

INTERIOR BOARD OF LAND APPEALS

Checker Motorcycle Club

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CHECKER MOTORCYCLE CLUB

IBLA 90-320

Decided June 1, 1993

Appeal from a decision of the California Desert District Office, Bureau of Land Management, denying an application for special recreation permit to conduct the Johnson Valley to Parker Hare and Hound motorcycle race. CA 060-SRO-25.

Affirmed.

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

Issuance of a special recreation permit is discretionary, and BLM properly rejects an application for a permit for an organized off-road motorcycle event when there is evidence that the event could result in significant impacts to sensitive wildlife species and would be inconsistent with the management objectives, responsibilities, or programs for the public lands involved.

APPEARANCES: Bill Fuentes, Diamond Bar, California, for appellant; Ed Hastey, State Director, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Checker Motorcycle Club (CMC) has appealed the March 6, 1990, decision of the District Manager, California Desert District, Bureau of Land Management (BLM), denying an application for a special recreation permit for a 220-mile motorcycle race from Johnson Valley, California, to Parker, Arizona, in March 1990. Because the appeal presents an issue which is "capable of repetition, yet evading review," we do not dismiss it as moot. See Southern Utah Wilderness Alliance, 114 IBLA 326, 329-30 (1990); Southern Utah Wilderness Alliance, 111 IBLA 207, 208-10 (1989).

BLM gave the following reasons for its decision:

The last third of the event utilizes the southern portion of the California loop of the Parker 400 race course which has been closed to competitive racing events.

In August 1989, the desert tortoise was emergency listed as endangered by the U. S. Fish and Wildlife Service. The course crosses 24 miles of desert tortoise categorized habitat, of which approximately 42 percent is in Category I and 58 percent in Category III.

Based on past events, post race evaluations, and the more stringent requirements that will be necessary to protect the desert tortoise, there will be a high probability for noncompliance with permit stipulations and a potential adverse effect on the desert tortoise.

There appear to be no reasonable alternative routes that would run from Johnson Valley to Parker and avoid sensitive resource values, especially desert tortoise habitat. Further, no alternative course can be analyzed within the time limit before the event. Because of the impacts, the listing of the tortoise and the degree of public controversy, an [environmental impact statement] will be required, a process which would take approximately 1 year from initiation. * *

The above reasons are cited in summary form. A more complete analysis and discussion is contained in the BLM decision and policy dated February 21, 1990. * * * In that policy paper is expressed the intent to amend the CDCA [California Desert Conservation Area] Plan to permanently remove the course from the plan.

(Decision at 1-2).

The policy paper that accompanies the February 21, 1990, letter referred to in BLM's decision is entitled "Competitive Courses and Corridors Identified within the California Desert Conservation Area Plan (CDCA)." It states as follows the rationale:

These courses and corridors were established and designated to allow off-road vehicle racing events to be held outside of Class I (Open) areas. At the time the * * * CDCA was approved (1980), anticipated environmental impacts were considered to be within acceptable limits. However, over time, and particularly this year, the criteria for judging environmental acceptability have changed. Specifically, with the development of the Bureau's Desert Tortoise Range Management Plan and subsequent emergency listing of the desert tortoise by the U. S. Fish and Wildlife Service in August 1989, it is clear that the Desert Plan decisions and the individual decisions to authorize these events must be reconsidered.

Other concerns common to most of these courses and corridors include environmental impacts caused by noise, dust, reroutes, course straying, and spectator impacts; the inability

to find acceptable course alternatives; and the costs of the event in terms of time and money and the benefits to the public.

(Policy Paper at 1). The discussion specific to this course adds:

Transects outside [the 24 miles of desert tortoise] categorized habitat areas indicate that low density tortoise habitat along several portions of the course. * * * The fact that this race is run in March compounds the problems of protection of the tortoise since it corresponds to the time of year when they are out of winter hibernation and are most active. The potential for tortoises being struck by race vehicles is highest during this period. Based on an event beginning in Johnson Valley and ending near Parker, Arizona, there [do] not appear to be any reasonable alternatives to the route. The proposed route would not affect desert tortoise, private land, wilderness study areas or military reservations."

Id. at 8.

CMC's reasons for appeal are that it had agreed in August 1989 not to use any portion of the Parker 400 race course; that the section of desert tortoise habitat was not defined and an alternative route would certainly exist; that the proposed route was smaller than other events and would therefore be easier to manage and cause significantly less land degradation; that the route was not needed because of the agreement not to use the Parker 400 race course; and that BLM's decision was not timely because it was received only 11 days before the event was scheduled. "We do not feel the B.L.M. has provided reasonable, or timely explanations to deny our land use application. Furthermore, * * * the Riverside office [of BLM] apparently did not know how closely we were working with their Barstow office to minimize environmental impact," (emphasis in original) CMC concludes. It submitted a map showing a new segment of the route passing through the Marine Corps Training Area and a new finish at Danby Dry Lake, west of Parker, Arizona.

BLM's answer states that although there were negotiations between CMC and BLM on the final course routing, CMC did not have a final map and was not aware of a formal decision to remove the Parker 400 loop and therefore based its decision on the map that was submitted with the application. The southern portion of the Parker 400 loop and a segment of the route near Amboy Crater constituted the 24 miles of desert tortoise habitat. Even though the number of entrants was fewer than for other race events, BLM determined the potential impacts could still be significant in light of the listing of the desert tortoise. Controversy about the listing of the tortoise and about the significance of the impacts of long-distance off-highway races were the reasons BLM considered an EIS might be required. "The appellant essentially has submitted a new proposal for its SOR [statement of reasons] which generally gerrymanders a route around tortoise habitat. Whether or not the proposed route would be environmentally acceptable or feasible from a management standpoint

would still have to be determined. The appellant[']s SOR therefore should be viewed as a negotiating alternative to [its application]," BLM concludes (Answer at 1-2).

[1] Special recreation permits are issued under the authority of the Secretary of the Interior to regulate uses of public lands pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b). Regulations governing special recreation use permits are set forth in 43 CFR Subpart 8372. "The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer." 43 CFR 8372.3. BLM has discretion to deny a special recreation permit application if the proposed activity conflicts with BLM's management responsibilities, or programs for management of the public lands involved. Red Rock Hounds, Inc., 123 IBLA 314, 315 (1991); Patrick G. Blumm, 121 IBLA 169, 171 (1991); American Motorcycle Association, District 37, 119 IBLA 196, 197 (1991); Southern California Trials Association, 104 IBLA 141 (1988); Cascade Motorcycle Club, 56 IBLA 134 (1981); Western Expeditions & Tours, 52 IBLA 80 (1981); Southern California Motorcycle Club, 42 IBLA 164 (1979). Absent compelling reasons for modification or reversal, a rejection of an application for a special recreation permit will be affirmed if the decision is supported by facts of record. Red Rock Hounds, Inc., *supra*; California Association of Four-Wheel Drive Clubs, 123 IBLA 361, 372 (1978), *aff'd*, California Association of Four-Wheel Drive Clubs v. Andrus, No. 80-5666 (9th Cir. 1982).

Although it appears from the record that CMC's willingness to alter the route of its proposed event may not have been communicated from the Barstow Resource Area office that was handling the application to the California Desert District Office of BLM that made the decision to deny it, it is also true that the record does not contain any statement from CMC that it intended to amend its application to propose a route corresponding to the map it submitted on appeal. Nor is it clear that crossing the Corps Training Center lands would have been a feasible alternative.

What is clear is that BLM's decision was based on a concern to prevent harm to the desert tortoise, then recently listed as endangered under the Endangered Species Act, 16 U.S.C. § 1531 (1988), at a time it would be emerging from hibernation. In American Motorcycle Association, District 37, *supra* at 199, we stated, quoting California Association of Four-Wheel Drive Clubs, Inc., *supra* at 367-68, that where BLM invokes the Endangered Species Act and the National Environmental Policy Act, 42 U.S.C. § 4321 (1988), to close two corridors of the California desert to ORV use, we will uphold BLM's exercise of discretion "unless appellant has shown that the BLM did not adequately consider all of the factors involved, including whether less stringent alternatives would accomplish the intended purpose, or that there is sufficient reason to change the result." If the proposed timing and route of this event, we believe BLM did consider all factors involved and that protection of the desert tortoise would have required careful examination of the changes to the route suggested on

appeal by CMC even if they had been made before the event. BLM's decision is based on facts of record and the compelling reasons to modify or reverse it. American Motorcycle Association, District 37, supra.

Further, BLM's decision was based on its policy of not approving the use of four motorcycle race courses pending amendment of the CDCA Plan. BLM has authority to deny issuance of special recreation permits pending full environmental study in connection with development of a comprehensive land management plan, pursuant to the multiple-use management provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1732, 1733 (1988). California Association of Four-Wheel Drive Clubs, supra at 368-71. Absent a showing of "compelling reasons" for reversal, BLM's decision is affirmed. Id. at 372. CMC has not shown such reasons.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 1.101, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

James L. Burski
Administrative Judge