INTERIOR BOARD OF LAND APPEALS

Frank Robbins, d.b.a. High Island Ranch

154 IBLA 93 (December 18, 2000)

FRANK ROBBINS, d.b.a. HIGH ISLAND RANCH

IBLA 99-347 Decided December 18, 2000

Appeal from a decision of the Worland Field Office, Bureau of Land Management, denying an application for a special recreation permit. WY-010-RU99-02.

Affirmed.

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

   An authorized officer's exercise of discretionary authority to deny a special recreation permit should have a rational basis supported by facts of record so as not to be arbitrary, capricious, or an abuse of discretion. BLM may deny a special recreation permit if the proposed activity conflicts with BLM objectives, responsibilities, or programs for management of the public lands.

APPEARANCES: John M. McCall, Esq., Cheyenne, Wyoming, for appellant; Jennefer E. Rigg, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE TERRY

Frank Robbins (appellant), d.b.a. High Island Ranch, appealed from a June 18, 1999, decision (Decision) of the Field Manager, Worland, Wyoming Field Office, Bureau of Land Management (BLM), denying appellant's Special Recreation Permit (SRP) application WY-010-RU99-02. On July 19, 1999, appellant filed a Notice of Appeal and Petition for Stay of the Field Manager's Decision. On August 18, 1999, the Board denied appellant's Petition for Stay, and on February 1, 2000, the Board denied appellant's Request for Reconsideration of the stay denial.

In its Decision, BLM stated that a significant part of appellant's proposed activities in the SRP were in conjunction with and dependent on his High Island Ranch livestock grazing permit, which, by letter dated June 17, 1999, BLM had proposed to cancel. (Decision at 1.) It stated

that cancellation of the permit would render that part of appellant's SRP inoperative. Id. BLM further explained in its Decision:

> Following your 1995 operating season, your SRP was suspended due to noncompliance with the stipulations of the permit. Upon correction of the immediate problems resulting in the permit suspension, your operation was placed in a probationary status and your permit was issued on an annual rather than a five-year basis.
>
> You have consistently shown a complete disregard for BLM's lawful authority to administer public lands. The record regarding the High Island Ranch SRP (number WY-018-RU98-09), the High Island Ranch grazing permit (grazing record number GR491211), and [r]ight-of-way case numbers WYW-127878 and WYW-141791 (trespass) shows that since your acquisition of the High Island Ranch in 1994, you have repeatedly failed to comply with the terms and conditions which govern your various public land use authorizations, often despite explicit advance warnings from BLM that your conduct would violate the terms and conditions of your public land use authorizations. Specifically, you have, among other things:
>
> * had your special recreation permit suspended and reduced from a five-year term to a one-year term due to infractions of the permit's conditions;
>
> * received ten different grazing trespass notices, some of which have been in conjunction with your SRP operations;
>
> * been in noncompliance of your grazing permit and allotment management plan on at least twenty occasions, in addition to those for which grazing trespass notices were issued; and
>
> * committed trespass on the public lands by blading a road, that facilitates your SRP operations, without authorization.
>
> In reaction to BLM's efforts to investigate these problems and otherwise manage the public lands, you have repeatedly attempted to limit BLM's access across your deeded lands that are intermingled with public lands in the area covered by the SRP. Along with the numerous incidents detailed in my proposed grazing decision, dated June 17, 1999, in a letter dated October 20, 1995 concerning your SRP you stated "I expect BLM

to notify me of when they are expecting to be on or to cross private lands." Your past SRPs and the application for WY010-RU99-02 require that:

> Authorized representatives of the Department of the Interior, other Federal agencies, and game wardens must at all times, have the right to enter the premises on official business.

Part of BLM's duties in carrying out the various statutory mandates that govern its administration of the public lands include monitoring uses of the public lands and investigating unauthorized uses and potential permit violations. A requirement that BLM obtain advance permission from a permittee before conducting compliance inspections would clearly interfere with BLM's ability to manage and protect the public lands. The Interior Board of Land Appeals (IBLA) recognized this fact, with respect to your High Island Ranch grazing permit, when it explicitly ruled that BLM need not obtain your advance permission before carrying out its duties on the public lands (IBLA 98-180; 98-404). Nevertheless, you have persisted in your obstruction of BLM's access to the public lands despite the IBLA's specific Orders clarifying that the access stipulation is indeed a condition of your High Island Ranch grazing permit and explicitly stating that BLM does not need to obtain your advance permission before carrying out its responsibilities on the public lands. Your interference with BLM's access to the public lands makes it impossible for BLM to carry out its statutory responsibilities to manage and protect the public lands.

(Decision at 1-2.)

In his Statement of Reasons (SOR) for appeal, appellant claims that BLM violated its own regulations in denying the SRP in the manner it did. Appellant asserts that the regulation regarding the issuance of the SRP requires that BLM, within 30 days of the filing date or within 15 days of the projected use date, advise the applicant if the decision on issuing the permit will be delayed. (SOR at 2, citing 43 C.F.R. § 8372.2.) Appellant contends that BLM waited almost a month after the May 26, 1999, use date to issue the decision appealed from, and that because of the belated decision, appellant's tourist season has been adversely affected and BLM's actions "will create a devastating effect to Mr. Robbins' business, reputation and family if he is now forced to send his guests away." (SOR at 3.) Appellant urges that by waiting until he spent significant resources and was in the middle of his tourism activities to deny the SRP, BLM acted arbitrarily, which was contrary to BLM governing guidelines, and that such action presents a basis for asserting estoppel. Id.

Appellant claims that BLM's actions in denying the application based on a proposed grazing decision "offends traditional notions of justice by presuming Mr. Robbins is guilty before the merits of the appealed decisions will be heard." (SOR at 4.) Appellant contends that this type of decision-making offends the entire appeal process set forth under 43 C.F.R. § 4.21, and that because BLM expressly based its action on the proposed decision, the action is ultra vires and an arbitrary exercise of discretion. Id.

Further, appellant asserts that although the approval of an application for an SRP is discretionary with the authorized officer, there are constraints on such discretion and the exercise of such authority must have a rational basis supported by the facts of record so that it will not be arbitrary or capricious. (SOR at 4, citing Red Rock Hounds, Inc., 123 IBLA 314, 318 (1992).) In this case, appellant claims, the decision "rests upon allegations and issues which are yet to be resolved and should not be accorded any evidentiary weight in the administrative record pending a final outcome on their merits." Id.

In its Answer, BLM states that the lands used by the High Island Ranch include approximately 44,383 acres of private, State, and Federal lands and encompass four separate allotments. BLM explains that in many cases the interspersed Federal lands can be reached for management purposes only by crossing appellant's private lands. (Answer at 2-3.) BLM claims that as a result of appellant's interference with BLM's efforts to manage and protect the public lands, BLM sought relief from the Board in two grazing trespass cases involving appellant. (Answer at 3, citing BLM's Request for Limited Relief from Stay and Request for Expedited Consideration, dated October 27, 1998, and filed in High Island Ranch and Frank Robbins v. BLM, IBLA Nos. 98-180 and 98-404.) BLM states that despite the Board's November 20, 1998, Order, appellant continued to interfere with BLM's management and protection of the public lands on the High Island Ranch allotments by requesting, on April 27, 1999, that the local sheriff's office serve two BLM employees with a "Notice of Trespass" when they crossed appellant's private land in order to reach public land. (Answer at 3.)

BLM notes that on May 19, 1999, the Board issued another Order denying appellant's Petition for Reconsideration of the Board's November 20, 1998, Order in this case in which the Board stated: "We find that administrative access is an implied condition of a grazing permit whenever such administrative access is necessary in order for BLM to carry out its statutory responsibilities on the public lands." (Answer at 4, quoting May 19, 1999, Order.) BLM further asserts that at a meeting on May 26, 1999, in which its Law Enforcement Ranger, appellant, and the Hot Springs County Sheriff met to discuss the two Board Orders and the required BLM access to administer the public lands, appellant stated, after reading the May 19, 1999, Board Order, that "he did not recognize the Board's Order as having any authority over him." (Answer at 4.)

In relating the history of the SRP assigned to the High Island Ranch, BLM claims that appellant's predecessor, prior to his sale to appellant in 1994, held a 5-year SRP for his guest ranch activities. (Answer at 5.) Appellant was likewise initially granted a 5-year SRP, but this permit was modified into an annual permit in 1995, as a result of appellant's violations of his SRP. Id. BLM sets forth the time-frame of the SRP denial as follows:

> Mr. Robbins' previous SRP expired on March 18, 1999. BLM received an application for a new permit from Mr. Robbins on April 9, 1999. By decision dated June 18, 1999, BLM denied Mr. Robbins' application for a new SRP. The June 18, 1999 decision is the subject of this appeal.

(Answer at 5.)

BLM urges that its decision to deny appellant's SRP application was not only reasonable and supported by the facts, but was the only practical alternative available to BLM, given the circumstances. (Answer at 6.) In short, BLM claims, appellant, by his own behavior, made it clear to the Bureau that he had no regard whatsoever for the lawful authority of BLM to manage and protect the public lands. Id. In light of these circumstances, BLM states, on June 17, 1999, it issued a proposed decision (related but different from the SRP decision) canceling appellant's grazing permit. Id.

BLM asserts that its decision to deny the SRP complied with the regulations. It notes that 43 C.F.R. § 8372.2(c)(2) requires notification to an SRP applicant within 30 days of the filing date or within 15 days of the desired use date, whichever is earliest, only if the decision will be delayed. (Answer at 7.) In this case, BLM recites, appellant filed his application on April 6, 1999, with June 28, 1999, listed as the first use date under the requested authorization. 1/ (Answer at 8.) Within 3 days of receipt of the application, BLM states, it sent appellant a letter request for clarification of certain points within the application and the Plan of Operation included therein. Id. Appellant, BLM claims, did not respond to this request until a month later, on May 10, 1999, when BLM received the requested information. Id. BLM asserts that it then issued its decision denying the SRP on June 18, 1999, 10 days prior to the first proposed use date. BLM claims that it did not violate the requirement relating to the timing of notice if a decision is to be delayed, but that "even if one assumes that BLM's decision did not comply with the regulation at 43 C.F.R. § 8372.2(c)(2), that regulatory time frame is directory, not mandatory, and accordingly, noncompliance with the regulation would not be grounds for invalidating BLM's decision." (Answer at 9.)

1/ Appellant claims in his SOR that "May 26, 1999" was the first use date for the SRP. BLM states that it is "June 28, 1999." (Answer at 8.) The application itself lists the first use date as "27 June."

Equally important, BLM urges, its decision is reasonable and appropriate, independent of the grazing permit cancellation decision. BLM notes that since acquisition of the private lands serving as base property for the High Island Ranch allotments, appellant has established a pattern of violating the terms and conditions of his various public use authorizations. (Answer at 10.) For example, BLM states, appellant has been cited for trespass for unauthorized blading of a road on public lands, 2/ been in noncompliance with his grazing permit on at least 20 occasions, and received formal notices regarding 11 different grazing trespasses, 7 of which settled and 4 of which are the subject of pending appeals. (Answer at 10, note 9.) This is in addition, BLM asserts, to his recalcitrance in precluding BLM employees from gaining access to Federal lands. (Answer at 12.)

[1] SRP's are issued pursuant to the Secretary's authority to regulate use of the public lands granted by the Land and Water Conservation Fund Act, 16 U.S.C. § 460l-6a(c) (1994); see also section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1994). Regulations governing SRP's are set forth in 43 C.F.R. Subpart 8372, and 43 C.F.R. § 8372.3 provides: "The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer."

"Discretion" does not mean that the decision cannot be reviewed, however. Any exercise of discretionary authority must have a rational basis supported by facts of record so as not to be arbitrary, capricious, or an abuse of discretion. Judy K. Stewart, 153 IBLA 245, 251 (2000); William D. Danielson, 153 IBLA 72, 74 (2000); Red Rock Hounds, Inc., supra at 318; Four Corners Expeditions, 104 IBLA 122, 125-26 (1988). BLM may exercise this discretion to determine if the proposed activity conflicts with BLM objectives, responsibilities, or programs for management of the public lands. Checker Motorcycle Club, 126 IBLA 251, 254 (1993), and cases cited therein.

As we have noted above, we review the exercise of BLM's discretion in denying an application for an SRP to determine if it has a rational basis supported by facts of record. Terry Kaiser, 136 IBLA 148, 150 (1996). We have reviewed the record that the Worland Field Office provided us for its June 18, 1999, decision. We find adequate support in the record that the Worland Field Manager's decision has a rational basis and is not arbitrary or capricious or an abuse of discretion. Although Robbins' argument that the decision was rendered when related appeals were still undergoing review has been considered, the entire record and the pattern of violations represented by the repeated notices he has received since receiving the first SRP in 1994 provide more than a reasonable factual basis for BLM's decision in this case not to renew the permit.

2/ Affirmed by the Board in Frank Robbins, 146 IBLA 213 (1998).

We also find no merit in appellant's claim that BLM engaged in procedural violations as a result of an understandable delay in advising him of the status of his application. While appellant claims that the delay deprived him of the opportunity to take advantage of available economic opportunities, the Worland office was attempting to sort out repeated trespass notices directed at appellant at the very time he was applying to BLM to use the same public land for purposes that would require that BLM office to exercise its right of access across his private land to carry out its statutory responsibilities. By Robbins' refusal to recognize BLM's right of access, he cannot now complain that BLM delayed, when the delay resulted from BLM's reasonable exercise of care in ensuring its statutory obligations to protect the public lands were fulfilled. This decision does not preclude Robbins from reapplying for a permit if he obtains the judicial relief he seeks.

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 June 18, 1999, decision by the Worland Field Manager is affirmed.

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James P. Terry
Administrative Judge

I concur:

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Bruce R. Harris
Deputy Chief Administrative Judge