



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Interior Board of Land Appeals
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JESS RANKIN, D/B/A WEST TEX-NEW MEX HUNTING SERVICES

IBLA 2008-143

Decided October 3, 2008

Appeal from a decision of the Deputy State Director, Resources, New Mexico State Office, Bureau of Land Management, canceling a commercial Special Recreation Permit, NM 510-05-017, for providing false information on the permit application.

Decision affirmed, as modified; Petition for stay denied as moot.

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

BLM's cancellation, in accordance with 43 C.F.R. § 2932.56(b), of a Special Recreation Permit for conducting big game hunting services on public lands will be affirmed, as modified, when the basis for BLM's action, *i.e.*, providing false information on the permit application, does not support cancellation under that regulation, but other facts in the record do.

APPEARANCES: Kelly M. Cassels, Esq., and Luke W. Ragsdale, Esq., Roswell, New Mexico, for appellant; Arthur Arguedas, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Albuquerque, New Mexico, for the Bureau of Land Management.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Jess Rankin, d/b/a West Tex-New Mex Hunting Services, has appealed from and petitioned for a stay of the effect of a February 26, 2008, decision of the Deputy State Director, Resources, New Mexico State Office, Bureau of Land Management (BLM), canceling Rankin's commercial Special Recreation Permit (SRP), NM 510-05-017, because he had provided false information on his SRP application.

Because we conclude that Rankin failed to establish that BLM erred in canceling his SRP, BLM's decision is affirmed, as modified to alter the basis for such action. His petition for a stay is denied as moot.

Background

On August 3, 2005, Rankin filed Form 2930-1 (March 2004) titled "Special Recreation Application and Permit" with BLM, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (2000), and its implementing regulations, 43 C.F.R. Part 2930, seeking renewal of his existing SRP authorizing him to provide big game hunting services on public lands in New Mexico.

The application contained a series of six questions regarding the applicant's permit, bond, and compliance history to be answered by checking an appropriate box, marked "Yes" or "No," any affirmative answer requiring a written explanation. Rankin checked the box marked "No" for two questions that were pertinent to BLM's decision: (1) "Have you ever been denied or had a permit revoked?" and (2) "Are there any pending investigations against you?"

The form stated that the principal purpose for requesting answers to the questions was to allow BLM to decide whether or not to issue the SRP. Thus, BLM relies on the accuracy and completeness of the information provided by the applicant in determining the applicant's qualifications for the permit.¹ Rankin signed his SRP application on August 3, 2005, representing, by his signature, that "the information in this application is true, complete, and correct to the best of my knowledge and belief and is given in good faith."² On the same date, BLM signed the application thereby renewing the SRP for a stated 5-year term running from July 15, 2005, to July 15, 2010, "subject to the conditions and special stipulations on reverse."

¹ BLM will renew a permit if it is in good standing; if renewal is consistent with BLM management plans and policies; and if the permittee and all its affiliates have a satisfactory record of performance. 43 C.F.R. § 2932.51; see BLM Recreation Permit Administration Handbook (H-2930-1 (Rel. 2-295 (8/7/2006))) (Handbook), 1.III.E.1., at 22-23. Thus, of relevance to BLM in exercising its discretion on whether or not to renew an SRP is the applicant's record of performance, including "compliance with applicable laws and regulations on all other Federal, State, or county-administered lands or related waters." Handbook, 1.III.E.1., at 22-23; see *id.*, 1.III.O.2., at 47-48.

² The application warns that knowingly and willfully providing false information on the application is a crime under 18 U.S.C. § 1001 (2000).

In his decision, the Deputy State Director stated that the “grounds” for permit cancellation were found in 43 C.F.R. § 2932.56(b), providing that BLM “may suspend or cancel your Special Recreation Permit if you: 1) Violate permit stipulations, or 2) Are convicted of violating any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities.” Decision at 1. While citing that regulation, the Deputy State Director expressly cancelled the permit as “a result of providing false information on Form 2930-1, signed and dated by Jess Rankin on August 3, 2005.” *Id.*

The Deputy State Director explained that Rankin had checked the “No” box, on his application in answer to two questions: 1) “Have you ever been denied or had a permit revoked?” and 2) “Are there any pending investigations against you?” Decision of 1. With respect to the first question, the Deputy State Director stated that Rankin had, in fact, been denied permits on three occasions by BLM or the U.S. Forest Service, referring to the fact that Rankin had been denied an SRP for guiding big game hunts on public land by the Las Cruces District Office, BLM, on September 6, 1991,³ and permits for guiding hunts on national forest lands by the Magdalena Ranger District, Cibola National Forest, U.S. Forest Service, on February 5, 1991, and August 20, 1999. *Id.* In reference to the second listed item, the Deputy State Director stated that Rankin had been “under investigation . . . for an occurrence on September 23, 2002, for illegally taking fish and wildlife in violation of the laws and regulations of the United States, specifically, Title 16 USC [§§] 3372(a)(1) and 3373(d)(2) [(2000)]. In fact, you were convicted of this violation on January 24, 2006.”⁴ Decision at 1. Documents supportive of the permit

³ The Deputy State Director noted that in a Feb. 21, 1995, Order, in *Jess Rankin*, IBLA 92-93, the Board affirmed the District Office’s September 1991 decision to reject Rankin’s permit application.

⁴ The record shows that on Sept. 25, 2006, U.S. Magistrate Judge William P. Lynch accepted Rankin’s guilty plea to a criminal “Information,” dated Jan. 24, 2006. *United States v. Rankin*, No. 2:04-1497-001 (D.N.M.). The Information stated that Rankin knowingly transported, sold, received, and acquired wildlife, *i.e.* an oryx, and “in the exercise of due care, should have known that it was taken in violation of and in a manner unlawful under the laws and regulation of the United States, in violation of provisions of the Lacey Act, 16 U.S.C. §§ 3372(a)(1) and 3373(d)(2) (2000), and 18 U.S.C. § 2 (2000).” The Judge fined Rankin \$2,500. In a Plea Agreement dated Jan. 24, 2006, Rankin admitted to the violations based on the fact that he sought and received a State depredation permit for an oryx; that the permit was only valid for private property; that he sold the permit to an out-of-state hunter from North Carolina; that the hunter paid Rankin for outfitting and guide services; that the hunter killed an oryx on public land; and that Rankin transported the animal from

(continued...)

denials, the investigation, and the criminal conviction are contained in the case record.

Rankin filed a timely notice of appeal, arguing in his statement of reasons for appeal (SOR) that, while he did, in fact, provide false information, he did not do so intentionally, and for that reason, BLM should not have canceled his SRP. SOR at 1. He explains that he was under the impression that he was only being asked about any permit denials and any pending investigations during the one-year period of time prior to the date of his application, claiming that many other forms he completes request information only for that one-year period. He does not provide evidence of any such forms. Nor does Rankin contest any of the statements made by the Deputy State Director in his decision regarding Rankin's prior permit denials and criminal conviction.

Discussion

SRPs are issued under the general authority of the Secretary of the Interior to administer use of the public lands, pursuant to section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (2000). We have stated that BLM has authority to impose administrative sanctions for violations of its permit program or permit provisions, even in the absence of specific regulatory provisions establishing those sanctions, when BLM first provides notice to the affected person of the possible range of sanctions. *The Board of Regents of the University of Oklahoma*, 165 IBLA 231, 239-40 (2005), and cases cited. It necessarily follows that when BLM provides such notice by regulation, it may impose a listed sanction. However, an exercise of the Secretary's discretionary authority to administer SRPs must have a rational basis and be supported by facts of record demonstrating that an action is not arbitrary, capricious, or an abuse of discretion. *Larry Amos d/b/a Winterhawk Outfitters, Inc.*, 163 IBLA 181, 188 (2004). An appellant bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision is in error. *Id.* at 190.

[1] In canceling the SRP, BLM expressly relied on a regulation, 43 C.F.R. § 2932.56(b), providing notice to permittees of a range of possible sanctions. That regulation states:

- (b) BLM may suspend or cancel your Special Recreation Permit if you—
- (1) Violate permit stipulations, or

⁴ (...continued)

the area in a pickup truck for the purpose of processing the meat. See Plea Agreement, *United States v. Rankin*, No. 04-1497 JB (D.N.M.), dated Jan. 24, 2006, at 3-5.

(2) Are convicted of violating any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities.

The regulation provides BLM with discretionary authority to suspend or cancel an SRP when the permit holder violates a permit stipulation or has been convicted of violating a Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities.

In this case, BLM canceled the SRP because Rankin provided false information on his application in 2005, citing 43 C.F.R. § 2932.56(b), the false information being that he failed to disclose that he had previously been denied permits by both BLM and the U.S. Forest Service and that he was the subject of an investigation concerning the killing of an oryx on public land at the time of filing the application. However, providing false information on the application does not violate any particular permit stipulation in the SRP in question, and the information provided by Rankin was unrelated to the grounds for suspension or cancellation set forth in 43 C.F.R. § 2932.56(b)(2), because Rankin's conviction occurred over 5 months after the filing of the application. Thus, the stated basis for cancellation, *i.e.*, providing false information, does not support cancellation under section (1) of the regulation cited by BLM in its decision.

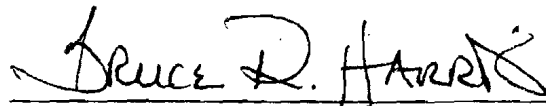
Nevertheless, we affirm BLM's cancellation because Rankin's criminal conviction provides grounds for doing so under section (2) of that regulation.

Rankin pleaded guilty to a violation of 16 U.S.C. §§ 3372(a)(1) and 3373(d)(2) (2000). Under 16 U.S.C. § 3372(a)(1) (2000), it is unlawful for any person to "import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States." Criminal penalties for having knowingly violated 16 U.S.C. § 3372(a)(1) (2000), are applicable under 16 U.S.C. § 3373(d)(2) (2000), when, in the exercise of due care, the violator should have known that the fish or wildlife or plant was taken in violation of an underlying law, treaty, or regulation of the United States.

The Deputy State Director did not state, in his February 2008 decision, that 16 U.S.C. §§ 3372(a)(1) and 3373(d)(2) (2000) related to "the conservation or protection of natural resources [or] the environment," but it is obvious from a reading of the Lacey Act that it does concern such matters and, therefore, fits within the parameters of 43 C.F.R. § 2932.56(b)(2). *See William D. Danielson*, 153 IBLA 72, 73-74 (2000) (hunting guide SRP denial based, in part, on a Lacey Act conviction).

Because BLM has exercised its discretionary authority under 43 C.F.R. § 2932.56(b) to cancel the SRP in question and the facts of record support a cancellation of the SRP under section (2) of that regulation, we affirm the decision appealed from, as modified by our discussion herein.

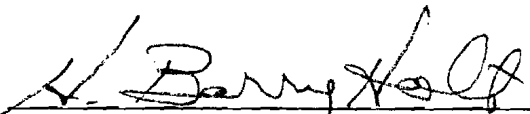
Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed, as modified. Rankin's petition for a stay is denied as moot.



Bruce R. Harris

Deputy Chief Administrative Judge

I concur:



H. Barry Holt

Chief Administrative Judge