



JAMES R. STACY

188 IBLA 134

Decided August 8, 2016



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Interior Board of Land Appeals
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JAMES R. STACY

IBLA 2014-216

Decided August 8, 2016

Appeal from a decision of the Assistant Field Manager, White River Field Office, Colorado, Bureau of Land Management, denying an application to expand the operating boundaries of an existing Special Recreation Permit for commercial big game hunting outfitting and guiding. CO-110-SRP-010-126.

Affirmed.

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

An exercise of the Secretary's discretionary authority to administer special recreation permits under the Federal Land Policy and Management Act of 1976 and its implementing regulations must have a rational basis that is stated in the decision and supported by facts of record demonstrating it is not arbitrary, capricious, or an abuse of discretion. It is appellant's burden to demonstrate, by a preponderance of the evidence, that a challenged decision was in error. This burden is not satisfied simply by conclusory allegations of error or expressions of disagreement with the analysis and conclusions.

2. Federal Land Policy and Management Act of 1976:
Applications;
Public Lands: Special Use Permits

BLM properly denies an application to expand the operating boundaries of a special recreation permit for commercial big game hunting outfitting and guiding, pursuant to its discretionary authority under the Federal Land Policy and Management Act of 1976 and implementing regulations, when doing so is in accordance

with regulation and policy directing that the agency eliminate the likelihood of conflicts with other authorized users and promote a diversity of recreational opportunities on the public lands, and thus has a rational basis, and where the applicant fails to demonstrate error in BLM's decision.

APPEARANCES: James R. Stacy, Natchitoches, Louisiana, *pro se*; John S. Retrum, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

James R. Stacy, doing business as Strawberry Creek Outfitters, LLC (SCO), has appealed from a June 16, 2014, decision of the Assistant Field Manager (AFM), White River (Colorado) Field Office (WRFO), Northwest District, Bureau of Land Management (BLM), denying his application to expand the operating boundaries of SCO's existing Special Recreation Permit (SRP), CO-110-SRP-010-126, for commercial big game hunting outfitting and guiding.

BLM's regulations afford the agency considerable discretion in approving or denying special recreation permits. In exercising its discretion, a BLM SRP decision must have a rational basis that is stated in the decision and supported by the record. To prevail in a challenge to an SRP decision, an appellant therefore must demonstrate BLM's decision was in error – *i.e.*, that it does not have a rational basis. Here, BLM denied SCO's application to expand its operating boundaries based on the agency's determination, consistent with regulation and policy, that granting the application could result in conflicts with existing authorized users of the land, and would not promote a diversity of recreational opportunities on the public lands. Because Stacy has not met his burden to show that BLM's decision was in error, we affirm the AFM's June 2014 decision.

BACKGROUND

A. Stacy's Application to Modify SCO's Existing SRP

Stacy, doing business as SCO, holds an SRP for commercial big game hunting outfitting and guiding in Game Management Unit (GMU) 211, situated on public lands in northwestern Colorado. The SRP authorizes SCO to outfit and guide hunters

each big game hunting season, from August 25, 2012, to December 31, 2016.¹ BLM issued the SRP consistent with its authority under section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA) and its implementing regulations.²

In 2014, Stacy sought to expand the operating boundaries of the SRP to include two parcels, located near SCO's existing permitted area in GMU 211, encompassing approximately 1,300 and 100 acres, for a total of 1,400 acres.³ In the application, Stacy stated that his purpose for modifying the SRP was "[t]o offer a larger hunting area" of public lands to SCO's "clients, employees and friends."⁴

B. BLM's Decision Denying Stacy's Application to Modify SCO's Existing SRP

In his June 2014 decision, the AFM denied Stacy's application to expand the operating boundaries of SCO's SRP. The AFM explained that BLM's SRP regulations explicitly provide that SRP decisions are "discretionary with the authorized officer."⁵ The AFM further explained that his decision was consistent with agency policy, which directs consideration of several factors when issuing SRPs, including whether issuance of a permit would be likely to create conflicts with existing permittees, the public, or private landowners, and whether issuance of a permit would enhance the diversity of recreational opportunities currently offered in the area.⁶

First, the AFM concluded that the application was properly denied in order to avoid the likelihood of any conflict between SCO and an existing SRP holder (Buffalo Horn Ranch), which holds an SRP authorizing commercial big game hunting outfitting and guiding for much of the proposed expansion area, and individual hunters authorized to use that area. He stated that given the "relatively small size" of the proposed expansion area of public lands, "[p]ermitting another commercial operation of the same type which overlaps the same area for the same time period would likely create conflict," and cause "a decline in the hunting success rate, or a decrease in the quality of the desired recreational experience."⁷ The AFM noted that BLM "has documented conflicts between commercial outfitters in the past on this

¹ Administrative Record (AR) Tab 1.02.04 (SRP CO-110-SRP-010-126).

² 43 U.S.C. § 1732(b) (2012); 43 C.F.R. Part 2930.

³ AR Tab 1.01.01 (SRP Application, Apr. 21, 2014).

⁴ *Id.*

⁵ AR Tab 1.01.03 (Decision) at unpaginated (unp.) 1 (citing 43 C.F.R. § 8372.3, which was replaced in 2002 by 43 C.F.R. § 2932.26).

⁶ *Id.* at unp. 1-2.

⁷ *Id.* at unp. 1.

particular parcel of BLM lands,” and denying SCO’s request for expansion was consistent with local BLM policy specifying that permits may not be issued for activities or uses that are likely to create conflicts with existing permittees, the public, or private landowners.⁸

Second, the AFM concluded that the application was properly denied because SCO’s proposal “for the same activity and the same time period” as the other permitted commercial big game hunting outfitting and guiding operation “does not enhance the diversity of recreational opportunities currently offered in th[e] area” of public lands at issue.⁹ He again cited the local BLM policy, which also specifies that SRP applicants must demonstrate that their proposal enhances the diversity of recreational opportunities available for visitors and the services are needed by the public.¹⁰

Stacy appealed the AFM’s June 2014 decision and filed a statement of reasons (SOR) in support of his appeal. BLM filed a response.

STANDARD OF REVIEW AND APPELLANT’S BURDEN OF PROOF

[1] BLM issues SRPs under the general authority of the Secretary of the Interior to administer use of the public lands under section 302(b) of FLPMA.¹¹ BLM thus has considerable discretion to approve or disapprove an application to issue or modify an SRP.¹² In exercising its discretion, BLM’s regulations direct the agency to consider certain factors, to the extent relevant, including conflicts with other users.¹³ BLM must ensure that any decision related to an SRP application has a rational basis that is stated in the decision and supported by facts of record demonstrating it is not arbitrary, capricious, or an abuse of discretion.¹⁴

⁸ *Id.*; see also AR Tab 1.02.02 (WRFO SRP Policy, Jan. 2013) at 8.

⁹ AR Tab 1.01.03 (Decision) at unpag. 2.

¹⁰ *Id.*; see also AR Tab 1.02.02 (WRFO SRP Policy, Jan. 2013) at 8.

¹¹ 43 U.S.C. § 1732(b) (2012); *Eric Carlson, d/b/a Breckenridge Adventure Tours*, 186 IBLA 319, 322 (2015).

¹² See 43 C.F.R. § 2932.26; *Ernie P. Jablonsky, d/b/a Montana Big Game Pursuits*, 184 IBLA 331, 337 (2014); *David L. Antley, Jr., d/b/a High Desert Outdoors, Inc.*, 178 IBLA 194, 197 (2009).

¹³ 43 C.F.R. § 2932.26(c).

¹⁴ *Eric Carlson*, 186 IBLA at 322; *David L. Antley, Jr.*, 178 IBLA at 197; *Larry Amos d/b/a Winterhawk Outfitters, Inc.*, 163 IBLA 181, 188 (2004).

An appellant challenging such a BLM decision thus has the burden to demonstrate, by a preponderance of the evidence, that BLM's decision was in error – *i.e.*, that it does not have a rational basis.¹⁵ This burden is not satisfied simply by conclusory allegations of error or expressions of disagreement with BLM's analysis and conclusions.¹⁶ As we have previously explained,

[t]he burden is upon the person challenging such a BLM decision to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision is not supported by a record that shows that BLM gave due consideration to relevant factors and acted on the basis of a rational connection between the facts found and the choice made.^[17]

Moreover, where the basis for the decision is clear from the record, we will not substitute our judgment for that of the BLM official exercising his or her discretion.¹⁸

DISCUSSION

On appeal, Stacy makes two arguments that BLM's decision to deny SCO's application to expand the boundaries of its current SRP was in error: (1) the agency incorrectly concluded that expansion would result in conflicts with other users, and (2) the agency demonstrated bias against SCO. We address each argument below.

A. Stacy Has Not Demonstrated Error in BLM's Decision to Deny the Permit Modification Based on Potential Conflict

On appeal, Stacy argues that BLM erred in denying his application to expand the boundaries of his current SRP because the agency incorrectly concluded that the expansion would result in conflicts with other authorized users. He states that while the potential for conflict would exist if the 1,400-acre expansion area was the only area used by SCO, given the overall area of public and private lands encompassed by SCO's current commercial big game hunting outfitting and guiding operations, "there should be sufficient area so that SCO is not intruding upon the current SRP holder

¹⁵ *Eric Carlson*, 186 IBLA at 322; *David L. Antley, Jr.*, 178 IBLA at 197-98; *Larry Amos*, 163 IBLA at 188-89 ("If a decision regarding approval of an SRP application has any rational basis, it will not be found to be arbitrary and capricious.")

¹⁶ *See, e.g., Ernie P. Jablonsky*, 184 IBLA at 338; *Utah Trail Machine Association*, 147 IBLA 142, 144 (1999).

¹⁷ *Ernie P. Jablonsky*, 184 IBLA at 338.

¹⁸ *Shooters-Edge, Inc.*, 178 IBLA 366, 370 (2010).

[Buffalo Horn Ranch].”¹⁹ Stacy also disputes the potential for conflict based on the fact that at present, SCO successfully conducts commercial big game hunting outfitting and guiding operations on the 1,500-acre area of public lands covered by its existing SRP in common with “two different private landowners,” who hunt that area themselves or “sell what is known as ‘trespass hunts.’”²⁰ He states: “We all have been successful in sharing the SCO permitted area so that it does not negatively impact the desired recreation experience.”²¹ Stacy further notes that the past incidents of conflict identified by BLM in its decision did not involve SCO, and Stacy has consistently demonstrated his “ability to work in a professional manner” with other permittees, which has “contributed to the INCREASE in the quality of the desired recreation experience for the clients of my business and our neighbors.”²²

[2] None of Stacy’s arguments, however, satisfies his burden to demonstrate error in BLM’s decision that allowing an expansion of SCO’s permitted area would likely create conflict with the other SRP holder or private hunters in the proposed expansion area. SCO’s stated purpose in obtaining a modification of its SRP is to authorize its hunters to use the expansion area; it is therefore reasonable to assume that at some point in time, SCO’s hunters would find themselves on these lands at the same time as hunters outfitted and guided by Buffalo Horn Ranch. And even SCO agrees that if the expansion area was the only parcel of land to be hunted by SCO and the current SRP holder, this “would have the propensity to create conflict amongst ex[ist]ing commercially guided hunts and private hunters.”²³ The fact that SCO has other lands available for hunting does not eliminate the potential for such conflict.

Nor does the fact that SCO has a history of getting along with other outfitters and individuals engaged in big game hunting in the area mean that there is no potential for conflict. A potential for conflict exists regardless of the identity of the parties using an area in common. Moreover, Buffalo Horn Ranch, which holds the existing SRP in the proposed expansion area, was involved in a conflict with another outfitter in GMU 211 in 2008.²⁴ Based on its conclusion that the 1,300 acre parcel involved in the conflict was too small for use by two outfitters at the same time, the

¹⁹ SOR at 2.

²⁰ *Id.* at 3.

²¹ *Id.*

²² *Id.*

²³ *Id.* at 2.

²⁴ Answer at 3.

WFRO modified the boundaries of both outfitters' SRPs.²⁵ Thus, regardless of SCO's assertion of no previous conflicts, we find no error in BLM's determination that expanding SCO's permitted area would likely create conflict in the proposed expansion area.

We further find no error in BLM's decision to deny SCO's application to expand its permitted area based on the potential for conflict, since the governing regulation directs BLM to base its SRP decisions on "[c]onflicts with other uses" (among other things), and BLM policy similarly directs BLM to avoid conflicts.²⁶ Neither the regulation nor BLM policy requires that the agency, in exercising its management discretion over the public lands, deny an SRP application only when there is certainty of conflict. BLM's management responsibility concerning the authorized use of the public lands requires it to do more than subjectively assess the realistic chance that two permittees may conflict, and instead requires it to ensure, from an objective standpoint, that no conflict is likely to occur. That responsibility can be advanced by ensuring that the circumstances that may lead to a conflict do not exist. Such circumstances include two permittees authorized to use the same, relatively small area of public lands for the same purpose at the same time.

Stacy's conviction that an expansion of SCO's permitted area will not cause conflict amounts only to a disagreement with BLM's analysis and conclusion, which is insufficient to demonstrate error.²⁷ Stacy's assertion that no conflict would occur is merely speculation at this point in time, and does not satisfy his requirement to demonstrate error in BLM's decision. Moreover, because the basis for BLM's decision

²⁵ *Id.*; see also AR Tab 1.03.01 (Decision, Jan. 5, 2009); AR Tab 1.03.03 (Order, IBLA 2009-206, Sept. 29, 2009) (affirming BLM's decision modifying SRP boundaries).

²⁶ See 43 C.F.R. § 2932.26(c); BLM Recreation Permit and Fee Administration Handbook, H-2930-1 (Nov. 17, 2014) at 1-9 ("Other factors that may determine whether or not the [authorized officer] approves an SRP application include recreation conflicts in the proposed area of operations . . . and whether the public land area available is sufficient to accommodate the proposed use."); AR Tab 1.02.02 (WRFO SRP Policy, Jan. 2013) at 8 ("New Permits will be carefully considered and may not be issued for activities or uses that are likely to create conflicts with existing permittees, the public or private landowners. . . . These criteria are used to analyze applications and offset potential problems.").

²⁷ See, e.g., *Ernie P. Jablonsky*, 184 IBLA at 338; *Utah Trail Machine Association*, 147 IBLA at 144.

is clear from the record, we will not substitute our judgment for that of the BLM official who exercised his discretion.²⁸

B. Stacy Has Not Demonstrated That BLM Was Biased Against SCO in Denying the Permit Modification

Stacy also argues on appeal that, in issuing its decision, BLM demonstrated bias against SCO and did not exercise “appropriate professional discretion.”²⁹ First, Stacy asserts that the AFM deferred to the preference of the conflicting SRP holder. He states that in discussing expansion of SCO’s SRP boundary to encompass public lands already permitted by Buffalo Horn Ranch, the AFM “indicated” to Joe Gutierrez, SCO’s Guide/Manager, “that he would have to call Mr. Grant Edinger of the Buffalo Horn Ranch . . . to see if it was ‘ok’ with him for us to permit [the expansion].”³⁰ Second, Stacy claims that because SCO has obtained access to the expansion parcels, in denying his application for expansion of the SRP boundary BLM showed “[i]nconsistency in application of rules.”³¹ As evidence, he reports that BLM told one of the neighboring ranchers that “there was NO WAY to stop someone or an entity from permitting an area as long as they have access.”³²

There is nothing in the record, however, that corroborates Stacy’s statements about these BLM communications, and BLM denies any bias against SCO.³³ Other than Stacy’s statement in his SOR that the AFM “indicated” that he needed to call Buffalo Horn Ranch to see if the Ranch was “ok” with expanding SCO’s permitted area, there is no evidence in the record supporting his claim that BLM sought the Ranch’s permission to approve SCO’s application or deferred to the Ranch’s preference. There is similarly no evidence in the record supporting Stacy’s claim that the AFM told a rancher that BLM would not deny an SRP where the applicant has access to the area to be permitted. Yet even if the AFM made such a statement, this would not demonstrate any error in BLM’s decision. Approving an SRP based on an applicant’s access would be inconsistent with BLM’s SRP regulations and policy, which direct the agency to consider certain factors in considering SRP approvals, none of which concerns whether the applicant has access. Thus, any such a

²⁸ See *Shooters-Edge, Inc.*, 178 IBLA at 370.

²⁹ SOR at 1.

³⁰ *Id.*

³¹ *Id.* at 3.

³² *Id.*

³³ Answer at 6.

statement would have had no binding effect on BLM.³⁴ And, in any event, there is no evidence that BLM previously issued an SRP based on the permittee's access, or has acted inconsistently in its SRP decisions.

Moreover, even if we were to accept Stacy's assertions as true, the record demonstrates that BLM's decision to deny SCO's application for expansion was based on the regulatory requirement to consider conflicts with other uses, and policy direction to disfavor the creation of potential conflicts between the holders of SRPs, and favor the enhancement of the diversity of recreational opportunities. Stacy provides no basis for finding that BLM was wrong to adhere to its regulation and policy.³⁵ We therefore find that he has not met his burden to show error in BLM's decision.

CONCLUSION

We conclude that Stacy has not shown any error in BLM's decision to deny SCO's application to modify its SRP boundaries. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,³⁶ we affirm BLM's decision.

/s/

Amy B. Sosin
Administrative Judge

I concur:

/s/

Silvia M. Riechel
Administrative Judge

³⁴ See *Salmon Creek Association*, 151 IBLA 369, 372 (2000) ("Even if Appellant was misled by BLM, a 'representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule,' or bind the Department.") (quoting *Charles House*, 33 IBLA 308, 310 (1978)).

³⁵ Cf. *Belco Petroleum Corp.*, 141 IBLA 344, 362 (1997) (BLM policy is "binding on BLM employees," even though it "is not binding on the Department or this Board.").

³⁶ 43 C.F.R. § 4.1.