INTERIOR BOARD OF LAND APPEALS

Rock Crawlers Association of America

167 IBLA 232 (November 23, 2005)

ROCK CRAWLERS ASSOCIATION OF AMERICA

IBLA 2003-284 Decided November 23, 2005

Appeal from a letter of the Carson City, Nevada, Field Office, Bureau of Land Management (BLM) asserting that BLM would no longer be accepting applications for special recreation permits for competitive rock crawling events at a site in Washoe County, Nevada. NV-03300.

Dismissed.

1. Administrative Procedure: Administrative Review--Appeals: Jurisdiction--Board of Land Appeals--Rules of Practice: Appeals: Standing to Appeal

   The Board has no jurisdiction to review Bureau of Land Management policies outlined in a letter setting forth stated future plans with respect to applications it might receive for use of a particular site, in the absence of an actual application pending before the agency upon which an appealable decision is rendered.

2. Public Lands: Special Use Permits--Special Use Permits

   The rules at 43 CFR Subpart 2932 provide the discretion to BLM to grant or deny an application for a special recreation permit. 43 CFR 2932.26. They do not provide BLM the authority to reject in advance hypothetical applications that have not been submitted or permit terms which have not been set forth in an application.

APPEARANCES: John C. Horning, for the Rock Crawlers Association of America; Nancy S. Zahedi, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

The Rock Crawlers Association of America (RCAA) submits this appeal from a letter dated May 8, 2003, sent to RCAA by the Carson City, Nevada, Field Office, Bureau of Land Management (BLM). The letter advised RCAA that BLM would no longer be accepting applications for special recreation permits (SRPs) for competitive rock crawling events at a site in Washoe County, near Reno, Nevada, called Moon Rocks, in section 21, T. 23 N., R. 20 E., Mount Diablo Meridian.

The background facts are not in dispute. Moon Rocks is an unusual rock outcrop 23 miles north of Reno in a relatively isolated area of public lands governed by the 2001 Carson City Field Office Consolidated Resource Management Plan (RMP). All public lands within the jurisdiction of the Carson City Field Office are designated as open to off-highway vehicle (OHV) use unless restricted or limited. (RMP section 8 at 2.) Moon Rocks is within an area called Hungry Valley, where OHV use is limited to existing roads and trails. (Final Southern Washoe County Urban Interface Plan Amendment (2001) at 6.) [1/] The site is a popular staging area for motorized recreational users and BLM has granted SRPs to organizations using the site for motorcycle and equestrian events.

Rock crawling is a relatively new sport involving use of four-wheel drive vehicles for crawling up and over rocks. See Arizona State Association of 4-Wheel Drive Clubs, Inc., 165 IBLA 153 (2005) (jeep waterfall climbing); Colorado Mountain Club, 161 IBLA 371 (2004) (extreme jeeping); see also photographs in the record. After preparing environmental assessment (EA) NV-030-2002-15, BLM granted an SRP to the California Rock-Crawling and Off-road Championship Series (CalROCS) for a competitive rock crawling event held in May 2002. According to BLM the "CalROCS" competition was the first event of its kind in Nevada, and was the first two-axle competitive event approved at Moon Rocks. The event drew approximately 1,000-1,500 spectators per day, which doubled BLM's expectations. Though BLM recommended that CalROCS provide a hotel shuttle for spectators, the shuttle was largely ignored in favor of private transportation. The spectators' vehicles, parking fee collection, and a lack of volunteers to control parking contributed to a mile-long traffic backup which included and stymied vehicles and passengers not attending the event.

BLM received three more permit applications for additional rock crawling events in 2003, including an application from the American Rock Crawling Association of America, later renamed RCAA. BLM met with RCAA and another

[1/] The RMP and the Plan Amendment are referenced in documents within, but do not themselves appear in, the record before us.

applicant to discuss problems that occurred during the CalROCS event. Based upon the same EA that was used for the CalROCS event, BLM granted an SRP to RCAA on April 8, 2003, for a rock crawling competition scheduled for April 11-12, 2003. The SRP was granted subject to a number of stipulations related to parking, public safety, and clean-up requirements.

BLM monitored the event and was dissatisfied with the results. According to documents and photographs in the record, spectators swarmed the rocks, motorcyclists quarreled in an incident with spectators, parking was mismanaged, no shuttles were provided, and the event coordinators did not sufficiently control trash or mobile sanitation devices. BLM believed that the estimated 1,500 spectators daily would have substantially increased in number but for weather conditions.

After the event, BLM employees decided internally to close Moon Rocks to future competitive rock crawling events. BLM concluded that event managers would not be able to manage parking and traffic in the remote location or limit increasing spectator involvement, and ultimately decided that Moon Rocks should not be the locus of such large competitive events because the lack of infrastructure made dealing responsibly with attendance impossible. BLM asserts that it advised all of the various applicants for competitive rock crawling events that it intended not to accept applications for or approve future permits. The record, however, contains only the letter to RCAA dated May 8, 2003.

This letter, directed exclusively to RCAA, advises the organization of "a few things that [were] not acceptable" at the close of the April 2003 event including remaining paint or chalk marks, nails, and tire treads. However, the thrust of the letter was BLM's future plans with respect to the Moon Rocks site. BLM stated:

> As a result of our monitoring observations of Rock Crawling events conducted at Moon Rocks, we have determined that these events are exceeding the existing public occupation capacity of the site and that the competition's actions are beyond Tread Lightly land use ethics expectations. Our current land use management plans do not call for the expansion of facilities such as parking and camping areas in order to accommodate commercial, spectator-oriented events. * * *
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> Permittees have been unable to meet BLM stipulations regarding spectator management. The BLM is unable to provide sufficient agency staff to oversee the large permitted events and to properly manage the public uses occurring just outside of the event area on public land.

> Regarding Tread Lightly expectations, it has been our observation that Rock Crawling rules of competition penalize the competitor for backing, using spotter assistance, and leverage thereby encouraging excessive wheel spinning and the application of horsepower rather than driver/vehicle finesse to maneuver the obstacles. Wheel spin when a vehicle [is] high-centered and is making no forward or backward progress for several seconds has become excessive. The combination of using horsepower, speed and wheel spin to conquer steep or rugged obstacles has become excessive.
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> It is difficult for the BLM to encourage Tread [L]ightly/Minimum Impact when the public witnesses what appears to be an acceptable driving technique at an event utilizing public land resources. To their credit, we did observe that a few competitors could maneuver the obstacles without wheel spin, without spotter assistance and without breaking the rocks or their vehicles. Those competitors do meet our expectations and are the preferred role models.
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> As a result of these observations, the BLM's Carson City Field Office has decided not to accept any future applications to conduct Rock Crawling events at the Moon Rocks site. According to 43 CFR * * * 2932.26, the "BLM has the discretion over whether to issue a Special Recreation Permit." That decision is to be based upon a list of relevant factors. The decision to deny Rock Crawling event permit applications for the Moon Rocks area is based on 43 CFR 2932.26 listed factors: (b) Public safety, (c) Conflicts with other uses, (d) Resource protection, and (g) Other: insufficient Agency staffing for event over-sight and simultaneous casual public uses.
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> BLM's Carson City Field Office may consider applications for commercial events attracting large numbers of spectators if the event occurs adjacent to a willing, local community or private facility where the infrastructure of police, medical, food and public sanitation are provided.

(May 8, 2003, letter at 1-2.) BLM advised RCAA of a right of appeal. Id. at 2.

RCAA submitted a Notice of Appeal and a Statement of Reasons (SOR). By order dated August 14, 2003, the Board ordered BLM to answer the SOR and specifically directed BLM to address whether the May 8, 2003, letter "is properly regarded as a decision that adversely affects RCAA." (Aug. 14, 2003, Order at 2.)

BLM submitted its Answer on September 16, 2003. BLM took the position that the letter is an appealable decision adversely affecting RCAA because it "prohibits action affecting individuals having interests in the public lands." (Answer at 9, citing Joe Trow, 119 IBLA 388, 392 (1991).)

[1] We disagree with BLM based upon the following analysis. Departmental regulations limit our jurisdiction to considering decisions of the Department which make determinations regarding the individual rights of a party and take or prevent action. 43 CFR 4.410 (2003); Joe Trow, 119 IBLA at 391. By contrast, policy statements or letters which announce intended policy cannot form the basis for an appealable decision. James C. Mackey, 114 IBLA 308, 315 (1990). In the latter case, we dismissed an appeal with respect to a letter which

> merely informed appellant of the matter and does not constitute a decision on a case which is appealable to this Board. The Board does not have jurisdiction to consider challenges to BLM statements of policy because such appeals do not present a case or controversy. See Headwaters, Inc., 101 IBLA 234, 239 (1988); cf. Tennessee Consolidated Coal Co. v. OSMRE, 99 IBLA 274 (1987); State of Alaska, 85 IBLA 170, 172 (1985).

114 IBLA at 315. In Mackey, we refused to consider an appeal of the BLM Manual which established procedures that would be followed by BLM employees "in the absence of a decision applying the procedure to dispose of a case to which appellant is a party." Id., citing State of Alaska, 106 IBLA 160, 165, 95 I.D. 304, 306 (1988).

We recognize that BLM's argument has some merit. BLM contends that the May 8, 2003, letter at issue in this case falls within the category of documents which "prohibit or announce" an "action affecting individuals having interests in the public lands." (Answer at 8, citing Joe Trow, 119 IBLA at 392.) BLM's view is that by advising RCAA that it will not accept an application for the sort of competitive rock crawling event conducted by CalROCS in 2002 and RCAA in 2003, it has prohibited action by RCAA.

We find, however, that BLM's legal position in its Answer is merely an endorsement of BLM's stated future policy regarding its plans with respect to the Moon Rocks site, by contrast with an actual determination regarding an application pending before the agency. This conclusion is bolstered by the fact that BLM had no application before it and rejected no specific application request. While BLM has sent RCAA a strong signal as to how it will review applications similar to the one submitted in 2003 and how it will address RCAA's ongoing plans, we find no facts upon which to conclude BLM made a reasoned determination about an actual

application and no basis upon which to affirm or reverse BLM's conclusion based upon a reasoned examination of the facts. We cannot guess whether BLM would accept or reject an application with terms substantially different from those BLM considered hypothetically in the May 8 letter, nor can we opine on whether some other permutation of a competitive rock crawling event would be approved or rejected, based on reasoned decision-making, in the absence of specific terms, requests, and conclusions. BLM's letter is a hypothetical statement to RCAA of what it would do in certain circumstances, but until an actual response based upon a specific request is evoked from BLM, we cannot speculate as to whether BLM's conclusion would be rational.

[2] Our conclusion is further supported by the regulations to which BLM cites in support of its conclusion. The rules at 43 CFR Subpart 2932 do, in fact, supply BLM the discretion to grant or deny an SRP on the basis of the factors cited in the May 8, 2003, letter. See 43 CFR 2932.26. However, this rule appears in the Departmental regulations addressing how BLM may consider actual SRP applications. Nothing in Subpart 2932 suggests BLM has the discretionary authority to give advisory opinions to potential applicants regarding what action it will take on applications that have yet to be submitted. While BLM may take specific actions regarding violations of permit terms, 43 CFR 2932.56, BLM issued no decision to RCAA regarding a violation based upon its 2003 event, nor is the May 8, 2003, letter a decision to amend, cancel, or revoke a permit, which in turn would have been reviewable on appeal to the Board. Accordingly, we conclude that it would be difficult at best to determine that the May 8, 2003, letter is a reviewable decision when it purports to take action not authorized by the regulations it purports to implement.

BLM clearly has the delegated authority of the Secretary under section 202(a) of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. § 1712(a) (2000), to "when appropriate, revise land use plans." The regulations at 43 CFR Subpart 1610 expressly provide for decisions that effectuate changes in RMPs. 43 CFR 1610.5-4 (maintenance decisions); 43 CFR 1610.5-5 (amendments); and 43 CFR 1610.5-6 (plan revisions). Thus, to the extent BLM argues it has issued a decision affecting the public, that authority undoubtedly resides in BLM through the land use planning process. Setting aside the questions regarding whether BLM properly followed such procedures in issuing the May 8, 2003, letter, were BLM to properly invoke the rules at 43 CFR Subpart 1610 to advise the public that it has further limited OHV use at the Moon Rocks site, or closed the site to particular types of OHV use, we would likewise have no authority to consider an appeal from it. Decisions approving RMPs or revisions of RMPs, are subject to a limited right to protest to the Director of BLM, whose decision shall be final for the Department.

43 CFR 1610.5-2(b); Harold E. Carrasco, 90 IBLA 39, 41 (1985), citing Oregon Natural Resources Council, 78 IBLA 124, 127 (1983); Oregon Shores Conservation Coalition, 83 IBLA 1, 2 (1984); In re Lick Gulch Timber Sale, 72 IBLA 261, 317 n.44, 90 I.D. 189, 220 n.44 (1983). Thus, no appeal from such a decision may be heard by the Board of Land Appeals. However we characterize the nature of the May 8, 2003, letter, we have no jurisdiction to consider it.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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Lisa Hemmer
Administrative Judge

I concur:

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David L. Hughes
Administrative Judge