

INTERIOR BOARD OF LAND APPEALS

Joe Peepers

137 IBLA 324 (undated)

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JOE PEEPERS

IBLA 94-339

Decided

Appeal from a decision of the Bureau of Land Management, Oklahoma Resource Area Office, cancelling private maintenance and care agreement for wild free-roaming horses. NM 90538377, NM 90538379, NM 91538466.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

BLM properly canceled a private maintenance and care agreement and took possession of wild horses when the adopter failed to produce the horses for inspection within 7 days of receipt of a written request as required by his agreement and 43 CFR 4750.4-(c) and 4770.1(g).

APPEARANCES: Joe Peepers, pro se; Arthur Arguedas, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Joe Peepers has appealed from a January 11, 1994, decision of the Oklahoma Resource Area Office, Bureau of Land Management (BLM), that cancelled his private maintenance and care agreement (agreement) for wild free-roaming horses.

In late 1992 and early 1993, Peepers, members of his family, and four other partners arranged for a group adoption of 24 horses. Under agreements signed by each of the group adopters, Peepers was responsible for providing pasture and corral facilities for the horses. In the agreements, each of the adopters represented to BLM that the horses would be kept on land provided by Peepers near the towns of Lindale and Tyler, Texas.

On September 8, 1993, letters were sent to Peepers and his partners requesting them to make the adopted horses available for inspection within seven days of receipt of the letters, and notifying them that the horses should be "tied or otherwise contained within a corral." No BLM record exists concerning this inspection. On November 18, 1993, Bart Russell, a BLM Ranger, met with Peepers to inspect the horses, which were in three separate pastures. They could find only 18 of the horses, and Russell was unable to perform close inspections of them because they were not corralled.

On December 14, 1993, Russell met a second time with Peepers. The horses were still located in three pastures, and only 18 could be found. On that date, Peepers signed a written agreement to "contain untitled horses from the [wild horse and burro] program for inspection within 30 days." On December 30, 1993, a letter was written to the horse owners again directing them to make their horses available for inspection; it was directed that the horses should be tied or otherwise corralled so that they could be easily identified and inspected. On January 10, 1994, Russell and a team of BLM rangers travelled to Tyler to meet with Peepers. Peepers then handed them a sheriff's report he had filed reporting six of the horses stolen. According to Russell's report of that date, "At the site, Hwy 110 there were 9 horses \* \* \* loose in the pasture. I asked PEEPERS why he had not contained them as he agreed, PEEPERS stated that he was not educated and he did not understand the word "contained." BLM then opened an investigation into the disappearance of the six horses. BLM cancelled Peepers' agreement by written decision issued the next day, because he had failed to produce the horses for inspection within 7 days of receipt of a written request as required by his agreement and departmental regulations found at 43 CFR 4750.4-1(c) and 4770.1(g).

In his statement of reasons, Peepers makes the following argument on his own behalf:

I wish to appeal the action taken by Bart Russell and his group against me, Joe Peepers. They have picked up my horses saying that I refused to put them in a corral for inspection. When the first request came on Sept. 8, 1993, I paid a guy to fix fence and help put these horses in a 10 acre holding pen until they could be inspected. I was in poor health at that time and could not do this by myself. The BLM people never showed up to inspect these horses.

They also raised cane because all the horses were not in the same pasture. I was told by Bill Sharp, who was running the program at that time, and Don Galloway to put the horses adopted at different times in different pastures so they could be inspected separately when it came for my titles on said horses.

BLM has responded that, according to Peepers' own admission, he held the horses in a 10-acre pasture after BLM notified him to corral the horses. BLM states the inspection scheduled on September 17, 1993, was not held as planned because conditions for inspection were unsuitable, and that later observation from a distance revealed that Peepers continued to leave the horses in the 10-acre pasture. BLM states that a 10-acre pasture is unsuitable for close inspection of the horses, and that examination was further thwarted because domestic horses were feeding in the same pasture.

In answer to Peepers' statements that he had been told to house the horses in separate pastures, BLM maintains that, in his agreement, Peeper's represented the horses would be held in one pasture. Finally, BLM asserts that because six horses were reported missing from Peepers' herd, it was necessary to conduct an investigation, and to interview people who knew Peepers and to ask all relevant questions.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1994), 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) (1994); 43 CFR 4750.4 and 5.

Departmental regulations grant BLM broad authority to manage the private maintenance of wild horses and burros prior to their final adoption. Along with other "prohibited acts," "violating a term or condition of the Private Maintenance and Care Agreement" is reason for cancelling the agreement, repossessing horses, and disapproving requests by the adopter for additional horses. 43 CFR 4770.1(g); 4770.2(b).

Regulations grant BLM the authority to verify compliance with private maintenance and care agreements "by visits to an adopter, physical inspections of the animals, and inspections of the facilities and conditions in which the animals are being maintained." 43 CFR 4760.1(a). As a condition for continuation of a private maintenance and care agreement, BLM may require an adopter to "take specific corrective actions if the authorized officer determines that an animal is not receiving proper care or is being maintained in unsatisfactory conditions." 43 CFR 4760.1(d).

The terms of adoption appearing in Peepers' private maintenance and care agreement specify that "[a]dopters shall capture and restrain animals to allow for physical inspection within 7 days of receipt of a written request from the authorized officer" (Private Maintenance and Care Agreement Terms of Adoption, at (d)). BLM's letter to Peepers dated December 30, 1993, specifies as follows:

In accordance with item (d) of the Terms of Condition [sic] of the \* \* \* [Private Maintenance and Care Agreement], you are hereby directed to make the above listed horses available for physical inspection within seven days of receipt of this letter. The horses should be tied or otherwise contained within a corral, such that they are easily accessible and can be positively identified by our inspectors.

Peepers maintains that by containing the horses within the 10-acre pasture, he had complied with BLM's request. This argument, however, misconstrues the definition of capturing, restraining, or coralling. A "corral" is

defined as "[a] pen or enclosure for confining or capturing livestock." Webster's Third New International Dictionary of the English Language Unabridged, (Springfield, Massachusetts: G. & C. Merriam Company (1971), p. 511). Ten acres cannot reasonably be defined as a pen wherein to confine or otherwise restrain livestock for close physical inspection. Peepers did not comply with BLM's written request, and therefore violated the terms of his agreement.

We find no other assertion of error in the BLM decision in Peepers' statement of reasons. The record reveals that Peepers represented to BLM in his agreement that the horses would be kept on pasture lands located near the intersection of Interstate 20 and Highway 69 between Lindale and Tyler, Texas. Peepers claims BLM officials encouraged him to move some of the horses to other pastures. He has not, however, produced evidence of any written BLM communication which would entitle him to prevail on a claim of estoppel against the Government. See Dean Staton, 136 IBLA 161, 162-64 (1996). Moreover, while he has alleged that BLM treated him unfairly in investigating the loss of six horses from his herd, he has not produced evidence to support his allegations. An appellant who does not show adequate reason for appeal and, as appropriate, support the allegation with argument or evidence showing error cannot be afforded favorable consideration. Add-Ventures Ltd., 95 IBLA 44, 50 (1986).

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.

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Franklin D. Amess  
Administrative Judge

I concur.

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C. Randall Grant, Jr.  
Administrative Judge