

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>EQUIVEST LIMITED PARTNERSHIP,</p> <p>v.</p> <p>Respondent:</p> <p>HINSDALE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Michael C. Stern, Esq. Address: P.O. Box 1293 Montrose, Colorado 81402 Phone Number: (970) 240-2812 Attorney Reg. No.: 5108</p>	<p>Docket Number: 42523</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on April 1, 2004, Diane M. DeVries and Judee Nuechter presiding. Petitioner was represented by Michael C. Stern, Esq. Respondent was represented by Charles F. Cliggett, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Lot 1: That part of the Colorado Placer, MS No. 375, west of the easterly
120 acres Section 16, T42N, R5W NMPM Sherman Mining District
6.818 acres
(Hinsdale County Schedule No. R001459)**

Petitioner is protesting the 2003 vacant land classification of the subject property. Known as the Sunshine Princess Ranch, the subject property consists of 6.818 acres of land located in Hinsdale County, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property should have been classified as agricultural property in 2003 based on continued use as a ranch under state statutes. Cattle were grazing on the property in 2001 and 2002. A continuous grazing lease had been in existence since December 2000 with appropriate water rights. The property consists of two lots that were considered as one piece of property for over 100 years until 1994. Lot 1 is the subject property and is adjacent to Lot 2. These parcels should be treated as one parcel due to their boundaries and historical use that would also indicate agricultural status for taxation purposes.

Respondent:

Respondent contends that the sole issue is whether the parcel qualifies as agricultural land. They found an absence of proof that the land was used for grazing in order to qualify for agricultural classification as of January 1, 2003.

FINDINGS OF FACT:

1. Mr. Tommy Thompson, Trustee and General Partner of Equivest Limited Partnership, appeared as a witness.
2. Petitioner did not present a market approach to value.
3. The witness testified that he resides on a 40-acre \pm parcel surrounded by national forest in a box canyon. The property is a high mountain meadow with a flat valley and two rivers run through the canyon. The land is considered grazing land. When he purchased the property in 1994, the parcel had been split at the gravel road. He purchased the larger parcel first, and in 2000, he was able to purchase the smaller parcel, which is the subject property. The property is located approximately 25 miles from Lake City, Colorado on a winding gravel road. The two parcels are being used as a ranch and he raises cattle on these parcels as a business. He grazes them and then sells the cattle. He has had a lease on this land since 2000 with Equivest Limited Partnership, a family partnership comprised of himself, his wife, a daughter, and her brother. He put cattle on the land in May 2001.

4. The witness testified that the lease covers the entire parcel, which consists of Lot 1 and Lot 2 with a total of 37.54 acres. He has grazed cattle on both lots for three years and the lease is currently in effect. The leaseholder is Equivest and he pays the partnership for leasing the land.

5. Mr. Thompson testified that a stock trailer, a squeeze chute, a couple of water troughs, two portable corrals and a mower that will stack remaining grasses at the end of the season were on the subject property during the base period. The property is fenced and is enclosed when cattle are present, but is typically not enclosed when cattle are not on site. The cattle operation is during the grazing season only, since a continuous operation at 9,600 feet above sea level is impossible. Since purchasing the property, Mr. Thompson applied for and received proper water rights; cleared the land; and planted special grasses, which is a continuing process; he fenced the property and installed two infrastructures for water and two head gates. The property has approximately one-half mile of irrigation ditches.

6. The witness testified that his prior experience with cattle ranches included a 700-acre ranch on the Alpine Plateau and prior to that he had a ranch in Texas. He grazed cattle on both of those ranches.

7. Mr. Thompson indicated that the subject property is a flat meadow with special grasses and water for grazing purposes.

8. Petitioner's Exhibit A, page 17, shows the Bill of Sale for the cattle Petitioner purchased in May 2001. Four or five of the cattle went to both Lots 1 and 2 of the subject property for grazing. Page 18 of the same exhibit shows the Bill of Sale for cattle purchased in September 2001. The Statement on page 36 indicates that five cattle were purchased on May 25, 2002 and were subsequently put on Lots 1 and 2 for grazing. Page 35 shows the Bill of Sale for these five cattle dated September 12, 2002. Page 64 reflects an additional purchase of cattle in 2003 and page 96 shows the Bill of Sale for these cattle. Mr. Thompson feels he was successful in his ranching efforts.

9. The witness testified that the squeeze chute, watering troughs and both collapsible corrals were used on Lot 1 during 2001, 2002 and 2003.

10. Mr. Thompson testified that he files Federal Tax Form 1040-F every year for the ranch as a profit and loss statement. This Federal Tax Form has never been challenged.

11. The witness testified that in December 2000 there was a grazing lease on the subject property. Although the Pasturing and Grazing Lease for horses shown on page 95 of Petitioner's Exhibit A is outside the base period, Mr. Thompson included it in the exhibit to illustrate the ongoing ranch operation.

12. Mr. Thompson testified that the predominant use of Lot 1 is for grazing and its use has not changed since 2001. Another 40-acre parcel located nearby on the same road is classified as agricultural and has only two horses grazing.

13. The witness testified that he has obtained four water rights for his property, as shown

on page 23 of Petitioner's Exhibit A. There are two creeks that run through the ranch and he has obtained one-half foot of water rights from Cataract Creek and one-half foot of water from Cottonwood Creek from 1995 and 1996 decrees for irrigation. Petitioner's Exhibit A, page 44 indicates his third water right for 2.5 CFS for the entire 37.54 acres (Lots 1 and 2) for irrigation and stock water from the Sunshine Ditch Enlargement, which was appropriated in May 2000. The granted decree for this water right was August 2002 and is now absolute. In order to be absolute, it has to be used as described. It has been used for irrigation on Lot 2 and stock water on Lot 1, which was the specific purpose for which it was obtained. The head gate on Lot 2 is pumped and the water is transported to the stock tanks on Lot 1. There is no other water for the cattle on his land without using this water decree.

14. The witness testified that Lot 1 is approximately 6.818 acres and is considered feasible to graze cattle. Typically, more than one pasture is necessary to graze cattle in this area.

15. Petitioner's Exhibit A, page 135, indicates that the conditional water right for the Sunshine Ditch Enlargement has matured into an absolute water right, although it occurred after the base period. Mr. Thompson installed an 18-inch culvert under the roadway for future irrigation to improve the grasses.

16. Petitioner's Exhibit A, page 140, shows an additional 1.5 CFS for the irrigation of 25 acres for Lot 2 and for stock water for Lot 1 as needed, in addition to providing water for wildlife. He petitioned for this water in October 2002 and obtained the decreed water right for the Princess Ditch in 2003.

17. The witness testified that he used stock water in 2001, 2002 and 2003 on Lot 1.

18. The Sunshine Princess Ranch consists of two lots and Mr. Thompson owns both of these lots. Lot 2 is 31.529 acres and is on the southern portion of the ranch. The county roadway has a 40-foot easement that bisects the ranch and ends on Petitioner's property.

19. The witness testified that the photos on page 94 of Petitioner's Exhibit A were taken around October 2003 and show remnants of cow manure from the 2002 grazing period. Pages 65 and 66 have an August 2003 photo date and also show remnants of cow manure. A photo on page 92 shows the fencing that is on the subject lots, in addition to a used salt block and stock trailer. Page 18 of Petitioner's Exhibit A shows the cattle grazing on his property in 2001.

20. Petitioner presented videotape showing continuous fencing along the north border of Lot 1, as well as other areas of Lots 1 and 2 on the Sunshine Princess Ranch. Mr. Thompson shot the video footage in October 2003.

21. Under cross-examination, the witness testified that the ranch consists of two lots whereas the subject property consists of only Lot 1 for purposes of this hearing. When Petitioner received the notices of assessment, they were specific to each lot. Petitioner's Exhibit A, page 42, indicates that the ranch is one parcel of land that is used for grazing livestock. Petitioner's Exhibit A, page 95 is a grazing lease from September 2003, which the witness acknowledged is after the assessment date of January 1, 2003.

22. The Petitioner testified under cross-examination that the irrigation pipe was installed September 8, 2003, which is also after the effective assessment date.

23. During questions from the Board, Mr. Thompson testified that an electric fence on the BLM land provided continuous fencing for grazing purposes on Lot 1 during the base period.

24. Petitioner is requesting a change in classification for the subject property for tax year 2003 from vacant land to agricultural with a proper reassessment of the property.

25. Respondent's witness, Ms. Amy B. Wilcox, the Hinsdale County Assessor and Registered Appraiser, presented an indicated value of \$85,500.00 for the subject property based on the market approach.

26. The witness testified that the subject property is a 6.1-acre parcel known as Lot 1 of the Sunshine Princess Ranch, which was formerly a 158-acre placer claim that was broken into four 40-acre lots.

27. Ms. Wilcox testified that Hinsdale County Road 35 separates Lots 1 and 2 and that Equivest Limited Partnership owns both lots.

28. Ms. Wilcox testified that she personally inspected Lot 1, the subject property. Respondent's Exhibit D provides a narrative timeline that covers May 2001 to August 2003 based on records in her office. The 2001 tax year valuation was protested for Lot 1, but not the classification. This protest was dropped prior to the CBOE hearing.

29. The Respondent's witness testified that an application for an irrigation line to be placed under Hinsdale County Road 35 was made on September 17, 2001 and was to have been completed by October 31, 2001. To her knowledge, the project was not completed until September 2003 and the Bond would not be returned to Equivest for one year, which would be September 2004. In September 2003, she received a request indicating that Lot 1 of Sunshine Princess Ranch was eligible for agricultural classification.

30. The Respondent's witness testified that Lot 1 was physically inspected between May and June 2002 and she saw no indication of cattle grazing. There was no fence around the BLM U-shaped area. She did not see a fence on the rear of the U-shaped parcel at that time nor did she see any presence of water for livestock. She did not believe that the subject property would be eligible for agricultural classification until 2003. With no fence, grazing would not be possible due to containment issues. Lot 2, which was entirely fenced, appeared to be eligible for agricultural classification and was classified agricultural for tax year 2002.

31. A letter from the Petitioner dated April 2, 2003 shown on page 3 of Respondent's Exhibit D indicates that Lot 1 was currently being permanently fenced, which is outside the base period. The Hinsdale County Administrator and Ms. Wilcox made another physical inspection of the subject property in July 2003. They witnessed a front fence along Hinsdale County Road 35 with east and west side fencing. The BLM land was not fenced and there were no signs of livestock

on Lot 1. A pile of fencing material and an old rusty squeeze chute was on the property. There were no stock tanks. The photograph contained in Respondent's Exhibit D, Tab 12 shows that Lot 1 has no interior fence around the BLM land. The witness presented an affidavit from Ray Blaum, the Hinsdale County Administrator, stating that he observed no rear fencing on Lot 1 and no evidence of livestock on the property.

32. The Respondent's witness testified that the request from Equivest for a reclassification of Lot 1 was denied in August 2003. Ms. Wilcox testified that she performed a physical inspection of the subject property on August 17, 2003, which included walking from the west fence to the rear of the property until it stopped. The rear fence was not complete and was incapable of containing livestock. She indicated that the classification for agricultural use could not be made if evidence of grazing and fencing was not there. Grazing on government land such as BLM land is illegal and the definition of a ranch is the grazing of livestock.

33. Ms. Wilcox testified that on August 14, 2003, she received a photo from the Petitioner showing a parked stock trailer, a stock tank and a portable corral, along with a letter indicating that cattle were present on Lot 1 as of August 14, 2003.

34. Because no evidence of livestock was present during the onsite inspection in 2002, Ms. Wilcox testified that she believes the subject property was vacant land and does not qualify for agricultural status.

35. Under cross-examination, Ms. Wilcox testified that she did not attempt to have Petitioner present while inspecting the property.

36. Ms. Wilcox further testified that the irrigation pipeline was completed in 2003 and that there is no statutory requirement that a pipeline must be present on a property for agricultural classification. She made a physical inspection of the subject property after March or April 2002. She did not go through any of the fences or travel to the rear of the property in 2002. There may not be a statute requiring fencing for agricultural classification, although it is one consideration in determining the classification. The vast majority of fencing was in place in 2002 for the subject property per the testimony of the Respondent's witness. The initial classification for Lot 2 was residential in 2002 then changed to agricultural by the Respondent based on physical evidence of grazing.

37. Ms. Wilcox testified that Mr. Ray Blaum may or may not have gotten out of the car on July 21, 2003 during their inspection of the subject property. She did not observe cattle at that time. She is not aware if there is a requirement for permanent fencing, although in her professional opinion, a viable cattle operation would require fencing.

38. The Respondent's witness testified during cross-examination that she did not walk on the subject property, but around the fence line.

39. During redirect examination, the Respondent's witness indicated that prior to this hearing, she was not aware that Mr. Thompson had ever used electric fencing on the BLM land. He could not legally do this without a permit and she does not believe a permit was obtained. Ms.

Wilcox indicated that the typical grazing period is from June to September and that it started raining in June in 2003. It surprised her that there were no animals on Lot 1 in July 2003. When the animals were on the property in August 2003 that would only allow for one month of grazing.

40. During re-cross examination, the witness testified that there is no statute that sets forth a particular time period for grazing.

41. During questioning from the Board, Ms. Wilcox testified that the photo submitted to her on August 21, 2003 did not indicate the date the photo was taken. She did not see the stock trailer, a stock tank, or corral on August 17, 2003, although the Petitioner has indicated the cattle were on the property on August 14, 2003.

42. During rebuttal testimony, Petitioner testified that page 83 of Petitioner's Exhibit A showed an example of the electric fence he had used in the past, although it was not white and was a three-strand fence. Mr. Thompson testified that he purchased cattle on August 14, 2003 and had two portable corrals on the property. He put his cattle in the corrals on the east side of Lot 1 adjacent to the BLM land on August 14, 2003 to use the meadow on the east. On the August 19, 2003 the fence was completed. This is not relevant to this case since it was after the base period. The fence was not complete on January 1, 2003.

43. Respondent assigned an actual value of \$85,500.00 to the subject property for tax year 2003 based on a vacant land classification.

CONCLUSIONS:

1. Respondent presented sufficient probative evidence and testimony to prove that the subject property was correctly valued and classified for tax year 2003.

2. Although the Petitioner presented photos and a video of the subject property indicating evidence of grazing and cattle located on the property, they were taken during 2003. The Board cannot rely on the photos or the video, as they do not indicate the evidence of cattle or grazing during the base period or for a period of two years prior to the assessment date. The Respondent's witness testified that inspections of the subject property during the base period yielded no evidence of cattle or grazing on site.

3. The Petitioner provided a pasturing and grazing lease for the subject property dated September 12, 2003. This lease is not applicable to this hearing since it occurred after the base period.

4. Petitioner testified that the subject property was totally fenced during the summer of 2003, which is outside the base period. The Board heard testimony that most of the subject property was fenced during the base period; Petitioner testified that an electric fence was utilized to contain the cattle in the U-shaped portion of the subject property. Though the use of an electric fence would allow grazing of the subject property, no evidence of actual grazing during the base year was presented.

5. Petitioner provided Bills of Sale for the purchase and sale of livestock during the base period, as well as after the base period. However, the Board has no proof that the livestock were actually grazed on the subject property. Petitioner owns the adjacent 31-acre parcel known as Lot 2. There is no dispute that livestock were present and qualified Lot 2 for an agricultural classification; the only issue is whether agricultural use occurred on the subject property, Lot 1. Respondent's witness inspected the property on several occasions during the base period and did not see any evidence of use. The subject property is a small parcel so far as grazing land is concerned, and even a minimal use of the property for grazing purposes should have left evidence of grazing. The lack of observable evidence of livestock use for such a small parcel is troubling to the Board. Although Petitioner testified that actual use occurred, the testimony of Respondent's witness that there was no evidence of use on the inspection dates was more persuasive.

6. The Petitioner provided documentation that indicated water rights for Lot 1 (the subject property) and Lot 2 had been obtained and decreed within the base period. The Board also recognizes that although water rights have been obtained, it does not prove that they were utilized for agricultural purposes during the base period for Lot 1, the subject property. Agricultural status is not guaranteed solely due to the ownership of water rights; the water rights must have been used for qualifying agricultural activities. The Board also notes that some of the irrigation water was brought in to the subject property during 2003, which is beyond the assessment date and not relevant to tax year 2003.

7. The Board agrees with Respondent that Petitioner's desire and intention to graze cattle is not sufficient to change the classification of the subject property to agricultural for this base period. The Petitioner did not provide strong evidence to indicate that cattle were actually grazing on Lot 1 during all three years of the base period, though there does appear to be sufficient evidence that the subject property was grazed in 2003, after the assessment date, which would be relevant for agricultural classification considerations for tax year 2004.

8. After careful consideration of all of the evidence and testimony presented, the Board affirms Respondent's assigned value of \$85,500.00 and the vacant land classification of the subject property for 2003.

ORDER:

The petition is denied.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 23rd day of June, 2004.

BOARD OF ASSESSMENT APPEALS

Diane M. DeVries

Diane M. DeVries

Judee Nuechter

Judee Nuechter

This decision was put on the record

JUN 23 2004

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.



Penny S. Lowenthal
Penny S. Lowenthal