RED ROCK HOUNDS, INC.

IBLA 90-271 Decided June 29, 1992

Appeal from a decision of the Lahontan, Nevada, Resource Area Manager, Bureau of Land Management, rejecting special recreation permit application NV-03414-0-04.

Set aside and remanded.

1. Administrative Procedure: Administrative Review--Public Lands: Special Use Permits--Special Use Permits

   The Board will not substitute its judgment for that of the duly authorized BLM official exercising discretion to reject a special recreation permit application on the ground that it conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved where the facts of record support the decision. However, where two criminal convictions which were substantially relied upon as a basis for the BLM decision are reversed on appeal subsequent to the BLM decision, and the record contains little factual detail of the basis for rejection, the case is properly remanded.

APPEARANCES: Bruce W. Thee, Reno, Nevada, for appellant; William A. Molini, Reno, Nevada, for intervenor State of Nevada Department of Wildlife.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Red Rock Hounds, Inc., (Red Rock) has appealed from a decision of the Lahontan, Nevada, Resource Area Manager, Bureau of Land Management (BLM), dated February 15, 1990, rejecting an application for renewal of special recreation permit NV-03414-0-04. This application was filed by appellant on October 24, 1989, seeking authorization to conduct several English-style fox hunts on public lands. Instead of foxes, appellant explained, coyotes would be hunted. The nature of these "fox hunt events" was described in an environmental assessment (EA) (NV-030-87-54) prepared by BLM in 1987:

During these events approximately 10 to 15 riders on horseback pursue a coyote, which a pack of about 20 foxhounds has flushed,

> on a cross-country chase. Each pursuit lasts until the coyote either eludes the hounds, enters terrain where the horses cannot follow or becomes tired, at which time the hounds are recalled. The coyote is not caught, injured or run to the point of exhaustion. No firearms are used during the course of the hunt.

(EA at 1). Bedell Flats was specifically identified as the site of the proposed hunt on the application and the attached map. 1/ Lynn Lloyd and appellant were each named as applicants on the face of the permit application.

In reaching his decision, the Area Manager stated that he had reviewed all pertinent information in the files, input received during the scoping process, the applicable land use plan, and discussions with the Nevada Department of Wildlife (NDOW). These discussions focused on two convictions of Lloyd under Nevada Revised Statutes (NRS) 503.631. This provision states that "[i]t is unlawful for the owner of any dog to permit such dog to run at large if such dog is actively tracking, pursuing, harassing, attacking or killing any deer within this state."

Based on this review, BLM determined that appellant's proposed activity jeopardized the welfare of the Lassen-Washoe interstate deer herd and, therefore, was not in conformance with the Lahontan Resource Management Plan. This plan, dated September 5, 1985, incorporates the Lassen-Washoe Wildlife Habitat Management Plan (HMP), which itself calls for continued "protection of crucial seasonal wildlife habitat by not issuing special recreational use permits for dog trials or other similar events in identified crucial areas * * * during the winter and early spring." Id. at 8. A primary purpose of the HMP, BLM explained, is to prevent unnecessary harassment of the Lassen-Washoe interstate deer herd during the period when it is under the greatest biological stress. For this reason, the Sand Hills area, located within crucial deer habitat, was closed (Decision at 2).

The BLM decision found that Lloyd's two convictions under NRS 503.631 demonstrated appellant's inability to control its pack of hounds. These convictions and appellant's failure to keep its hounds within areas authorized by stipulations developed in EA NV-030-87-54 and incorporated in prior permits were held by BLM to indicate that appellant's activity is inconsistent with the purpose for which the public lands are managed (Decision at 2). To grant NV-03414-0-04, BLM held, would be contrary to the reasons for the Sand Hills closure and would not conform to the Lahontan Resource Management Plan. Regulation 43 CFR 1610.5-3(a) requires that all "resource management authorizations and actions * * * conform to the approved plan," BLM noted. Also cited by the agency was regulation 43 CFR 8372.3, which provides that "approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer."

1/ The application also identified public lands in Smith Valley, but Red Rock later expressed the intention not to use these public lands. See Letter to BLM dated Jan. 8, 1990.

The record discloses that the area sought by appellant for its hunt, Bedell Flats, is outside of, but adjacent to, crucial deer habitat. BLM stated in its 1987 EA that "critical deer winter range virtually surrounds" Bedell Flats (EA at 3). During a hunt, appellant explains, Lloyd is the huntsman who directs 15-20 hounds in the chase. She is assisted by two or three "whips," who ride on the right and left of the hounds and push the hounds back to the huntsman if they stray from the area allowed. An average of 15 riders, including the huntsman and whips, accompany the hounds, appellant states. Hunts are conducted twice per week and last from 2 to 4 hours.

In its statement of reasons (SOR) for appeal, appellant states that it is error to attribute any conviction of Lloyd to Red Rock Hounds, Inc. Appellant is a separate legal entity, a tax-exempt corporation under section 501(c)(7) of the Internal Revenue Code, appellant states. Red Rock Hounds, Inc., is not owned by Lloyd, although she serves as its president (Response to Ex Parte Communication, Aug. 16, 1990, at 1).

A large part of appellant's pleading is devoted to an analysis of the circumstances leading to Lloyd's two convictions for violation of NRS 503.631. Appellant challenges the adequacy of the facts related in the record to establish that its dogs were in fact chasing deer. Appellant has subsequently informed us, by a pleading filed on March 29, 1991, that each of these convictions has been reversed by the Second Judicial District Court, Washoe County, Nevada. Appellant reports that all charges of chasing deer against Lloyd and Red Rock Hounds have been dismissed.

Appellant contends the potential for harassment of mule deer actually would be reduced by approval of the instant application for use of Bedell Flats which is public land in T. 23 N., R. 19 E., Mount Diablo Meridian. When this area has not been available, appellant states, the hunt was "forced to use" private land in Red Rock Valley (SOR at 5). Red Rock Valley is owned by approximately 130 families, some of whom have livestock and fence their property. Because of the various impediments, fences and private lands, the whips have a much more difficult time maintaining control of the hounds in this situation. Id. Not once, however, has BLM observed a violation of permit stipulations (regarding chasing mule deer) when hunts have been allowed on Bedell Flats, appellant states.

On May 15, 1990, NDOW filed a letter submitting its views on the appeal. NDOW noted that it "strongly agrees with the denial" of appellant's application, citing the convictions of Lynn Lloyd in local criminal court for allowing her hounds to track and chase mule deer on public land in an area that is considered critical deer winter range, in separate incidents on November 20, 1988, and May 31, 1989. 2/ NDOW noted that the Lassen-Washoe interstate deer herd has decreased for

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2/ NDOW seemed to indicate that appellant had also been convicted, but the record does not indicate that this is the case.

several reasons, including man's activities. It asserted that appellant's business has been operating in the Red Rock Valley since 1980 and that numerous complaints have been filed on a variety of subjects, including dogs chasing deer. It stated that appellant "has not been able to control their hounds and in numerous cases the hounds have been picked up by neighbors and turned over to Washoe County animal control." NDOW alleged that, when "the hounds get away from the horse riders[,] it might be days before the hounds make their way back to Lloyd's residence. In the meantime the hounds chase deer and other animals until the dogs are at the point of exhaustion."

On May 24, 1990, NDOW filed a formal request to intervene in support of BLM's decision. By order dated July 16, 1990, copies of NDOW's pleadings were served on appellant which was allowed an opportunity to respond. Appellant has replied that it does not hunt on critical deer winter range, but outside that area. Further, appellant asserts that the convictions (which were subsequently reversed) did not stem from the conduct of the hunt. Appellant has not opposed the motion to intervene.

Under the regulations, any "adverse parties" named by BLM in its decision have the right to file an answer in support of the correctness of BLM's decision. See 43 CFR 4.413(a) and 4.414. An "adverse party" to an appeal is one who will be disadvantaged if the appellant prevails before the Board. Beard Oil Co., 105 IBLA 285, 287 (1988). In view of NDOW's duty to protect the Lassen-Washoe deer herd and its participation in BLM's consideration of appellant's application, NDOW was clearly an adverse party and might have been named as such in BLM's decision. BLM's failure to do so does not prevent NDOW from participating, however, as it is well established that a party having an interest in an appeal may be allowed to intervene. See, e.g., Lloyd Heger, 121 IBLA 321, 324 (1991); Beard Oil Co., supra at 287. Accordingly, the motion of NDOW to intervene is granted.

[1] Special recreation permits are issued under the general authority of the Secretary of the Interior to regulate the use of the public lands, pursuant to section 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1988). American Motorcycle Association, 119 IBLA 196, 198 (1991). Regulations guiding the issuance of such permits are set forth in 43 CFR Subpart 8372. As noted by BLM, approval of an application and issuance of a special recreation permit is discretionary with the authorized officer. 43 CFR 8372.3.

The record reveals that on at least two prior occasions BLM has exercised its discretion to grant a special recreation permit to appellant. These permits authorized hunts on Bedell Flats and Smith Valley during the 1987-88 and 1988-89 hunt seasons. Acknowledging that "certain problems [were] encountered during the 1988-89 hunt season with respect to compliance with the terms of the permit," BLM sought comments from potentially affected parties upon receipt of application NV-03414-0-04. On January 9, 1990, NDOW wrote BLM to say that Lloyd had been convicted

on September 7, 1989, and again on December 21, 1989, of violating NRS 503.631. 3/

Two days after receipt of NDOW's letter, BLM informed appellant by letter of January 11, 1990, that "it would be inappropriate to authorize your activity on any public lands in the vicinity of the identified critical deer winter range due to the continuing potential for harassment of wildlife." In so holding, BLM relied upon Lloyd's two convictions and certain unspecified misconduct suggested by prior correspondence dated January 10, 1989. This prior correspondence stated:

> Any further incident of wildlife harassment, whether it results from a permitted event or an event on private lands, or unauthorized use of the public lands by either members of the hunt or your hounds, cannot be tolerated and will result in issuance of a citation and/or suspension of your permit.

The effect of BLM's January 11, 1990, letter was to deny application NV-03414-0-04 insofar as lands in Bedell Flats were concerned. The letter further indicated that if appellant were still interested in receiving a permit for lands in Smith Valley, it should file certain information, e.g., fees, proof of insurance, etc.

On January 16, 1990, appellant wrote to BLM stating that it did not have plans to hunt in Smith Valley. A meeting on February 8, 1990, attended by representatives of appellant, BLM, and NDOW failed to produce a suitable compromise. On February 15, 1990, BLM issued the decision which is the subject of this appeal.

Case law makes clear that BLM has the discretion to reject an application for a special recreation permit if the proposed use conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved. American Motorcycle Association, supra at 199; Cascade Motorcycle Club, 56 IBLA 134, 137 (1981). Rejection of an application will be affirmed where the decision is supported by facts of record, in the absence of compelling reasons for modification or reversal. National Public Lands Task Force, 70 IBLA 214, 216 (1983).

Our review of the record reveals that Lloyd's two convictions were substantially relied upon in BLM's decision to reject NV-03414-0-04. Other factors may have entered BLM's analysis, but these factors are only obliquely referred to. Mentioned repeatedly in the correspondence

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3/ Although the Sheriff's Office indicated there have been other problems involving Red Rock and Lloyd in conflicts with private landowners regarding the hounds crossing private property, the Sheriff's Office had "no problem with the issuance of the Special Recreation Permit to the Red Rock Hounds, particularly since the riding area is in Bedell Flat, which is a good distance from the area in which the problems between Ms. Lloyd and her neighbors have occurred." Letter of Nov. 8, 1989, from Washoe County Sheriff's Office to BLM District Manager.

are the convictions. Where, as here, these convictions are reversed and all charges dismissed, rejection of NV-03414-0-04 is no longer supported by well-articulated facts of record. BLM's decision of February 15, 1990, is, accordingly, set aside and remanded.

Two observations are necessary here. First, we wish to make clear that rejection of NV-03414-0-04 may be supported by facts far short of conviction for violation of a Nevada statute. Violation of a permit stipulation itself is grounds for suspension of a special recreation permit. Patrick G. Blumm, 116 IBLA 321, 336 (1990). 4/ Had BLM more carefully described the events, apart from the convictions, that affected its decision, a different result might be in order. Our difficulty in discerning such events is caused in part by the agency's failure to include any documents in the record, with the exception of EA NV-030-87-54, dated September 1987, that predate appellant's October 24, 1989, application. Further, it should be recognized that we will not substitute our judgment for that of the BLM official duly authorized to exercise the discretion where the basis for that decision is clear in the record:

> Where conflicting uses of the public lands are at issue and the matter has been committed to the discretion of the BLM, the Board will uphold the decision of the BLM 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 * * *.

California Association of Four-Wheel Drive Clubs, Inc., 38 IBLA 361, 367-68 (1978), quoted in American Motorcycle Association, supra at 199.

Notwithstanding the broad discretion vested in BLM in matters such as this, the decision is properly remanded where the basic predicate of the decision has been subsequently altered. Hence, application NV-03414-0-04 is remanded to BLM for preparation of a new decision. If appellant is no longer interested in the application, it shall immediately inform the agency. Although BLM's grant or denial of an application is discretionary, the exercise of that discretion must be supported by facts of record. See Supron Energy Corp., 46 IBLA 181, 187 (1980). Such facts shall be clearly set forth, and the agency shall particularly identify any violation of stipulations attached to prior permits. 5/

4/ Cf. 43 CFR 8372.5(f) which states that conviction of a violation of any Federal or State law or regulation "concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities that is related to" the special recreation permit may result in cancellation of the permit.

5/ Appellant's representative, Bruce W. Thee, acknowledges in a letter dated Jan. 16, 1990, that Lloyd exercises the hounds throughout the year without the help of outriders. This situation makes it easier for the hounds to chase wildlife than during the formal hunts when generally 2-4 outriders help control the hounds, Thee writes. If BLM finds such conduct to be a violation of permit stipulations or of 43 CFR 8372.1, it shall plainly state.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Lahontan Area Resource Area Manager is set aside and the case is remanded.

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C. Randall Grant, Jr.
Administrative Judge

I concur:

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David L. Hughes
Administrative Judge