

INTERIOR BOARD OF LAND APPEALS

Jerry Dixon

165 IBLA 125 (March 22, 2005)

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JERRY DIXSON

IBLA 2003-79

Decided March 22, 2005

Appeal from a decision of the Field Manager, Jackson, Mississippi, Field Office, Bureau of Land Management, providing notice of the repossession of three horses, and canceling the Private Maintenance and Care Agreement for those horses. Freeze Marks 10574515, 01641148, and 97569848.

Affirmed.

1. Wild Free-Roaming Horses and Burros Act

A Private Maintenance and Care Agreement for adopted wild horses may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated. BLM may rely upon an observed deteriorating condition of the animals themselves and credible reports of third parties in deciding to repossess the animals and cancel a Private Maintenance and Care Agreement. Where photographs taken on the day of the inspection provide sufficient evidence of the deteriorating condition of the animals, and appellant has submitted no countervailing evidence that would warrant reversal of a decision to cancel the Private Maintenance and Care Agreement and repossess the horses, the decision will be affirmed.

APPEARANCES: Jerry Dixon, Petal, Mississippi, pro se; Patricia A. Woods, Esq., Office of the Field Solicitor, Knoxville, Tennessee, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Jerry Dixon has appealed from the August 27, 2002, decision of the Field Manager, Jackson, Mississippi, Field Office, Bureau of Land Management (BLM), notifying Dixon of the repossession of three horses, identified by Freeze Marks 10574515, 01641148, and 97569848, and canceling his Private Maintenance and

Care Agreement (PMACA) for those horses. BLM had approved the PMACA with Dixson's application to adopt horses on April 20, 2002. The application indicated that the horses would be kept in a location near Black Creek Road near Purvis, Mississippi.

BLM received a complaint concerning the physical condition of the horses, and on the basis of photographs of the horses submitted with the complaint, Jess Bryant and James Hood, a BLM wild horse and burro specialist, set out to repossess the horses. The horses were not at the location stated in appellant's application, but were being kept in a corral behind Russet Lane near Petal, Mississippi.^{1/} Hood took photographs showing the thin condition of the horses, and stated that the horses had not received proper care. In an August 29 memorandum, Hood recommended that a "citation for neglect be issued and the horses NOT be returned to Dixson."

In his appeal, however, Dixson states that the horses were fed and watered daily "and sometimes twice a day." The horses were being gently trained and kept in a temporary pen and stall until permanent quarters could be built. Dixson asserts that [when] Bryant and Hood "said they didn't see anything wrong with the ho[r]ses and compl[i]mented on how gentle the horses were as they handled them." In its Answer, BLM notes that it was never notified of the change in the horses' location as required by 43 CFR 4750.4-1(b), and states that the photographs [that] "show the extremely poor condition of the three horses."

The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (2000), 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 PMACA, and until BLM issues a certificate of title. 16 U.S.C. § 1333(c) (2000); 43 CFR 4750.4 and 4750.5. Regulations 43 CFR 4760.1(a) and 4770.1(g) require the adopter to comply with the PMACA and the regulations.

Departmental regulations prohibit anyone from treating a wild horse or burro inhumanely. 43 CFR 4770.1(f). "Inhumane treatment" is defined 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." 43 CFR 4700.0-5(f).

^{1/} 43 CFR 4750.4-1(b) provides that wild horses covered by a PMACA "shall not be transferred for more than 30 days to another location or to the care of another individual without the prior approval of the authorized officer." This Board has affirmed BLM decisions cancelling PMACA's for failure to comply with this requirement. See Stefanie Lee, 151 IBLA 1, 2 (1999), and cases cited.

[1] A PMACA may be summarily cancelled by BLM upon good and sufficient evidence that the terms of the agreement have been violated. The Board has held that BLM “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); see also Freddie R. Mason, 126 IBLA 28, 29 (1993); Grant F. Morey, 108 IBLA 354, 356 (1989). In this case, the photographs taken on the day of the inspection provide irrefutable evidence of the deteriorating condition of the animals. Appellant has submitted no countervailing evidence that warrants reversal of BLM’s decision.

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.

James F. Roberts
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge