

ROBERT L. SNOOK
d.b.a. BEAVER STATE ADVENTURES

IBLA 86-1468

December 3, 1987

Appeal from a decision of the Area Manager, Grants Pass Resource Area Office, Bureau of Land Management, affirming an administrative penalty for unauthorized use under and unauthorized assignment of a special recreation permit. MRP-59.

Affirmed.

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

BLM may properly cause the holder of a special recreation permit for commercial use of a wild and scenic river to forfeit two scheduled trips where the evidence establishes that, in the preceding year's regulated use period, the permittee launched a scheduled trip without checking in at the necessary location on the day of the launch, as required by stipulations incorporated in the permit.

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

BLM may properly place the holder of a special recreation permit for commercial use of a wild and scenic river on a probationary status where the evidence establishes that the permittee gave his trip card to someone other than a bona fide employee, who then conducted the scheduled trip, thereby effecting a partial assignment of his permit in violation of the stipulations incorporated in his permit.

APPEARANCES: Robert L. Snook, pro se; Donald P. Lawton, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert L. Snook, d.b.a. Beaver State Adventures, has appealed from a June 9, 1986, decision of the Area Manager, Grants Pass Resource Area Office,

Bureau of Land Management (BLM), affirming an administrative penalty for unauthorized use under and unauthorized assignment of his special recreation permit, MRP-59.

On July 11, 1985, BLM issued a 5-year special recreation permit (MRP-59) to Snook, thereby authorizing commercial use of the Rogue River "between its confluence with the Applegate River and Lobster Creek." ^{1/} The permit specifically authorized use "[a]s scheduled by BLM-USFS [Forest Service, U.S. Department of Agriculture (Forest Service)] between May 24, 1985 and Sept. 2, 1985; at other times by submitting trip card in advance."

On April 30, 1986, the Area Manager issued a proposed decision in which he proposed to penalize Snook for four incidents of noncompliance with the terms of his special recreation permit, which incidents occurred during the 1985 operating season. The Area Manager stated that three of the incidents consisted of failing to turn in a "trip card" at the Rand Visitor Center prior to launching trips on August 12 and 23, and September 28, 1985. In each case, the Area Manager stated that the trip was considered to be "unauthorized." In addition, the Area Manager stated that, in view of Snook's admission in a January 27, 1986, letter that he had allowed a friend to run the August 23, 1985, trip, this was regarded as an "unauthorized assignment" of the permit. As penalties for these incidents, the Area Manager proposed, in accordance with the "approved operating plan," to penalize Snook two trips in the 1986 operating season for each unauthorized trip for a total of six and to place Snook's permit in a probationary status, which would entail the following:

All 1986 use will be under one year permit and will be scrutinized for compliance to the approved operating plan. At the conclusion of the 1986 season a performance evaluation will take place and the status of the Beaver State Adventures permit will be updated to reflect observed performance during the season. An unacceptable performance evaluation for 1986 may result in permit suspension.

By letter received by BLM on May 6, 1986, Snook protested the Area Manager's April 1986 decision, contending that he had "never knowingly violated any conditions of my permit in the many years that I have boated in the regulated section of the Rogue." Snook stated that: "Trip cards were sent in for each of the trips you mention. The trip on September 28 was scheduled in advance as per the 'voluntary regulation' in effect for 1985." He characterized the incidents of noncompliance as "unintentional managerial mistakes" and stated that he had hired a business manager in order to ensure future compliance. He concluded that the proposed decision would adversely affect his business and was "unnecessary [in] view of our performance record up to August 1985." He proposed that his permit simply be placed in a probationary status.

^{1/} The record indicates that this section of the Rogue River is the designated "wild" section of the river, *i.e.*, that portion of the river originally designated under section 3(a)(5) of the wild and Scenic Rivers Act, as amended, 16 U.S.C. § 1274(a)(5) (1982).

In his June 1986 final decision, the Area Manager affirmed his proposed decision, concluding that Snook had offered "no substantive facts * * * which would or could refute the statement of violations as outlined in the proposed decision." The Area Manager stated that Snook would lose six scheduled starts in the 1986 operating season, specifically those scheduled for August 11, 15, and 19 and September 7, 12, and 21. ^{2/} In addition, the Area Manager stated that Snook's permit would be placed in a probationary status.

In his statement of reasons for appeal, Snook reiterated his history of no prior violations and the adverse effect of the final decision on his business, due to the forfeiture of 6 out of 8 of his scheduled starts for the 1986 operating season. He stated that the facts concerning the alleged violations are "nebulous" and that he had not been afforded "due process." He requested an immediate stay of the Area Manager's June 1986 final decision, pursuant to 43 CFR 8372.6(b), in order that he could conduct the scheduled trips.

In response to appellant's statement of reasons, the Office of the Regional Solicitor, on behalf of BLM, opposed the request for a stay, contending that the violations had, in fact, occurred and that the penalties for the violations were clearly spelled out in the approved operating plan, which was attached to the permit and made a part thereof.

By order dated July 29, 1986, the Board denied appellant's request for a stay, concluding that he had not demonstrated that he was likely to succeed on the merits and that any irreparable harm to appellant caused by forfeiture of his scheduled starts was "counterbalanced by the need of having effective measures to ensure compliance with BLM's commercial river management plan" (Order, dated July 29, 1986, at 3).

[1] We now reach the merits of the appeal. The first question we must decide is whether appellant violated the terms of his special recreation permit by failing to turn in a "trip card" at the Rand Visitor Center prior to conducting the trip on each of the 3 dates in question.

The "trip card" is a "final confirmation" of a trip and consists of a joint BLM-Forest Service form, with three carbon copies, which is filled out by the outfitter and signed by an agency representative, presumably either an authorized BLM or Forest Service employee. The record contains trip cards, signed by appellant, for each of the "unauthorized" trips. The cards for the August 12 and 23 trips, entitled "Rogue River (Wild Section) Commercial Trip

^{2/} In a July 16, 1986, letter to Snook, the Area Manager amended his June 1986 final decision, stating that the forfeiture would apply to starts scheduled for Aug. 11 and 19 and Sept. 7, 12, 21, and 26. This change was made, according to the Area Manager, in order to accommodate a "large start" on Aug. 15. On July 16, 1985, the Area Manager had no authority to amend his earlier decision. Snook's appeal filed on July 7 removed such authority. On July 16 this Board had jurisdiction over the case. In order to amend his decision properly, the Area Manager should have sought remand of the case to the Area Office in order to restore BLM's jurisdiction. See Melvin N. Barry, 97 IBLA 359 (1987); AA Minerals Corp., 27 IBLA 1 (1976).

Confirmation and Authorization," were signed by appellant on August 12, 1985. The instructions on the back of the card state that the blue and tan copies of the card should be brought to the Rand Visitor Center "on the day of launch" and that: "After an agency representative, at the Rand Visitor Center has reviewed the form, the blue copy must be carried by the trip leader while on the river, and must be presented upon request by BLM-USFS or local law enforcement officers." Neither of the cards for these trips contained signatures on the line entitled "Agency Representative Approval."

The card for the September 28 trip, entitled "Rouge River Commercial Trip Validation," was signed by appellant on September 28, 1985. The front of the card states that it is "[n]ot valid unless signed by authorized Managing Agency representative" and that the "completed card must be carried by the Head Boatman at all times while on the river and must be presented upon request by BLM-USFS or local enforcement officers." No signature by an agency representative appears on the card. The clear import of both types of "trip cards" is that the card must be presented at the Rand Visitor Center on the day of the launch, signed by an agency representative, and then carried during the trip.

In the present case, the absence of the required signatures indicates that appellant failed to check in at the Rand Visitor Center on the day of each launch.

Appellant has not denied that trips were conducted pursuant to his permit on August 12 and 23, and September 28, 1985. Indeed, in a January 27, 1986, letter, contained in the record, appellant admitted that the trips occurred: "The Aug. 12 trip I ran after the people finally showed up late. I couldn't book the Aug. 23 trip so I sent the card to a friend who took an Amway trip! He packed the permit down the river with him! Sept. 28 I ran a 3-day lodge trip." Nor does appellant deny that trip cards were not turned into the Rand Visitor Center on the day of the launch. In his May 1986 protest, appellant stated that trip cards had been "sent in for each of the trips you mention." (Emphasis added.) There is no assertion that the cards were personally presented at the Rand Visitor Center on the day of the launch, as required. Rather, it is appellant's contention that this failure was an "unintentional" mistake (Letter to Area Manager, dated May 3, 1986, at 2).

Section 17 of the conditions set forth on the back of appellant's special recreation permit (Form 8370-1 (August 1982)) states that the permit is subject to "[a]dditional conditions, and stipulations attached." These additional conditions were the Rogue National Wild and Scenic River's "Commercial Outfitter Operating Plan for Commercial Permittees in the Designated 'Wild' Section" (Operating Plan), a copy of which was provided to all commercial permittees prior to the 1985 operating season. Paragraph 9 of section II (permit stipulations) of the Operating Plan states that permittees "must comply with all directions listed on the Rogue River Commercial Trip Confirmation and Authorization card" (Operating Plan at 6). As noted supra, these directions included the requirement to check into the Rand Visitor Center on the day of the launch. Moreover, section IV (penalties) of the Operating Plan sets forth various violations. Specifically, paragraph 2 provides under "Violation F" that an unauthorized trip will be deemed to have occurred "when [a] permittee launches a trip without first checking in with the Rand Visitor Centre by 2 p.m. on the day of launch." *Id.* at 17. Thus, it is clear that

appellant's failure to check in at the Rand Visitor Center constituted a violation of his special recreation permit which incorporated the Operating Plan.

Appellant's defense is that he did not "knowingly" violate the conditions of his permit (Letter to Board, dated July 21, 1986). However, as the Operating Plan makes clear, intent is not a prerequisite to finding a violation of the permit.

The next question is whether the penalty imposed by BLM for the unauthorized trips was proper. The penalty is spelled out in the Operating Plan, which provides under "Penalty F" that, for the first offense, the permittee will "forfeit two trips of the same size closest to the date of the unauthorized trip during the following year's regulated use period". (Operating Plan at 17). BLM invoked that penalty in the present case for each of the three unauthorized trips.

It is clear that BLM regards this administrative penalty as not only commensurate with the nature of the offense, but also designed to promote compliance with the requirement to check in at the Rand Visitor Center. The latter is clearly not a pro forma requirement, but, as evidenced by the final confirmation forms, is intended to notify BLM and the Forest Service of how many people are actually using the river on any given day, the section of the river being used, the type of trip involved, and the number and types of boats involved, all of which is subject to agency review and final approval. Moreover, the "wild" section of the Rogue River is carefully regulated in order to manage the impact to the river and surrounding land, as well as to ensure fairness among users of the river. See Wilderness Public Rights Fund, 63 IBLA 91 (1982).

Thus, BLM and the Forest Service regulate the number of commercial permits, the number of trips allocated to commercial outfitters during the operating season and the number of passengers on commercial trips during the operating season. In addition, passenger spaces allocated and confirmed 10 days or more prior to the assigned launch date but "not registered at the Rand Visitor Center by 2 p.m. on the launch date" are placed in a common pool and made available on a first-come, first-serve basis "on that day" (Operating Plan at 7). Thus, launching a trip without checking into the Rand Visitor Center may result in an excess number of users on the river on a given day. Therefore, the requirement to check into the Rand Visitor Center prior to launching a trip, with the attendant penalty for failure to do so, is a necessary component of proper management of the river.

Although BLM could have designated a less harsh penalty in developing its Operating Plan, it chose not to do so. We have recognized that it has the inherent authority "to impose sanctions where, in BLM's opinion, an outfitter has violated * * * permit conditions." David Farley, Inc., 90 IBLA 112, 123 (1985), appeal filed, Ken Warren Outdoors, Inc. v. United States, No. 86-436-RE (D. Or. 1986); see also Osprey River Trips, Inc., 83 IBLA 98, 101 (1984). Appellant had notice of the consequences of a failure to check in at the Rand Visitor Center. BLM's decision merely imposes the penalty established by the Operating Plan.

[2] Finally, we deal with the question of whether BLM properly placed appellant's permit in a probationary status for an "unauthorized assignment" of the permit in connection with the September 28, 1985, trip. Section 4 of the conditions on the back of appellant's permit state that the permit "may not be reassigned or transferred by permittee." In addition, paragraph 19 of section II (permit stipulations) of the Operating Plan provides that the permittee "may not assign or sub-lease any portion of the permit authorization or interest therein, directly or indirectly, voluntarily or involuntarily" (Operating Plan at 11). Paragraph 2 of section IV (penalties) of the Operating Plan under "Violation 5" provides that "assignment or subleasing of the permit, or any part thereof, or interest therein" constitutes a violation. *Id.* at 14. The assigned penalty for a first offense is giving the outfitter "probationary status." *Id.*

In the present case, the only evidence of a violation is appellant's statement in his January 27, 1986, letter that he "sent the [trip] card" to a friend, who then conducted a trip on the day of appellant's scheduled start. BLM's announced interpretation of the phrase "assignment of permit privileges" in the "Special Recreation Permit Policy," applicable Bureauwide, published in the Federal Register on February 10, 1984 (49 FR 5300), prohibits the utilization of permitted trips by other than "bona fide employees" of the permitted trips by other than "bona fide employees" of the permittee. Hondoo River & Trails, 91 IBLA 296, 302 (1986). Similarly, paragraph 19 of section II (permit stipulations) of the Operating Plan provides that "[o]nly bona fide employees of the permittee may guide trips under the authorization granted to a permittee" (Operating Plan at 11).

Appellant has offered no evidence that his "friend," who received appellant's trip card and conducted a trip on September 28, 1985, was a bona fide employee of appellant. Therefore, by letting that friend conduct the scheduled trip, appellant effectively transferred his authorized use for that date. Under Hondoo River, this constituted a partial assignment of appellant's permit. Accordingly, we conclude that BLM properly placed appellant's permit in a probationary status based on an "unauthorized assignment."

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.

Bruce R. Harris
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge.

