

INTERIOR BOARD OF LAND APPEALS

John Linjatie

137 IBLA 390 (January 22, 1997)

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JOHN LINJATIE

IBLA 93-299

Decided January 22, 1997

Appeal from a decision of the Garnet Resource Area Manager, Bureau of Land Management, denying an application to adopt wild and free-roaming horses. MT 4700.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

An application to adopt wild and free-roaming horses under 43 CFR Subpart 4750 is properly rejected where the decision is supported by the regulations and observations of qualified BLM personnel, and the party challenging the determination has not shown it to be unreasonable or improper.

APPEARANCES: John Linjatie, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

John Linjatie has appealed from a decision of the Garnet Resource Area Manager, Bureau of Land Management (BLM), dated March 16, 1993, denying his application to adopt four wild horses. Appellant's application, dated February 3, 1993, was filed pursuant to section 3(b) of the Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2) (1994), which authorizes the adoption of wild free-roaming horses by qualified individuals.

According to the record, Jeff Fenton, a Range Conservationist, and Greg Smith, a Range Technician, both with the Headwaters Resource Area, BLM, inspected Linjatie's facilities and discussed his adoption application with him. In a report dated March 10, 1993, they described what their inspection had disclosed. In addition to raising questions as to the adequacy of the feed supply, the report noted:

[T]he entire facility including fences, corral and shed is totally unsuitable. The acreage, estimated at approximately five acres, is presently being used by seven horses and appears to be unsuitable for grazing. There is no available water for the existing horses to drink.

\* \* \* \* \*

The small existing shed was very old and unstable. The four strand barbed wire fence was in total disrepair. Horses could easily walk through the fence or step over it in many places. The corral was very old and unstable and incapable of holding a horse. This facility is definitely unsuitable for a wild horse facility [and] is located within the city limits of Helena.

John Linjatie also said he owned some mountain pasture that could be used for horse range. After visiting with the applicant, [we] came to the conclusion that he had an interest in animals but was not well educated in livestock management and nutrition.

(Mar. 10, 1993, Memorandum to Garnet Area Manager, BLM).

In his March 16, 1993, decision, the Garnet Area Manager proffered the following reasons, based on the field inspection, for denying Linjatie's application:

1. Inadequate shelter.
2. Corral - wire is not adequate material and four feet high is not sufficient height.
3. Question the source, quality, and quantity of feed.
4. Water source for horses appeared inadequate.
5. Information on the application is incomplete.

In his statement of reasons for appeal, Linjatie contended that his building was adequate and provided sufficient shade, the corral could be modified to satisfy BLM's height restrictions, his current feed plan was adequate to keep his present horses in good condition, and that BLM's personnel did not inspect his water source. He described his horses as "fat" with the exception of those he had recently bought at an auction. Linjatie asserted that he had adopted horses from BLM in the past and that he had been assured by BLM that he could adopt additional horses. He also noted that, while he did have **seven** horses at the time of the inspection, if he were allowed to adopt additional horses, he would sell all but his saddle horse and an Arabian stallion which he intended to breed with the BLM mares. In addition, he argued that he had a total of 40 acres, adjacent to his corral, on which he could run the horses.

[1] The Wild Free-Roaming Horses and Burros Act, supra, authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. Departmental regulations set forth qualification standards applicable to the instant appeal which relate, in part, to the quality of maintenance an adopter is expected to provide:

(a) To qualify to receive a wild horse or burro for private maintenance, an individual shall:

\* \* \* \* \*

(3) Have adequate feed, water, and facilities to provide humane care to the number of animals requested. Facilities shall be in safe condition and of sufficient strength and design to contain the animals. The following standards apply:

(i) A minimum space of 144 square feet shall be provided for each animal maintained, if exercised daily; otherwise, a minimum of 400 square feet shall be provided for each animal;

(ii) Until fence broken, adult horses shall be maintained in an enclosure at least 6 feet high; burros in an enclosure at least 4½ feet high; and horses less than 18 months old in an enclosure at **least** 5 feet high. Materials shall be protrusion-free and shall not include large-mesh woven or barbed wire;

(iii) Shelter shall be available to mitigate the effects of inclement weather and temperature extremes. The authorized officer may require that the shelter be a structure, which shall be well-drained and adequately ventilated;

(iv) Feed and water shall be adequate to meet the nutritional requirements of the animals, based on their age, physiological condition and level of activity;

\* \* \* \* \*

(b) The authorized officer shall determine an individual's qualifications based upon information provided in the application form required by § 4750.3-1 of this subpart and Bureau of Land Management records of any previous private maintenance by the individual under the Act.

43 CFR 4750.3-2.

Our review here focuses on the proper exercise of administrative discretion inherent in the consideration of an application under 43 CFR Subpart 4750. The party challenging a determination by BLM bears the burden of showing that the decision is not supportable on any rational basis or does not comply with the regulations or statutes. See Larry Brown & Associates, 133 IBLA 202, 205 (1995); Wayne D. Klump v. BLM, 124 IBLA 200, 204 (1992); Union Oil Co. of California, 116 IBLA 8, 16 (1990); Four Corners Expeditions, 104 IBLA 122, 125 (1988). In the instant case, appellant has not shown that there was an abuse of discretion in the denial of his application.

The decision to reject appellant's application was based on specific observations of deficiencies by BLM personnel trained in those matters. It is well established that the Department is entitled to rely on the reasoned analysis of its experts in matters within the realm of their expertise. King's Meadow Ranches, 126 IBLA 339, 342 (1993); Animal Protection Institute of America, 118 IBLA 63, 76 (1991).

In previous cases involving wild horse maintenance agreements, we have held that the reasoned judgment of BLM personnel that facilities are inadequate constitutes sufficient basis to terminate an agreement. Freddie R. Mason, 126 IBLA 28 (1993); Thana Conk, 114 IBLA 263 (1990). In the instant situation, BLM has identified specific instances in which the facilities offered by Linjatie do not comport upon visual inspection with the guidelines expressed in the regulations. Thus, for example, the fence around the corral is clearly not the requisite height and BLM's inspection indicated it was constructed of unsuitable material. Furthermore, BLM's inspection also suggested that the shelter for the horses is in need of substantial repair. Given the other concerns expressed as to the adequacy of the food and water supply, BLM could not, given its statutory mandate, permit the adoption of horses as requested by appellant. Thus, we must affirm the decision below.

On the other hand, the record also supports the observation made by the BLM investigators that appellant does appear to be an individual concerned with the welfare of his horses. If, indeed, as appellant asserts, he has successfully adopted and maintained wild horse in the past, this is a point in his favor. Our action herein does not preclude appellant from submitting another application in the future to adopt wild horses. See 43 CFR 4750.3-4. It goes without saying, however, that before such an application could be favorably considered, appellant must first rectify the deficiencies delineated in the BLM field report and provide sufficient assurances as to the adequacy of the food and water supply. If appellant desires to pursue such a course of action, he would be well-advised to contact BLM officials to ascertain exactly what he must do to obtain favorable consideration of an adoption application, before formally filing a request for adoption.

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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James L. Burski  
Administrative Judge

I concur.

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T. Britt Price  
Administrative Judge