Editor's note: Reconsideration denied by Order dated Nov. 25, 1998

H. ARVENE COOPER AND BRENT DAVID COOPER
(Appellants)

v.

BUREAU OF LAND MANAGEMENT
(Respondent)

LYNN A. JENKINS, I.
(Intervenor)

IBLA 95-489 Decided May 6, 1998

Appeal from an Order issued by Administrative Law Judge Harvey C. Sweitzer, dismissing H. Arvene Cooper and Brent Cooper v. Bureau of Land Management, UT-08-93-01.

Affirmed as modified.

1. Grazing Leases: Assignment

The Department has historically declined to adjudicate private disputes involving grazing leases and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. When a private party seeks to have a grazing lease cancelled because the lessee has deeded the property to the party seeking to have the grazing lease cancelled, and there is an ongoing dispute regarding the ownership of base property, the proper course of action on the part of BLM is to decline to disturb the existing conditions until resolution of the private dispute.

APPEARANCES: Lynn A. Jenkins, I., pro se, Appellant; Clark B. Allred, Esq., Vernal, Utah, for Respondents H. Arvene Cooper and Brent David Cooper; David K. Grayson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

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OPINION BY ADMINISTRATIVE JUDGE MULLEN

Lynn A. Jenkins, I., has filed an appeal of a June 2, 1995, Order issued by Administrative Law Judge Harvey C. Sweitzer, dismissing H. Arvene Cooper and Brent Cooper v. Bureau of Land Management, UT-08-93-01.

This case initially arose from an April 9, 1993, decision issued by the Area Manager, Book Cliffs Resource Area, Utah, Bureau of Land Management (BLM), terminating a grazing permit held by H. Arvene and Brent Cooper. The termination was based upon a BLM finding that the Coopers' base property, described as the S½SE¼NW¼, sec. 27, T. 7 S., R. 20 E., Salt Lake Base and Meridian, Utah, was owned and controlled by Jenkins. The decision stated that, in accordance with 43 C.F.R. § 4110.2-1(d), BLM was required to immediately terminate the grazing permit because the Coopers no longer owned or controlled the base property.

The Coopers appealed to the Hearings Division, Office of Hearings and Appeals, claiming that the April 9, 1993, decision was in error because they had retained ownership and control of the base property. The appeal was assigned to Administrative Law Judge Harvey C. Sweitzer. Judge Sweitzer granted Jenkins' motion to intervene on May 12, 1995.

Some time prior to the issuance of the April 9, 1993, BLM decision the Coopers had initiated legal action in state court to resolve a number of questions including the ownership of the base property. That case was unresolved when BLM issued its April 9, 1993, decision. Judge Sweitzer held the action before him in abeyance pending the outcome of the state court action.

On February 22, 1995, the state court held in favor of the Coopers, holding that Jenkins had no authority to record the quit-claim deed, and that they were the owners of the base lands. On June 1, 1995, BLM filed a motion to dismiss the appeal before Judge Sweitzer, asserting that the state court decision that the Coopers had retained control of the base property ownership was conclusive for BLM purposes. The Coopers concurred in that motion and Judge Sweitzer responded by dismissing the proceeding.

Jenkins appealed, alleging that he had acquired all right, title, and interest in the property through the quit-claim deed and that the Coopers had conspired to fraudulently acquire the grazing lease. In the way of relief, he seeks to have this Board find that the Coopers did not own or control the base property when they applied for the grazing permit.

The Coopers responded, stating that they retained ownership and control of the base property. They explained that in 1977, Arvene Cooper and Afton C. Higley had entered into an agreement to exchange properties, with the base property being a part of the property subject to that agreement. Title was not to pass until full payment had been made pursuant to the contract. A second suit resulted from an alleged breach of the exchange.

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agreement. Following a lengthy trial, the Eighth District Court in and for Uintah County, Utah, issued a Ruling and Order on February 4, 1998. This ruling sets out the following findings, which are pertinent to this appeal:

> 26. * * * The Federal Government requires owners of sheep permits to have access to "base property" as a condition of the permit. Mr. Cooper had designated a 20 acre parcel of property to be used as a base property for his permit. The 20 acres was part of the 40 acre parcel of property described in the Exchange Agreement. * * * [The] Coopers had retained title to this 40 acre parcel. Mr. Cooper had also received permission from Mr. Higley to use the 20 acres as base property for the sheep permit.
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> 27. Some time in May or early June of 1988, Mr. Higley and Mr. Brent Cooper approached the Coopers and requested permission to use the 40 acre parcel as collateral for an operating loan for their joint venture. At this time, the Coopers had not received full payment under the contract. Therefore, the Coopers had no obligation to place their property in jeopardy by allowing it to be used as security for the joint venture. Nevertheless, as an accommodation, they agreed to let the joint venture use their property as security for a loan. However, Mr. Brent Cooper and Mr. Higley agreed that if they could not secure a loan, the deed would be returned. Pursuant to this agreement the Coopers signed a quit claim deed to the 40 acre parcel * * * and gave the deed to Brent Cooper who tried to obtain the loan. When Brent Cooper was unsuccessful in obtaining the loan he sent the deed to Mr. Higley who was also unsuccessful in obtaining a loan. In spite of the fact that no loan was obtained, the deed was not returned to the Coopers. The deed was put into Mr. Higley's file and was not recorded. * * *
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> 28. Sometime prior to September 5, 1991, Mr. Jenkins obtained access to the contract files which Mr. Higley had maintained concerning the Exchange Agreement. Included in the files was the quit claim deed to the 40 acre parcel of land * * * which had been delivered to Mr. Higley to obtain a loan. Without notice to the Coopers, Mr. Jenkins recorded the deed on September 5, 1991. The recording of this document was a clear violation of the promise of Mr. Higley that the deed would be returned. On October 26, 1991, Mr. Jenkins went to the Cooper farm to arrange for final payment under the [Uniform Real Estate Contract]. In the course of this conversation, Mr. Jenkins first learned about the sheep permit. During the conversation, Mr. Cooper informed Mr. Jenkins that he would need some time before he could transfer the property so that he could purchase additional land to be used as base property for the sheep permit. During the conversation, Mr. Jenkins was fully aware that he had already recorded the deed to the 40 acres. Nevertheless, instead of revealing this fact, he agreed to give Mr. Cooper the time

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> necessary to obtain additional property and to transfer the sheep permit. After that time, Mr. Jenkins contacted the B.L.M. and arranged to have the sheep permit transferred to his name. Contrary to his promise, Mr. Jenkins not only failed to cooperate but has actively opposed Mr. Cooper's attempts to regain title to the sheep permit. To aggravate the situation, Mr. Jenkins entered into an agreement with Chuck Winn to allow Mr. Winn to use the sheep permit for $5000 a year. * * * The conduct of Mr. Jenkins with the sheep permit is reprehensible and completely unjustified. His only access to this asset was the quit claim deed which was recorded without the permission of the Coopers and contrary to the promises of his predecessor in interest that it would not be recorded. The Court believes that Mr. Jenkins never intended to cooperate with Mr. Cooper so that Mr. Cooper could transfer the sheep permit. Although he may well have innocently recorded the deed, he has acted at every turn thereafter with deception. In the process, he obtained a valuable asset which had been purchased by the Coopers * * *. As a result of the recording of the quit claim deed, Mr. Jenkins now has title to the 40 acres as well as the sheep permit and has the use of the sheep permit since 1992. All of this occurred without Mr. Jenkins paying any compensation to Mr. and Mrs. Cooper for the sheep permit and without full payment being made for the 40 acres.

(Ruling and Order at 18-21.)

We note that Jenkins was not named as a defendant in the above suit in the state court. That court specifically stated that "[b]ecause Mr. Jenkins was not included as a Defendant and was not allowed to defend against the Complaint, Mr. Jenkins cannot be held liable for the loss of the sheep permit." (Ruling and Order at 21.) Thus, the state court action did not actually resolved the issue of ownership of the sheep permit.

[1] Notwithstanding this finding we are able to rule on the propriety of Judge Sweitzer's dismissal. As noted above, at some time prior to the issuance of the April 9, 1993, BLM decision, the Coopers had initiated legal action in state court to resolve the question of property ownership, and that case was pending when BLM issued its April 9, 1993, decision. In Charles H. and Joanne E. Dorman et al. v. Robert L. Meyer et al., 79 IBLA 209, 212 (1984), we specifically noted that

> [t]he Department has historically declined to adjudicate private disputes involving the validity or effect of a lease assignment and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. E.g., Fimple Enterprises, Inc., 70 IBLA 180 (1983); William B. Brice, 53 IBLA 174, aff'd, Brice v. Watt, No. C-81-0155 (D. Wyo. Dec. 4, 1981) [aff'd No. 82-1455 (10th Cir. Oct. 4, 1983]. The record in this case clearly indicates

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> that BLM was aware of the existence of a private dispute between the parties and litigation regarding the alleged breach of the Contract for Sale and Assignment. The proper course of action on the part of BLM was to decline to disturb the existing conditions until resolution of the private dispute, and BLM's approval of the reassignment to appellees was contrary to Departmental policy. Fairness dictates that we now restore the status quo by vacating the reassignment to the appellees pending resolution of the dispute. Fimple Enterprises, Inc., supra.

(Footnote omitted.)

This case is an excellent example of the wisdom of the Department's policy of maintaining the status quo until parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. Jenkins sought to have the Coopers' lease cancelled because the Coopers had lost the base property. The Coopers objected, claiming that Jenkins had wrongly acquired the property. When a private party seeks to have a grazing lease cancelled because the lessee has conveyed the base property to the party seeking to have the grazing lease cancelled, and there is an ongoing dispute regarding the validity of the conveyance, the proper course of action on the part of BLM is to decline to disturb the existing conditions until resolution of the private dispute. Had BLM adhered to this course of action, BLM would have maintained the status quo, and this appeal would not now be before us.

Rather than dismissing the action and remanding the case in order to allow BLM to rescind its decision, Judge Sweitzer should have vacated the BLM decision and remanded the case to BLM for further action. We hereby do so.

Upon remand BLM should withhold further action on the applications for assignment until final resolution of the private dispute and receipt of notice of the results of the final determination.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Administrative Law Judge decision on appeal is affirmed as modified by this Decision, the underlying BLM decision of April 9, 1993, is vacated and the matter is remanded to BLM for further action consistent herewith.

R.W. Mullen
Administrative Judge

I concur:

James L. Byrnes
Chief Administrative Judge

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