

COLORADO RIVER & TRAIL EXPEDITIONS, INC.

IBLA 91-400

Decided July 23, 1992

Appeal from a decision of the Moab, Utah, District Manager, Bureau of Land Management, reducing the number of passenger days allocated to recreation permit No. MD-88-GR-014R.

Affirmed.

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

The number of passenger days allocated to a holder of a commercial special recreation permit was properly reduced from 200 to 190 days for lack of use under a permit provision establishing a mechanism whereby past performance was to be used to fix passenger allocations.

APPEARANCES: Vicki Mackay, permittee, Salt Lake City, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Vicki Mackay, doing business as Colorado River & Trail Expeditions, Inc., has appealed from a June 27, 1991, decision of the Moab, Utah, District Manager, Bureau of Land Management (BLM), reducing from 200 to 190 the number of passenger days allocated to appellant by commercial special recreation permit No. MD-88-GR-014R. Appellant operates a commercial boating business on the Colorado River under a permit from BLM that measures intensity of permit use in part according to the number of permitted passenger trips taken annually on the river.

The June 27, 1991, decision explains that appellant had not used her permit up to the authorized passenger limit, but had fallen below 72 percent of the usage authorized. In consideration of this usage, using a formula provided by the permit terms, BLM determined that, pursuant to stipulation G(4) of the permit, a reduction in the allocation of passenger days was warranted, and reduced the number allotted to appellant from 200 to 190 days. In taking this action, BLM stated:

Colorado River and Trails' three-year average use for the period 1988 through 1990 was 136 passenger days. Thus after the adjustment, the company will still have 30 percent more user days available than it has recently utilized. In addition, Colorado Rivers and Trails will continue to have equal access to passenger days available through the pool system whenever pool days are available. Should you change your operation in such a way

that you require additional passenger days, you may be able to obtain additional allocation under the procedures described in Section G(4) of the permit stipulations.

(Decision at 2).

Appellant does not allege error in the June 27, 1991, decision, but argues that her appeal is nonetheless "justified" because the effect of the BLM decision will be to put appellant at a competitive disadvantage for outings that begin on weekends. Appellant contends that "the great percentage of overall use is generated on Saturday launches, and that the second greatest overall use is generated on Friday and/or Sunday launches." Appellant concludes that, to be fair, BLM should "adopt a rotating launch calendar that will give every outfitter the opportunity to share the weekend launches over the 3-year period that measures 'substantial use.'"

[1] While appellant has identified how the reduction in her allocation of passengers may adversely affect the operation of her outfitting business, she has not identified any error in the decision from which appeal was taken. The permit in question was issued pursuant to Departmental regulations 43 CFR Subpart 8372, which provide that special recreational permits "will contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general." 43 CFR 8372.5(b). The stipulations to her permit provide, at sec. A(8), that BLM retains authority to modify the permit within the scope of the permit terms. At sec. G(4) the permit stipulations provide a mechanism for reduction or increase of passenger days and launch date allocations depending on reported past use. Appellant admits that BLM correctly followed the mechanism provided by sec. G(4) for reducing passenger days when the performance of the outfitter under the permit resulted in less use than the permit allowed.

Nonetheless, appellant argues that a more precise administration of river use by BLM should properly have looked instead to a modification of the launch day allocations, since that factor bears more directly on the actual performance of an outfitter than does the number of passenger days actually used. Assuming, for purposes of decision, that this conclusion is correct, appellant has nonetheless failed to show that BLM acted in error when the passenger day allocation was reduced in this case. BLM must hold individual operators of commercial recreational permits accountable to the terms of their permits during the course of administration of the Department's recreation program. Patrick G. Blumm, 116 IBLA 321, 338 (1990); Rogue Excursions Unlimited, Inc., 104 IBLA 322, 325 (1988); Osprey River Trips, Inc., 83 IBLA 98, 101 (1984). When an appeal is taken from a BLM decision that has applied permit terms to limit operations by a permittee, the permittee has the burden to show error in the decision under review, if she is to obtain relief from the decision. Galand Haas, 114 IBLA 198, 203 (1990). No error has been shown or suggested by appellant's argument that another approach to use allocation might have been better used in this case. That a party to whom a decision is issued may have another opinion about an alternative method of approach to use allocation by the administrator does

not establish that the opinion at issue was in error. See generally Galand Haas, supra.

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.

Franklin D. Arness
Administrative Judge

I concur:

James L. Byrnes
Administrative Judge