

TRIUMPH EXPEDITIONS

IBLA 2002-97

Decided January 29, 2002

Appeal from decision of the Cedar City (Utah) Field Office, Bureau of Land Management, terminating special recreation permit CCFO-01-1.

Decision affirmed; request for stay and motion for extension of time to file an answer denied as moot.

1. Special Use Permits

BLM is vested with considerable discretionary authority in approving and issuing special recreation permits. Decisions imposing sanctions for violations of permit terms and conditions, including termination, will be affirmed by this Board unless the decision is found to be arbitrary, capricious, or based upon a mistake of fact or law. If a decision is supported by any rational basis, it will not be held arbitrary or capricious. Where BLM has given appellant ample warning and opportunity to comply with all permit terms and conditions, and appellant repeatedly failed or refused to do so, the decision terminating the permit will be affirmed.

APPEARANCES: Alan Jacob, Tocqueville, Utah, for Triumph Expeditions; A. Jerry Meredith, Field Office Manager, Cedar City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Triumph Expeditions (Triumph), by and through its director, Alan Jacob, has appealed the October 12, 2001, decision of the Bureau of Land Management (BLM), which terminated Triumph's special recreation permit (SRP) for noncompliance with applicable supplemental permit conditions. Triumph provides a course of "behavioral and therapeutic care for disabled youth" which includes a wilderness experience. (Triumph's Petition for Stay (Petition)). That wilderness experience occurs on public lands, as authorized by the SRP.

In its decision terminating the SRP, BLM cited Triumph's failure to timely submit a required post-use report within the 10-day grace period

allowed by BLM. ^{1/} Specifically, BLM stated that the post-use permit for the period July 1 through September 30, 2001, had not been received on or before October 10, 2001. As further support for its decision, BLM cited prior instances of noncompliance and past warnings regarding the importance of timely compliance with all terms and conditions of the SRP. On November 9, 2001, Triumph appealed the decision.

The October 12, 2001, final decision apprised Triumph of its right to appeal, but failed to inform Triumph of its right to petition for a stay. Accordingly, by letter dated November 26, 2001, BLM advised Triumph of the right to request a stay, the elements required to support such a request, and where to file it. On December 12, 2001, we received BLM's Motion for Extension of Time to File Answer (Motion). Thereafter, on December 28, 2001, we received Triumph's stay petition. In reviewing the case file for purposes of ruling upon the stay petition, we have decided the merits of the appeal. We have concluded that the BLM's decision must be affirmed, thus mooting appellant's stay petition, as well as BLM's request for an extension of time to file an answer.

In addition to assurances that its state outdoor license had not lapsed since March 1, 2001, Triumph's statement of reasons for appeal consists of the assertion that Jacob unsuccessfully attempted to transmit two post-use reports on October 10 and October 12, 2001, respectively:

I have enclosed two post use reports that were faxed to your office. The first was on the 10th of Oct. that our office manager faxed, and an additional copy was sent on the 12th of Oct. that Alan Jacob faxed to ensure that this necessary documentation was received by the BLM.

Executive Director for Triumph, Simon Timms phoned Bob Edwards of the Cedar City field office and learned that neither copy had been received by him at the field office. It is our contention that a non-human error took place to set in motion a termination of Triumph's permit.

The Notice of Appeal was signed by Jacob.

^{1/} Two post-use reports are required under the SRP. Stipulation 16 requires a final post-use report which is due within 30 days of the last day of authorized use. The term of the permit is five years, absent termination before then. The post-use report at issue in this appeal is required pursuant to the Supplemental Permit Condition 2, and is tied to quarterly use fee periods. The use fees are calculated based upon the income to the permittee generated by use of the public lands, and thus these post-use reports must be filed at the end of the quarterly use period, or within 10 days of the end thereof, the so-called "grace period." Since the SRP also requires the payment of quarterly use fees at the end of the quarterly use period or within the 10-day grace period, the failure to timely submit the post-use report jeopardizes the timely payment of quarterly use fees and constitutes an additional incident of noncompliance.

In its chronology of events 2/ leading to the decision to terminate the SRP, BLM questions Jacob's assertion that the post-use report was timely transmitted to BLM's Cedar City Field Office via facsimile, and has submitted copies of the activity reports that are generated by fax machines to support its challenge. We agree that Jacob's assertion is not credible.

As an initial matter, it is obvious that the two "copies" of the June-September post-use report submitted by Jacob are not copies at all. Instead, the two documents are two reports signed by Jacob for the same period, dated October 10 and October 12, respectively. Both reports show no use and otherwise contain the same information, but contrary to the statement in the Notice of Appeal, one is not an "additional copy" of the other. If it were true that Triumph attempted to fax the report on October 10, we think it far likelier that Triumph, upon learning that the attempt was unsuccessful, would have attempted to send the same copy again rather than preparing a new post-use report. At the very least, the preparation of a duplicate report under a different date begs for explanation. Jacob has neither explained it nor acknowledged this fact, even though he signed both reports and presumably would have questioned the need to prepare and sign a second report for the same use period in as many days.

The activity report purportedly generated by Jacob's fax machine was submitted to BLM and appears in the record with the designation of "Attachment #1." That activity report shows all the activity on Jacob's machine from October 9 through October 13, and it does not support appellant's allegations. We note that it lacks the identifying data typically printed on fax machine activity reports -- the date, time, telephone number of the fax machine for which the report is generated, appellant's company name, or even the page number of the report -- which would lend credibility to appellant's contention. The only transmission associated with BLM's fax telephone number on October 10 (no. 16 on the report page) shows that Triumph successfully received a 1-page fax from BLM.

The only transmission associated with BLM's fax telephone number on October 12 (no. 30 on the report page) shows that Triumph failed to successfully receive a fax from BLM. According to the activity report, Triumph's machine was in "receive" ("RCV") mode in both instances. Accepting it at face value, appellant's evidence thus establishes that there were no failed attempts to transmit a document to BLM on the days claimed.

In contrast, BLM has submitted the activity report generated by its fax machine, identifiable as such by all the authenticating data noted

2/ This document is captioned "BLM Perspective: History on Special Recreation Permit on Triumph Expeditions" and is dated Dec. 3, 2001 (Chronology). In addition to a simple recitation of events in the history of the permit, however, it contains a section which reflects BLM's opinion regarding the fax machine activity report submitted by Jacob.

above as lacking in Jacob's submission. That report shows all the activity on BLM's machine from October 9 through October 16, and none of the telephone numbers that communicated with BLM's machine on any date between October 9 and October 16 is Triumph's fax number. Since appellant does not allege any subsequent effort to file the required post-use report within the time provided by the terms of its SRP, it is clear that Triumph failed to comply with this permit term.

As BLM noted in its decision, this incident of noncompliance is not Triumph's first. Triumph had previously failed to timely submit the post-use report due for the quarter ending December 31, 2000. BLM personally contacted Jacob and explained that the permit could be terminated for failure to comply. When Jacob submitted the report on January 23, 2001, the use fee amount was insufficient. BLM again personally contacted Jacob and explained how to properly calculate the fee. On January 23, 2001, BLM sent a letter to Triumph Youth Services, LLC, ^{3/} in which the need to timely submit post-use reports and use fees was explained and future compliance was requested. Nonetheless, the fee deficiency was not received until February 2, 2001. In March 2001, the SRP was terminated for failure to renew the State outdoor license prior to the expiration of the prior license, even though BLM had reminded Triumph of this obligation in a letter to Jacob dated October 17, 2000. BLM accepted a new application for an SRP and issued it on March 22, 2001. On July 11, 2001, BLM again found it necessary to contact Jacob because the post-use report and use fee for the period ending on June 30, 2001, had not been received by July 10. When Triumph failed yet again to timely submit the required report and fee for the period ending on September 30, 2001, BLM issued its decision terminating the SRP.

Special recreation permits are issued pursuant to the Land and Water Conservation Fund Act, 16 U.S.C. § 4601-6(c) (1994), which provides: "Special recreation permits for uses such as group activities, recreation events, motorized recreation vehicles, and other specialized recreation uses may be issued in accordance with procedures and at fees established by the agency involved." See also 43 CFR 8372.0-3. SRPs issued by the Department of the Interior are also subject to the provisions of the Federal Land Management and Policy Act of 1976, as amended, 43 U.S.C. § 1732(c) (1994).

[1] BLM is vested with considerable discretionary authority in approving and issuing SRPs. 43 CFR 8372.3. Decisions imposing sanctions will be affirmed by this Board unless the decision is found to be arbitrary, capricious, or based upon a mistake of fact or law. Obsidian Services, Inc., 155 IBLA 239, 246 (2001); Judy K. Stewart, 153 IBLA 245, 251 (2000); Dvorak Expeditions, 127 IBLA 145, 151 (1993). If a decision is supported by any rational basis, it will not be held arbitrary or

^{3/} Triumph Youth Services, LLC, operates Triumph Expeditions, and is the entity which holds the outdoor license issued by the State of Utah and related insurance.

capricious. Dvorak Expeditions at 151 (citing Robert E. Miller, Jr. v. BLM, 118 354, 357 (1991)).

The obligation to comply with all terms of an SRP is a serious matter, as plainly stated in Conditions 1 and 14, and in Stipulation 17 of Triumph's SRP. In the past BLM has given appellant ample warning and opportunity to do in a timely manner that which the permit requires, and Triumph has repeatedly failed or refused to do so. In such circumstances, we perceive no basis for disturbing the decision to terminate the permit.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed, the stay is denied as moot, and BLM's motion for an extension of time to file an answer is denied as moot.

T. Britt Price
Administrative Judge

I concur:

David L. Hughes
Administrative Judge