

INTERIOR BOARD OF LAND APPEALS

William D. Danielson

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WILLIAM D. DANIELSON

IBLA 99-265

Decided July 26, 2000

Appeals from decisions of the Prineville and Medford District Offices, Bureau of Land Management, denying applications for special recreation permits. OR 8372.

Affirmed.

1. Public Lands: Special Use Permits--Special Use Permits

Denial of an application for a special recreation permit when the proposed use conflicts with BLM objectives, responsibilities, or programs for management of the public lands is a matter of discretion with the authorized officer under 43 C.F.R. § 8372.3. Any exercise of discretionary authority must have a rational basis supported by facts of record so that it is not arbitrary, capricious, or an abuse of discretion. BLM's denial of applications from a person who fails to disclose information required on the application form, whose conduct and reputation are inconsistent with BLM policies for administering the special recreation permit program, and who has been convicted of Lacey Act violations will be upheld when supported by the record.

APPEARANCES: William D. Danielson, Medford, Oregon, pro se; Bradley Grenham, Esq., Office of the Solicitor, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

William D. Danielson has appealed two decisions by the Bureau of Land Management (BLM) denying applications for special recreation permits, one a January 29, 1999, decision by the Prineville (Oregon) District Office, BLM, denying Danielson a special recreation permit to guide hunters on BLM land that he had applied for on October 7, 1998, the other a Medford District Office decision dated September 18, 1998. BLM's Prineville District Office gave three reasons for its decision:

(1) Danielson provided false information on his application for a permit. BLM stated that Danielson provided false information in item 7d of the application form, Form 8370-1, when he checked "no" in response to the question whether there was any investigation or legal action pending against him for use of public lands. In addition, BLM stated, Danielson left blank items 7a-7c on the form, which ask if he had been issued a permit for a previous event or activity and, if so, by what BLM office and on what date, even though he had previously been issued a permit by the Medford District Office, BLM.

(2) Danielson had been convicted of a fish and game violation in 1989. Citing 43 C.F.R. § 8372.5(f), BLM stated it had a strong interest in assuring that applicable game laws would be adhered to when issuing permits for commercial guiding on public lands. 1/

(3) A history of complaints from landowners and clients about Danielson indicated it would not be in the public interest to issue the permit. The Prineville District Office decision stated it had learned from information made available to it by the Medford District Office that Danielson's 1998 request to renew a hunting permit had been denied by that District because of numerous complaints concerning illegal hunts, trespass, and safety.

In his statement of reasons (SOR) for appeal Danielson states that he checked "no" for item 7d of the form, after conferring with counsel, because the April 15, 1998, indictment against him did not involve public lands. (SOR at 4.) He notes the indictment was for Federal violations and was later dismissed. Id. 2/

1/ 43 C.F.R. § 8372.5(f) provides that "[t]he conviction of a violation of any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities that is related to [a] special recreation permit may result in the cancellation of the permit."

2/ Exhibit L of the SOR is a motion by the Government in United States of America v. William Dennis Danielson, CR 98-60045-HO, "to dismiss the indictment in this case without prejudice to reinstate these and other charges since a broad-ranging grand jury investigation of the defendant and others will not be concluded prior to the \* \* \* trial date." The motion was granted by United States Magistrate Judge Thomas Coffin, United States District Court for the District of Oregon, on Feb. 2, 1999. The indictment was for four counts of violating the Lacey Act, 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(1)(B), and 18 U.S.C. § 2 (1994). (Record, Tab 35).

In March 1999, a second indictment was returned. On Apr. 28, 2000, Danielson was found guilty of selling and transporting in interstate commerce a blacktail deer illegally taken or possessed, in violation of 16 U.S.C. §§ 3372(a)(2)(A), 3372(c), and 3373(d)(1)(B), and 18 U.S.C. § 2 (1994). United States of America v. William Dennis Danielson, Case No. 99-60035-1-AA, U.S. District Court, District of Oregon, Verdict Form, April 28, 2000.

Danielson acknowledges that he left items 7a-7c blank. "At the time of the application in Prineville, I had not been denied or granted a SRP [special recreation permit] in the Medford District," Danielson states, <sup>3/</sup>

but I knew that I had an [sic] reputation with the Medford District that most likely would lead them to make an adverse recommendation should that information be disclosed. This seemed the necessary thing to do at the time, and given the opportunity to correct this, I certainly would by indicating that my previous SRP had been with the Medford District.

Concerning the 1989 fish and game violation, Danielson states that on advice of counsel he pled guilty to a charge of angling by prohibited methods rather than contest a more serious offense that would have resulted in loss of his guide license if he had been convicted. (SOR at 4-5.) "There is no place for disclosure of such violations on the application form," Danielson states, "so it was not disclosed. I would have thought that the period of time over which I have conducted fishing, hunting and guiding for a livelihood (1984 to 1999) and having one violation during a non-commercial activity in the last nine years would not be a factor for the denial of a SRP." *Id.* at 5.

Danielson disputes the allegations of trespass and illegal hunting activities that were reported by the Medford District Office.

[1] Denial of an application for a special recreation permit is a matter of BLM's discretion, but "[a]ny 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." *Terry Kayser*, 136 IBLA 148, 150 (1996); *Red Rock Hounds, Inc.*, 123 IBLA 314, 319 (1992). In *Red Rock Hounds, Inc.*, we stated that rejection of an application "may be supported by facts far short of conviction for violation of a \* \* \* statute." *Id.* Although Danielson's illegal angling conduct may be too remote to be a reasonable basis for denying his application, his recent Lacey Act conviction is certainly not. *See* note 2, *supra*. In any event, Danielson's failure to disclose information about his permit from the Medford District in response to items 7a-7c on the form is a rational basis for the Prineville District Office's denial of the application. *Baltzor Cattle Co. v. BLM*, 141 IBLA 10, 23 n.5 (1997).

Danielson also appealed the Medford District Office's September 18, 1998, decision denying an application to it for a special recreation permit. That decision was "based on [his] history of unauthorized and unsafe activities and for providing false information to [that] office."

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<sup>3/</sup> We note that although Danielson dated his application to the Prineville District Aug. 20, 1998, i.e., before the Medford District's Sept. 18, 1998, decision denying his Apr. 16, 1998, application to the Medford District for a special recreation permit, his application to the Prineville District was not filed there until Oct. 7, 1998.

The decision noted that Danielson checked "no" in response to question 7d on his application form dated April 16, 1998, even though a local newspaper reported the next day that he had been under investigation and had been indicted, and characterized this as a misrepresentation. The decision mentioned a July 1997 report to BLM from a Danielson client that Danielson had led him to trespass on private land; had represented he had a permit to hunt on BLM land (when, BLM noted, he had only applied for a permit); was willing to let a client shoot a bear illegally; and had told clients they could shoot an extra deer by using his wife's hunting tag. The decision also listed an October 1997 complaint from a private landowner that Danielson had trespassed on his land while guiding clients. The decision recited BLM policies governing issuance of special recreation permits as including protection of resource values and consideration of the interests of nearby landowners, and concluded that "given the overall circumstances, it would not meet BLM policy and objectives to authorize you to conduct commercial guiding activities on the public lands."

In his October 1, 1998, notice of appeal Danielson stated that there was no evidence supporting his client's July 1997 assertion that he had led him to trespass; that the alleged incident involving the bear took place when he was not present; that his wife had never purchased a deer tag in Oregon; and that he did not hunt without a permit but if he did it was because BLM improperly delayed issuing it. These questions had been investigated before BLM issued him a permit in September 1997, Danielson stated; they were not considered sufficient to deny him a permit then, so they should not be in 1998. As to the October 1997 complaint, Danielson said that the landowner cautioned him on a public road not to trespass but there was no "allegation of trespass as to a specific event" and the hunter Danielson was with later provided BLM with a statement that no trespass had occurred at the time in question. Finally, Danielson provided a copy of the indictment and stated that there was no reference in it that the alleged violations occurred on public land so that BLM's statement that there were charges pending against him for use of public lands was clearly false. Danielson repeats these positions in his SOR and takes issue with BLM's February 4, 1998, evaluation of Danielson's 1997 permit season. See Record, Tab 23, page 49.

As noted above, we review the exercise of BLM's discretion in denying an application for a special recreation permit to determine if it has a rational basis supported by facts of record. Terry Kayser, 136 IBLA 148, 150 (1996). We have reviewed de novo the record the Medford District Office provided us for its September 18, 1998, decision. We find adequate support in the record that BLM's September 18, 1998, decision has a rational basis and is not arbitrary or capricious or an abuse of discretion. Although Danielson's explanation for why he checked "no" on item 7d of the application may be plausible, the record supports BLM's concerns that, given his reputation and conduct, granting his application would not be consistent with its policies for administering the special recreation permit program. Danielson's recent conviction, supra note 2, confirms those concerns. BLM may reject an application for a proposed use that

would conflict with its objectives, responsibilities, or programs and such a rejection will be affirmed where it is supported by facts of record, absent compelling reasons for modification or reversal. Red Rock Hounds, Inc., 123 IBLA 314, 318 (1992). We cannot find such compelling reasons based on this record.

Because there is no issue of material fact that would make a difference in the disposition of these appeals, Danielson's request that we refer this matter for a hearing under our authority in 43 C.F.R. § 4.415 is denied. See Woods Petroleum Co., 86 IBLA 46, 55 (1985).

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, BLM's January 29, 1999, and September 18, 1998, decisions are affirmed.

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Will A. Irwin  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge