

WHITEWATER EXPEDITIONS & TOURS

IBLA 80-597

Decided January 9, 1981

Appeal from decision of the Folsom, California, District Office, Bureau of Land Management, rejecting special recreation permit application F-RUP-165.

Affirmed.

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

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for commercial river rafting where the proposed use would exceed the river's carrying capacity and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

APPEARANCES: Stephen P. Liles and Richard O'Toole, owners, Whitewater Expeditions & Tours, Sacramento, California.

OPINION BY ACTING ADMINISTRATIVE JUDGE HARRIS

On December 11, 1979, Whitewater Expeditions & Tours (W.E.T.) filed an application for a special recreation permit with the Bureau of Land Management's (BLM) District Office in Folsom, California. W.E.T. was seeking use of the Merced River for commercial rafting. On April 1, 1980, W.E.T. received BLM's decision denying its application for the following reasons:

The 1979 permit holders have been allocated all the available use of public lands along the Merced River for use in conjunction with commercial rafting for the 1980 season. Therefore there is no additional use available for the 1980 season for additional commercial rafting permits.

8372.3 Issuance of Permits. The approval of an application and subsequent issuance of a Special Recreation permit is discretionary with the Authorized Officer.

On appeal W.E.T. argues that the original allocation was based on two put-in sites and two overnight campsites but that more put-in sites are now available, and W.E.T. alleges that it has secured the use of private property for an overnight campsite. It also alleges that BLM's discretionary issuance of special recreational permits has resulted in arbitrary decisions, and although current Merced River permittees indicate an intent to use 100 percent of their allocated use, use in the past has been less than 50 percent. W.E.T. states that BLM employees led it to believe that it would receive a permit and that another permittee was allowed to renew its permit after the March 1, 1980, deadline for renewals.

The record indicates that in 1976 BLM became involved in the issuance and monitoring of commercial whitewater rafting permits for the Merced River, and an environmental analysis (CA-040-6-73) was prepared setting a carrying capacity for the river. Factors considered in determining carrying capacity were available campsites, put-in areas, takeout facilities, conflicts with other users, and crowding as it related to aesthetics and solitude.

At the same time BLM developed an allocation scheme which provided for maximum participation by interested parties, including the holding of public allocation meetings. As a result, 14 permits were issued in 1978. In 1979 and 1980 permits were reissued to previous permittees who had fulfilled all requirements and permit stipulations.

W.E.T. initially contacted BLM in September 1979 and was represented at an allocation meeting on November 15, 1979. However, after no current permittee gave up an allocation, W.E.T.'s application was denied.

[1] Special use permits are issued under the general authority of the Secretary of the Interior to regulate the use of the public lands. Section 302(b), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1976). Special recreation use permit requirements are set forth in 43 CFR Subpart 8372. Section 8372.3, concerning the issuance of such permits, states, "The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer." BLM has the discretion to reject a special use permit application if the proposed use conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved. Southern California Motorcycle Club, Inc., 42 IBLA 164 (1979); Donald J. Laughlin, 25 IBLA 41 (1976); Jerry Tecklin, 20 IBLA 308 (1975).

Where the record shows that the total use for which commercial river runners have applied would exceed the river's carrying capacity, denial of a special permit will be affirmed. Outdoor Adventures, S.W., 50 IBLA 90 (1980); Canon Tours, Inc., 20 IBLA 216 (1975).

Here, the record shows that the overall carrying capacity of the river was established on the basis of a number of factors, not merely available put-in areas and campsites. The permittee who received its permit after the March 1, 1980, deadline received a valid extension to comply with all requirements, and when it received its permit on March 7, 1980, all available use was allocated for 1980. The fact that all use is allocated does not guarantee 100 percent use. Unforeseen circumstances, such as weather, number of bookings, and high or low water, all impact on the percentage of an allocation that is used. In addition, the fact that BLM employees may have indicated that there was a possibility that W.E.T. would receive a permit does not guarantee its issuance.

Denial of W.E.T.'s application was not arbitrary. All available allocations were made. Denial was consistent with BLM objectives, based on earlier consideration of the carrying capacity of the river. We note, however, that W.E.T. is not precluded from applying for a use allocation in the future, nor would W.E.T. be barred from use of the river for its rafting activities, if it could secure the use of property other than public lands for all on-shore activities, as it alleges it has secured an overnight campsite.

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.

Bruce R. Harris

Acting Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

