

INTERIOR BOARD OF LAND APPEALS

Larry Amos d.b.a. Winterhawk Outfitters, Inc.

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LARRY AMOS d/b/a WINTERHAWK OUTFITTERS, INC.

IBLA 2001-135

Decided September 29, 2004

Appeal from a decision of the Glenwood Springs, Colorado, Resource Area, Bureau of Land Management, denying renewal of a special recreation use permit. CO-078-14-99-01.

Affirmed as modified.

1. Special Use Permits

The holder of a special recreation permit is prohibited from violating the conditions and stipulations governing its terms. 43 CFR 8372.0-7(a)(2) (2000). Approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer. 43 CFR 8372.3 (2000). An exercise of BLM's discretionary authority to refuse to renew a special recreation permit 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. An appellant appearing before the Department bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision to reject a special recreation permit renewal application is in error.

2. Special Use Permits

Where the official BLM record reveals that a permittee has failed timely to file post use and trip use reports with the BLM, as required by a special recreation permit, a BLM decision not to renew the permit will be found to be supported by facts of record and to have a rational basis.

APPEARANCES: Larry Amos, Silt, Colorado, for appellant; Jennifer E. Rigg, Esq., Lakewood, Colorado, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE HEMMER

Larry Amos d/b/a Winterhawk Outfitters, Inc. (Winterhawk), has appealed from a January 4, 2001, decision of the Glenwood Springs Resource Area Office, Bureau of Land Management (BLM), rejecting Winterhawk's application for renewal of a special recreation permit (SRP) for commercial recreational use of public lands administered by BLM. Winterhawk applied for the renewal of a permit to conduct guided lion hunting trips on BLM land.

Winterhawk conducts commercial wilderness recreation tours on public lands in the White River National Forest and the Flat Tops Wilderness Area, located within the Rocky Mountains in central Colorado. It provides outfitting services for clients, including horseback vacations, fly fishing trips, and wilderness hunts for a variety of wildlife. The SRP in question authorized Winterhawk to conduct commercial mountain lion hunts on lands administered by BLM.

The record indicates that Winterhawk was conducting guided lion tours on Forest Service lands from the early 1990s, and perhaps before. BLM began approving commercial recreation use of BLM-managed land in connection with lion hunting operations under SRP CO-078-14-93-01 in 1994. (BLM letter to Amos dated Jan. 20, 1994.) The first SRP in the record was issued for the period "January 1, 1994 to April 15, 1996, subject to annual validation requirements" and "subject to the terms, conditions and stipulations" which were attached. (SRP CO-078-14-93-01 Operating Authorization signed by Larry Amos on Jan. 6, 1994.)

From the time of this 1994 SRP, BLM made clear that Winterhawk was obligated, as one of the terms and conditions of the permit, to submit trip logs and post use reports at the end of every lion hunting season. BLM's January 20, 1994, letter specifically stated that such reports "are due within 30 days of the end of the winter use season or May 15, 1994." *Id.* Attached to the SRP authorization was a list of renewal requirements. That list reiterated that the hunting season would expire on April 15, 1994, and use reports for the winter/spring season were due on May 15, 1994.

The record reflects that Winterhawk's compliance with the obligation to submit post use and trip reports was less than diligent. BLM files reflect a dispute with Winterhawk over the accuracy of 1993 use reports, presumably required under a permit not in this record. BLM expressed the concern that Winterhawk had reported two less kills for 1993 than were reflected in records provided by the Colorado Division of Wildlife (DOW).<sup>1/</sup> On May 24, 1994, Amos spoke by telephone with a BLM official in

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<sup>1/</sup> The record contains a Mar. 30, 1994, letter on this topic from BLM to Winterhawk. This letter was returned to BLM unclaimed on Apr. 21, 1994.

BLM's Glenwood Springs office. A written record of that conversation indicates that BLM and Amos attempted to resolve the dispute and that Amos intended to submit the 1993 and 1994 use reports in person. (BLM Memorandum dated May 24, 1994.)

BLM records do not contain any indication that Winterhawk actually submitted a post use report for 1993 and 1994. A July 7, 1994, BLM memorandum states: "[U]se report review still pending." A letter to Winterhawk dated December 20, 1994, makes clear that by this point in time, BLM still had not received reports for either 1993 or 1994. It directed Winterhawk to submit actual use reports from "November 15, 1993 to present" and advised Winterhawk that, given that the State of Colorado had closed the lion season at the end of March, its 1994 use reports had been due on May 1, 1994. (BLM letter to Amos dated Dec. 20, 1994.) Subsequent data indicates that the 1994 use reports were never received and formed at least in part a basis for suspending the remaining term of the 1994 SRP.

Though the SRP issued on January 20, 1994, had authorized use for 1994 through April 15, 1996, Winterhawk never signed annual application renewals in 1995 or 1996. Accordingly, for those periods BLM suspended Winterhawk's permit. In 1995 BLM sent Amos the following language suspending the SRP for failure to submit both the 1995 permit and the 1994 post use reports:

An application for renewal of your Special Recreation Permit was mailed to you on 3/20/95. You did not return the application by the deadline of May 15, 1995. Therefore your SRP for 1995 is suspended. Upon review of your records, you failed to submit your 1994 actual use and failed to submit renewal applications.

(BLM letter to Amos dated Aug. 16, 1995.) This letter also noted that Winterhawk had not submitted a post use report which would have been due on April 30, 1995.

On November 22, 1995, BLM sent Winterhawk a new operating authorization, valid only for the period November 15, 1995, through December 31, 1996. Once again, BLM suspended Winterhawk's permit for 30 days by letter dated January 16, 1996, pending receipt of supporting documentation and a signed copy of the operating authorization. Amos never responded. On February 28, 1996, Winterhawk's 1996 permit was canceled. (BLM letter to Amos dated Feb. 28, 1996.)<sup>2/</sup>

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<sup>2/</sup> Amos takes the position in this appeal that Winterhawk never responded to BLM with respect to permits for the 1995 and 1996 seasons, because it had no need for permits in those years. (Statement of Reasons (SOR) at 3-4.)

On July 26, 1997, Amos signed an application for a permit to hunt from November 1997 through March 1998, and from November 1998 through December 1998. BLM issued an operating authorization from January 1 through December 31, 1998. It stated ambiguously that trip logs and post use reports were due “by December 31 of each year or within 30 days of the end of the season for lion hunting.” (Winterhawk SRP Operating Authorization signed Dec. 1997.)

On January 13, 1998, BLM cleared up that ambiguity in a letter advising Amos that the “Post Use Report and Trip Logs are due within 30 days of the end of the hunting season \* \* \* under the terms of your permit. The Post Use Report is due even if you have no clients for the term \* \* \*.” (BLM letter dated Jan. 13, 1998.)

Once again, the record reflects that Amos did not timely submit the required reports to BLM. On June 1, 1998, BLM sent a letter to Amos charging Winterhawk with a \$100 fine and placing the outfitter on probation because no post use reports were submitted. The June 1 letter was not sent certified mail and the record contains no clear indication regarding when or if Amos received it. Sometime prior to August 1, 1998, Amos submitted post use reports for the 1998 season that he dated July 13, 1998. In a cover letter attaching these reports, Amos did not indicate that he was aware of the June 1, 1998, probationary letter, but he reflected awareness that BLM thought he was late in submitting post use reports. Amos claimed that there must be some confusion over the date on which post use reports were required in that the permit had authorized him to file the reports as late as December 31. Amos did not take into account BLM’s January 13, 1998, letter advising him of the precise expectations that he comply with the terms of the permit within 30 days of the end of the lion season. Amos’ letter and accompanying documents were not date-stamped by BLM as received.<sup>3/</sup>

On August 24, 1998, Amos signed another permit application for Winterhawk. On this application, Winterhawk made clear that it understood the lion season to end in March of each year. Amos expressly identified the time period for which he sought a permit as “Lion Season Nov. 1998 to March 1999 - Nov. 99 to Mar. 2000.” (Aug. 24, 1998, permit application for 1999-2000.) BLM issued a permit for the period January 1, 1999, to December 31, 1999. The record suggests that in 1999, Winterhawk timely filed post use reports. (Apr. 26, 1999, letter from Amos to BLM attaching use reports;

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<sup>3/</sup> Many of the record documents submitted by Amos are not date-stamped as received by BLM; many letters regarding the Winterhawk permit were not sent to Amos by certified mail, and return receipts frequently are not found in the record. The official record must clearly reflect whether BLM has properly discharged its duties in order for the Board to make particular factual findings regarding the timing of communications under 43 CFR Part 4.

May 20, 1999, letter from BLM to Amos.) Nonetheless, BLM asserted that Winterhawk “did not complete the legal description of the kill column on the Trip Log form.” (May 20, 1999, letter from BLM to Amos.) In addition, BLM concluded that Amos had underpaid his 1998-99 fees. On July 7, 1999, BLM sent Amos a bill for collection of \$172.20. The unclaimed letter was returned to BLM. In a follow-up letter to Amos mailed September 2, 1999, BLM suspended the remainder of the permit term effective September 1, 1999. (BLM letter to Amos dated Sept. 2, 1999.) On November 11, 1999, Winterhawk remitted outstanding fees and the suspension was lifted. (SOR Attachment 25, letter from BLM to Amos, Nov. 11, 1999.)

Amos signed an application for a 2000 SRP on August 25, 1999, once again asserting that Winterhawk was seeking a permit for two “lion seasons” dated November 1999 through March 2000, and November 2000 through March 2001. BLM issued a permit “for the period of January 1, 2000, to December 31, 2000.” In this 2000 SRP, BLM stated “Trip Logs and Post Use Reports and a copy of the State kill forms are due within 30 days of the end of the season for lion hunting.” (2000 SRP signed Dec. 1999.)

Once again, Winterhawk failed to submit the required reports. On June 15, 2000, BLM issued a letter to Amos asserting that Winterhawk had failed to submit post use reports for the 2000 permit and stating that the permit was suspended for the remainder of the year. The letter asserts that a Notice of Citation was attached, though we find no copy of such notice in the BLM record. It also asserts that in 1998, Winterhawk was put on probation for 1 year. This particular assertion is not supported in the record.

Amos did not dispute that he never filed the reports. Instead, in an undated letter, also not date-stamped by BLM, Amos objected to the suspension as illegal and asserted that no post use report was required to be sent because Winterhawk did not take paid clients on BLM land. Amos further asserted as justification for failure to send a non-use report that “no forms [were] sent to us this year.” In a letter which Amos dated August 20, 2000, Amos forwarded a permit application for 2001.

A letter in the file dated December 12, 2000, indicates that BLM contacted the Colorado Office of Outfitter Registration seeking information concerning Winterhawk’s clients, dates of service, and contracts for the winter 2000 lion season. According to this letter, BLM had reason to believe that Winterhawk did, in fact, take clients on lion hunts on BLM lands under the terms of the 2000 permit.

On December 15, 2000, BLM sent a letter by certified mail to Amos requesting him to produce his records prior to December 27, 2000. That letter was returned as unclaimed on January 3, 2001. However, on December 26, 2000, Laura J. Amos, hand-delivered to BLM documents which were responsive to BLM’s request. Specifically, Laura Amos submitted reports indicating that, in fact, Winterhawk had guided several clients on mountain lion hunts during the 2000 season and that one client had killed a male

mountain lion. (Dec. 26, 2000, letter from Laura Amos to BLM, attached hunt descriptions; Feb. 7, 2000, kill report submitted to Colorado Division of Wildlife.)

On January 4, 2001, Amos' wife Laura hand-delivered two identical letters to BLM employees, both dated January 3, 2001. In these letters, Laura Amos expressed the view that the correct 2000 information that she had submitted should have cleared up any questions regarding the 2000 post use reports. Laura Amos also asserted that BLM's failure to issue a 2001 permit was "intended to jeopardize Winterhawk \* \* \* and ultimately restrict or destroy our livelihood." She asked for urgent attention given that lion hunters were scheduled to hunt.

On January 4, 2001, BLM issued its decision rejecting Winterhawk's permit application, filed with BLM on August 20, 2000, for the 2000 and 2001 hunting seasons and stating that SRP CO-78-14-99-01 "will not be re-issued." Because we adopt only a part of BLM's logic in this decision it is important to recite it in full.

This decision was reached following a review of your compliance history and subsequent violations of the "Terms, Conditions and Stipulations". A chronicle of your non-compliance history is cited below.

1993: New Permit [<sup>4/</sup>]

1994: Requested review on post use reports for 1993, no action taken

1995: Post Use Report for 1994 and application material for 1995 not received, **Permit suspended for stipulations: XVII.A,B, IX.A,B,C,**

1996: No application fee, copy of insurance, or copy of current outfitters license received by due date, **Permit Suspended for Stipulations: V.IIIF, XVII.A,B,**

1996: Corrective action for above deficiencies not submitted, **Permit Canceled for Stipulations: XVII.A,B**

1997: New Temporary Permit

1998: Post Use Report not submitted by due date, **Permit on Probation for Stipulations: IX.A,B,C, XVII.A,B**

1999: Request to re-submit a corrected Post Use report for 1998-99 use and bill for collection  
Failure to pay bill by due date, **Permit Suspended for Stipulations: VIII.B,D,F, XVII.A,B,**

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<sup>4/</sup> We note that no 1993 permit appears in BLM's record, though 1993 permit compliance issues are clearly presented, as described above.

2000: No Post Use report received by due date for 99-00 season,  
**Citation and Permit Suspended for Stipulations:**  
**IX.A,B,C, XVII.A,B**

On December 28, 1999, you signed a copy of the Terms, Conditions and Stipulations which are attached and made a part of your SRP. Section XVII.B, Violations and Penalties, spells out what penalties can be invoked for failure to follow the terms of your permit. “Additionally, any such violation may result in permit revocation, suspension or probation. Violation may also be cause for the BLM to deny approval of a Permit or Operation Authorization for subsequent years. If a permit is canceled or suspended, permit applications will not be approved for any person connected to or affiliated with the operation under a canceled or suspended permit.”

In addition, we understand that you took a client hunting on public lands along the Colorado River road on January 2, 2001, and at Canard Hill on January 3, 2001. Any clients or continued commercial use of BLM managed lands after December 31, 2000, are in violation of federal regulations and may be subject to penalties prescribed in [43 CFR 8372.0-7], which may include fines up to \$1,000 or imprisonment up to 12 months.

Even though you submitted your renewal information on August 20, 2000, your permit was suspended on June 15, 2000, for the remainder of the calendar year. Additionally your permit was only an annual permit, and renewals or reissuances are discretionary as stated in the 43 CFR 8372.3 “Issuance of permits. The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer.” [A]nd as stated in *BLM Colorado’s SRP Information*, booklet, “BLM will issue both lion and bear hunting-related outfitter permits for a Field Office only at the discretion of the Manager.” In light of these facts and your repeated violations it was not prudent to book clients for commercial activities after December 31, 2000, without any communication to this office.

(Jan. 4, 2001, decision at 1-2.)

Winterhawk timely appealed. In its SOR, Winterhawk contends that BLM has not maintained a complete and accurate administrative record. Winterhawk asserts that the record should include a 1994 post use report and “records of all telephone calls, meetings and decisions surrounding the permit.” (SOR at 10-11.) Winterhawk asserts that the BLM Field Manager “failed to consider the entire administrative record in issuing



this decision,” and thus abused her discretion. Id. at 2. Winterhawk further contends that BLM has misinterpreted various benign actions taken by Winterhawk as indicating that it has persisted in a pattern of violations of the terms of its SRPs, when, in fact, the record does not support that interpretation. Id. at 11-12. Thus, Winterhawk contends that the Board may not affirm BLM because the administrative record does not support BLM’s factual conclusions.

[1] At all times relevant to this appeal, the regulations governing SRPs were set forth in 43 CFR Subpart 8372 (2000).<sup>5/</sup> Under 43 CFR 8372.3 (2000), approval of an application for and subsequent issuance of an SRP is discretionary with BLM. Dirt, Inc., 162 IBLA 55, 58 (2004); William D. Danielson, 153 IBLA 72, 74 (2000). The regulations state unequivocally that the holder of an SRP is prohibited from violating the conditions and stipulations governing its terms. 43 CFR 8372.0-7(a)(2) (2000). It follows that BLM has the discretionary authority to refuse to renew an SRP on the basis of a documented violation of a permit term. As we held in Dirt, Inc., the “existence of discretionary authority to approve a special recreation permit necessarily establishes the existence of such authority to deny an application upon good and sufficient basis.” 162 IBLA at 58.

In this case, the 2000 SRP application signed by Winterhawk makes abundantly clear that BLM’s authority to deny a permit renewal for Winterhawk’s failure to comply with the terms of the permit was an express condition of the SRP. Section XVII.B of the 2000 SRP signed by Amos asserts that “[a]ny violation of permit terms, conditions and stipulations may be subject to penalties prescribed in 43 CFR 8372.0-7 \* \* \* [and] may result in permit revocation, suspension or probation. Violations may also be cause for BLM to deny approval of a Permit or Operating Authorization for subsequent years.” In signing and accepting the 2000 SRP, appellant acknowledged and agreed that, among other sanctions, BLM could deny an SRP application in subsequent years. See Judy K. Stewart, 153 IBLA 245, 251 (2000). Accordingly, BLM had the authority to deny permit renewal in 2001 based upon prior permit violations.

The question before us is whether the record supports BLM’s exercise of its discretionary authority to deny permit renewal. Such a decision 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. Obsidian Services, Inc., 155 IBLA 239, 248 (2001). Thus, a decision imposing a sanction for violation of permit terms will be upheld, unless it is shown that it was arbitrary, capricious, or based upon a mistake of fact or law. Dvorak Expeditions, 127 IBLA 145, 151 (1993). If a decision regarding approval of an

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<sup>5/</sup> These regulations were superseded by new rules published at 43 CFR Part 2930, effective Oct. 31, 2002.

SRP application has any rational basis, it will not be found to be arbitrary and capricious. Dirt, Inc., 162 IBLA at 58; Terry Kayser, 136 IBLA 148, 150 (1996).

This record demonstrates that BLM's decision has a rational basis, and is not arbitrary or capricious for the reason that Winterhawk patently did not comply with the terms of its 2000 SRP. Specifically, the record shows that Winterhawk was obligated to submit post use and trip reports within 30 days of the end of the lion season. This was a plain term of the permit. (2000 SRP.) The record shows that Winterhawk had ample understanding that this permit term was of importance and that BLM expected compliance with it, by virtue of the almost annual history of BLM's efforts to secure those reports from Winterhawk, as detailed above. The record shows that Winterhawk was fully aware that the lion season ended at the end of March. This is evident from the application Amos submitted on August 25, 1999, in which he identified the lion season for all relevant years as running from November through March. The record indicates that Winterhawk submitted no such timely reports by the end of the 30-day period, and Winterhawk does not contend otherwise in this appeal.

For the reasons just stated, we affirm BLM's January 4, 2001, decision as entirely justified on this record.<sup>6/</sup> We refuse to affirm on the other factual grounds asserted in the decision. First, BLM's recitation of facts regarding prior violations is not sustained point by point in the record. As noted above, we cannot verify that many of the documents which would support various BLM assertions of violations in prior years were ever received, or even left unclaimed, by Amos, because BLM did not submit records supporting such information. Moreover, we cannot sustain BLM's assertions regarding the dates of Amos' documents because BLM did not date-stamp them. Second, the record does not show that the violations of particular permit terms issued prior to the 2000 SRP, as enumerated in the decision, were ever expressly conveyed to Amos or Winterhawk. BLM may not identify violations from years past as support for a decision, when in fact it did not identify those violations at the time or pursue to conclusion such violations that it did assert. Accordingly, we affirm the decision as modified to account for the facts of record which we can verify. On this record, it is undisputable that Winterhawk did not comply with the terms of the 2000 SRP.

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<sup>6/</sup> We note as well that the record indicates that Winterhawk misstated facts to BLM in the summer of 2000, when Amos asserted in writing that it did not lead hunts on BLM land. Yet, later Laura Amos submitted a kill report for a mountain lion within Game Management Unit (GMU) 26, as well as reports regarding three hunts during the 2000 season. The 2000 SRP expressly authorizes Winterhawk to use public lands in GMU 26 for the lion hunts. In addition, the Aug. 25, 1999, permit application submitted by Amos expressly requests to hunt in "lion hunting unit" 26.

Winterhawk is correct to note that BLM's record in this case is woefully inadequate to support some of BLM's assertions. However, Winterhawk is wrong in suggesting that the Board must reverse BLM on this basis. Winterhawk charges that BLM has failed to keep an accurate record of meetings, telephone calls, and memoranda which would tend to exonerate Winterhawk, and suggests that BLM has lost or misplaced records, such as the missing 1994 post use report, which could absolve it of wrong-doing. (SOR at 10-11.)

Our decision is premised on the facts of record regarding the violation of the 2000 SRP. The remainder of the record is significant only in that it refutes any suggestion that Winterhawk might make that it was unaware of the permit term regarding post use reports or of BLM's view that compliance with this permit term was critical.

In order to prevail on a claim that BLM committed an error of fact, an appellant appearing before the Department bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision is in error. Galand Haas, 114 IBLA 198, 203 (1990), citing Bender v. Clark, 744 F.2d 1424 (10th Cir. 1984). Winterhawk has provided us with no more than uncorroborated statements that BLM received relevant documents from Winterhawk that are now not in the record, and these statements in any event are not relevant to our ruling regarding compliance with the 2000 SRP. Thus, for example, Winterhawk alleges that the 1994 report should be in the record, but it falls short of demonstrating that Winterhawk or Amos ever actually prepared one or provided one to BLM. It contends that BLM should have other telephone records and notes that would explain Winterhawk's actions. But it does not indicate any action or behavior on its own part which could be documented to justify its absolute failure to comply with the 2000 SRP.

To the extent Winterhawk has supplied copies of documents in its possession not found in the BLM record, these documents do not undermine the rationale of BLM's decision to refuse permit renewal on the basis of Winterhawk's violation of the 2000 SRP terms. Winterhawk submits copies of two violation notices issued to Winterhawk by BLM on September 2, 1999, and June 15, 2000. (SOR Attachments 24, 34.) These and other attachments support Winterhawk's charges against BLM's record-keeping. They also support, however, the rationale for BLM's decision in demonstrating that BLM took Winterhawk's prior failures to comply with permit terms very seriously. They also further undermine any suggestion that Winterhawk had any justification for failing to comply with the 2000 SRP. Winterhawk submits a copy of a note in its possession documenting that it hand-delivered on August 31, 2000, the "non-use report" described in the facts above as undated. (SOR Attachment 30.) Again, however, this document only verifies that Winterhawk did not comply with the terms of its 2000 SRP which required such reports to be filed within 30 days of the March 2000 end of the lion season which Winterhawk itself represented to be March 2000. Moreover, Winterhawk submits the "actual use report" which it hand-delivered to BLM on December 26, 2000. (SOR

Attachments 31 and 32.) In contradicting Amos' statements of "non-use" for the 2000 season, this report verifies that even when attempting belatedly to comply in August 2000 Winterhawk knowingly provided incomplete information to BLM.<sup>7/</sup>

[2] Winterhawk's failure to timely submit reports required by its 2000 SRP was in and of itself justification for BLM's refusal to reissue its permit for 2001. Winterhawk was unequivocally on notice that post use reports were to be timely filed within 30 days subsequent to the close of the winter hunting season, even if it had no commercial business during the season. Winterhawk received a suspension of its 2000 authorization for that omission. It later claimed that it had no paying clients during the winter 2000 season. BLM subsequently learned that documentation existed which called into question the veracity of the post use report. Accordingly, we find that BLM's decision not to renew Winterhawk's special recreation permit has rational basis and is supported by facts of record. Appellant has not shown, by a preponderance of the evidence, that the decision was arbitrary, capricious, or based upon a mistake of fact or law.

Accordingly, 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 as modified.<sup>8/</sup>

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Lisa Hemmer  
Administrative Judge

I concur:

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C. Randall Grant, Jr.  
Administrative Judge

<sup>7/</sup> Winterhawk submits a phone record created by Larry Amos documenting a telephone conversation he had with a BLM official on June 16, 2000. (SOR Attachment 29.) This document verifies that Amos attempted to defend his failure to submit the reports he was required to file under the terms of the 2000 SRP by claiming that BLM had not sent him a form on which to file it. Amos should have been well-informed on the basis of documents he submits in this appeal that BLM expected compliance with the terms of the 2000 SRP. There is no plausible interpretation of the 2000 SRP that affords Amos the excuse from compliance with its terms that Winterhawk was required to submit reports only if BLM provided him the paper on which to file them.

<sup>8/</sup> During proceedings before the Board, BLM moved to dismiss the appeal on the basis of an action taking place in state administrative fora. That motion is denied as moot