

WALT'S RACING ASSOCIATION

IBLA 75-90 (Supp.)

Decided October 22, 1975

Appeal from decision of the Las Vegas District Office, Bureau of Land Management, denying appellant's protest against the imposition of a revised fee assessment for Special Land Use Permit 5/
-74-35.

Affirmed.

1. Applications and Entries: Vested Rights -- Fees -- Special Use Permits

An applicant's special land use permit application does not fall within a Bureau of Land Management instruction memorandum exception which permits the honoring of past "negotiations which have progressed too far to negate," in lieu of the new revised fee assessment required by the memorandum for off-road vehicle events, where at the time of issuance and notice of the memorandum only preliminary negotiations had occurred which could still be negated.

APPEARANCES: Joseph W. Brown, Esq., of Jones, Jones, Bell, LeBaron, Close & Brown, Las Vegas, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Walt's Racing Association has appealed from a decision of the Las Vegas District Office, Bureau of Land Management (BLM), dated July 7, 1975, denying for a second time appellant's protest against imposition of a revised fee assessment required by BLM Instruction Memorandum No. 74-60, February 21, 1974, which imposes a 5-percent payment on the gross receipts for special land use permits issued for organized off-road vehicle events.

This case was initially considered by the Board in Walt's Racing Association, 18 IBLA 359 (1975), in which the pertinent issues are fully set out. In the previous decision the Board concluded, in part, that the case should be remanded to BLM to determine whether the appellant's February 11, 1974, application for the April 26-28, 1974, event fell within the instruction memorandum's fee exception which provided that "negotiations which have progressed too far to negate will be honored." BLM was instructed to issue a decision on the matter subject to appellant's right to appeal.

[1] In its second decision, BLM set out criteria for, and measured appellant's application against, the instruction memorandum's fee exception as follows:

The negotiations which can normally be expected in the processing of a Special Land Use Permit - Recreation, will include but not necessarily be limited to the following:

1. Negotiations at the time of application for an event concerning course routing, applicant's responsibilities, and known constraints.
2. Negotiations between applicant or BLM with other government agencies (Federal, State and Local), interested private parties, for the purpose of land use conflict identification and resolution.
3. Negotiations concerning and made necessary by the findings of the Cultural Resources Report and Environmental Analysis Record. (These would include but not be limited to re-scheduling of the event if necessary to allow sufficient time for completion of an Environmental Impact Statement, explanations for permit denial if appropriate, and discussions concerning means of implementing mitigating measures identified in the above reports.)
4. Negotiations at the time of S.L.I.P. issuance to clarify or explain the Special Conditions normally included in a Special Land

Use Permit-Recreation. (These conditions would normally include the applicable rental fee schedule.)

5. Negotiations during and after the event concerning the implementation of Special Conditions included in the Special Land Use Permit.

At the date this District Office received IM 74-60 negotiations had progressed through the first stage identified above only.

The Special Land Use Permit for the Bonnie & Clyde 350 could have been denied for appropriate reasons identified at any time up to the fourth stage listed above, that is, at any time prior to permit issuance.

For the above reasons, it is determined that negotiations concerning the Bonnie & Clyde 350 of April 26 - 28, 1974, had not progressed at the date Mr. Lott was notified of the requirements included in IM 74-60, too far to negate. Under the criteria identified above, any negotiations performed up until April 25, 1974, were negatible.

We find that BLM applied a reasonable analysis for determining when it is proper to apply the memorandum's exception for "negotiations which have progressed too far to negate," and we concur with the conclusion that appellant's application did not fall within this exception. Accordingly, appellant's protest against the imposition of a revised fee assessment was properly denied.

In its present appeal, appellant reiterates arguments which the Board rejected in Walt's Racing Association, supra. We adhere to our holding in that decision, namely, that the filing of an application for a special land use permit does not vest in the applicant any rights which preclude BLM from requiring compliance with fee assessments adopted after the date of such filing but before issuance of the permit.

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

Martin Ritvo
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge

