



SCOTT C. BIGGERS

188 IBLA 55

Decided June 24, 2016



United States Department of the Interior  
Office of Hearings and Appeals

Interior Board of Land Appeals  
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SCOTT C. BIGGERS

IBLA 2014-119

Decided June 24, 2016

Appeal from a BLM decision cancelling a Private Maintenance and Care Agreement for wild horses and prohibiting the adoption of any wild horses from BLM in the future. Freezemark numbers 05018645, 05221043, and 02598926.

Affirmed.

1. Evidence: Burden of Proof;  
Wild Free-Roaming Horses and Burros Act

BLM has discretion to cancel a Private Maintenance and Care Agreement (PMACA) and disapprove future requests to adopt wild horses and burros when the applicant for adoption fails to comply with the terms and conditions of the PMACA. When BLM cancels a PMACA, the applicant for adoption has the burden of establishing that the cancellation was improper. An applicant may show that the cancellation was improper by demonstrating that there is insufficient evidence that he or she violated the PMACA.

2. Wild Free-Roaming Horses and Burros Act

BLM may cancel a PMACA when the applicant for adoption sells wild horses covered by a PMACA before obtaining title to them.

APPEARANCES: Scott Biggers, Florence, Mississippi, *pro se*; Courtney Shea, Esq., U.S. Department of the Interior, Office of the Solicitor, Knoxville, Tennessee, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RIECHEL

Scott Biggers appeals a January 16, 2014, decision of the Southeastern States Field Office, Bureau of Land Management (BLM), cancelling his Private Maintenance and Care Agreement (PMACA) for wild horses and prohibiting him from adopting any

wild horses or burros from BLM in the future. PMACAs and BLM regulations forbid those seeking to adopt wild horses from selling them before obtaining title to them. Because Mr. Biggers sold wild horses before obtaining title to them, we find that BLM properly cancelled the PMACA.

*Wild Horse Adoptions under the Wild Free-Roaming Horses and Burros Act*

Under the Wild Free-Roaming Horses and Burros Act, the Secretary of the Interior, through BLM, manages the population of wild horses and burros on the public lands by removing excess wild horses and burros and offering them for private maintenance and adoption.<sup>1</sup> Those seeking to adopt a wild horse or burro must submit to BLM an application that shows their qualifications, including their ability to assure humane treatment and care of the wild horse or burro.<sup>2</sup> The applicants are required to enter into a Private Maintenance and Care Agreement (PMACA) with BLM, which commits the applicant to take care of the wild horse or burro and sets forth the terms of adoption, prohibited acts, and title qualifications.<sup>3</sup> The list of prohibited acts in a PMACA includes “selling or attempting to sell a wild horse.”<sup>4</sup> BLM regulations also prohibit applicants from, among other things, selling a wild horse or burro before receiving title to it, transferring a wild horse that is subject to a PMACA for more than 30 days without prior BLM approval, and violating any term or condition of a PMACA.<sup>5</sup>

BLM may verify an applicant’s compliance with a PMACA and BLM regulations by inspecting the animals and the facilities and conditions where the animals are maintained.<sup>6</sup> Any violation of the terms and conditions of a PMACA may result in cancellation of the PMACA, repossession of the wild horses and burros covered by the PMACA, and disapproval of the applicant’s requests for additional excess wild horses and burros.<sup>7</sup>

After BLM approves an adoption application, title to the horse or burro remains with the Government for at least 1 year after placement and execution of the PMACA until the applicant applies for and BLM issues a Certificate of Title.<sup>8</sup> Once an applicant receives title, he or she is no longer prohibited from, among other things, selling the horse or burro.

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<sup>1</sup> 16 U.S.C. § 1333(b)(2)(B) (2012); *see also* 43 C.F.R. §§ 4720.1, 4750.1.

<sup>2</sup> 16 U.S.C. § 1333(b)(2)(B); 43 C.F.R. §§ 4750.3-1, 4750.3-2.

<sup>3</sup> 43 C.F.R. § 4750.4-1; BLM Form 4710-9 (2002).

<sup>4</sup> BLM Form 4710-9 at 2.

<sup>5</sup> 43 C.F.R. §§ 4750.4-1(b), 4770.1(d) and (g).

<sup>6</sup> 43 C.F.R. § 4760.1.

<sup>7</sup> 43 C.F.R. § 4770.2(b).

<sup>8</sup> 16 U.S.C. § 1333(c); 43 C.F.R. §§ 4750.4-1(a), 4750.5; *see also* BLM Manual Handbook H-4750-2, Adoption of Wild Horses and Burros at II-11 (1998).

Before an applicant receives title, he or she may ask BLM to approve a reassignment of the wild horse or burro to another individual.<sup>9</sup> If the new adopter meets the qualifications for adoption, BLM may approve the reassignment.<sup>10</sup> However, the wild horse or burro may not be transferred until BLM provides written approval for reassignment.<sup>11</sup> BLM guidance cautions that, even if BLM approves reassignment, “[c]ollection of money by the original adopter from the new adopter as part of a reassignment is a violation of the regulations prohibiting the sale of wild horses or burros. Therefore, adoption fees and veterinary, feed, board, and other expenses cannot be recovered by the adopter terminating the PMACA.”<sup>12</sup>

*Mr. Biggers’s Wild Horse Adoptions*

In December 2009, BLM approved Mr. Biggers’s application for adoption of wild horses, and Mr. Biggers signed the PMACA for the three wild horses at issue in this appeal.<sup>13</sup> In his statement of reasons, Mr. Biggers explains that he sought to adopt these horses for the Parchman Animal Care and Training (PACT) program, an equine therapy and inmate rehabilitation program Mr. Biggers and his brother established under the Mississippi Department of Corrections, in Parchman, Mississippi.<sup>14</sup> Mr. Biggers states, and BLM does not dispute, that the horses were well cared for while they were at Parchman, but in December 2013, the PACT program was defunded, and the horses needed to be moved.<sup>15</sup> Mr. Biggers found “successor adopters” for the horses and states that he provided the names and addresses of those individuals to BLM.<sup>16</sup>

According to BLM, a BLM staff member recognized in 2012 that Mr. Biggers had not applied for title to the horses he received in 2009, which he was permitted to do one year after receiving them.<sup>17</sup> The BLM staff member contacted Mr. Biggers and requested title applications for the wild horses.<sup>18</sup> After a few months went by without receiving the applications, the BLM staff member visited Mr. Biggers’s property.<sup>19</sup> The

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<sup>9</sup> BLM Manual Handbook H-4750-2 at II-15; *see also* 43 C.F.R. § 4750.4-3 (transfer of a wild horse or burro after an applicant asks to terminate a PMACA).

<sup>10</sup> BLM Manual Handbook H-4750-2 at II-15.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Administrative Record (AR), Documents (Docs.) 31 (adoption application) and 30 (PMACA).

<sup>14</sup> Statement of Reasons (SOR) (dated Mar. 12, 2014); AR, Doc. 32.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> AR, Doc. 1 at unpaginated (unp.) 1.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

BLM staff member found no wild horses on the property, and Mr. Biggers's caretaker said he did not know where the wild horses were.<sup>20</sup> After the visit, Mr. Biggers called BLM and said that the horses had been moved.<sup>21</sup> BLM instructed Mr. Biggers to provide the locations of the wild horses and the title applications.<sup>22</sup> Mr. Biggers eventually submitted title applications, but they were incomplete.<sup>23</sup> At this point, BLM forwarded Mr. Biggers's file to BLM law enforcement personnel.<sup>24</sup>

A year later, a member of BLM law enforcement personnel reported that he found all of Mr. Biggers's untitled wild horses.<sup>25</sup> Each individual who received a wild horse from Mr. Biggers wanted to adopt it, and each of the individuals reported paying Mr. Biggers between \$300 and \$500 for each horse.<sup>26</sup> These individuals received the wild horses from Mr. Biggers between 3 months and 1½ years before speaking to BLM law enforcement personnel.<sup>27</sup>

Based on this information, BLM sent a decision letter to Mr. Biggers informing him that he violated his PMACA and BLM regulations by selling or giving away untitled wild horses.<sup>28</sup> BLM therefore cancelled Mr. Biggers's PMACA and informed him that he will be prohibited from adopting any wild horses or burros in the future.<sup>29</sup>

Mr. Biggers appealed BLM's decision.<sup>30</sup> Mr. Biggers asserts that, when he applied for the horses, BLM "agreed that the horses could be readopted once trained by the [PACT] program and after a one year period."<sup>31</sup> Mr. Biggers argues that his "conduct and activities were fully compliant with instructions provided by [BLM]."<sup>32</sup>

We note that BLM's decision identified 4 wild horses: Freezemark numbers 05018645, 05221043, 02598926, and 05221061. BLM later determined that Mr. Biggers received title to the horse with Freezemark number 05221061.<sup>33</sup> It is not

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at unp. 2; AR, Docs. 14 and 16 (Freezemark # 02598926), 15 and 17 (Freezemark #s 05018645 and 05221043).

<sup>24</sup> AR, Doc. 1 at unp. 2, Doc. 12 (Request for Investigation (Feb. 27, 2013)).

<sup>25</sup> AR, Doc. 11 at 1 (Jan. 7, 2014).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> AR, Doc. 9 at 1 (Jan. 16, 2014).

<sup>29</sup> *Id.*

<sup>30</sup> Notice of Appeal (dated Feb. 13, 2014).

<sup>31</sup> SOR.

<sup>32</sup> *Id.*

<sup>33</sup> AR, Doc. 1 at unp. 2, Doc. 22 (certificate of title for Freezemark # 05221061).

clear from the record whether BLM notified Mr. Biggers that the inclusion of the titled horse in the decision was an error; however, once Mr. Biggers had title, the PMACA no longer applied to that horse because it was no longer “wild” after title transferred.<sup>34</sup> Consequently, the cancellation of the PMACA had no effect with respect to that horse. BLM also cancelled the PMACA for another horse, Freezemark number 05726442, later the same month, but the decision was returned to BLM unclaimed and was not appealed.<sup>35</sup> Our decision on appeal therefore applies only to the wild horses with Freezemark numbers 05018645, 05221043, and 02598926.

### *Standard of Review*

[1] BLM has discretion to cancel a PMACA and disapprove future requests to adopt wild horses and burros when the applicant for adoption fails to comply with the terms and conditions of the PMACA.<sup>36</sup> When BLM cancels a PMACA, the applicant for adoption has the burden of establishing that the cancellation was improper.<sup>37</sup> An applicant may show that the cancellation was improper by demonstrating that there is insufficient evidence that he or she violated the PMACA.<sup>38</sup>

#### *Mr. Biggers Has Not Shown that Cancellation of the PMACA was Improper*

Mr. Biggers does not contest that he sold the three horses at issue in this appeal before obtaining title to them. Instead, he argues that a BLM employee told him that the horses could be “readopted” one year after Mr. Biggers received them and that Mr. Biggers himself could place the horses with a “subsequent adopter.”<sup>39</sup>

There is no evidence in the record that BLM approved either a reassignment or a sale or transfer of the horses covered by the PMACA. Instead, the record shows that BLM officials were unaware of the location of the horses Mr. Biggers received and in

<sup>34</sup> 16 U.S.C. § 1333(d)(1); 43 C.F.R. § 4700.0-5(l).

<sup>35</sup> AR, Doc. 7 (decision cancelling PMACA for Freezemark # 05726442), Doc. 5 (envelope showing the decision letter was unclaimed), Doc. 6 (unsigned postal receipt); Answer at 4.

<sup>36</sup> 43 C.F.R. § 4770.2(b); *Julie R. Hayslip*, 155 IBLA 315, 318 (2001); *Susan A. Moll*, 101 IBLA 45, 51 (1988).

<sup>37</sup> *Ted L. Barber, Sr.*, 156 IBLA 59, 63 (2001); *Larry Vanden Heuvel*, 145 IBLA 309, 315 (1998).

<sup>38</sup> See *Jerry Dixon*, 165 IBLA 125, 127 (2005) (“A PMACA may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated.”).

<sup>39</sup> SOR (identifying the employee as the “Jackson BLM Supervisor” in the Southeastern States Field Office).

fact had to request an investigation to determine where Mr. Biggers had moved them.<sup>40</sup> Furthermore, even if a BLM employee told Mr. Biggers that he could sell the wild horses, this would be in direct conflict with the Wild Free-Roaming Horses and Burros Act, BLM regulations, and the PMACA and therefore would not bind the Department.<sup>41</sup>

[2] The facts are undisputed that Mr. Biggers sold or gave away the three wild horses subject to this appeal in violation of the PMACA, and therefore BLM had discretion to cancel the PMACA for these wild horses.

In addition to challenging the cancellation of his PMACA, Mr. Biggers “vigorously object[s] to the notification . . . that I was advised that I would be prohibited from adopting any wild horses or burros in the future.”<sup>42</sup> Because there is no adoption application before us for review, we need not address this notification. If Mr. Biggers submits another application to adopt a wild horse or burro, then his application will be subject to review under BLM’s regulations.

#### *Conclusion*

Mr. Biggers has not demonstrated that BLM’s decision to cancel his PMACA was not supported by sufficient evidence. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,<sup>43</sup> we affirm BLM’s January 16, 2014, decision.

/s/

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Silvia M. Riechel  
Administrative Judge

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<sup>40</sup> See AR, Docs. 1, 11, 12, 20.

<sup>41</sup> See 43 C.F.R. § 1810.3; *Salmon Creek Association*, 151 IBLA 369, 372 (2000) (“Even if Appellant was misled by BLM, ‘a representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule,’ or bind the Department.” (quoting *Charles House*, 33 IBLA 308, 310 (1978))).

<sup>42</sup> SOR.

<sup>43</sup> 43 C.F.R. § 4.1.

## ADMINISTRATIVE JUDGE JACKSON CONCURRING

I write separately to clarify my view as to what the Bureau of Land Management (BLM) may properly consider in deciding whether to grant a future application to adopt a wild horse or burro from an individual who had been found in noncompliance with the terms and conditions of the Private Maintenance and Care Agreement (PMACA) for an earlier-adopted horse or burro.

The rule at 43 C.F.R. § 4750.3-2 (Qualification standards for private maintenance) expressly provides, among other qualifications, that a putative adopter have “no prior conviction for inhumane treatment of animals or for violation of the Act or these regulations.”<sup>1</sup> Since a conviction is synonymous with a successful criminal prosecution that results in fines and/or imprisonment<sup>2</sup> and the record does not show that Biggers had been convicted of any such criminal violation, I do not believe he is “unqualified” or otherwise precluded from adopting a wild horse. I therefore do not believe he is “prohibited from adopting any wild horses or burros in the future.”<sup>3</sup>

Nevertheless, BLM has express authority to disapprove a future request to adopt wild horses on a case-by-case basis.<sup>4</sup> Moreover, as this Board has stated:

BLM properly may consider the prior conduct of those accepting responsibility for a wild horse’s care. 43 C.F.R. § 4750.3-2(b). It is neither unreasonable for BLM to consider past conduct as a guide to future actions, nor error to do so. Nor is it necessary for BLM to prosecute and obtain a conviction for inhumane treatment of animals as a predicate to denying an adoption application on the ground that a question concerning whether the horse will be properly cared for exists.<sup>[5]</sup>

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<sup>1</sup> 43 C.F.R. § 4750.3-2(a)(2).

<sup>2</sup> See 43 C.F.R. § 4770.5 (“Any person who commits any act prohibited in § 4770.1 of these regulations shall be subject to a fine of not more than \$2,000 or imprisonment for not more than 1 year, or both.”); see also 43 C.F.R. § 4770.1(g) (prohibited acts include “[v]iolating a term or condition of the Private Maintenance and Care Agreement”).

<sup>3</sup> AR, Doc. 9 at 1 (Jan. 16, 2014); see *Halina C. Morley*, IBLA 2011-23 (June 21, 2011), at 5-6 n.10 (BLM denied that its decision barred Appellant from future adoptions, and represented that cancelling her PMACA under 43 C.F.R. § 4770.2(b) only makes BLM “unlikely to authorize [her] to continue adopting wild horses”).

<sup>4</sup> 43 C.F.R. § 4770.2(b).

<sup>5</sup> *Nikki Lippert*, 160 IBLA 149, 156 (2003) (case citations omitted).

BLM can consider prior PMACA noncompliance on a case-by-case basis in deciding whether to allow Biggers to adopt wild horses or burros, but since his noncompliance did not render him unqualified, I do not believe it can bar him from all wild horse or burro adoptions, as its decision here purportedly did.

In any event, I concur fully in the results and rationale expressed by Judge Riechel.

\_\_\_\_\_/s/\_\_\_\_\_  
James K. Jackson  
Administrative Judge