

CASCADE MOTORCYCLE CLUB

IBLA 81-125

Decided July 20, 1981

Appeal from decision of District Manager, Prineville District, Oregon, Bureau of Land Management, rejecting application for special recreation use permit. OR 050-TUP-1-1.

Affirmed.

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

The issuance of special use permits is discretionary, and BLM may properly reject a permit application for an organized off-road motorcycle race where the proposed use would adversely affect critical deer winter range and would be inconsistent with the objectives, responsibilities, or programs for the management of the public lands involved.

APPEARANCES: Larry Ulrich, President, Cascade Motorcycle Club, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Cascade Motorcycle Club has appealed from a decision of the District Manager, Prineville District, Oregon, Bureau of Land Management (BLM), dated October 16, 1980, rejecting its application for a special recreation use permit, OR 050-TUP-1-1, in order to hold a motorcycle

race with approximately 100 participants on December 14, 1980. ^{1/} The proposed site of the race was an area north of Highway 20 within the Millican Valley Off-Road Recreation Vehicle (ORV) Management Area. The rationale for the decision was that "the area north of Highway 20 is open to organized races from March 16 through November 30." The decision further states: "The area north of Highway 20 * * * has been identified in the Millican Valley ORV Management Plan as a critical deer winter range and is the basis for closure to organized ORV events in the winter months."

In its statement of reasons for appeal, appellant contends that the area north of Highway 20 was improperly closed to ORV use during the winter months because motorcycle racing is not incompatible with deer herds. Larry Ulrich, President of the Cascade Motorcycle Club, argues on behalf of appellant:

I have spent a greater part of my life in the woods on foot, driving trucks, and riding motorcycles. Deer are not bothered by vehicles. They are curious about vehicles and only when chased are they bothered at all. There has never been any proof that closing an area to vehicles is beneficial to the deer herds. * * * Casual users are more likely to harass deer than a racer intent on staying on a marked race course. [Emphasis in original.]

Appellant states that the "big concentration of deer in the winter is 6 miles west and on the South side of highway 20." Appellant also correctly points out that BLM erroneously stated that the area north of Highway 20 "is open to organized races from March 16 through November 30." Organized ORV events are authorized in that area from March 15 to April 30 and between September 1 and November 30.

Appellant further argues that racing only takes place during the winter months and the "South side is very wide open and extremely cold during December, January, and February," while the "north side is more protected and speeds are lower, resulting in a more comfortable day of racing."

Millican Valley, a 94-square mile area located 20 miles east of Bend, Oregon, has been popular with ORV enthusiasts for about 18 years. In July, 1978, BLM prepared an Environmental Assessment (EA) for the Millican Valley ORV Management Area. The EA described the

^{1/} The date for holding the race has passed. Accordingly, as to this particular race, the case is moot. However, we believe that appellant generally challenges the policy behind rejection of its application. It is to this question that we address ourselves, infra.

existing environment, discussed the impact of ORV use on the environment, and assessed several alternatives for managing ORV use, including a proposed action. The proposed action provided for up to eight organized ORV events, with dates for those events for the area north of Highway 20 being September 15 through November 30 and April 1 through April 30 (EA at 7). The EA noted that the area is "not considered to be prime mule deer habitat. Populations are low during most of the year, but during the winter months have averaged as high as 1,000 animals north of U.S. 20 and 150-200 south of the highway" (EA at 25). Portions of the racecourse sought by appellant go through "major" deer winter range depicted on a wildlife habitat map (EA at 26). 2/

Regarding impact, the EA reports that "[o]rganized ORV events have not had a significant adverse impact on mammals. Moderately used trails have provided more food variety by creating edge effect. The proposed action, which continues to prohibit races during critical periods, i.e., * * * winter north of U.S. 20, will continue to have little or no adverse affect on big game animals" (EA at 53). The EA lists prohibition of "unorganized ORV use on deer winter range between December 1 and March 30 to prevent disturbance and stress" as a possible mitigating measure, but does not recommend it (EA at 60, 63).

BLM then prepared a draft management plan, Millican Valley ORV Management Plan (MP), and solicited comments. By letter dated September 13, 1978, appellant commented on the proposed decision to close the area north of Highway 20 to organized ORV use during the winter months: "The North side of the highway should not be closed in the winter. The deer herd in this area is a resident herd and is not bothered by motorcycle activity. The big deer herds are just West of Horse Ridge and South of Highway 20" (MP, Public Comment section).

In the final MP issued December 1978 BLM responded: "Information and input by the Oregon Department of Fish & Wildlife and the Prineville BLM District Wildlife Biologist as described in the environmental assessment indicate that ORV activities during the months of December, January, February, and March have a significant detrimental impact on wintering wildlife" (MP, Public Comment section). (Emphasis added.)

The MP essentially adopted the proposed action discussed in the EA, limiting organized ORV events north of Highway 20 to the periods between September 15 and November 30 and April 1 and April 30. The MP offered the following analysis: "The northern portions of the area (West

2/ In comparing the map of the racecourse attached to the application with the map in the EA, the areas where the racecourse goes through deer winter range are secs. 25 and 36, T. 18 S., R. 14 E.; secs. 19 and 31, T. 18 S., R. 15 E.; and secs. 4-6, 9-10, 16, 21-22, and 27, T. 19 S., R. 15 E., Willamette meridian, Deschutes and Crook Counties, Oregon.

Butte and Bear Creek Buttes) are important deer winter ranges. Winter range in this area is critical because of the loss of winter range east of Bend due to population growth and development" (MP at 13). (Emphasis added.)

Subsequently, the seasonal limitation on organized ORV events was revised and notice thereof published in the Federal Register. The notice stated: "Organized ORV events will be authorized in approximately the north half of the area between September 1 and November 30 and from March 15 to April 30. * * * The north area will then be closed to all off-road vehicle use from December 1 to March 15." 44 FR 55665 (Sept. 27, 1979). (Emphasis added.) 3/

[1] Special use 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 (FLPMA), 43 U.S.C. § 1732(b) (1976). Special recreation use permit requirements are set forth in 43 CFR Subpart 8372. See 43 CFR 8344.1 (ORV use). The applicable regulation, 43 CFR 8372.3, regarding issuance of special recreation use permits, provides: "The approval of an application and subsequent issuance of a special recreation permit is discretionary with the authorized officer."

Accordingly, BLM has the discretion to reject a special recreation use permit application if the proposed use conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved. See Whitewater Expeditions & Tours, 52 IBLA 80 (1981), and cases cited therein.

Rejection of an application for a special recreation use permit will be affirmed where the decision is supported by facts of record, in the absence of compelling reasons for modification or reversal. See California Association of Four-Wheel Drive Clubs, Inc., 38 IBLA 361 (1978); cf. Dell K. Hatch, 34 IBLA 274 (1978).

3/ The case file also contains an undated one page statement entitled "Supplemental Information Millican Valley Off-Road Area." It states in relevant part:

"Since the initial drafts of the Environmental Analysis and management plan the December 1 closing date for the north area has not been changed. Wildlife Biologist and the Oregon Department of Fish and Wildlife have recognized the north area as critical mule deer winter range. It should be noted that another deer winter range exists adjacent to the south area on the Deschutes National Forest. The National Forest area is also used for ORV events on a regulated basis and is closed each fall as of November 1." (Emphasis added.)

The record supports BLM's decision to reject appellant's application. It indicates that a substantial portion of the racecourse would go through deer winter range, which has been designated as "critical," and that ORV activity during the winter months would have a "significant detrimental impact." Protection of wintering herds of wildlife is in the public interest. L. A. Idler (Supp.), 28 IBLA 8 (1976).

Appellant has offered nothing on appeal to suggest that a wintering herd of deer would not be adversely affected by an organized ORV race, other than the personal experience of Larry Ulrich. We cannot hold that appellant has presented compelling reasons for modification or reversal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge