

INTERIOR BOARD OF LAND APPEALS

Curt Farmer Pack Llamas

133 IBLA 278 (August 9, 1995)

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CURT FARMER PACK LLAMAS

IBLA 95-478

Decided August 9, 1995

Appeal from a decision of the Rio Puerco, New Mexico, Resource Area, Bureau of Land Management, finding commercial recreation permit NM 8550 (017) had expired.

Reversed.

1. Administrative Procedure: Generally--Rules of Practice: Appeals: Board of Land Appeals--Federal Land Policy and Management Act of 1976: Permits--Public Lands: Special Use Permits

Although directed by Curt Farmer Pack Llamas, 132 IBLA 42 (1995), to renew a commercial recreation permit, BLM refused to do so; no justification for this failure to comply with the cited decision having been provided, BLM is directed forthwith to issue a permit to Farmer for a reasonable term consistent with the use sought to be permitted.

APPEARANCES: Calvin Hyer, Jr., Esq., Albuquerque, New Mexico, for appellant; Margaret Miller Brown, Esq., Office of the Field Solicitor, Southwest Region, Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Curt Farmer has appealed from a May 3, 1995, decision issued by the Rio Puerco Assistant Resource Area Manager, Bureau of Land Management (BLM), finding that his special recreation permit for commercial use (NM 8550 (017)) had expired, and that, if he wished to renew the expired permit, a new plan of operations was required. The BLM decision also stated that payment of additional fees and preparation of an environmental assessment would be required before a permit could be issued.

Farmer had applied for a permit for the 1994-95 season of intended use from May 1994 until May 1995, thereby extending a prior permit that expired on May 3, 1994. His application was rejected on April 28, 1994, in a decision by BLM. In Curt Farmer Pack Llamas, 132 IBLA 42 (1995), however, the April 28, 1994, BLM decision was reversed, and BLM was required to issue Farmer the permit applied for, "all else being regular." Id. at 45. The

record now before us on appeal, however, shows that no permit for the 1994-95 season was ever issued to Farmer by BLM as directed by our decision, but that instead he was notified that the permit term had expired.

Farmer complains that BLM refused to issue the permit as required by the decision in Curt Farmer Pack Llamas, supra, and has now attempted to unnecessarily add requirements not earlier contemplated or required. BLM has not responded to this allegation, and the record furnished on appeal supports Farmer's conclusion; neither submission of a new application, payment of fees, nor a need to conduct an environmental assessment were issues before us when Curt Farmer Pack Llamas was decided in February 1995. There is no indication that the 1994 application was not complete and the record provides no justification for further delay before implementing our February 10, 1995, decision.

[1] The Board of Land Appeals has been delegated authority by the Secretary of the Interior to hear and decide appeals from decisions by BLM. See 43 CFR 4.1. As was observed in Phelps Dodge Corp., 72 IBLA 226, 230 (1983), this Board cannot be relegated to the role

of "an umpire blandly calling balls and strikes" on decisions delivered by BLM. \* \* \* The Interior Board of Land Appeals is a component of the Office of Hearings and Appeals; an adjunct of the Office of the Secretary. As such, it is invested with the authority of the Secretary to consider and decide, "as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, and appeals and other review functions of the Secretary." 43 CFR 4.1. [Emphasis in original; citations omitted].

Upon receipt of our decision in Curt Farmer Pack Llamas, issued on February 10, 1995, BLM was therefore obliged to issue a permit to Farmer, all else being regular. Nonetheless, BLM did not take the action directed by our decision, nor has any reason been given why it was not possible to proceed as directed. Although the decision in Curt Farmer Pack Llamas was received by counsel for BLM, there is no acknowledgement of that fact in the decision here under review. This disregard for the exercise of the authority delegated by the Secretary of the Interior may not be allowed; BLM is directed to implement the decision in Curt Farmer Pack Llamas without further delay by issuing a permit to Farmer. See 43 CFR 4.1.

BLM denied permit renewal to Farmer in 1994, leading to the appeal that ended in the Curt Farmer Pack Llamas decision. Quite clearly, BLM had taken no action to renew the Farmer permit prior to May 3, 1995. The record before us, however, contains no explanation for the decision issued on May 3, 1995. In the absence of any such showing, it must be concluded that "all else was regular" in the Farmer application, and that it should have been given favorable consideration and a permit ought to have issued. It is concluded, therefore, that there exists no foundation in the record

to support the BLM decision to again reject Farmer's application. BLM is therefore directed to renew the commercial permit previously issued to Farmer for a reasonable term consistent with the use sought to be permitted.

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 reversed and BLM is directed forthwith to issue the commercial recreation permit applied for by Farmer. The new permit, which will not expire until after May 1996, will issue based on the application and fees offered by Farmer in April 1994.

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Franklin D. Arness  
Administrative Judge

We concur.

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James L. Bymes  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge