9-25-95

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
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IN REPLY REFER TO:

September 19, 1997

ORDER

CALIFORNIA DEPARTMENT OF FISH & GAME,	:	CA-02-95-01
Appellant	:	Appeal from the Area Manager's Letter dated February 1, 1995, Eagle Lake Resource Area, Susanville District, California.
v.	:	
BUREAU OF LAND MANAGEMENT,	:	
Respondent	:	
JOHN ESPIL SHEEP CO., INC.,	:	
Intervenor,	:	
COMMISSION FOR THE PRESERVATION OF WILD HORSES,	:	CA-02-95-02
Appellant	:	Appeal from the Area Manager's Letter dated February 1, 1995, Eagle Lake Resource Area, Susanville District, California.
v.	:	
BUREAU OF LAND MANAGEMENT,	:	
Respondent	:	
JOHN ESPIL SHEEP CO., INC.,	:	
Intervenor	:	

Twin Peaks Allot

NEVADA DIVISION OF WILDLIFE, Appellant v. BUREAU OF LAND MANAGEMENT, Respondent --- JOHN ESPIL SHEEP CO., INC., Intervenor	:	CA-02-95-03 Appeal from the Area Manager's Letter dated February 1, 1995, Eagle Lake Resource Area, Susanville District, California.
WILD HORSE ORGANIZATION ASSISTANCE, Appellant v. BUREAU OF LAND MANAGEMENT, Respondent --- JOHN ESPIL SHEEP CO., INC., Intervenor	:	CA-02-95-04 Appeal from the Area Manager's Letter dated February 1, 1995, Eagle Lake Resource Area, Susanville District, California.

Motion to Intervene and Motion to Consolidate Granted;
Motion to Dismiss Denied

On August 1, 1997, John Espil Sheep Co., Inc. (Espil) filed motions to intervene, consolidate, and dismiss the above-captioned matters. On August 29, 1997, Appellants (Nevada) Commission for the Preservation of Wild Horses and Nevada Division of Wildlife filed a response in opposition to the motion to dismiss only. The remaining Appellants did not respond to the motions and the deadline to respond has expired. On September 4, 1997, Espil filed a reply to Appellants' response.

Appellants have appealed a Letter dated February 1, 1995 (with attachments), issued by the Area Manager of the Eagle Lake Resource Area, Susanville District, California, Bureau of Land Management (Respondent). That Letter informed Appellants of a Federal court order dismissing and approving settlement of a Federal lawsuit brought by Espil regarding a February 28, 1994, Decision issued by Respondent. That Decision and the subsequent settlement affected Espil's grazing privileges for the Twin Peaks Allotment.

At the time of settlement, Appellants had appeals of the February 28, 1994, Decision pending before this office. Because the settlement, by its terms, vacated and superseded that Decision, Respondent requested that this office set aside the Decision and remand the matters to Respondent. Appellants did not object to the request and, by Order dated March 10, 1995, the request was granted.

Espil's motion to intervene is based upon the fact that the February 1, 1995, Letter pertains to its grazing privileges for the Twin Peaks Allotment. Clearly, Espil (hereinafter "Intervenor") may be directly affected by any decision on appeal and therefore its motion to intervene is hereby granted. See 43 C.F.R. § 4.471.

Good cause appearing therefor, Intervenor's motion to consolidate the above-captioned matters is also granted. Good cause for the motion includes the fact that the matters are all appeals of the February 1, 1995, Letter and that they involve common issues.

Finally, for the reasons set forth below, the motion to dismiss is denied. The grounds stated for the motion are twofold: (1) that this office lacks jurisdiction over the appeals because the February 1, 1995, Letter is not a final decision from which appeal may be taken and because this office may not review the Federal court order of dismissal and approval of the settlement affecting Intervenor's grazing privileges, and (2) that the appeals involve issues which were included in the prior orders of the Federal court and this office, or which were adjudicated in the prior proceedings before the Federal court and this office. See 43 C.F.R. § 4.470(d).

Contrary to Intervenor's contentions, this tribunal does have jurisdiction over the appeals. The February 1, 1995, Letter, along with the attached notice of the settlement and the settlement itself, are properly treated as a final decision from which appeal may be taken. Cf. BLM v. Wagon Wheel Ranch, Inc., 62 IBLA 55, 57 (1982) (appeal regarding a letter informing appellant that it had option of filing an appeal if it felt adversely affected by range line agreement). The Letter provides notification of the settlement, which, by its self-executing terms, vacates and supersedes the February 28, 1994, Decision and establishes terms and conditions for the 1995 grazing season. The only future action to be taken is the ministerial act of adding the terms and conditions to Intervenor's grazing permit. Respondent indicates in the notice that this "will" take place; there is no further discretionary determination to be made. Thus, in substance, the combination of documents (the letter, notice, and settlement) serves the same functions as a typical document entitled

"Final Decision" or "Notice of Final Decision"; they establish terms and conditions relating to a grazing permit and provide notification thereof to interested parties. Consequently, the combination of documents, despite their nomenclature, constitutes a final decision from which appeal may be taken.

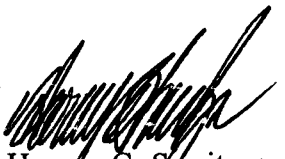
Further, this tribunal does have jurisdiction to review the terms of the settlement, notwithstanding the existence of the Federal court order of dismissal "in consideration of" the settlement, because the order explicitly provides that the dismissal is "without prejudice" and "shall not operate as an adjudication upon the merits of the case." While it is true that this tribunal is without jurisdiction to render a decision differing from that which a Federal court has entered, see Pacific Greyhound Lines v. Brooks, 220 P.2d 477, 479 (Ariz. 1950) (administrative tribunal is without jurisdiction to render a judgment differing from that which the Arizona Supreme Court has entered); DeRasmo v. Smith, 15 Cal.App.3d 601, 609, 93 Cal.Rptr. 289, 294 (1971) (an administrative agency cannot declare the judgment of a court to be void), this principle of law does not apply to such orders or decisions which are "without prejudice" and/or which are not on the merits. Cf. United States v. Morton Salt Co. et al., 338 U.S. 632 (1950) (where enforcement decree of Federal court directed private party to provide to the Federal Trade Commission reports of the manner of compliance with the decree but expressly was without prejudice to the right of the Commission to initiate contempt proceedings for violations of the decree, the Commission did not invade the province of the judiciary by ordering the production of additional compliance reports, as the reservation of the right to initiate contempt proceedings must have contemplated that the Commission could obtain accurate information on which to base a responsible conclusion that there was or was not cause for such a proceeding); Scott Burnham, 100 IBLA 94, 94 Interior Dec. 429, 449-50 (1987) (while the findings of a court as to determinative facts in the proceedings before it may be binding upon the Department, a judgment issued as a consequence of a settlement is not conclusive unless an issue is specifically addressed in the judgment, as the settlement precludes the need to decide the issues upon which the court otherwise would have based its decision).

Likewise, because neither the Federal court order nor the March 10, 1995, Order of this office reached the merits of the underlying dispute, Appellants are not barred from challenging the settlement under 43 C.F.R. § 4.470(d) or the doctrines of res judicata or collateral estoppel. See Federated Department Stores, Inc., et al. v. Moitie, 452 U.S. 394, 398-99 (1981) (one of the elements of the doctrine of res judicata is a final judgment on the merits); Drum v. Nasuti, 648 F.Supp. 888, 897 (E.D. Pa. 1986), aff'd, 831 F.2d 286 (one element of collateral estoppel is a final judgment on the merits). Neither the Federal court nor this office issued a final order which addressed or adjudicated the issues which Appellants are now raising or any other substantive issues.

The existence of the Federal court order does not bar Appellants for the additional reason that, with certain exceptions not applicable here, a judgment or decree among parties to a lawsuit resolves the issues as among them, but it does not conclude the rights

of strangers to those proceedings. Martin v. Wilks et al., 490 U.S. 755, 762 (1989).[1] The rights of Appellants, as strangers to the Federal lawsuit between Respondent and Intervenor, were not concluded by the order of dismissal and settlement.

Finally, Intervenor's suggestion that Appellants should be barred from challenging the settlement because they did not elect to participate in the Federal court proceeding or to appeal the Federal court order is clearly contrary to Supreme Court precedent. In the Martin case, the Supreme Court held that "a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joined." Id. at 763.



Harvey C. Sweitzer
Administrative Law Judge

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[1] Because the Federal court order was without prejudice and did not reach the merits, it did not even resolve the issues as among the parties to the lawsuit. Respondent and Intervenor are bound by the settlement to the extent provided by contract law, as conditioned by grazing law.

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