



THE SECRETARY OF THE INTERIOR
WASHINGTON

HAMMOND RANCHES, INC.,

OR-020-14-01

Appellant,

DECISION

vs.

BUREAU OF LAND MANAGEMENT,

Respondent.

OREGON CATTLEMEN'S ASSOCIATION,
OREGON FARM BUREAU FEDERATION,
HARNEY COUNTY STOCK GROWERS
ASSOCIATION

Amicus curiae.

I. INTRODUCTION

Pursuant to a memorandum dated December 26, 2018, I assumed jurisdiction over the above-captioned appeal of the Bureau of Land Management's (BLM) February 14, 2014 decision to deny Hammond Ranches, Inc.'s application to renew its grazing permit. In light of new information since that decision was made, and for the reasons articulated more fully below, I hereby remand to BLM with instructions that it renew the grazing permit at issue under the same terms and conditions for the balance of the renewal period.

II. BACKGROUND

A. *Factual Background*

On September 30, 2013, Hammond Ranches, Inc. (Hammond Ranches) submitted an application for grazing permit renewal to the BLM for renewal of their grazing permit in Oregon. By Final Decision of February 14, 2014 (Final Decision or Decision), the BLM denied Hammond Ranches' application on the grounds that it did not have the requisite satisfactory record of performance under 43 C.F.R. § 4110.1(b). The BLM based its denial on the actions of Hammond Ranches' president, Dwight Hammond, and vice-president, Steven Hammond, in unlawfully starting fires on Federal land. Specifically, the BLM's decision references Dwight Hammond's June 21, 2012 jury conviction for maliciously damaging real property of the United States by fire, in violation of 18 U.S.C. § 844(f)(1), for his role in starting the 2001 Hardie-

Hammond Fire and Steven Hammond's jury conviction that same day on two counts of a violation of § 844(f)(1) for his role in starting the 2001 Hardie-Hammond Fire and the 2006 Krumbo Butte Fire. The Ninth Circuit Court of Appeals ultimately sentenced the Hammonds to the applicable statutory mandatory minimum sentences of 5 years (with credit for time served), which they began to serve in January, 2016. On July 10, 2018, President Donald J. Trump granted each man "a full and unconditional pardon" for his convictions in the U.S. District Court of Oregon for violations of 18 U.S.C. § 844(f)(1).

The BLM's Final Decision notes that the Hammonds' fire-starting conduct underlying the convictions constitutes an unsatisfactory record of performance as it violated BLM regulations and put people at risk. The BLM found that "the fact that the 2006 arson followed the 2001 arson demonstrates a pattern of Hammonds' conduct violating regulations applicable to the grazing permit and inconsistent with the orderly use, improvement, and development of resources." Decision at 17-18. The Decision finds that the Hammonds' conduct "knowingly placed public recreationists, firefighters, and BLM range staff at high risk." Decision at 17. In 2014, the United States and the Hammonds reached a civil settlement concerning the United States' monetary claims for damages from the fires; the Hammonds paid \$400,000.

B. Procedural History

Hammond Ranches appealed BLM's non-renewal decision to the Hearings Division of the Department's Office of Hearings and Appeals (OHA) in 2014. On April 12, 2018, the Hearings Division requested briefing on whether this case should first be adjudicated on summary judgment or whether, in the alternative, the case should proceed directly to hearing. On May 29, 2018, the Hammonds filed an opening brief. Amici Oregon Cattlemen's Association and Oregon Farm Bureau Federation supported Appellant in separate briefs. The BLM filed a Response to opening briefs on June 27, 2018. The OHA then extended briefing through granting various extensions and issuing a stay pending resolution of issues presented by *Lucia v. SEC*, 138 S. Ct. 2044 (2018). That stay was lifted on October 26, 2018. During the stay, Amicus Harney County Stock Growers Association entered an appearance and filed a brief in support of the Hammonds on September 19, 2018. On November 14, 2018, Judge Heffernan ordered the parties to resume briefing on whether the case could be resolved on summary judgment or should go to a hearing. On December 26, 2018, I assumed jurisdiction over the case.

III. APPLICABLE LAW

A. BLM Grazing Regulations

Federal law and regulations require a satisfactory record of performance for renewal of a grazing permit. The Taylor Grazing Act of 1934 provides for the "orderly use, improvement, and development of resources" on public lands, 43 U.S.C. § 315a, and conditions renewal of a grazing permit on compliance with rules and regulations. 43 U.S.C. § 315b. The Federal Land Policy and Management Act (FLPMA) provides that, for a permittee holding an expiring grazing permit to be given first priority for receipt of a new permit, the permittee must be "in compliance with the rules and regulations issued [by the Secretary] and the terms and conditions in the permit." 43 U.S.C. § 1752(c). The BLM regulations require that the authorized officer find that

an applicant have a satisfactory record before renewing a permit. 43 C.F.R. § 4110.1(b) (2005). A satisfactory record means the applicant is in “substantial compliance with” regulations applicable to the permit. 43 C.F.R. § 4110.1(b)(1). The BLM regulations applicable to a grazing permit prohibit: “(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization”; and “(4) Damaging or removing U.S. property without authorization.” 43 C.F.R. § 4140.1(b).

The Interior Board of Land Appeals (IBLA) has described how to evaluate substantial compliance:

[S]ubstantial compliance” is to be determined by considering both “the number of prior incidents of noncompliance,” and “the nature and seriousness of any noncompliances,” recognizing that the ultimate aim of a BLM decision regarding renewal is to use the record of performance “to confirm the ability” of a permittee “to be a [good] steward of the public land,” and thus “to ensure that permittees . . . are good stewards of the land,” thereby “protect[ing] [the land] from destruction or unnecessary injury and provid[ing] for orderly use, improvement, and development of resources.

Hanley Ranch Partnership, 183 Interior Board of Land Appeals 184, 199 (2013).

B. The Effect of a Pardon

A pardon sets aside punishment, such as imprisonment and the automatic loss of civil rights, (e.g. preclusion from voting, holding public office, or serving on a jury) but does not necessarily erase the conduct leading to conviction or the fact of conviction. *See, e.g.*, 59 Am. Jur. 2d Pardon and Parole § 51 (November 2018 update) (pardon “involves forgiveness, not forgetfulness”); *Nixon v. United States*, 506 U.S. 224, 232 (1993) (“a pardon is in no sense an overturning of a judgment of conviction”); *Burdick v. United States*, 236 U.S. 79, 94–95 (1915) (a pardon “carries an imputation of guilt; acceptance a confession of it”); *In re North*, 62 F.3d 1434, 1437 (D.C. Cir. 1994) (“pardon does not blot out guilt”).¹ Thus, government agencies have permissibly considered conduct underlying an individual’s pardoned conviction if the conduct is relevant to an assessment of the individual’s qualifications for a license or certification. *See, e.g.*, *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 125–26 (7th Cir. 1977); *Hirschberg v. Commodity Futures Trading Comm’n*, 414 F.3d 679, 682 (7th Cir. 2005). On the other hand, the government can consider changed circumstances such as a pardon and passage of time without further violations in determining whether to remove sanctions restricting that individual’s professional activities. *See, e.g.*, *SEC v. Lewis*, 423 F. Supp. 2d 337, 341 (S.D.N.Y. 2006).

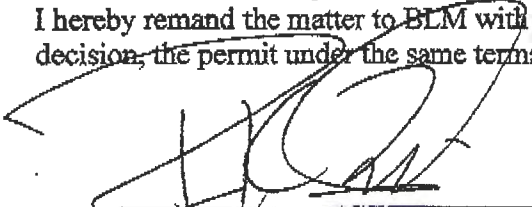
¹ *See also United States v. Noonan*, 906 F.2d 952, 958–60 (3d Cir. 1990) (“[b]y 1915, ... the [Supreme] Court made clear that it was not accepting the [*Ex parte Garland*, 71 U.S. 333 (1866)] dictum that a pardon ‘blots out of existence the guilt’” because pardon does not “create any factual fiction” that conviction had not occurred); *Grossgold v. Supreme Court of Illinois*, 557 F.2d 122, 125–26 (7th Cir. 1977) (pardon “did not wipe out the moral turpitude inherent in the factual predicate supporting plaintiff’s mail fraud conviction” and thus an attorney was not relieved of discipline by state bar).

IV. ANALYSIS

I find that the pardons constitute unique and important changed circumstances since the BLM made its decision. In light of the Grants of Executive Clemency, the years of imprisonment, and civil damages paid by the Hammonds, I find that it is consistent with the intent of the pardons – and in particular their reflection of the President’s judgment as to the seriousness of the Hammonds’ offenses – to renew the Hammonds’ permit for the duration of the term that would have commenced in 2014. The Hammonds’ continuance of grazing will depend on compliance with BLM’s grazing regulations. I do not find fault with BLM’s assessment of the law and facts in its 2014 Decision and I reiterate BLM’s concern for human safety on public lands. The safety of our Nation’s firefighters and others working and recreating on public lands remains paramount. I will ask BLM to keep the Office of the Secretary apprised of any permit compliance and human safety issues.

V. CONCLUSION

Pursuant to 43 C.F.R. § 4.5 and other authority delegated to me, for the reasons set forth above, I hereby remand the matter to BLM with instructions to renew, within 30 days of the date of this decision, the permit under the same terms and conditions for the balance of the renewal period.



Ryan K. Zinke
Secretary of the Interior

2 JAN 2019

Date

Distributed

By Facsimile:

W. Alan Schroeder, Esq.

P.O. Box 267

Boise, Idaho 83701

(Counsel for Appellant)

Bradley Grenham, Esq.

U.S. Department of the Interior

Office of the Regional Solicitor

Pacific Northwest Region

601 SW 2nd Avenue, Suite 1950

Portland, OR 97204 (Counsel for Respondent)

Elizabeth E. Howard, Esq.

Schwabe, Williamson & Wyatt

Pacwest Center

1211 SW 5th Avenue, Suite 1900

Portland, Oregon 97204

(Amicus Curiae, Oregon Cattlemen's Association)

Mary Anne Cooper, Esq.,

Oregon Farm Bureau Federation

1320 Capitol Street NE, Ste. 200

Salem, OR 97301

(Amicus Curiae, Oregon Farm Bureau Association)

Brandon L. Jensen, Esq.

Falen Law Offices

P.O. Box 346

Cheyenne, Wyoming 82003-0346 (Amicus Curiae, Harney County Stock Growers Association)

Shayla Freeman Simmons, Director

U.S. Department of the Interior Office of Hearings and Appeals

801 N Quincy Street, Suite 300

Arlington, VA 22203

James H. Heffernan, Administrative Law Judge

U.S. Department of the Interior Office of Hearings and Appeals

351 South West Temple, Suite 6.300

Salt Lake City, UT 84101