INTERIOR BOARD OF LAND APPEALS

Camp Redcloud, Inc.,

162 IBLA 84 (June 29, 2004)

CAMP REDCLOUD, INC.

IBLA 2001-338 Decided June 29, 2004

Appeal from a decision of the State Director, Colorado State Office, Bureau of Land Management, finding that Camp Redcloud, Inc., is engaged in commercial activities requiring a special recreation permit and denying a fee waiver.

Affirmed.

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

   A party engaged in "commercial use," as that term is defined in 43 CFR 8372.0-5(a) (2000), must obtain a special recreation permit. The nonprofit status of any organization under the Internal Revenue Code does not control the distinction between commercial and non-commercial use under that rule. Collection by a permittee of fees, charges, and other compensation which are not strictly a sharing of, or which are in excess of, actual expenses incurred for the purposes of a permitted use of public lands shall make the use commercial. The land user may not avoid a commercial designation by claiming that it receives fees which do not exceed actual expenses while omitting from its calculations other compensation received for the activity on public land.

2. Federal Land Policy and Management Act of 1976: Permits--Fees--Public Lands: Special Use Permits--Special Use Permits

   A party may not obtain a waiver of fees due for a special recreation permit when its use of the public lands is primarily for recreation purposes.

APPEARANCES: Thomas F. Cheney, Esq., Montrose, Colorado, and Daniel File, Lake City, Colorado, for Camp Redcloud, Inc.; Lyle K. Rising, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Camp Redcloud, Inc. (Camp Redcloud), has appealed a June 14, 2001, decision of the Colorado State Director, Bureau of Land Management (BLM), finding Camp Redcloud's activities on the public lands to constitute a commercial use requiring a special recreation permit and denying its request for a waiver of associated permit fees. The Board denied Camp Redcloud's petition for stay of the decision by order dated October 23, 2001.

Camp Redcloud is a "Christian Challenge Center" and youth camp located near Lake City in Hinsdale County, Colorado. Camp Redcloud is a Colorado corporation and is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code. The record reveals that the Camp offers "physically and spiritually" challenging outdoor residential and wilderness camp experiences and "Christian gospel" for children and teens ages 5 to 18 and for families primarily during the summers in the San Juan Mountain area of Colorado. See, e.g., 1996 Camp Brochure. The brochure asserts that programs are permitted "on Grand Mesa, Uncompahgre, Gunnison National Forest," and BLM lands "in the Montrose District." Id. Camp Redcloud's programs, open to the general public, include sports, wilderness adventure, biking, backpacking, and horseback riding.

Camp Redcloud was founded in 1981, initially operating on 140 acres of leased private land. That year, it provided programs for just over 100 campers. (Statement of Reasons (SOR) at 1-2.)

Camp Redcloud provided program activities on private and public land, without a permit for the latter use from 1981-1991. On May 22, 1991, Camp Redcloud first submitted an application for a special recreation permit for day and overnight hiking and backpacking activities to be conducted "throughout the summer" on public lands administered by BLM. Camp Redcloud made no effort to categorize its activities as non-commercial at that time. BLM approved special recreation permit CO-030-SRUP-91-54 on August 7, 1991. (May 22, 1991, letter from Camp Redcloud to BLM at 1; 1991 Special Recreation Application and Permit at 1; Jan. 4, 2001, Briefing for the State Director at 1.) Camp Redcloud paid a total of $165.75 in permit fees for 1991. (July 26, 1991, July 10, 1992, Receipt and Accounting Advice.) That year, Camp Redcloud reported 1,345 client user days

under the permit and 222 staff days, for a total of 1,567 total user days. [1/] (1991 Post Use Report at 1.) At the end of 1991, its first year of operating under a special recreation permit, Camp Redcloud's financial balance sheet indicated that it had $899,017.57 in total assets. (Dec. 31, 1991, Balance Sheet at 1.)

In a letter dated February 6, 1992, BLM advised Camp Redcloud that it had agreed with the United States Forest Service (FS) to issue a joint permit for lands administered by BLM and the FS. (Undated notice to outfitters, with Feb. 6, 1992, notation to Camp Redcloud.) On May 22, 1992, the Area Manager, Gunnison Resource Area, BLM, issued a letter to Camp Redcloud stating that BLM would waive permit fees "starting in 1992 as long as your economic situation remains essentially the same as indicated in your past financial statements." The Area Manager stated that Camp Redcloud was an "atypical operation" that did not clearly fit into the categories created by BLM's regulations. Although Camp Redcloud's staff was paid a salary, BLM noted the possibility that donations could cover those salaries. BLM concluded that if donations paid staff salaries, "the fees paid by campers [g]o directly to the actual cost of room and board during their stay." Based on this analysis, BLM authorized a fee waiver. (May 22, 1992, letter from BLM to Camp Redcloud at 1-2.)

Camp Redcloud operated its programs pursuant to special recreation permits issued jointly by BLM and the FS from 1992 through 1999, gradually increasing its use of the public lands. (1992-1999 Special Recreation Applications and Permits.) BLM waived fees annually for each permit. In 1999, however, BLM advised Camp Redcloud of changes in its permit policy and suggested that they meet to discuss how those changes would affect Camp Redcloud. Specifically, BLM stated that "[i]t looks like [these policy changes] will eliminate our ability to waive fees for your operation." (June 9, 1999, Short Note Transmittal from BLM to Camp Redcloud.) Under the 1999 special recreation permit, Camp Redcloud spent a total of 7,450 user days on the public lands. (1999 Post Use Report at 1.)

By the end of 1999, Camp Redcloud had assets totaling $2,553,320.26. (Dec. 31, 1999, Balance Sheet at 1.) Additionally, during the period leading up to this appeal, approximately 4,000 young people were taking part in Camp Redcloud's programs annually. Of that total, about 60% participated in outdoor education activities administered through public schools in Western Colorado. (July 27, 2001, Affidavit of Daniel File, at 1-2.) [2/]

[1/] BLM regulations define a user day as: "a calendar day, or portion thereof, for each individual accompanied or serviced by an operator or permittee on the public lands." 43 CFR 8372.0-5(h) (2000).

[2/] File, the Executive Director and President of the camp, submitted an affidavit in (continued . . .)

Camp Redcloud submitted its 2000 permit application on February 9, 2000. (Feb. 9, 2000, letter from Camp Redcloud to BLM at 1.) As it had done in previous years, it chose the box marked "other," and added that it requested a "Non Profit" permit. (2000 Special Recreation Application and Permit at 1.) BLM and Camp Redcloud met to discuss Camp Redcloud's status as a commercial operation and the waiver of user fees, in both August and November of 2000, but failed to agree on either issue. (Apr. 27, 2001, Notice of Proposed Decision at 1.) As a result, no permit was issued that year. (Jan. 4, 2001, Briefing for the State Director at 5.) Camp Redcloud did, however, submit a Post Use Report asserting use of public lands for a total of 8,662 user days. (2000 Post Use Report at 2.)

On December 28, 2000, Camp Redcloud sought a special recreation permit for the year 2001, including requests to conduct multiple new activities. (2001 Special Recreation Application and Permit at 1; 2001 Special Recreation Application and Permit, Request for New Use.) On January 4, 2001, the Gunnison Field Office briefed the State Director about the dispute over fees. The Field Office noted that, of the 65 permits it managed at that time, Camp Redcloud received the only fee waiver. Additionally, the Field Office estimated that "Camp Redcloud enjoys as many client days as all the rest of [the other 22 organized groups and outfitters in the area] put together." The Field Office recommended a finding that Camp Redcloud is a commercial organization and does not qualify for a fee waiver pursuant to applicable BLM regulations at 43 CFR Subpart 8372 (2000). The Field Office also explained its proposed method of fee calculation, although it suggested that Camp Redcloud be involved in the fee calculation process. (Jan. 4, 2001, Briefing for the State Director at 1-5.)

On April 27, 2001, the Gunnison Field Office issued a Notice of Proposed Decision, finding that the financial information submitted by Camp Redcloud was insufficient to demonstrate that its activities were non-commercial and also that Camp Redcloud did not qualify for a fee waiver for "research and/or scientific,

---

[2/] (continued . . .)
support of this appeal. In it File asserts that Camp Recloud deserves a waiver on grounds of its benefits to the "health, safety and welfare" of a "broad segment of the public," including children of imprisoned parents, children in poverty, and those with "physical and mental handicaps." Id. at 1-2. In 1996, Camp Redcloud offered 40 slots, out of the roughly 4000 available, to children of imprisoned parents during two 5-day periods during the summer. (1996 Camp Brochure.) Though the 1999 "Profit and Loss" Statement shows income of approximately $22,000 from donations for scholarships, out of a total income of approximately $790,000, it is not possible to determine from the record how much was spent on, or any other information regarding, scholarship campers or campers with "physical or mental handicaps."

therapeutic or administrative use directly related to management of the permit." The Field Office proposed that the decision apply in the year 2001 and subsequently. (Apr. 27, 2001, Notice of Proposed Decision at 1-4.) The proposed decision required payment of $160 plus three percent of the gross income generated from services offered on the public lands, excluding gross income derived from private land use. Id. at 3. [3/] Camp Redcloud protested the proposed decision. It did not challenge the method of fee calculation. (May 17, 2001, Protest of Proposed Decision at 1-3.)

The BLM State Director issued a Notice of Final Decision on June 14, 2001. The State Director determined that Camp Redcloud was a commercial organization under 43 CFR 8372.0-5 (2000), and that its non-profit status did not control that question. He noted that "a number of non-profit organizations" operated under BLM special recreation permits. The State Director found that Camp Redcloud does not qualify for a fee waiver, because he concluded that BLM policy guidelines permit fee waivers only for research, therapeutic, or administrative use. The State Director asserted that a fee waiver for therapeutic activity is properly given only for patient therapy, and that Camp Redcloud's use did not so qualify. (June 14, 2001, Notice of Final Decision at 1-3.)

Camp Redcloud timely appealed. In an introductory letter, Camp Redcloud asserts:

> We really see that we are being discriminated against by the BLM and USFS by classifying us as you have and charging us fees. * * * The problem is that we are classified as a 'commercial' organization which is far from fact, and you impose a fee which is a greater hardship on an organization like ourselves which is supported by donations.

(Aug. 7, 2001, letter from Camp Redcloud to the Board at 1.)

In its SOR, Camp Redcloud describes the programs it offers and asserts that "it is apparent that the activities of Camp Redcloud, Inc., directly benefit the health, safety and welfare of a broad segment of the general public." (SOR at 2.) Camp Redcloud argues that its activities are non-commercial because camper fees represent less than the actual cost of operating the camp. It asserts that because it does not charge campers separately for public land use, any charge assessed by BLM will be arbitrary. Thus, it requests that Camp Redcloud "should be determined to be a non-commercial entity upon whom rental fees should not be imposed." (SOR at 4.)

[3/] According to Camp Redcloud, approximately 90 percent of its program is conducted on private lands. The gross income pertaining to this use would be excluded from the fee assessment.

Camp Redcloud also argues that "waiver of fees for special recreation permits may be made for organizations involved in therapeutic uses." (SOR at 4.) It asserts that BLM's interpretation of therapeutic activity as only relating to hospital patients improperly restricts that term. Camp Redcloud asserts that its goals of instilling religious values, outdoor skills, and self-esteem in children should constitute therapeutic use justifying a fee waiver.

Camp Redcloud provides financial documentation to support its appeal. It offers a statement of Camp Redcloud's profits and losses for 1999, indicating a net income of $20,933.66 for that year. Among its expenses, Camp Redcloud lists $322,865.27 for staff salaries. (SOR Exhibit A.) Camp Redcloud submits a statement of its total liabilities and equity, indicating assets of $2,553,320.26. (SOR Exhibit B.) Also, it provides a statement of income from camper fees and the expenses paid by those fees. In 1999, Camp Redcloud received $336,785.51 from camper fees out of total receipts of approximately $790,000. Camp Redcloud asserts that it can trace the dollars received from camper fees, as opposed to those from other sources, and that the camper fees went to the payment of expenses for food, fuel, utilities, supplies, insurance, horse care, licensing fees, telephone charges, vehicle maintenance, automobile registration and taxes, camp maintenance, postage, printing, camp services, travel, membership fees, and miscellaneous expenses. Camp Redcloud asserts that camper fees fell short of the total expenses in those categories by $9,657.67. (SOR Exhibit C.) Thus, Camp Redcloud concludes that its fee structure reveals it was non-commercial.

In his affidavit, File asserts that capital expenditures for the acquisition of new property and remodeling work were derived only from donations, and that no fixed assets have been purchased with camper fees. File also avers that Camp Redcloud pays all staff salaries through donations. Finally, he states that the shortfall in camper fee income over expenses in Exhibit C was covered by donations. (July 27, 2001, Affidavit of Daniel File at 1-2.)

In its answer, BLM argues that the Board's decision in Wilderness/Challenge, Inc., 64 IBLA 44 (1982), is determinative here. BLM asserted there that almost all organizations conducting permanent activity on the public lands will be considered commercial pursuant to applicable BLM regulations at 43 CFR Subpart 8372 (1980). [4/] BLM states that here, as in Wilderness/Challenge, Inc., Camp Redcloud conducts commercial activities on the public lands for which its staff is paid. Also, BLM asserts that Camp Redcloud has not demonstrated that it qualifies for a fee waiver as an educational institution because there is no evidence that it is an

[4/] The portions of the definition of "commercial" relied on by the Board in that case were promulgated in 1978 and remained in effect until 2002.

accredited educational institution or that its activities are "principally educational or scientific." (Answer at 4.)

In response, Camp Redcloud asserts that Wilderness/Challenge, Inc., is distinguishable from its case because, in that case, funding for a recreation program was provided specifically for activities conducted on the public lands. Here, Camp Redcloud asserts that it would continue to collect donations and pay staff salaries for the camp use on private lands even if it did not conduct activities on public land. Camp Redcloud also argues that BLM's interpretation of commercial use is overly broad.

[1] Camp Redcloud first argues that BLM erred in classifying its use of the public lands as commercial use. We disagree. Camp Redcloud misreads the applicable rule in several critical respects.

During the years relevant here the procedures by which BLM authorized specific recreational land uses appeared at 43 CFR Subpart 8372 (2000). These regulations, including pertinent definitions, were superseded by new rules published at 43 CFR Part 2930, effective October 31, 2002. Thus, to the extent we construe regulations in effect at the time of the appeal, our construction would control permit years 2000, 2001, and 2002 only. [5/]

The regulations require a special recreation permit for commercial use, competitive use, and off-road vehicle events involving the public lands. 43 CFR 8372.1-1 (2000). The threshold issue for determining the need for a special recreation permit here is whether Camp Redcloud's use of the public lands is commercial, within the meaning of Subpart 8372. In 2000, "Commercial use" was defined as follows:

> Commercial use is recreational use of the public lands for business or financial gain. When any permittee, employee or agent of a permittee, operator, or participant makes or attempts to make a profit, salary, increase his business or financial standing, or supports, in any part, other programs or activities from amounts received from or for services rendered to customers or participants in the permitted activity, as a result of having the special recreation permit, the use will be considered commercial. * * * The collection by a permittee or his agent of any fee, charge, or other compensation which is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use shall make the activity or use commercial. Use by

[5/] As no permit was issued for the year 2000, likewise, BLM granted no fee waiver for that year.

> educational and therapeutic institutions is considered commercial when the above criteria are met. Profit making organizations are automatically classified as commercial, even if that part of their activity covered by the permit is not profit making. Nonprofit status of any group or organization under the Internal Revenue or Postal Laws or regulations does not in itself determine whether an event or activity arranged by such a group or organization is noncommercial. Any person, group, or organization seeking to qualify as noncommercial shall have the burden of establishing to the satisfaction of the authorized officer that no financial or business gain will be derived from the proposed use.

43 CFR 8372.0-5(a) (2000) (emphasis added). The coverage of the rule is thus broad; any recreational use of public lands for which people made or attempted to make a profit, salary, or increase in business or financial standing was "commercial" within the meaning of the rule.

Any compensation collected for purposes other than for actual expenses necessarily makes the activity commercial use pursuant to Subpart 8372. The term "actual expenses" is defined as

> expenses necessarily incurred for the permitted activity or use. These include, but are not limited to, the actual costs of such items as expendable equipment and supplies. Actual expenses do not include any salaries, profit, increase of capital worth, allowances, or subsidies of any other activities of the permittee or sponsor, the purchase or amortization of nonexpendable supplies of equipment, any allowance for undersubscribed events or any monetary compensation for sponsors or participants.

43 CFR 8372.0-5(b) (2000). Thus, fees or compensation received for expenses that are not actual expenses, including compensation for the payment of salaries, makes the venture commercial. The applicant bears the burden of demonstrating that "no financial or business gain will be derived from the proposed use." 43 CFR 8372.0-5(a) (2000).

Camp Redcloud may not avoid the permit requirements of Subpart 8372 based on its non-profit status under section 501(c) of the tax code. Its argument on appeal and its practice of scratching out "commercial" and writing in "non-profit" on its special recreation permit applications presumes that because the Internal Revenue Service has qualified the camp as a non-profit organization for tax and donation purposes, it necessarily cannot be considered to provide commercial activities for purposes of a BLM special recreation permit.

This construction is defeated by the plain language of 43 CFR 8372.0-5(a) (2000). The nonprofit status of any organization under the Internal Revenue Code "does not in itself" control the distinction between commercial and non-commercial use. Although profitmaking organizations are by definition commercial entities under these rules, BLM evaluates the activities of non-profit organizations to determine whether or not they are "for business or financial gain." Id.

Camp Redcloud's argument that the fees it collects from campers are purely a sharing of actual expenses, making its use non-commercial (SOR at 3), likewise ignores the plain words of the definition. The argument attempts to conform Camp Redcloud's finances to the following sentence within the definition of "commercial" use: "The collection by a permittee or his agent of any fee, charge, or other compensation which is not strictly a sharing of, or is in excess of, actual expenses incurred for the purposes of the activity or use shall make the activity or use commercial." As a matter of fact, Camp Redcloud's financial documents for 1999 reveal that it collected more than three-quarters of a million dollars in revenue, and paid slightly less in expenses. In fact, the net income has been positive each year of operation. The Camp has submitted data indicating all the compensation it receives for running the camp; this revenue exceeds 100 percent of expenses, and therefore also exceeds any subset of expenses which constitutes actual expenses. Camp Redcloud's focus on what the payment of camper fees may cover by way of expenses sidesteps the language of the definition with includes "charge, or other compensation." Thus, Camp Redcloud's argument depends on a misconstruction of the relevant portion of the rule. [6/]

Further, Camp Redcloud ignores the remainder of the regulation which specifies that a use is commercial for purposes of Subpart 8372 if the permittee "makes or attempts to make a profit, salary, increase his business or financial standing * * * from amounts received from or for services rendered to customers." 43 CFR 8372.0-5(a) (2000) (emphasis added). It is undisputed that Camp Redcloud's staff salaries are paid from amounts received from or for camp services, some of which occur on the public lands. (SOR at 3; July 27, 2001, Affidavit of Daniel File at 3.) Regardless of the source of money to pay these salaries, whether from camper fees or donations, payment of those salaries from that compensation makes Camp Redcloud's activities commercial. In addition, Camp Redcloud's net value has increased by 250 percent since it began obtaining special recreation permits in 1991. We see no basis for its argument that it does not fit into the commercial category on the basis of its "increasing [its] financial standing" under that definition.

[6/] To the extent Camp Redcloud were to subtract the portion of receipts applicable only to the public, as opposed to private, land use, it would have to subtract the same portion of expenses, and thus the excess would be proportionately the same.

The Board explored a similar factual situation in Wilderness/Challenge, Inc., where the appellant was a non-profit, educational corporation granted tax exempt status by the Internal Revenue Service. 64 IBLA at 45. There, the appellant contracted with educational agencies to conduct river rafting trips, outdoor education training, and training for teachers and students. Id. To run these programs, the permittee employed a full-time staff. It billed the educational agencies for the entire cost of the programs, including staff salaries. Id. at 45-46. Relying on the language quoted above, the Board found that the use was commercial. Id. at 47, quoting 43 CFR 8372.0-5(a) (1980). Conceding that the definition made it difficult for an educational institution ever to be defined as non-commercial, the Board nonetheless applied the rule as written. Id. at 47-48.

Considering the plain language of the applicable rules, we affirm BLM's conclusion that Camp Redcloud is engaged in commercial activities. Thus, it must obtain a special recreation permit for its public land use.

[2] Camp Redcloud next argues that, even if it is required to obtain a permit, it is entitled to a fee waiver. Again, we disagree.

BLM is responsible for establishing fees to be paid for special recreation permits. 43 CFR 8372.4 (2000). BLM may require a permit but shall not charge fees for uses "including, but not limited to, organized tours or outings conducted for educational or scientific purposes related to the resources of the area visited by bona fide institutions established for these purposes." 43 CFR 8372.4(c)(2) (2000). In such cases, applicants for a fee waiver may be required to provide documentation of their official recognition as an educational or scientific institution by a Federal, State, or local governing body. To qualify for a waiver, such use must also relate directly to educational or scientific purposes and shall not be primarily recreational in nature. 43 CFR 8372.4(c)(3) (2000). Pursuant to 43 CFR 8372.0-5(e) (2000), educational use is defined as "an academic activity sponsored by an accredited institution of learning."

In Pacific Crest Outward Bound School, 117 IBLA 309, 314 (1991), the Board examined the circumstances under which Subpart 8372 contemplates the granting of fee waivers.

> The regulations provide for exemption of fees for commercial recreational uses, including "organized tours or outings conducted for educational or scientific purposes," but only if certain conditions are met. It is clearly stated in 43 CFR 8372.4(c)(3) that no waiver of fees shall be granted unless the use of the resources relates directly to scientific or educational purposes. Further, when read in pari materia with 43 CFR 8372.0-5, it is clear that waiver of fees "may be denied" by

> BLM where the permittee fails to provide documentation of its official governmental recognition as an educational or scientific institution, or any other documentation demonstrating that it is engaged in an "academic activity sponsored by an accredited institution of learning."

Camp Redcloud neither argues nor presents evidence that it is an educational or scientific institution involved in such activities. 43 CFR 8372.4(c)(2)-(3) (2000). Therefore, Camp Redcloud has not demonstrated that it is entitled to, or eligible for, a fee waiver based on educational or scientific use.

Camp Redcloud's contention that it is entitled to a waiver is based on its claim that it is a "therapeutic institution." Camp Redcloud asserts that its efforts to "instill Christian values, outdoor education, outdoor skills, team spirit and generally building a higher level of confidence" constitute therapeutic activities. (SOR at 4.) As noted above, the BLM fee waiver rule at 43 CFR 8372.4(c) (2000) is silent as to BLM's authority to waive fees for therapeutic institutions and activities. The reference to "therapeutic" use appears in the definition of commercial use, which controls whether a permit is required at all. 43 CFR 8372.0-5(a) (2000). That rule states that uses even by "therapeutic institutions" are considered to be commercial when the other criterial of the definition are met. Id. Camp Redcloud is not a therapeutic institution. But even if it were, for the reasons stated above, it would need a special recreation permit to conduct its activities on public lands under that rule.

Camp Redcloud is correct to note that BLM asserted in its decision that it "may waive fees only for Special Recreation Permits issued for research and/or scientific, therapeutic or administrative use directly related to management of the permit area or if the event or activity is co-sponsored by BLM." (June 14, 2001, Notice of Final Decision at 2.) BLM has thus stated that the question of whether fees will be waived under 43 CFR 8372.4 (2000) includes consideration of whether therapeutic uses will be made of the public lands. See Pacific Crest Outward Bound School, 117 IBLA at 312. [7/] The addition of "therapeutic uses" as a justification for a fee waiver derives from language in the August 29, 1984, regulatory preamble regarding the fee provision at 43 CFR 8372.4(c) (2000). That language stated that the intent of the

---

[7/] BLM has submitted excerpts from what it calls "BLM's Manual/Policy Statement for Administering Special Recreation Permits" that appear to be the source of BLM's therapeutic use fee waiver policy. The excerpt on fee waivers states:
"2. The authorized officer may waive fees only for Special Recreation Permits issued for research and/or scientific, therapeutic, or administrative use directly related to management of the permit area or if the event or activity is co-sponsored by the BLM. Although fees may be waived, applicants on this basis must compete for use allocations where applicable. Non-profit, educational, or public agency status is not, on its own, a basis for waiving fees."

fee provision was to parallel the National Park Service (NPS) rules at 36 CFR Part 71. 49 FR at 34336; Pacific Crest Outward Bound School, 117 IBLA at 313. The NPS rule states: "No Federal recreation fee shall be charged any hospital inmate actively involved in medical treatment or therapy in the area visited." 36 CFR 71.13(d) (2000).

Thus, to the extent a fee waiver could be considered appropriate for therapeutic use under Subpart 8372 and BLM policy, it appears as a result of the NPS rule which permits a waiver only for hospital patient therapy. BLM's final decision to deny a fee waiver to Camp Redcloud because no such use is at issue here is consistent with the language on which Subpart 8372 was based and we affirm it. [8/]

Even assuming arguendo that we could find that Camp Redcloud was a recognized scientific, educational, or therapeutic institution engaged in such activities, a fee waiver would still be inappropriate where the relevant activities are primarily recreational in nature. 43 CFR 8372.4(c)(3) (2000). "Permits may be required but fees are not charged for uses for educational or scientific purposes, regardless of whether the use is commercial, so long as the use is not primarily recreational." 49 FR at 5305. Based on the record, and the camp advertisements, we have no basis on which to find that Camp Redcloud's activities are primarily related to anything but recreation. [9/]

We turn finally to Camp Redcloud's averment that the State Director's decision constituted discrimination. According to BLM, however, out of 65 permittees, Camp Redcloud has been the sole benefactor of a fee waiver from the Gunnison Field Office. (Jan. 4, 2001, Briefing for the State Director at 1-2.) Camp Redcloud's assertions posits facts unsupported in the record.

[8/] Camp Redcloud's argument that we should interpret "therapeutic" to give the term its plain meaning does not further its cause. Setting aside whether the activities offered by Camp Redcloud could be considered to be personally therapeutic in the eyes of the camp participant, BLM's rulemaking made clear that its meaning was more restrictive and objective.

[9/] Camp Redcloud also asserts that BLM's imposition of fees at 3% of the gross income generated from services on the public lands will be arbitrary because it does not charge campers separately for their public land use. However, the State Director's decision did not impose a specific method for computing Camp Redcloud's permit fees. In fact, the BLM's Notice of Proposed Decision stated "we will work with you to estimate the percentage of a camper's fees that go toward the services and activities you provide on BLM land." (Apr. 27, 2001, Notice of Proposed Decision at 3.) Camp Redcloud's argument, therefore, reveals no error.

Therefore, 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.

_____
Lisa Hemmer
Administrative Judge

I concur:

_____
Bruce R. Harris
Deputy Chief Administrative Judge