



BADGER RANCH, *ET AL.* v. BUREAU OF LAND MANAGEMENT

171 IBLA 285

Decided May 23, 2007

BADGER RANCH, *ET AL.*

v.

BUREAU OF LAND MANAGEMENT

IBLA 2005-206

Decided May 23, 2007

Appeal from a decision of Administrative Law Judge James H. Heffernan, to the extent it affirmed a decision of the Winnemucca Field Office, Bureau of Land Management, for grazing trespasses. N2-2005-01; NV-020-11-1100.

Affirmed.

1. Environmental Policy Act--Environmental Quality: Environmental Statements--Federal Land Policy and Management Act of 1976: Grazing Leases and Permits--Grazing Permits and Licenses: Trespass--National Environmental Policy Act of 1969: Environmental Statements

The approval of a proposed action in a Decision Record and Finding of No Significant Impact, following the preparation of an Environmental Assessment, does not constitute an authorization to use the public lands. BLM authorizes use of public land for grazing by issuing grazing permits or leases which specify all grazing use. Allowing cattle to graze on public land without a permit or lease and an annual grazing authorization is a prohibited act under 43 C.F.R. § 4140.1(b)(1)(i).

APPEARANCES: W. Alan Schroeder, Esq., Boise, Idaho, for appellants; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Badger Ranch and Dan and Eddyann Filippini have appealed from the May 20, 2005, decision of Administrative Law Judge James H. Heffernan, to the extent it affirmed a January 18, 2005, “Final Decision and Demand for Payment” from the Winnemucca Field Office, Bureau of Land Management (BLM), for grazing trespasses by appellants’ cattle in the Pumpnickel Allotment. N2-2005-01; NV-020-11-1100. BLM sought to collect \$148.00 for trespasses that occurred on September 29 and 30, 2003, and from January 5 through January 8, 2004. Judge Heffernan concluded that BLM had proved its case for trespasses on September 29, 2003, and January 6, 2004, but that it had not done so for September 30, 2003, or for January 5, 7, or 8, 2004. Decision at 7-8. He approved damages of \$28.75 for the September 29, 2003, and \$20.13 for the January 6, 2004, trespass, plus a \$10.00 service charge, for a total of \$58.88. *Id.* at 9.

The Pumpnickel Allotment adjoins the North Buffalo Allotment, and a portion of the boundary between the two Allotments is not fenced. Consequently, cattle may drift from one Allotment to the other. Appellants hold a grazing permit for the North Buffalo Allotment, but not for the Pumpnickel Allotment. Acts prohibited by BLM’s regulations include allowing livestock to graze on public land “[w]ithout a permit or lease, and an annual grazing authorization.” 43 C.F.R. § 4140.1(b)(1)(i); *see also* 43 C.F.R. § 4150.1. BLM imposed trespass damages because appellants’ cattle drifted into the Pumpnickel Allotment.

Appellants acknowledge that neither they nor their predecessor have had a grazing permit to graze cattle on the Pumpnickel Allotment, but they nonetheless contend that grazing by cattle drifting from the North Buffalo Allotment to the Pumpnickel Allotment had been authorized in 1987 after BLM’s Battle Mountain Office prepared Environmental Assessment N66-EA7-10 (EA) and issued a Decision Record and Finding of No Significant Impact (DR/FONSI). BLM prepares an EA for a proposed Federal action to determine whether an environmental impact statement is required by the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C) (2000), unless the proposed action is categorically excluded from the requirement pursuant to 40 C.F.R. §§ 1501.3, 1501.4, and 1507.3(b)(2). *See Center for Native Ecosystems*, 170 IBLA 331, 345 (2006). Accordingly, BLM prepared the EA in response to an application by appellants’ predecessors in interest, Eddie and Louie Venturacci, for an “exchange-of-use” authorization. Statement of Reasons at 5; EA at ¶ I.

According to the EA, the Venturaccis acquired a lease in the North Buffalo Allotment that had previously been held by Roaring Springs Associates, who grazed sheep. The Venturaccis wanted to graze cattle. The EA was prepared because “the grazing capacity for cattle on the leased lands had to be calculated *and the effects of*

the change in kind of livestock and season of use on the intermingled public lands considered.” EA at ¶ I (emphasis added). The EA described the proposed action as follows:

The proposed action is to convert the AUM’s of exchange of use for the lease from sheep to cattle. . . . The number of AUM’s calculated for cattle is 908 in North Buffalo plus an additional 100 AUM’s in the Pumpernickel Allotment and 67 AUM’s in the Battle Mountain Triangle amounting to 1075 AUMs total. *The AUM’s in Pumpernickel and the B.M. Triangle would be licensed in such a way as to cover any drift into those areas across unfenced boundaries.*

EA at ¶ II.A (emphasis added). The DR/FONSI, which was set forth as Section VII of the EA, states in part: “The proposed action is accepted.” EA at ¶ VII.

Appellants’ argument that the DR/FONSI constitutes the authorization to graze their cattle in the Pumpernickel Allotment fails for several reasons. Although BLM properly contends that the EA was never implemented by issuing an “exchange-of-use” agreement in either Allotment, BLM Response at 6-8, we note that, even if BLM had approved such an agreement with the Venturaccis, it would not have been transferable to appellants. 43 C.F.R. § 4130.6. Judge Heffernan also correctly noted that while the North Buffalo Allotment is administered by the Battle Mountain Field Office, the Pumpernickel Allotment is administered by the Winnemucca Field Office, and the latter Office had never authorized grazing by appellants’ cattle. Decision at 4, 6.

[1] Most importantly, however, we agree with Judge Heffernan that the issuance of the DR/FONSI “did not constitute an automatic, self-effectuating authorization to graze 100 drift AUMs on the Pumpernickel Allotment.” *Id.* at 6. Approval of an action proposed in an EA by issuance of a DR/FONSI does not constitute the issuance of a land use authorization, as the decision in *Southern Utah Wilderness Alliance*, 152 IBLA 216 (2000), illustrates. In that case, BLM had prepared an EA that included a “Decision Record” approving a proposed action to issue a right-of-way, but the right-of-way was not effective until a grant instrument was prepared and signed by the authorized officer more than 18 months later. *Id.* at 217 n.1. As with rights-of-way and other types of authorized uses, specific authorization is required to allow grazing on the public lands. The instrument by which BLM authorizes grazing, upon an application therefor, is a permit or lease that specifies “all grazing use.” 43 C.F.R. §§ 4100.0-5, 4130.1-1, 4130.2.¹ Those instruments shall

¹ BLM’s regulations recognize other grazing authorizations such as exchange-of-use
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specify terms and conditions that may be reflective of, or in addition to, any to which an EA may refer. *See* Grazing Permits and Leases, 43 C.F.R. § 4130.2(a); Terms and Conditions, § 4130.3; Mandatory Terms and Conditions, § 4130.3-1; and Other Terms and Conditions, § 4130.3-2. Because appellants did not have a “permit or lease, and an annual grazing authorization” in the Pumpnickel Allotment, allowing their cattle to graze there was a prohibited act under 43 C.F.R. § 4140.1(b)(1)(i) that constituted unauthorized grazing. Violations of 43 C.F.R. § 4140.1(b)(1)(i) are subject to damages and possible civil penalties and criminal sanctions under 43 C.F.R. § 4150.1. Accordingly, Judge Heffernan’s decision must be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur:

Christina S. Kalavritinos
Administrative Judge

¹ (...continued)

agreements, nonrenewable permits or leases, crossing permits, and special grazing permits, but these authorizations have no priority for renewal and cannot be transferred or assigned. 43 C.F.R. § 4130.6.