



DAVID L. ANTLEY, JR., D/B/A HIGH DESERT OUTDOORS, INC.

178 IBLA 200

Decided September 29, 2009



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

DAVID L. ANTLEY, JR., D/B/A HIGH DESERT OUTDOORS, INC.

IBLA 2009-230

Decided September 29, 2009

Appeal of a decision of the District Manager, Lakeview District Field Office, Oregon, Bureau of Land Management, denying an application for a new Special Recreation Permit, and revoking an existing 2007 permit, OR-015-2007-01.

Decision affirmed.

1. Public Lands: Special Use Permits--Special Use Permits--  
Federal Land Policy and Management Act of 1976:  
Applications: Generally

A BLM decision issued pursuant to 43 C.F.R. Subpart 2932, denying an application for a Special Recreation Permit for falsely answering a question on the permit application about prior convictions, and because of a history of disregarding regulations and natural resources-related laws, demonstrates a rational basis for denial under the regulations when adequately supported by the record.

APPEARANCES: David L. Antley, Jr., Bandon, Oregon, appellant; Frank S. Wilson, Esq., Office of the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE M<sup>C</sup>DANIEL

David L. Antley, Jr. (Antley), d/b/a High Desert Outdoors, Inc. (HDO), has appealed the June 26, 2008, decision of the District Manager, Lakeview (Oregon) District Field Office, Bureau of Land Management (BLM), denying his application to renew his Special Recreation Permit (SRP), and revoking his 2007 permit, OR-015-2007-01,<sup>1</sup> because issuance would not serve the public interest or contribute to the

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<sup>1</sup> The appeal of the revocation of the 2007 permit is now moot because that permit was issued in 2007 and expired on July 26, 2008. Thus, there is no relief that this  
(continued...)

achievement of program objectives, given his history of disregarding regulations and natural resources-related laws.

Because we conclude that Antley has failed to establish that BLM erred in denying his application to renew his SRP, BLM's decision is affirmed.

### *Background*

On May 8, 2008, Antley filed Form 2930-1 (March 2004) titled "Special Recreation Application and Permit" (SRP Application) with BLM, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (2006), and its implementing regulations, 43 C.F.R. Part 2930, seeking renewal of his existing SRP authorizing him to provide big game hunting services on public lands in Oregon. AR-D9. He provided his name as the person completing the application and HDO<sup>2</sup> as the business or organization involved.

The application includes a series of six questions concerning the applicant's permit, bond, and compliance history, to be answered by checking an appropriate box, marked "Yes" or "No." Affirmative answers required a written explanation. The form states that its principal purpose is to allow BLM to decide whether to issue the SRP. Antley checked "No" in answer to the following three questions:

- "17b. Have you ever been denied or had a permit revoked?"
- "17d. Are there any pending investigations against you?"

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<sup>1</sup> (...continued)

Board can now give concerning the expired permit and we do not address it further. See AR (Administrative Record)-D11 at 30. The documents in the AR are labeled with a document number, and the pages in the AR are sequentially numbered. We cite the document number when referring to a document as a whole, and the document number and AR page number when citing a specific page.

<sup>2</sup> Antley states that he started High Desert Outdoors as a sole proprietorship, which was incorporated as HDO on Sept. 20, 2006. The latter was administratively dissolved on Nov. 17, 2006, and was not reinstated until June 5, 2009. Thus, at the time of the application and when the appeal was filed, HDO was dissolved. See Affidavit of David Antley, Jr., at ¶¶ 2, 14, 87; Supplemental Statement of Reasons (SSOR) at 12; Oregon Secretary of State Business Registry dated June 15, 2008, at Tab 1 of a separate law enforcement administrative record (LE-AR) submitted by BLM on appeal, containing documents covered by the Privacy Act. Antley was allowed to file a Rebuttal of BLM's Argument (Rebuttal) concerning the LE-AR and other documents filed on appeal, which he did; BLM was allowed to file a reply, but did not. IBLA Order dated Aug. 27, 2009.

- “17e. Have you been convicted of violations regarding natural resources, cultural resources or any activity related to your proposed permit?”

Antley signed the SRP application on May 8, 2008, representing, by his signature, that “the information in this application is true, complete, and correct to the best of my knowledge and belief and is given in good faith.”<sup>3</sup>

In his decision, the District Manager stated:

[Y]ou falsified information in your 2008 application for a special use permit. Under question 17b of your application, you indicated that you have never been denied a permit nor had a permit revoked. In 2007 the Fish and Wildlife Service denied your permit application. Under question 17d, you indicated that there were no pending investigations against you. When you submitted this permit application, you were under investigation for a 2005 violation for unlawful possession of a mountain lion. Under question 17e, you indicated that you had never been convicted of “violations regarding natural resources, cultural resources or activity related to your proposed permit.” In our review of your record, we discovered that you had several wildlife violations including: 1991, convicted of a wildlife violation (misdemeanor); 1993, hunting with a suspended license (misdemeanor); 2005, hunting without a license and the unlawful possession of a cougar. From October 2005 until January 16, 2008 you had a pending case/investigation before the court. You were convicted of a game violation on January 16, 2008 at which time your hunting privileges were suspended.

Decision at 1.<sup>4</sup>

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<sup>c</sup> Under the signature line on the form is a warning that knowingly and willfully providing false information on the application is a crime under 18 U.S.C. § 1001 (2006), and 43 U.S.C. § 1212 (2006).

<sup>4</sup> Antley acknowledges the 1991 (“unlawful take of a game animal (misdemeanor)”) and 1993 (“hunting without a license (misdemeanor)”) convictions, and the March 2005 conviction for hunting without a license, which was set aside on June 24, 2009, subsequent to the Decision (and appeal) denying his 2008 permit application. SSOR at 1; Rebuttal at Ex. 7. He further acknowledges the citation and pending investigation for unlawful possession of a game animal, a cougar, in October 2005, and his resultant plea agreement dated Jan. 14, 2008, guilty plea (“I had a  
(continued...)”)

The District Manager denied Antley's SRP application, stating: "Given your history of disregard for regulations and other natural resources related laws, issuance would not serve the public interest nor contribute to the achievement of program objectives." Decision at 1.

Antley's appeal followed, seeking reversal of BLM's decision to deny his SRP application because of alleged errors in the decision concerning the permit denial by USFWS, the pending investigation of unlawful possession of a game animal, and prior convictions of violations regarding natural resources.

### *Discussion*

[1] SRPs are issued under the general authority of the Secretary of the Interior to administer use of the public lands, in accordance with section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2006). BLM has considerable discretion under section 302(b) of FLPMA in approving and issuing SRPs. *See* 43 C.F.R. § 2932.26; *Michael Voegele*, 174 IBLA 313, 318 (2008); *Bookcliff Rattlers Motorcycle Club*, 171 IBLA 6, 13 (2006); *Daniel T. Cooper*, 150 IBLA 286, 291 (1999).<sup>5</sup> BLM's exercise of its discretionary authority to administer SRPs must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. *Jess Rankin, d/b/a West Tex-New Mex Hunting Services*, 176 IBLA 162, 165 (2008), citing *Larry Amos d/b/a Winterhawk Outfitters, Inc.* 163 IBLA 181, 188 (2004); *Bookcliff Rattlers Motorcycle Club*, 171 IBLA at 13. If a decision has any rational basis, it will not be held arbitrary and capricious, or an abuse of discretion. *Michael Voegele*, 174 IBLA at 318; *Obsidian Services, Inc.*, 155 IBLA 239, 248 (2001). An appellant challenging a decision bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision is in error. *Jess*

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<sup>4</sup> (...continued)

cougar in my possession w/ my tag but I did not harvest it"), and conviction for a "Class A . . . violation of the wildlife laws or rules," a fine of \$1,367.00, and suspension of his hunting license for 5 years. SSOR at 4; *see* Rebuttal, Ex. 11, Oregon Fish and Wildlife Citation; Rebuttal, Ex. 12, Offer of Negotiation, Petition To Plead Guilty/No Contest/Conditional Guilty Plea. Based on information from the U.S. Fish and Wildlife Service (USFWS), BLM determined that Antley, d/b/a HDO, had been denied a USFWS permit to guide within the Hart Mountain Antelope Refuge in Oregon. *See* AR-D6 at 14.

<sup>c</sup> *See* BLM Recreation Permit Administration Handbook (H-2930-1 (Rel. 2-295 (8/7/2006))) (Handbook), 1.III.E.1., at 22-23. The applicant's record of performance is relevant to BLM in exercising its discretion on whether to renew an SRP, including "compliance with applicable laws and regulations on all other Federal, State, or county-administered lands or related waters." *Id.*

*Rankin*, 176 IBLA at 165; *Bookcliff Rattlers Motorcycle Club*, 171 IBLA at 13; *Larry Amos*, 163 IBLA at 190.

Under 43 C.F.R. § 2932.26, BLM has the discretion to decide whether to issue an SRP based upon a list of relevant factors. Here, the District Manager based his decision on three of the factors listed in section 2932.26: “(a) Conformance with laws and land use plans,” “(e) The public interest served,” and “(g) Other information that BLM finds appropriate.” He denied Antley’s request for a permit because “issuance of the SRP would not serve the public interest nor contribute to the achievement of program objectives,” given his falsification of information on his application in 2008 and his “history of disregard for regulations and other natural resources related laws.” Decision at 1.

After answering “No” to the question on his application asking whether he has been convicted of violations regarding natural resources, Antley goes to great lengths in his SOR, SSOR, and Rebuttal to explain his convictions for violating such laws and regulations. A false answer to this question deprives BLM of the information necessary to judge an applicant’s regard for the regulations and other natural resources-related laws in order to determine his qualifications for the permit.

The evidence clearly shows, and Antley’s admissions confirm, that he had convictions from 1991 to 2008 for four natural resources-related violations. Antley contends that he denied the existence of violations on his SRP application because he was told to do so by BLM employees after he explained the circumstances and that BLM should be estopped from denying the SRP application. SOR at unpaginated 3; SSOR at 29. However, as BLM states, the record contains no evidence to support his contention. Answer at 4. Further, we agree with BLM that even if an employee had given such advice, it is well-settled that “[o]ral misstatements cannot support a claim of estoppel; reliance must be predicated on a crucial misstatement in an official written decision.” *Ron Coleman Mining, Inc.*, 172 IBLA 387, 391 (2007); *see Carl Riddle*, 155 IBLA 311, 314 (2001), and cases cited; 43 C.F.R. § 1810.3.

Antley also argues that the 1991 and 1993 violations were committed when he was “a young man,” that the 1993 conviction was “expunged” in August 2008, and that “at no time did [he] ever try to hide anything he had ever done in his past from anyone at the [BLM].” SOR at unpaginated 3. As BLM states, Antley does not dispute the following critical facts: when he filled out the application on May 8, 2008, he had “been convicted of violations regarding natural resources” (application question 17e), thus his response to that question is false.

Antley further claims that his third conviction, in 2005, for hunting without a license “was not an offence against ‘natural resource[s], cultural resources or any

activity related to this proposed permit” because he was not guiding at the time of the citation. SOR at unpaginated 3. However, we agree with BLM’s response:

This argument ignores the clear language of question 17e which asks with a disjunctive “or” whether the applicant has been convicted of violations regarding (1) natural resources, (2) cultural resources, or (3) activities related to the permit. A hunting violation is clearly a natural resource violation; the fact that it was a procedural violation—not having a license when hunting—makes it no less of a violation regarding natural resources. The fact that he was not guiding at the time is irrelevant.

Answer at 4-5.

As to his fourth conviction, Antley goes into great detail to explain the circumstances leading up to and following this violation for unlawful possession of a game animal. However, nothing he says refutes the fact that in January 2008 he was convicted of the violation and therefore falsified the application by stating that he had no such prior convictions. SSOR at 2-4, 24.<sup>6</sup>

Finally, Antley argues that he did not have to admit to his convictions because he submitted the application on behalf of HDO. SSOR at 12. We disagree. At the time he filed the application, HDO had been administratively dissolved and, according to Oregon law, “[a] corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs.” Or.Rev.Stat. § 60.651(3). Moreover,

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<sup>6</sup> Antley argues that none of his violations “occurred while in the process of guiding or outfitting a client.” SOR at unpaginated 3. However, he admits that he acquired the cougar while at the Fields Store in southeastern Oregon, when, at the time, documents in the record and his statements indicate that he was acting either as a guide leader or outfitter for the HDO operations. Affidavit of David Antley, Jr. at 5-6. He states in his SOR that “we had booked the hotel for lodging our clients” at the time, and the Commercial Post Use Report filed by him for 2005 shows that a company associated with “David Antley” held hunts in the area on October 1-5, including 10 hours per day on BLM lands. Chronology of Events prepared by Antley, accompanying the SOR at unpaginated 1; AR-D21. In the Affidavit accompanying the SSOR, Antley confirms that he was in the Fields area to support and guide hunts. Affidavit of David Antley, Jr., ¶¶ 17-18, 20. Though Antley may not have been on BLM lands or personally guiding a hunt when he acquired the cougar, he and his company were apparently involved in a 5-day guided hunt under his BLM permit, which indicates that this event was “an activity related to [his] permit,” and another reason for checking “Yes” in answer to question 17e. AR-D9 at 23.

Antley apparently understood the questions to encompass his convictions as he was filling out the application. *See* Affidavit of David Antley, Jr., ¶¶ 8, 29, 33 (discussions between Antley and BLM employees about how to answer the questions in light of his personal convictions of violations). For these reasons, we conclude that Antley knowingly answered the question about his prior convictions falsely, and that this fact and the convictions themselves show a rational basis for a denial of the SRP under subsections (a), (e), and (g) of 43 C.F.R. § 2932.26. We, therefore, affirm the decision appealed.

Any other arguments raised by Antley not expressly addressed herein have been considered and rejected.

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 decision appealed from is affirmed.

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/s/  
R. Bryan McDaniel  
Administrative Judge

I concur:

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/s/  
Christina S. Kalavritinos  
Administrative Judge