

NATIONAL PUBLIC LANDS TASK FORCE
NEVADA OUTDOOR RECREATION ASSOCIATION, INC.

IBLA 83-86

Decided January 24, 1983

Appeal from a decision of the Nevada State Office, Bureau of Land Management, dismissing a protest against the issuance of special recreation use permit, N2-1-83.

Affirmed.

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

The issuance of special use permits is discretionary, and BLM may accept or reject a permit application depending upon its consistency with the objectives, responsibilities, or programs for the management of the public lands involved. Where a duly authorized officer has exercised this responsibility, his actions will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

2. Administrative Practice -- Federal Land Policy and Management Act of 1976: Public Participation

The public is properly included in formulation of resource and land management plans under the directive of the Federal Land Policy and Management Act of 1976, but such public participation is not mandatory for the discretionary issuance of a special use permit which accords with the prevailing management plan for the public lands involved.

APPEARANCES: Charles S. Watson, Jr., Director, National Public Lands Task Force, Nevada Outdoor Recreation Association, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The National Public Lands Task Force, Nevada Outdoor Recreation Association, Inc., appeals a decision of the Nevada State Office, Bureau of Land Management (BLM), dated October 18, 1982, dismissing its protest against the issuance of special recreation use permit, N2-1-83, for a land speed record attempt on the Black Rock Desert, Nevada. In a letter dated October 5, 1982, Thrust Cars Limited (Thrust), a British organization exclusively involved in attempts to break the land speed record, contacted BLM requesting a "special land use permit" to conduct timed speed runs on Black Rock Desert, Nevada.

In 1981, Thrust conducted speed runs on nearby Bonneville Salt Flats, Utah, but was prematurely halted by early seasonal flooding. Timed speed runs were scheduled to commence September 1982 at Bonneville, but Thrust again met with adverse flooding conditions. Thrust then contacted BLM concerning Black Rock Desert as an alternate site.

A land and environmental assessment report was compiled for 1,455 acres requested for use in Pershing and Humboldt Counties, Winnemucca District, Nevada. Nine BLM officers approved the completed environmental assessment report (EAR) and the permit was granted on October 14, 1982. On October 15, appellant submitted a written protest against issuance of the permit based on its assertions that the proposed use would harm the sensitive environment of the Black Rock Desert area. In a decision dated October 18, BLM denied appellant's protest and request for a stay with the reasoning that all of the environmental concerns posed by appellant had been adequately dealt with in the EAR, which recommended approval of the permit.

Appellant's foundation for its objections is its own investigative work of over 20 years in consideration of the Black Rock Desert as a possible wilderness study area and an area of critical environmental concern. It refers to a Nevada survey, which it conducted, that identifies rare and fragile natural resources in the vicinity. Appellant also questions the amount of time involved in preparing the EAR, alleges a lack of public involvement, and claims that the Winnemucca District plans for the Black Rock Desert does not allow for offroad vehicular (ORV) events.

Appellant's list of concerns was addressed by BLM in its October 18, 1982, decision by references to the EAR. It was noted that the area of the proposed speed runs has never been designated as an area of critical environmental concern or as a wilderness study area. Sensitive plant life, geothermal springs, and cultural and historical sites were discussed in the EAR, which found those critical areas to be placed at a safe distance from the proposed area of use. The foremost concern expressed in the EAR is that this particular authorization may precipitate increased off-road events in the area and the cumulative effect of those events. The EAR reasoned that all future requests for special recreation uses must be carefully analyzed on a case-by-case basis similar to the process used in this evaluation.

BLM made use of data extracted from previous EAR's in preparing this EAR in an expeditious fashion. The Winnemucca District's Management Framework Plans (MFP) for 1972 and 1982 were referred to, and no provisions were found in either plan that would

prohibit the issuance of the permit for the use

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requested. The 1972 MFP, the prevailing plan of the time of the report, provides that ORV events such as speed runs can be authorized on a case-by-case basis. Besides contacting local government officials, BLM relied upon public input concerning vehicular use on the Black Rock Desert received during the planning process for Winnemucca District MFP.

Thrust's proposed speed runs will be monitored by the United States Auto Club (USAC), which requires strict safety precautions, a fact considered in issuing the permit.

Several special stipulations were imposed upon the permit, including a performance bond, minimum insurance coverage, and assurances that the area will be left in as near a natural state as possible. No permanent facilities will be constructed and no special surface preparations will be needed to conduct the speed trials. Mileposts are to be marked with removable flags and the course created by driving another vehicle along the route. The EAR concluded that the immediate impact would be of no greater consequence than current uses and, because of natural conditions, no lasting effects should occur.

[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). 43 CFR 8372.3 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 depending on whether the proposed use agrees or conflicts with BLM objectives, responsibilities, or programs for management of the public lands involved. Cascade Motorcycle Club, 56 IBLA 134 (1981).

Acceptance or 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. In California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978), ^{1/} the appellants appealed from two decisions of the California State Director closing two corridors in the California desert to ORV use. In the area subject to the closure order were four endangered and one threatened species of plants. Closure was ordered by BLM, invoking the Endangered Species Act, 16 U.S.C. § 1531 (1976), and the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 (1976). Therein at pages 367-68, we said:

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 result. Cf. Questa Petroleum Co., 33 IBLA 116 (1977); Rosita Trujillo, 20 IBLA 54 (1975).

^{1/} Affirmed, California Ass'n of Four-Wheel Drive Clubs v. Andrus, No. 80-5666 (9th Cir.

Jan. 22, 1982).

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Appellant does not meet this burden by merely advancing another point of view. It is not enough on appeal to simply express disagreement with BLM's actions. The action of BLM required a considerable exercise of judgment in weighing competing interests and in devising what it regarded as a workable solution to the problem.

Similar statements were voiced by this Board in Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). Therein, Leaumont protested BLM's decision not to recommend certain areas for further wilderness study. On appeal, Leaumont continued to take exception with BLM's findings, many of which involved the subjective determination of whether a wilderness inventory unit possessed outstanding opportunities for solitude. In response to appellant's arguments, we stated at page 491:

These evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

In Leaumont, supra, the Board quoted a passage from Rosita Trujillo, 21 IBLA 289, 291 (1975), for a proposition useful here:

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Since the record at hand shows that BLM has reasonably considered alternatives and justified their choice of action in this matter, we find no compelling reason to alter that determination.

[2] Appellant asserts that "[t]he public's right to participate in the rule-making process was disregarded." BLM acted to issue a special use permit under 43 CFR Subpart 8372. As noted, the approval of an application under this regulation is discretionary with the authorized officer. Departmental regulation does not address direct public participation for issuance of a special recreation use permit. However, the records indicate that BLM did contact local government officials concerning the permit. Furthermore, BLM relied upon the District's MFP for an indication of public attitude. Public participation is a required part of the process to achieve a working land management plan. See 43 U.S.C. § 1712(a), (f); 43 CFR 1601.3. The decision to issue the special recreation permit was merely an application of the District's MFP and not the formulation of the plan itself. While

appellant's comments may have been useful during the period of public participation, it was not necessary for BLM to solicit appellant's involvement in the issuance of this permit. Appellant has failed to convincingly show error in the process BLM used to evaluate the permit application.

Accordingly, 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.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

