

BAJA MOTOR SPORTS

IBLA 77-194

Decided September 12, 1977

Appeal from decision of Riverside District Office, Bureau of Land Management, Riverside, California, partially denying Special Recreation Use Permit CA-060-SR7-1.

Affirmed.

1. Public Land: Special Use Permit--Special Use Permits

The issuance of a special use permit is discretionary, and the Bureau of Land Management properly exercises that discretion where it denies permits for three of four ORV events on the ground that lack of funds, time, and manpower would impede processing of applications and preclude preparation of the requisite environmental analysis records.

APPEARANCES: Bill Martin, for appellant, Baja Motor Sports.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Baja Motor Sports appeals from the January 10, 1977, decision of the Riverside District Office, Bureau of Land Management (BLM), Riverside, California, partially denying a special recreation use permit 1/ for conducting off-road vehicle (ORV) events in the El Centro Resource Area during the 1977 calendar year.

1/ Special land use permits have been issued to authorize beneficial use of public lands in situations where there is no provision of a law that may be invoked. 43 CFR 2920.0-2. However, § 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701, 1732(b) authorizes the Secretary to regulate the use of public lands "through easements, permits, leases, licenses, published rules, or other instruments as [he] deems appropriate."

On October 1, 1976, appellant filed a special recreation use application for four ORV events planned for January, May, August, and October of 1977.

The District Office denied the request for three of the four events on the grounds of lack of funds, time, and manpower to process the applications and prepare the required environmental analysis records. In the decision the District Office pointed out that the sponsors of ORV events had been earlier apprised that they could apply for no more events in 1977 than they had held in 1976, and that applications exceeding that number would not be processed. Appellant ran one event in 1976, and the District Office granted its request for the January 1977 event. Appellant, however, canceled that event due to bad weather, and the District Office agreed to let it reschedule at a later date.

On appeal, the appellant takes issue with the District Office's determination for the following reasons:

- 1) No other area is available for appellant's type of event;

fn. 1 (continued)

On December 14, 1976, the Associate Director, BLM, issued Organic Act Directive No. 76-15 entitled: "Interim Guidance for the Processing of Right-of-Way and Temporary Use Permit Applications" under PL 94-579, the "Federal Land Policy and Management Act of 1976" (the Act).

It provides that all temporary use permits (TUPS) will be processed in accordance with the following guidance:

* * * * *

"Secs. 302(b) and 504(a). L. Part 2920 - Temporary Use Permits

"1. Special land use permit authority is no longer applicable. Temporary use permits (TUPS) will be granted under Sec. 504(a) of the Act for any temporary land uses associated with rights-of-way deemed appropriate by the Authorized Officer.

"2. Temporary use permits may be issued under Sec. 302(b) for land uses not associated with rights-of-way. Until new regulations are issued, permits will be confined to short-term actions and/or temporary facilities where long-term tenure is not appropriate.

"3. Part 2920 regulations and BLM Manual procedures shall be utilized for the processing of TUP applications for land uses up to one (1) year permitting period.

"4. We are exploring the feasibility of converting present seismic exploration procedures (43 CFR 3045) to temporary use permits under 43 CFR 2920. Further guidance will be forthcoming."

- 2) Since the same area would be used for each event no new impact studies would have to be made;
- 3) Appellant's ORV fraternity is being denied its right to the use of a desert area; and
- 4) Lack of manpower in the District Office is not the fault of appellant.

[1] The Board has in several decisions held that the issuance of a special land use permit is discretionary. 2/ The BLM, exercising its discretion, authorized one of the four ORV events applied for by appellant, and stated sound reasons for its denial of the others. We find its determination to be neither arbitrary nor unfair to appellant's ORV fraternity. The BLM is responsible for administering resource lands in the public interest as a whole. That interest may include not only other ORV promoters, but other uses as well of the lands in question.

Accordingly, we hold that the District Office properly denied, in part, Special Recreation Use Permit CA-060-SR7-1.

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.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge

2/ See e.g., Wyoming Highway Department, 14 IBLA 258 (1974); Jerry Tecklein, 20 IBLA 308 (1975); Department of the Navy, 29 IBLA 324 (1977).

