



# United States Department of the Interior

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February 14, 2011

IBLA 2011-27	)	8000 (CA930) P
	)	
MDR PRODUCTIONS, INC.	)	Special Recreation Permit
& MOJAVE DESERT RACING, INC.	)	
	)	Decisions Affirmed;
	)	Request for Stay Denied as Moot

## ORDER

MDR Productions, Inc. (MDR Productions) and Mojave Desert Racing, Inc. (Mojave Desert Racing) (collectively, MDR), represented by Patricia Williams, President of both corporations, have filed two appeals to the Board, stemming from the response by the Bureau of Land Management (BLM) to events associated with the August 14, 2010, California 200 Race (200 Race), conducted annually by MDR on public land in the 180,000-acre Johnson Valley Off-Highway Vehicle (OHV) Open Area, approximately 100 miles northeast of Los Angeles, California.

MDR conducted the 200 Race under a Special Recreation Permit (SRP) (SR-10-49) issued by BLM on August 4, 2010. During the initial hour of the race, which began at dusk, the driver of a participating truck, which was traveling at a high rate of speed, lost control of the truck in a popular area for spectators. The truck hurtled into a large crowd of spectators gathered adjacent to the race course, killing eight people and injuring more than a dozen. Response to Petition for Stay (Response) at 2.

Following the incident, the District Manager, California Desert District (CDD) Office, BLM, issued a decision to MDR Productions on August 18, 2010: (1) suspending all existing SRPs issued by the CDD Office to MDR Productions, including SR-10-49 issued by the Barstow Field Office for the 200 Race, and (2) placing “any pending SRP applications” on hold. CDD Decision at unpaginated (unp.) 1. She explained that BLM had determined that the actions were necessary “to protect the safety of public land visitors,” “[g]iven the events associated” with the 200 Race.<sup>1</sup> *Id.*

<sup>1</sup> Nowhere in her decision did the District Manager describe the “events” of the 200 Race, or explain why the suspension or application hold were necessary or appropriate to protect public safety. Nor does the record provided by BLM contain any documentation whatsoever of what transpired on August 14. At best, the record

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She stated that the suspension action could be appealed to the Board, while the hold on applications “may be protested.”<sup>2</sup> *Id.* MDR appealed the suspension action and protested the hold on pending applications. In a decision dated September 17, 2010, the Acting State Director (ASD), California, BLM, denied MDR’s protest. MDR appealed the ASD Decision.

The Board docketed both appeals as IBLA 2011-27. MDR seeks a stay of the ASD Decision, but not of that part of the CDD Decision suspending its permits.

MDR has failed to establish that BLM erred in suspending its existing permits and placing a hold on pending SRP applications. For that reason, despite shortcomings in BLM’s decisions, we affirm those decisions and deny the request for a stay as moot.

#### *Actions Following Accident*

Four days after the accident, BLM issued the CDD Decision suspending MDR Productions’ existing permits and placing a hold on the processing of its pending applications. The suspension and application hold were to remain in effect until the BLM completed an investigation of the accident and determined what future actions to take.<sup>3</sup> CDD Decision at unp. 1; see Response at 3.

In addition, the California Highway Patrol (CHP), assisted by BLM, immediately undertook a criminal investigation of the accident. The CHP was to

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<sup>1</sup> (...continued)

contains the Nov. 17, 2010, declaration of Patrick Chassie, Chief Ranger, Barstow Field Office, which refers at page 1, ¶1, to a “crash” during the 200 Race, and MDR’s Aug. 16, 2010, Post Use Report which states: “Race stopped after 20 minutes.” Only BLM’s Response provides any factual detail concerning the “crash.” However, we accept those facts, which are not disputed by MDR, in support of BLM’s actions.

<sup>2</sup> There is no indication in the record of why the District Manager stated that one action could be appealed and the other protested. Only an action proposed to be taken is subject to protest. 43 C.F.R. § 4.450-2 (“any objection raised by any person to any action proposed to be taken in any proceeding before the Bureau will be deemed to be a protest”). The District Manager did not propose to hold pending applications; she stated that they were being held.

<sup>3</sup> In accordance with 43 C.F.R. § 2931.8(b), the CDD Decision, to the extent it constituted a final decision concerning existing SRPs, went into effect immediately and was to remain in effect unless the Board granted a stay, under 43 C.F.R. § 4.21(b).

present its findings regarding the likely cause(s) of the accident and any potential liability to the San Bernardino County District Attorney, and possibly the U.S. Attorney.

BLM also created its own Incident Inquiry Team (IIT), which was charged with investigating and preparing a report concerning BLM's issuance of the SRP for the 200 Race and permit issuance procedures in general in BLM offices in California. See Delegation of Authority and Charter for the IIT, dated Aug. 19, 2010 (attached to IIT Report), at unp. 1 ("The charter for this team is to focus on permit administration for OHV events, particularly as they relate to public safety, and not to conduct an accident investigation"). BLM's IIT has issued its report, but, according to BLM, CHP has not issued its findings.<sup>4</sup> See Response at 4.

Although BLM suspended "all" of MDR Productions' existing SRPs in its CDD Decision, the only permit it identified was SR-10-49. CDD Decision at unp. 1. The case record does not specifically identify any other permit(s) held by MDR Productions. However, we note that a document submitted by MDR Productions with the 200 Race application lists two other races in the "2010 California Championship Series," following the 200 Race: the Lucerne 250 and the Stoddard 250, which were scheduled for September 25 and November 6, 2010, respectively. That document also listed three races in the "Superstition Championship Series," that were to take place in 2010 after August 14, 2010. Further, that document lists the site of both the 200 Race and the Lucerne 250 as Lucerne Valley, which BLM states is "synonymous with Johnson Valley." We assume that any suspended permits were for calendar year 2010, and, therefore, have expired by their terms. However, absent record evidence, we will not dismiss MDR's appeal of the suspension action as moot based on our assumption.

BLM addressed MDR's protest in the ASD Decision issued on September 17, 2010, essentially denying its protest. Neither in that decision nor in the CDD Decision did BLM identify any specific pending applications from MDR Productions that were being held. The only reference to pending applications that we find is in BLM's IIT Report, which states at page 7 that "five applications from MDR . . . are being held in abeyance pending completion of the California Highway Patrol's investigation." However, despite the fact that the CDD Decision had limited the hold to any pending SRP applications, the ASD Decision expanded the scope of that hold to include future SRP applications, stating that "BLM will not lift its blanket

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<sup>4</sup> We have obtained a copy of the IIT report, entitled "Report on Johnson Valley OHV Incident and Review of Special Recreation Permit Program" (IIT Report), which was released to the public on Nov. 19, 2010.

suspension with respect to any pending or incoming SRP applications filed by MDR.”<sup>5</sup> ASD Decision at unp. 1. In addition, while the CDD Decision had simply stated that the application hold would remain in effect until BLM completed its investigation of the August 14 accident and determined what future actions to take, the ASD Decision clarified that BLM would hold pending and future applications until after CHP completed its investigation, “which also would include any actions thereafter on the part of the San Bernardino County District Attorney and the United States Attorney.” ASD Decision at unp. 2. In accordance with 43 C.F.R. § 2931.8(b), the ASD Decision was effective immediately and was to remain in effect unless the Board granted a stay, under 43 C.F.R. § 4.21(b).

MDR timely appealed both that part of the CDD Decision suspending MDR Productions’ SRPs and the ASD Decision. BLM opposes MDR’s request for a stay.

#### *BLM Properly Suspended Existing SRPs*

BLM is authorized by 43 C.F.R. § 2932.56(a), which BLM invoked in issuing the CDD Decision, to suspend or cancel existing SRPs where it is necessary to protect public health or safety or the environment. BLM suspended MDR Productions’ existing SRPs because it concluded that doing so was necessary to protect public safety. On appeal, Williams asserts that “[a]ny suspension of MDR Productions, Inc.’s SRP permits should be lifted immediately” because the 200 Race was conducted by Mojave Desert Racing, not MDR Productions. October 15, 2010, Notice of Appeal (Oct. N/A) at unp. 2. She explains that the companies are two separate entities, as recognized by the State of California and the Internal Revenue Service, and operate two different sets of races (California Championship Series races in Lucerne Valley, Barstow, and Ridgecrest (Mojave Desert Racing), and Superstition Championship Series races in Plaster City (MDR Productions)).<sup>6</sup>

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<sup>5</sup> While we may decide whether BLM properly placed a hold on pending applications, we have no jurisdiction to determine whether BLM properly decided to extend that policy to future SRP applications. *See Rock Crawlers Association of America*, 167 IBLA 232, 236-37 (2005); *Dirt, Inc.*, 162 IBLA 55, 61 (2004). Thus, we do not address that issue in this order. Only the filing of a new application, denial of the application by BLM, and subsequent appeal would properly place the matter before the Board.

<sup>6</sup> Williams’ representation is contradicted by the website for MDR Productions (<http://mdrracing.com>), which identifies Mojave Desert Racing as the sponsor of all of the races. It states, under the heading “About Us”: “We would like to take this opportunity to introduce you to Mojave Desert Racing (MDR), a Southern California corporation providing an exciting, rewarding, and safe environment for off-road

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We do not doubt that the companies are two separate entities. However, they are clearly closely related, operating out of the same business address in South El Monte, California, and sharing the same person as President. Moreover, Williams filed the application for SRP SR-10-49 on behalf of "MDR," an acronym that is used by Williams, as evidenced by the case record, interchangeably for Mojave Desert Racing and MDR Productions. All the documentation attached to the application is associated with MDR Productions. A copy of a flyer for the 200 Race bears the name "MDR Productions, Inc." The proof of insurance lists the "First Named Insured" as "MDR Productions." All notifications of the contact person or persons for pre-race, race day, or post-race activities appear on MDR Productions letterhead stationary, signed by "Patricia Williams, MDR."<sup>7</sup> Williams provides no basis for overturning the suspension of existing SRPs for MDR Productions.

BLM acted properly to suspend MDR's existing SRPs, pursuant to 43 C.F.R. § 2932.56(a), in order to protect public safety.

*BLM Properly Placed a Hold on Pending Applications*

We turn now to BLM's action in placing a hold on MDR Productions' pending SRP applications. BLM has ample authority, under section 302(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (2006), and its implementing regulations, 43 C.F.R. Part 2930, to take such action under its discretionary authority to approve or deny an SRP application, as well as to set appropriate terms and conditions. *See, e.g., Lassen Motorcycle Club*, 133 IBLA 104, 106 (1995). Such authority certainly encompasses the authority to delay or defer a decision regarding whether and under what terms and conditions to issue an SRP, where the time afforded is necessary or appropriate to gather facts concerning public safety or other matters critical to a proper decision on the application.

Further, 43 C.F.R. § 2932.26 specifically provides that BLM will exercise its authority to approve or disapprove an SRP application based on various factors, which include, *inter alia*, "[p]ublic safety," "[c]onflicts with other uses," "[t]he public interest served," "[w]hether in the past you complied with the terms of your permit or other authorization from BLM and other agencies," and "[s]uch other information that BLM finds appropriate." Clearly, a decision to approve or disapprove an SRP application can hinge on considerations of public safety. *See, e.g., Shooters-Edge, Inc.*,

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<sup>6</sup> (...continued)

racing in four locations: Barstow, Lucerne Valley, Ridgecrest, and Plaster City."

<sup>7</sup> The inference to be drawn from the application process for SRP SR-10-49 is that MDR Productions is the applicant for an SRP, regardless of whether Mojave Desert Racing or MDR Productions is "conducting" the race.

178 IBLA at 366, 368, 371-74 (2010) (public safety considerations primary reason for denial of SRP application for a proposed shooting range on public lands); *Pronto Pics, Inc.*, 165 IBLA 90, 91, 93 (2005) (SRP application for commercial photography on public lands denied for public safety reasons); *The Exodus Corp.*, 126 IBLA 1, 2-4, 6-7 (1993) (issuance of an SRP with a limitation on proposed jet boat use based on public safety concerns).

Moreover, it is prudent for BLM to defer the decision on an SRP application for the purpose of gathering information concerning whether approval or disapproval of an SRP application properly comports with public safety and the other factors. *Cf. Duranglers*, 105 IBLA 156, 158-59 (1988) (BLM properly denied protest by SRP applicant to moratorium on new permitted use, pending determination of river carrying capacity and preparation of river management plan).

It is well established that a BLM decision to approve or deny an SRP, or to impose specific terms, conditions, or stipulations, made in the exercise of its discretionary authority, must have a rational basis and be supported by facts of record demonstrating that the action is not arbitrary, capricious, or an abuse of discretion. *See, e.g., Shooters-Edge, Inc.*, 178 IBLA at 370; *Acadia Mountain Guides, Inc.*, 173 IBLA 1, 8-9 (2007); *Daniel T. Cooper*, 150 IBLA 286, 291 (1999). Where the basis for the decision is clear from the record on appeal, this Board will not substitute its judgment for that of the BLM official exercising his or her discretion. Similarly, we conclude that a BLM decision to hold pending applications in abeyance, which is supported by a rational basis, will not be overturned by this Board.

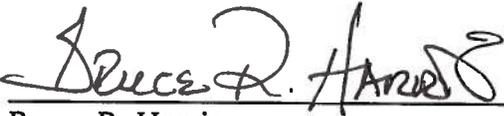
MDR's arguments in support of overturning the ASD Decision are essentially a defense of its actions relating to the accident in the 2010 200 Race, *e.g.*, no failure to protect public safety; conduct meets permit requirements; and actions not reckless or negligent, all of which are matters to be resolved through the CHP investigation and relevant subsequent actions based thereon. Such arguments provide no basis for reversing BLM's decision to place a hold on MDR Production's pending applications.

### *Conclusion*

MDR offers no argument or supporting evidence disputing BLM's conclusions that understanding the tragic events in the 200 Race is necessary to ensure the safety of the public during future similar racing events, and, that until the investigation is completed and any relevant resulting criminal/civil actions resolved, it is proper to suspend existing SRPs and place a hold on pending SRP applications. Clearly, BLM had a rational basis for its actions.

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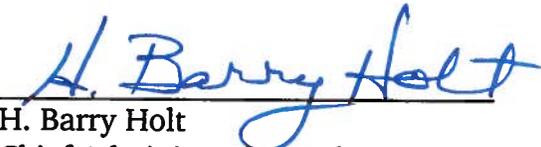
Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decisions appealed from are affirmed, and the request for a stay is denied as moot.



Bruce R. Harris

Deputy Chief Administrative Judge

I concur:



H. Barry Holt

Chief Administrative Judge

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