

NOTE: This disposition is nonprecedential.



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
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April 28, 2016

IBLA 2016-98	)	CO-110-SRP-010-104;
	)	CO-110-SRP-010-104L
	)	
MARK DAVIES D/B/A	)	Special Recreation Permit
MARK DAVIES GUIDE SERVICE, INC.	)	
	)	Set Aside and Remanded;
	)	Petition for Stay Denied as Moot

ORDER

Mark Davies d/b/a Mark Davies Guide Service, Inc. (Appellant), appeals from and petitions for a stay of a February 17, 2016, decision of the White River (Colorado) Field Office (WRFO), Bureau of Land Management (BLM), revoking Appellant's Special Recreation Permits (SRPs) pursuant to 43 C.F.R. § 2932.56(b) for failure to follow permit stipulations. Appellant's two SRPs are at issue: SRP-CO-110-SRP-010-104 for commercial big game hunting and SRP-CO-110-SRP-010-104L for commercial mountain lion hunting. BLM based its decision to revoke Appellant's SRPs on its conclusion that Appellant had conducted commercial big game hunting operations during the 2015 hunting season without the necessary Annual Operating Authorization (AOA).

In his statement of reasons (SOR) for appeal, filed with the Board on April 12, 2016, Appellant explains that the post-use report his agent submitted on his behalf for the 2015 big game hunting season was in error, and that he did not conduct any commercial hunting activity on BLM-administered land during that season. He rescinded the mistakenly filed post-use report and submitted a corrected one. Since BLM based its decision to revoke Appellant's SRPs on the hunting activity reflected on the now rescinded post-use report, we set aside BLM's decision and remand the matter to BLM for further review and appropriate action.

*BACKGROUND*

Appellant operates a commercial hunting guide service on public lands located near Grand Junction, Colorado. Appellant operates its service consistent with the two above-identified SRPs, issued by BLM pursuant to 43 C.F.R. Subpart 2932.

On September 3, 2012, BLM signed SRP-CO-0110-SRP-010-104, authorizing commercial big game hunting operations during the 2012 through 2016 hunting seasons.<sup>2</sup> The SRP, which BLM treated as a multi-year permit, specified that it was issued for the period of August 25, 2012, to December 31, 2012, and that it was contingent upon and was not valid without an AOA.<sup>3</sup> In accordance with BLM's Special Recreation Permit Information Handbook for Colorado (SRP Handbook), a multi-year permit must be accompanied by a current AOA to be valid.<sup>4</sup> We infer from the record that BLM issues AOAs on an annual basis. For example, BLM issued an AOA for the 2014 big game hunting season,<sup>5</sup> and by letter dated September 2, 2015, informed Appellant that it would not issue an AOA for the 2015 big game hunting season unless it received the signature page of the Colorado SRP Handbook and a price list for its services.<sup>6</sup>

On February 4, 2015, BLM acknowledged receipt of Appellant's big game post-use report for 2014.<sup>7</sup> That report is included in the record.<sup>8</sup> BLM noted that Appellant had agreed to submit a list of the various discounted hunt fees that Appellant may charge for the 2015 season, and that BLM needs the list to verify "any discounted hunts that [Appellant] may submit on your post use forms next season."<sup>9</sup>

On May 18, 2015, a representative of Appellant sent BLM a post-use report for the 2014-2015 mountain lion season, copies of two trade agreements, and a check. The cover letter explained, "[w]e reserve the right to adjust the advertised hunt price as stated in our brochures to meet the needs of our clients. This includes, but is not limited to, limited services fees, increased/decreased hunt days for special needs, youth hunts, trades and others."<sup>10</sup>

By letter dated September 2, 2015, BLM informed Appellant that it had "received full post use payment for the 2014-2015 mountain lion season as well as all required pre-use fees and documents for the 2015-2016 mountain lion season for

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<sup>2</sup> AR, Tab 4.01.01.

<sup>3</sup> *Id.*

<sup>4</sup> AR, Tab 4.01.10 at 7.

<sup>5</sup> AR, Tab 4.01.02.

<sup>6</sup> AR, Tab 2.01.03.

<sup>7</sup> AR, Tab 2.01.07.

<sup>8</sup> Tab 2.01.08.

<sup>9</sup> *Id.*

<sup>10</sup> AR, Tab 2.01.12.

Special Recreation Permit CO-110-SRP-010-104L.”<sup>11</sup> BLM further informed Appellant that it had “received all required pre-use fees and documents for your big game outfitting and guiding Special Recreation Permit . . . CO-110-SRP-010-104 for the 2015 season, except for a signed copy of the most recent version of the BLM Colorado Special Recreation Permit handbook.”<sup>12</sup> BLM noted that it still required a price list for the 2015 big game season. BLM referred to its February 4, 2015, letter in which it informed Appellant of its agreement to send BLM a “list of the various discounted hunt fees that [Appellant] may charge.”<sup>13</sup> With regard to Appellant’s statement that it reserved the right to lower and adjust the hunt price as needed, BLM informed Appellant that “[t]his statement provides the BLM no measurable means to ensure that your post use reporting is accurate and is not sufficient as your list of hunt fees.”<sup>14</sup> BLM requested “a price list for all commercial services, both big game and mountain lion-related, with any and all discounts and price ranges that may be charged for your commercial services on BLM lands.”<sup>15</sup> BLM stated that if Appellant did “not want to provide this type of price list, then we will need to value all hunts, whether bartered, traded, or paid for, at the rates listed in your brochure.”<sup>16</sup> This letter concluded with the following statement in bold type:

Before your 2015 Annual Operating Authorization for both the big game permit and mountain lion permit will be sent to you this season, the BLM must receive both the signed signature page of the enclosed BLM Colorado Special Recreation Permit handbook and a list of any and all discounts and price ranges that may be charged for all of your commercial services on BLM lands.<sup>[17]</sup>

#### *THE DECISION ON APPEAL*

In its February 2016 decision, BLM acknowledged receipt of Appellant’s 2015 big game post-use report and fees and the signature page of the handbook. BLM stated that it did not, however, receive the price list as BLM directed in its

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<sup>11</sup> AR, Tab 2.01.03 at unpaginated (unp.) 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at unp. 2.

September 2, 2015, letter. BLM stated: “Therefore, no 2015 Annual Operating Authorization was issued for your big game SRP, CO-110-SRP-010-104, or for your mountain lion SRP, CO-110-SRP-010-104L.”<sup>18</sup> BLM explained that it regarded Appellant’s big game post-use report as evidence that Appellant conducted commercial activities in 2015 under its big game SRP.<sup>19</sup> BLM noted that SRP-CO-110-SRP-010-104 included the statement that it is contingent upon, and not valid without, an accompanying AOA. Moreover, BLM’s Colorado Special Recreation Permit handbook, which Appellant signed on September 15, 2015, provides: “Multi-year permits must be accompanied by a current Annual Operating Authorization in order to be valid.”<sup>20</sup>

In its decision, BLM noted that “this is the second time you have violated this stipulation of your SRP in this manner.”<sup>21</sup> BLM referred to a March 27, 2012, letter in which it had informed Appellant that he had filed a post-use report for the 2011-2012 season for mountain lion hunting, but that BLM had no record of an SRP or AOA for that season.<sup>22</sup> BLM reminded Appellant that “[b]ecause of this 2012 violation, you operated for two years under a Probationary SRP.”<sup>23</sup>

Citing 43 C.F.R. § 2932.56, BLM informed Appellant that “effective immediately” both his big game and mountain lion SRPs “are hereby revoked.”<sup>24</sup>

On appeal, Appellant asserts that according to his records, he was never out of compliance and had submitted his price lists for the 2012 and 2015 seasons, as requested.<sup>25</sup> As proof, Appellant attached to his NOA a copy of an Addendum to Brochure Price List (Addendum), dated September 5, 2012, that also bears the handwritten notation, “Copy sent to WRFO 9-9-15.”<sup>26</sup> This Addendum states that Appellant’s brochure reflects prices for out-of-state hunters, that local residents are discounted 50% of the usual \$5000 hunting fees for mountain lion, and that local residents are discounted 50% of the usual \$3600 hunting fees for big game.<sup>27</sup>

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<sup>18</sup> AR, Tab 1.01.01 at unpag. 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at unpag. 1-2 (quoting 4.01.10 at 7).

<sup>21</sup> Decision at unpag. 2.

<sup>22</sup> AR, Tab 2.01.10.

<sup>23</sup> Decision at unpag. 2.

<sup>24</sup> *Id.*

<sup>25</sup> *See* NOA.

<sup>26</sup> *See id.*, Addendum dated Sept. 5, 2012.

<sup>27</sup> *Id.*

In his SOR, Appellant states that he “discovered an error” in his 2015 post-use report filed with BLM on December 7, 2015. Appellant attributes this error to “miscommunications” with his secretary, and indicates that he has filed a corrected post-use report that he claims “substantiates that no commercial services were delivered to any client for which I received enrichment of any kind.”<sup>28</sup> He admits that he “overlook[ed] not having an AOA,” but states that he “did not deliver commercial hunting services on WRFO controlled property in violation of my permits.”<sup>29</sup> In a letter dated March 31, 2016, he informs BLM of this “significant error,” and attaches a corrected post-use report, which includes the corrected Commercial Fee Worksheet and the Trip Log for 2015. Appellant also attaches the Commercial Fee Worksheet and the Trip Log previously submitted to BLM, both marked “Rescinded.”<sup>30</sup> The rescinded Commercial Fee Worksheet showed \$3800.00 in total gross receipts, with a post-use payment due BLM of \$9.00, whereas the corrected Worksheet shows \$0.00 for both. The rescinded Trip Log showed one client on BLM land for 7 days. The corrected Trip Log does not indicate the number of clients (or the copy is so poor that the number does not appear); the number of days on BLM land indicated is 3 days. On both the rescinded and corrected Trip Logs, the BLM area-of-use is given as Game Management Unit (GMU) 21, which is the area of use indicated on the big game SRP for 2015. In support of his corrected post-use report, Appellant submits the Affidavit of John Zellar, who states that he accompanied Davies to “several locations within GMU #21 looking for Elk,” but that Davies “was not operating as a hired guide and no fees, trade or barter or any other compensation was exchanged between Mark and I.”<sup>31</sup>

#### ANALYSIS

SRPs are issued pursuant to the general authority of the Secretary of the Interior to administer use of the public lands, in accordance with section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>32</sup> BLM has considerable discretion under section 302(b) of FLPMA in approving and issuing

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<sup>28</sup> SOR at 4.

<sup>29</sup> *Id.*

<sup>30</sup> *See id.*, Exhibits 4 and 5.

<sup>31</sup> *See id.*, Exhibit 5.

<sup>32</sup> 43 U.S.C. § 1732(b) (2012). *See also* 43 U.S.C. § 1701(a)(8) (2012); 43 C.F.R. § 2931.3(a).

SRPs.<sup>33</sup> BLM's exercise of discretion in administering 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.<sup>34</sup> If a decision has a rational basis, it will not be held to be arbitrary and capricious, or an abuse of discretion.<sup>35</sup> An appellant challenging a decision bears the burden of proof to show, by a preponderance of the evidence, that a challenged decision is in error, *i.e.*, that the decision does not have a rational basis supported by facts of record.<sup>36</sup>

In its decision, BLM deemed Appellant's big game post-use report for the 2015 season to be evidence that he had conducted big game hunting operations without having received an AOA from BLM.<sup>37</sup> Appellant did not submit a post-use report for mountain lion hunting for the 2015 season, and there is no evidence in the record that Appellant conducted mountain lion hunting operations during the 2015 season. Nonetheless, BLM revoked both Appellant's big game and mountain lion SRPs based upon its conclusion that Appellant had conducted big game operations during the 2015 season in violation of his big game SRP.<sup>38</sup> That big game SRP specifically stated that it is not valid unless accompanied by a current AOA.<sup>39</sup>

However, in his SOR, Appellant claims that the key document relied upon by BLM in rendering its decision was submitted to BLM in error, and that he did not conduct commercial big game hunting activities on BLM-administered land during the 2015 hunting season. The record gives us no reason to doubt Appellant's assertion. Given that BLM's decision to revoke Appellant's SRPs was based on information included in an erroneously filed post-use report, later corrected, we deem it appropriate to set aside the decision and remand the matter to BLM for further review in light of the correct documentation.

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<sup>33</sup> See, e.g., *David L. Antley, Jr., d/b/a High Desert Outdoors, Inc.*, 178 IBLA 194, 197 (2009), and cases cited; see also 43 C.F.R. § 2932.26.

<sup>34</sup> *David L. Antley, Jr.*, 178 IBLA at 197; *Jess Rankin, d/b/a West Tex-New Mex Hunting Services*, 176 IBLA 162, 165 (2008) (citing *Larry Amos d/b/a/ Winterhawk Outfitters, Inc.*, 163 IBLA 181, 188 (2004)).

<sup>35</sup> *David L. Antley, Jr.*, 178 IBLA at 197; *Michael Voegele*, 174 IBLA 313, 318 (2008); *Obsidian Services, Inc.*, 155 IBLA 239, 248 (2001).

<sup>36</sup> *David L. Antley, Jr.*, 178 IBLA at 197; *Jess Rankin*, 176 IBLA at 165; *Larry Amos*, 163 IBLA at 190.

<sup>37</sup> AR, Tab 1.01.01 at unp. 1.

<sup>38</sup> *Id.*

<sup>39</sup> AR, Tab 4.01.01.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we set aside BLM's decision and remand the case for further review. We also deny the petition for stay as moot.

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/s/  
James F. Roberts  
Deputy Chief Administrative Judge

I concur:

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/s/  
Silvia M. Riechel  
Administrative Judge