

INTERIOR BOARD OF LAND APPEALS

Freddie R. Mason

126 IBLA 28 (April 13, 1993)

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FREDDIE R. MASON

IBLA 92-259

Decided April 13, 1993

Appeal from a decision of the Las Cruces District Manager, New Mexico, Bureau of Land Management, cancelling a private maintenance agreement and taking possession of a wild and free-roaming horse.

Affirmed.

1. Evidence: Sufficiency -- Wild Free-Roaming Horses and Burros Act

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreement.

APPEARANCES: Freddie R. Mason, pro se; Margaret Miller Brown, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Freddie R. Mason has appealed from a July 12, 1991, decision of the Las Cruces District Manager, New Mexico, Bureau of Land Management (BLM), cancelling his private maintenance and care agreement for a wild and free-roaming horse assigned to appellant under the authority of the Wild Free-Roaming Horses and Burros Act of December 15, 1971, as amended, 16 U.S.C. §§ 1331-1340 (1988).

By the private maintenance and care agreement (Form 4710-9) signed on August 6, 1990, by appellant's daughter-in-law Lenora Rivera, P.A., appellant was assigned a horse identified with the Freezebrand 89527953 and a Signalment Key HM1AAAAFG.

The District Manager's decision states that a BLM inspection of the horse on May 25, 1991, revealed that the horse was underweight and had no water available to it. The horse's nutritional requirements were discussed with appellant at this time and appellant was advised that water, in properly sized containers, was to be provided to the horse at all times. Appellant was further told that BLM would conduct a follow-up inspection within 30 days. That inspection, on June 15, 1991, showed no significant improvement of the condition of the horse. Water was not available to the horse, nor was there hay or grain on the premises. Therefore,

the District Manager cancelled the maintenance and care agreement pursuant to 43 CFR 4770.2(b). That regulation provides that failure to comply with the terms of the maintenance and care agreement may result in its cancellation, repossession of the horse, and disapproval of subsequent requests to adopt additional wild horses and burros.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1988), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the agreement and until BLM issues a certificate of title. 16 U.S.C. § 1333(c) (1988); 43 CFR 4750.4 and 4750.5. Regulation 43 CFR 4760.1(a) requires the adopter to comply with the agreement and the regulations. "Application for Adoption of Wild Horse[s] or Burro[s]" (Form 4710) specifically prohibits an adopter from "treating a wild horse or burro inhumanely." Regulation 43 CFR 4700.0-5(f) defines "inhumane treatment" as "any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community."

As articulated in Grant F. Morey, 108 IBLA 354, 356 (1989), by the Board, the quantum of proof necessary to cancel a private maintenance and care agreement is as follows:

In previous decisions, the Board has held that BLM, in deciding to cancel an Agreement and repossess a horse, "may rely upon an observed 'deteriorating condition of the animals themselves and \* \* \* the credible reports of third parties' in deciding to repossess the animals and cancel a maintenance Agreement \* \* \*." Mary Magera, 101 IBLA 116, 119 (1988), quoting Dennis Turnipseed, 66 IBLA 63, 67 (1982). \* \* \* As applied in the instant case, [inhumane treatment] \* \* \* simply means that the condition of the horse, as well as the absence of feed and water, was found to reasonably justify its repossession and the cancellation of the Agreement pursuant to 43 CFR 4700.0-5.

See also Vickie L. Fontenot, 121 IBLA 47, 50 (1991).

In his statement of reasons, appellant acknowledges that the above inspections occurred and that on the May 25 inspection appellant assured the inspector that he would attempt to obtain an old bath tub for use as a water container for the horse. Appellant was unable to obtain the bath tub, however, and secured a large metal drum which he was "planning to put in usage on June 15th." On that day, appellant's daughter-in-law showed the inspector the drum which had not yet been placed inside the corral with the horse. Appellant also alleges telling the inspector that the horse had been fed the night before and that he and his daughter-in-law were waiting for the feed store to open at 9 a.m. so they might obtain an "ample weekly supply of both hay, grain feed, and vitamins." Appellant

asserts that BLM may have acted illegally in removing the horse from his property and requests an evidentiary hearing on the matter.

The file contains two Wild Horse and Burro Compliance Record Forms 4710-19 indicating that BLM inspector B. T. Frost inspected the horse on May 25 and June 15, 1991. In the May 25 report, the inspector gave the horse a "poor" body fat rating. He commented that the horse was not being fed regularly, but that he heard from the "branding inspector" who had also been to the premises, that the horse was being fed twice a day. He observed "a small water tank in the corral" and was assured by appellant and his daughter-in-law that they would obtain a bath tub as a water container for the horse. The inspector also reported that appellant and his daughter-in-law told him they had wormed the horse a few days earlier. He instructed them to feed more hay, approximately 25 pounds per day.

On his followup inspection, the inspector observed that the horse had been moved into a smaller, 10- by 12-foot, enclosure and there was neither hay nor water available to the horse. He was told by appellant and his daughter-in-law that they would use a barrel as a water container. The inspector felt that the horse was in no better condition than it had been on May 25. He advised that the horse would be repossessed.

On June 16, 1991, BLM repossessed the horse and on June 17, veterinarian Dr. Robert Gruda, performed a physical examination on the horse. <sup>1/</sup> He found the horse "about 150-200 pounds" underweight but free of disease. He observed "poor hair coat, prominence of ribs, spinous processes of spinal vertebrae, and the surface areas of the pelvis."

The file includes two sets of black and white photographs taken on June 17, 1991, 24 hours after the horse was repossessed and on February 7, 1992. The photographs clearly show a marked difference in the appearance of the horse on the two dates. The June 17 set shows prominence of ribs and pelvis. The 1992 photos show the horse with a uniform coat, rounded flanks, and no ribs protruding.

We conclude that BLM properly cancelled the agreement and repossessed the horse. The evidence is clear that the horse was malnourished at the time BLM repossessed it. Appellant has not disputed that the horse was underfed while in its care and there is substantial agreement between the accounts of the two inspections as recorded by BLM's inspector and in appellant's statement of reasons. Removal authority, in the interest of an adopted animal's welfare, is clearly provided to BLM under 43 CFR 4770.2(b) and 4770.3. Moreover, at the time the horse was repossessed title to it remained in the United States.

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<sup>1/</sup> The doctor's memorandum gives a date of "17 May 91." BLM's chronology of events indicates, however, that the horse was examined after repossession.

The record herein does not present a material conflict of facts. Appellant does not allege that the facts are other than demonstrated by the record, nor does he indicate that at a hearing he would present evidence requiring a different result. Therefore, no hearing is required and appellant's request for one is denied. Sealaska Corp., 115 IBLA 257 (1990).

Therefore, 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.

David L. Hughes  
Administrative Judge

I concur:

John H. Kelly  
Administrative Judge

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