon; and reducing spring grazing throughout Allotment #3. The stated reason for BLM's initial decisions limiting spring grazing and denying increase in Glanville's active preference and exchange of use AUM's was that approval of Glanville's application would cause the authorized grazing use in Allotment #3 to exceed its livestock grazing capacity in violation of 43 CFR 4130.6-1.

Glanville appealed the Resource Area Manager's decision pursuant to 43 CFR 4160.4, and the case was argued before Judge Child at a hearing held on November 14 and 15, 1988, at Ontario, Oregon. Testimony and documentary evidence introduced at hearing focused on the history of grazing management on Allotment #3, and the methodology used by BLM to monitor rangeland conditions upon the allotment. An understanding of both the management history of the allotment and how BLM undertook to monitor the range on the allotment is necessary to resolution of this appeal.

Management of Allotment #3

For purposes of this appeal, pertinent management history of Allotment #3 began on April 14, 1978. At that time, an initial "Interim Allotment Agreement" was entered into between and among the various users of Allotment #3 rangelands and BLM (Exh. R-1). Since that date, management of Allotment #3 has been conducted pursuant to several agreements, decisions, and allotment management plans (AMP's) (Exhs. R-1, R-2, R-3, R-4, R-6, R-7, R-8).

Beginning in the early 1980's, management of Allotment #3 has also been subject to the Northern Resource Area Management Framework Plan and the Ironside Environmental Impact Statement (Ironside EIS). The Ironside EIS' effects on use of the rangelands located in Allotment #3 are set forth in a document entitled "Rangeland Program Summary [RPS], Record of Decision, Ironside EIS Area, Vale District" (Exh. R-12). The RPS set forth various requirements for management of these rangelands, and provided that the requirements were to be implemented through AMP's and Notices of Proposed Decision. Under the terms of the range management plan, the Notices of Proposed Decision were to be issued to individual permittees, and were appealable pursuant to 43 CFR 4160.2 and 4160.4. (Exh. R-12 at 11).

On March 16, 1982, a Notice of Proposed Decision was issued to Hill Land & Livestock Company (Hill) which had purchased the grazing interests previously owned by B. N. Glanville and Becker Farms, Inc., and located in Allotment #3. In that Notice of Proposed Decision (Exh. R-4), BLM indicated that the interests owned by Hill were subject to an AMP signed by

Jerald Bunde, manager for Hill, on March 10, 1982. This March 16 decision proposed a number of actions significant to the grazing privileges that later returned to Glanville interests. The decision proposed an increase

in active grazing preference from 9,564 to 11,562 AUM's, to be implemented over a 5-year period. It proposed cancellation of Hill's then existing 10-year permit and recommended issuance of permits "reflective of our estimate of the current grazing capacity" (Exh. R-4 at 2). The decision proposed "to issue first a permit for the 3 years 1982, 1983 and 1984. Following that permit we will issue a permit for 1985 and 1986. For 1987 and succeeding years a 10-year permit will be issued." Id.

Paragraphs 4 and 5 of the decision, however, indicated that any increase in AUM's was contingent upon rangeland monitoring studies which verified that management objectives were being met, as follows:

Beginning in 1982, we will conduct a series of monitoring studies covering actual use, utilization, precipitation, range condition, and trend to see how the vegetation responds to the initial stocking rate and grazing management we propose in this decision. We will base future adjustments, either increases or decreases, on the results of these monitoring studies and other appropriate inventory data. Before the beginning of the 1985 grazing season, we will review with you the results of the monitoring studies. The amount of use authorized for 1985 and 1986 will be as indicated above unless the monitoring studies show that the initial stocking rate and other actions have resulted in a significant vegetative response. We will again review the results of the monitoring studies with you before the 1987 grazing season. The use authorized for 1987 and subsequent years will not exceed the best estimate of the livestock grazing capacity of the public lands in the allotment as determined by the monitoring studies. This level of authorized livestock grazing use will be as indicated above unless the monitoring studies document that the livestock grazing capacity is either greater or less than our present estimate. Authority for this action is found in 43 CFR 4110.3-1(d).

The management objectives and resource values to be evaluated at the end of the third and fifth year and time frames for achieving those objectives are found in detail in the attached Allotment Management Plan.

The changes in these values that would warrant a modification of the scheduled adjustment, as provided in 43 CFR 4160.1-1(b), are as follows:

a. Pasture or area specific allowable utilization limits have been delineated in the attached * * * [AMP]. If based on these utilization limits, the capacity estimate for the allotment differs from this decision, by more than 5% (high or low), a modification of this decision would be warranted.

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b. Objectives outlining rangeland condition class goals for all pastures are part of the attached AMP. Failure to achieve a trend moving toward those rangeland condition class objectives would warrant a modification of this decision.

(Exh. R-4 at 2-3).

Prior to the 1985 grazing season, the results of trend studies, actual use, and utilization studies were reviewed by Conrad Bateman, a Range Conservationist for BLM in the Vale District. As a result of these studies, Bateman recommended that Hill's AUM's not be increased to the amount set forth in the March 1982 decision. The 1985 AMP and a Memorandum of Agreement signed by Hill's manager, Jim Reid, reduced active AUM's from the 1984 amount of 10,999 to 10,392 (Exhs. R-6, R-7 at 4).

On January 1, 1986, Hill transferred its entire grazing preference on public lands within the Vale District, totaling 10,392 AUM's in Allotment #3, back to Glanville Farms, Inc. (Exh. R-13). On March 19, 1987, Glanville Farms, Becker Division, filed application for grazing preference totaling 10,392 AUM's within Allotment #3.

On July 23, 1987, Glanville Farms, Inc., and Thomas Silvey filed a grazing application requesting 686 additional AUM's. Decisions by BLM denying the application for increase of AUM's and reducing spring grazing on certain of the allotment pastures are the subject of this appeal (Exhs. R-40, R-41).

The January 22, 1988, decision (Exh. R-40), granted in part and denied in part the Glanville/Silvey request. The effect of BLM's decision was to leave total active preference for Glanville at the 10,392 AUM's reflected in the January 1, 1986, transfer application between Hill and Glanville. While the Resource Area Manager granted Glanville a request for 281 AUM's within Federal fenced range, this amount was subtracted from unfenced areas within Allotment #3. Exchange-of-use AUM's were held at 686, the number granted in the 1985 AMP and the January 31, 1985, Memorandum of Agreement.

In support of his decision, the Resource Area Manager stated:

On April 13, 1987, an evaluation of Allotment Three was completed. This evaluation was to determine if changes were needed in management and/or the carrying capacity of Allotment Three. This evaluation was corrected and amended after a meeting with all permittees on December 2, 1987. On February 18, March 19, and December 2, 1987, members of my staff met with all permittees of Allotment Three * * * to discuss the evaluation findings and recommendations.

* * * The April 13, 1987 allotment evaluation shows there is a forage deficit in outside pastures. A reduction in active preference is not proposed in this decision since the deficit falls within the five percent margin of error called for in the March 16, 1982 decision. The request for additional active

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livestock grazing preference is denied for the reason that authorized livestock grazing use shall not exceed the livestock grazing capacity for the allotment (43 CFR 4130.6-1).

A similar rationale was given for the decision to hold exchange of use AUM's at the current level.

Judge Childs' decision includes the following pertinent information which completes the picture of Glanville's current AUM preference:

In the denial of increase decision issued January 22, 1988, BLM made certain housekeeping corrections to the existing preference status of appellant to graze in Allotment #3. Included in that was picking up the reduction of active AUM's effected in 1985 [from 10,999 to 10,392] and showing those as suspended non-use AUM's [607 AUM's]. In said respects, * * * [BLM's] decision correctly stated the existing status of appellant's grazing preference without alteration thereto.

In addition thereto, BLM has stipulated to an additional 328 AUM's to be added to suspended preference. BLM admits that 328 AUM's should have been added to the Federal range by reason of acquisition of what had previously been State exchange-of-use lands leased to appellant.

Thus, appellant's total grazing preference in Allotment #3 should stand at 11,327 AUM's; 10,392 active and 935 suspended (Respondent's Brief at p. 28; Tr. 9).

(Decision at 11).

Rangeland Monitoring on Allotment #3

BLM decisions denying increase of appellant's grazing privileges and limiting spring use on the allotment were based on rangeland monitoring studies conducted by BLM as set forth in the 1978 Interim Allotment Agreement at Section III as modified and amended by the 1982 AMP at Section VIII. The 1982 AMP provided that "[r]ange trend and utilization studies will provide the basis for change in stocking rates, seasons of use, and grazing systems within the allotment." The AMP established the framework for range evaluation as follows:

A cooperative range studies program, started in 1978, has resulted in the accumulation of grazing utilization data and the establishment and reading of permanent range vegetation trend sites (see Appendices #2 and #3). Interpretation of the range studies information has been accomplished jointly by the BLM and permittees.

(1982 AMP at 9).

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The 1982 AMP noted that the "condition class designation for each pasture was determined in 1977," and that "[i]n order to determine if a pasture has met a condition class objective at any given time the condition classes for each range site in a pasture will have to be redetermined using appropriate methodology." *Id.* Those condition class objectives were set by the 1982 AMP at section II.C. The 1985 AMP set identical management objectives for Allotment #3 as did the 1982 AMP (Compare Exh. R-3 with Exh. R-7).

The 1982 and 1985 AMP's specified four factors to be measured in determining range condition within the allotment. Those factors were trend of vegetative cover, utilization, actual use, and the impact of climatic conditions. Both AMP's set forth identical plans for conducting trend, utilization, and actual use monitoring, and for considering the impact of climatic conditions.

With respect to the methodology for the conduct of trend studies, the AMP's stated: "Trend data will be gathered from permanently established trend transects. Trend studies will be read again in 1986. After 1986, trend will be read every 5 years. Low level color infra-red photography will be used to monitor change in the riparian management areas" (Exhs. R-3, R-7). The 1982 AMP designated 14 plots that were to be observed by photograph, line transect, and 3 by 3 monitoring methods (Exh. R-3, Appendix Table 2). All designated pastures contained at least one trend plot. The Gregory Creek and Stud Horse pastures contained three plots each. *Id.*

The chosen methodology for evaluating utilization studies was the Key Forage Plant Method. Climatic data was gathered from the Harper, Juntura, and Beulah weather stations, and the Range Forage Index from Squaw Butte Experiment Station was used to adjust utilization levels. Actual use records were given to BLM by the grazers within 15 days of the end of the authorized grazing system (Exh. R-3).

At the hearing before Judge Child, appellant challenged both the validity of these monitoring studies and the conclusions drawn therefrom. Appellant's challenges focused on site selection for the collection of data, adjustment of the utilization data by use of the forage crop index (FCI), and the adequacy and reliability of the trend study methodologies. Judge Child summarized the gist of appellant's technical

arguments before him and made findings and conclusions as follows:

a. Sites Selected for Data Collection

Appellant's experts complained that there was no indication that the BLM used stratification in selecting trend sites and locations for collecting utilization data, and that the BLM did not properly focus on key areas within each pasture in order to obtain a viable sample of utilization data within each key area. The evidence was that appellant's own consultants participated in, and concurred with the selection of these sites which have been used since 1982 for data collection (Tr. 189, 264-65;

Exhibit R-27, p. 1). These sites were incorporated in the 1982 AMP (Exhibit R-3 Appendices; Tr. 404-405). Nothing in the 1985 AMP altered these site locations.

BLM's expert effectively refuted appellant's assumptions that no stratification was used in the site selection process (Tr. 190). As to utilizing a key area for collecting utilization data, BLM's witness explained how the use of several utilization studies in a particular pasture, rather than a focus on one key area, was more appropriate in Allotment #3 (Tr. 220-221).

b. BLM's Adjustment of Utilization Data by Using the Forage Crop Index

Utilization studies are a key component in determining available forage. These studies are designed to determine the amount of utilization which occurs within a given pasture in particular and within the allotment as a whole. The objective is to see whether a target utilization of forage set by the BLM, and incorporated in the AMP, [is] being met. Ultimately, the goal of range management is to utilize the targeted amount (Tr. 86-91, 94-96, 274; Exhibit R-31).

In determining whether management objectives for utilization in Allotment #3 were being achieved, the BLM adjusted the utilization data by using the forage crop index (FCI).

In questioning the FCI, appellant takes issue with the use of a methodology which is called for in both the 1982 and 1985 AMP (Exhibit R-3, p. 10; Exhibit R-7, pp. 6-7). The Vale District has used the FCI to adjust utilization data since the late 1970's (Tr. 212). When the RPS established initial carrying capacities for allotments in the Vale District, utilization data were adjusted using the FCI (Exhibit R-12, p. 9; Tr. 214). BLM had a clear and rational basis for applying the FCI in making evaluation of its accumulated utilization data, which use was consistent with BLM's management objectives (Tr. 213-214, 215-217; Exhibit R-24, p. 10).

c. The Trend Study Data Used by the BLM in Allotment #3

Appellant questions whether BLM had adequate and reliable trend study data when making its decisions regarding management of the range in Allotment #3. According to the appellant's experts, the number of study sites was inadequate to provide accurate and reliable information. Here again, appellant's own representatives participated in selecting the study sites to be used (Tr. 189, 264-265); Exhibit R-27, p. 1), and these sites were incorporated in the 1982 AMP (Exhibit R-3, Appendix 2).

For Allotment #3, in addition to the utilization studies, the BLM used 3' x 3' plot photos and the 100 foot line intercept methodologies to collect trend data. Both of these methodologies are established trend studies, and the use of the two studies in conjunction with one another is recognized in the BLM Technical Reference Manual, Rangeland Monitoring Trend Studies, Exhibit R-23, p. 5.

As stated in the BLM Technical Reference, Planning for Monitoring:

* * * In determining the intensity of sampling, the authorized officer should weigh the desired level of monitoring against funding and personnel capabilities. Professional judgement plays a major role in making these determinations.

(Exh. R-20 at 5).

In making a determination of trend within Allotment #3, the BLM looked at the trend photos, the line intercepts and utilization data, and incorporated the professional judgement of range managers who have years of experience managing this particular range (Tr. 260). In the opinion of BLM's expert, the data collected for Allotment #3 were capable of accurately reflecting trend for pastures therein. (Tr. 260-261).

BLM's evaluation of the monitoring studies revealed static and downward trends for the spring pastures in Allotment #3 (Exhibit R-11, pp. 7-10; Tr. 196-207, 223, 402-403). The earliest point established for any of the appellant's experts personally observing the range within Allotment #3 is June 1987. The BLM range conservationist who participated in conducting the trend studies and in the Allotment #3 evaluation, has observed range conditions within Allotment #3 for over 10 years (Tr. 186).

The record in this matter shows that the monitoring studies and methodologies used by the Vale District in Allotment #3 conformed to established BLM standards and provided reliable data upon which the BLM employees, utilizing professional judgement, could make informed decisions regarding grazing management and forage allocation in Allotment #3.

(Decision at 8-10).

Issues on Appeal

Glanville's statement of reasons (SOR) on appeal charges that it should be awarded a rehearing, since Judge Child in large measure adopted verbatim the Brief and Proposed Findings filed by BLM subsequent to the November 1988 hearing. Appellant argues that procedural due process has been denied as a result (SOR at 1-3).

In the SOR appellant also advances arguments similar to those it made before Judge Child. Appellant argues that agreements made with BLM by Jim Reid on behalf of Hill are not binding upon appellant, as Jim Reid allegedly lacked authority to act on behalf of Hill. It is also argued that those agreements do not suspend any preference, that they do not reduce the active preference, that there was no meeting of the minds, and that the agreements were unauthorized (SOR at 4-18).

Appellant further argues, as it did before Judge Child, that the decisions by BLM limiting grazing capacity and spring use in Allotment #3 are erroneous because the known data does not support their conclusions. Appellant specifically argues that the data indicates that, for the most part, grazing capacity on Allotment #3 is actually underutilized, and that the allowable use should be increased (SOR at 19). Appellant argues that the FCI was improperly used and inaccurately applied to determine grazing capacity (SOR at 20-21). Appellant also argues that the range monitoring techniques relied upon by BLM were not valid and were incorrectly undertaken and applied, and that BLM's January 22, 1988, decisions should therefore be reversed (SOR at 22-27).

In answer, BLM argues that appellant is not entitled to a new hearing, that appellant has not established a legal, factual, or equitable basis for its claim to an increased preference in Allotment #3, that appellant has not shown BLM's determination of the carrying capacity of Allotment #3 to be in error, and that BLM's decision to reduce spring grazing is fully supported by the record.

[1] We find no merit to appellant's allegations that Judge Child's near-verbatim adoption of BLM's brief constitutes a denial of procedural due process. While Judge Child has in large measure adopted BLM's brief in his decision, the decision is supported by reference to both testimony and documentary evidence.

BLM's response that appellant has provided no argument or authority for granting a rehearing under these circumstances is well taken. This Board will not consider arguments advanced in an SOR that do not, where appropriate, support with some particularity the allegation with argument or evidence showing error. Conclusory allegations of error, standing alone, do not suffice. Add-Ventures, Ltd., 95 IBLA 44 (1986).

We do not, however, subscribe to BLM's assertion that this Board could not overturn Judge Child's findings and conclusions unless they are found to be "clearly erroneous" (Answer at 3). The reviewing powers of the Board of Land Appeals include the authority to make a de novo review of the entire administrative record and to make findings of fact based thereon. See United States v. Dunbar Stone Co., 56 IBLA 61, 67-68 (1981).

[2] Appellant argues that general principles of agency and contract law require invalidation of the terms of the 1985 AMP. Appellant argues that the downward adjustment of Hill's AUM's set forth in the 1985 AMP is invalid, as Hill's manager, Reid, lacked authority to sign the 1985 AMP for

Hill. Appellant bases this argument on the fact that BLM had no documentation on file indicating that Reid was authorized to sign cooperative agreements for Hill, as required by the BLM Manual.

Judge Child addressed these arguments in his decision, as follows:

Appellant argues that Jim Reid lacked the authority to act on behalf of Hill Land and Livestock Company and does so primarily by reason of the fact that at no material time was there a document in the BLM records which designated Mr. Reid to act on behalf of Hill Land and Livestock Company as provided in BLM Manual H-4130-1, Authorizing Grazing Use (Exhibit R-33).

Nevertheless, Mr. Reid was hired by Hill * * * as its general manager, undertook to act in that capacity, and was dealt with by the BLM as such (Tr. 64-65).

The testimony given by Mr. Reid indicates that he had actual authority to act on behalf of Hill * * *. More importantly, it is clear that the documents signed by Mr. Reid were provided to Robert Hill. [Id.] Subsequently, when Hill * * * transferred the grazing preference to Glanville Farms, Inc., the preference numbers used in the 1986 transfer document were identical to the reduced AUM's reflected in the documents signed by Mr. Reid in 1985 (Exhibit R-13). The logical conclusion which follows from this sequence of events is that the owners of Hill * * * were fully aware of, adopted and ratified the documents signed by Mr. Reid. Nothing in the record indicates that there was any attempt by an owner, officer, or other representative of Hill * * * to dispute the validity of the agreements signed by Mr. Reid. The transfer of the reduced grazing preference to Glanville Farms, executed by * * * Hill * * * was completely consistent with the documents signed by Jim Reid. As such, Glanville Farms received [in] full measure that which it bought and paid for. See Restatement of Agency, 2nd Ed., Secs. 82, 93 and 94.

(Decision at 10-11). The cited portions of the record support Judge Child's conclusion that Hill acquiesced in the 1985 reduction of AUM's, and that Hill's 1986 transfer of grazing preference to Glanville reflected that acquiescence. Departmental regulation 43 CFR 4110.2-3(a)(2) (1987), pertaining to transfer of grazing preference, provides, in pertinent part, that "transfer applications * * * shall evidence assignment of interest and obligation in range improvements * * *. The terms and conditions of the cooperative agreements and range improvement permits are binding on the transferee." (Emphasis added.) Accordingly, we reject appellant's arguments that the 1985 AMP should not be binding upon it as successor to Hill's interests. We further note that even if such agreement were found not to be binding on either Hill or appellant, this in and of itself would not establish that BLM's decision to reduce AUM's to the amount set forth in the 1985 AMP had no rational basis.

[3] Implementation of the Taylor Grazing Act of June 24, 1934 (the Act), as amended, 43 U.S.C. §§ 315, 315a-315r (1988), is committed to the discretion of the Secretary of the Interior. Clyde L. Dorius, 83 IBLA 29 (1984); Ruskin Lines, Jr. v. BLM, 76 IBLA 170 (1983); Claridge v. BLM, 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 (1988). The Federal Land Policy and Management Act of 1976, amending the Act, reiterates the Federal commitment to the protection and improvement of Federal rangelands. See 43 U.S.C. §§ 1751-1753 (1988).

The Resource Area Manager is responsible for making downward adjustments in existing leases when necessary. 43 CFR 4110.3-2(b). An adjudication 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. 43 CFR 4.478(b); Ruskin v. BLM, supra.

No adjudication of grazing preference will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4100 of this title. 43 CFR 4.478(b). Where BLM adjudicates grazing privileges in the exercise of its administrative discretion, that action may be regarded as arbitrary, capricious, or inequitable only where it is not supportable on any rational basis. The burden is on the objecting party to show that a decision is improper. George Fasselin v. BLM, 102 IBLA 9, 14 (1988).

In this instance we have reviewed the arguments on appeal in conjunction with the facts of record and have determined that Judge Child's decision correctly held that BLM's decision was reasonable and substantially complies with the applicable regulations. We reject appellant's arguments pertaining to the invalidity and inaccuracy of the methodology employed by BLM in monitoring rangeland condition. The claims appellant makes on appeal do not demonstrate error either by BLM or by the Administrative Law Judge, but rather, mere difference of opinion. Where the accuracy of a range survey is challenged, it is not enough for a range user to show that the grazing capacity could be in error, he must show that it is erroneous. Clyde L. Dorius, supra; Briggs v. BLM, 75 IBLA 301, 302 (1983); Allen v. BLM, 65 IBLA 196, 200 (1982).

The Department has historically recognized certain elements that must be shown to overturn the results of a range survey:

There is inherent in * * * [the Bureau's range studies] an element of human judgment which cannot be eliminated by the most meticulous observance of established procedures for measuring range capacity. However, * * * [t]he fact that there is error in the

Bureau's findings can be established only by showing that the Bureau's range survey methods are incapable of yielding accurate information, that there was material departure from prescribed procedures, or that a demonstrably more accurate survey has disclosed a different range capacity.

Clyde L. Dorius, *supra* at 37. While appellant addresses all three of these elements in the SOR, appellant has not made a clear showing of error as required by 43 CFR 4.478(b).

We are not persuaded by appellant's argument that BLM's calculations are so misplaced that Allotment #3 is underutilized and can actually bear an increase in AUM's. Gary Cooper, range conservationist with BLM who prepared both the 1985 Allotment Summary and its 1987 amendments (Exh. R-11), testified that approximately 18 percent of Allotment #3 is "leucostriated breaks or the lake beds, primarily non-fertile soils, as well as rock * * * [which] don't produce a lot of forage" (Tr. 278-79). He stated that, in addition, approximately 22 percent of the land is "scab land," and according to the ecological site guides, in best condition, it would take 8 acres to equal one AUM (Tr. 279). Cooper testified that while Allotment #3 is overall being grazed at approximately 6 acres per AUM, 40 percent of the allotment is approximately 15-acre range. *Id.* Cooper testified that, in his opinion, the allotment is overgrazed. The testimony of all BLM witnesses and the documentation they submitted indicates overwhelmingly that the condition of rangelands in Allotment #3 is moving from a static to a downward trend.

Appellant urges us to "take a hard look at the agency's process and apply reason in that analysis, as was done in Chris Claridge v. BLM, [*supra*]" (SOR at 27). Appellant argues that Claridge requires that a "decision rejecting an increase in grazing capacity must be based upon evidence of what the grazing capacity is, not whether a change in the trend or condition of public rangeland is needed." While we are in agreement with this analysis, certainly trend is a factor to be considered in determining grazing capacity. See Clyde L. Dorius v. BLM, *supra* at 39-40. The 1985 Allotment Evaluation Summary with 1987 amendments summarizes the data gathered by BLM, and unequivocally indicates that the grazing capacity of Allotment #3 will not permit an increase in active preference.

Appellant decries the methods by which BLM employed the FCI to adjust herbage yields despite the fact that appellant is also using an annual measure, the Range Utilization Key Forage Plant Technique, to determine utilization of the range (SOR at 19-21). This argument has been addressed in James E. Briggs v. BLM, 75 IBLA 301, 304 (1983), albeit in a slightly different context. In Briggs, this Board held that it is reasonable for BLM to limit consideration of annual forage to the minimum amount expected for purposes of calculating grazing preference, due to the fact that annual forage is dependent upon annual precipitation, which varies widely from year to year. Application of a FCI to forecast and adjust herbage yields according to precipitation averages is just another tool to account for the unpredictability of annual rainfall and the herbage adjustments that must be

made to accommodate that unpredictability. BLM aptly described the rationale and application of the FCI (Tr. 212-20). Appellant has not made a clear showing of error in BLM's application of the FCI.

Appellant charges that limitation of spring use on the pastures assigned to Glanville will severely hamper its livestock operations and is not justified because it is not tied to grazing capacity. Limitation of seasons of use will be upheld as an appropriate method for achieving management objectives under the Act where it is supportable upon a rational basis. Hugh A. Tipton, 55 IBLA 68 (1981). Gary Cooper, range conservationist with BLM, began working with Allotment #3 in 1985. Cooper drafted Exhibit R-11, the 1985 allotment evaluation summary with 1987 amendment. In 1985 and again in 1987, he recommended that spring use be limited (Exh. R-11; Tr. 275). To determine whether spring use should be limited, Cooper looked at the number of AUM's granted during the 7-month grazing period, and the carrying capacity for the pastures consistently grazed in the spring, and noticed an imbalance, so he determined that too many AUM's were being used in the spring (Tr. 276). Jean Findley, a botanist with BLM, testified that a downward trend in rangeland conditions "appears to be most often correlated with use that is either poorly timed or too heavy, or both, in the spring." Findley has observed range conditions within Allotment #3 for 10 years, and has observed a downward trend in rangeland conditions during that time (Tr. 223, 225). This testimony was not refuted by appellant.

To the extent appellant has raised arguments which we have not specifically addressed herein, they have been considered and rejected.

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.

Franklin D. Arness

Administrative Judge

I concur:

David L. Hughes
Administrative Judge