

SIERRA CLUB

IBLA 81-244

Decided August 31, 1981

Appeal from decision of the California Desert District, Bureau of Land Management, rejecting jurisdiction of appellant's protest. CA-060-SR-9-4XX.

Affirmed as modified.

1. Appeals -- Rules of Practice: Appeals: Effect of

When an appeal to the Board of Land Appeals from a decision made by an official of the Bureau of Land Management is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the subject matter of the appeal until jurisdiction over the case is restored by Board action disposing of the appeal.

APPEARANCES: Laurens H. Silver, Esq., Stephan C. Volker, Esq., San Francisco, for appellant; Lawrence A. McHenry, Esq., Office of the Solicitor, Riverside, California, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

On October 10, 1980, appellant and other plaintiffs filed suit in the District Court for the Eastern District of California, seeking injunctive and other relief to enjoin the California Desert District Office, Riverside, California, Bureau of Land Management (BLM), from issuing a permit for an off-road motorcycle race across public lands beginning at Johnson Valley, California, and ending 15 miles west of Parker, Arizona, scheduled for October 25, 1980. 1/

On October 22, 1980, BLM issued a special use permit authorizing the race to the Checker's Motorcycle Club of the American Motorcycle

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1/ Judge Hill entered judgment on Apr. 3, 1981, dismissing the complaint as moot following a hearing held Mar. 30, 1981.

Association, Inc., District 37. 2/ The permit specified that a "mass start motorcycle race [could be conducted] on October 25, 1980, or any weekend in Nov. or Dec., 1980 or Jan. or Feb. 1981, except on the weekend of the Parker 400 race." On the same day, but after the permit was issued, the court held a hearing on appellant's plea for injunctive relief. Appellant asserts in its statement of reasons that: "The Court ruling orally from the bench, denied plaintiffs' motion for preliminary injunction but commented that it was doing so only on the assumption that the [BLM] permit authorized the [race] as a 'one-time only' event."

Also on October 22, appellant filed with BLM a notice of appeal of the decision to issue the permit. 3/ On being advised that an appeal was an inappropriate mechanism to initiate review of the decision, appellants filed a protest the next day. In response to notice of appeal, the district manager advised to the following in his letter of October 24, 1980.

On October 22, 1980, I received your notice of appeal in the above entitled matter. In view of the fact that you have brought suit in the United States District Court for the Central District of California in Sierra Club, et al. vs Andrus et al., CV-80-4604-IH, seeking to enjoin the race which is the subject of your appeal, and on advise [sic] of counsel, I am returning the appeal to you. The United States District Court for the Central District of California would appear to have exclusive jurisdiction of the subject matter of your appeal and indeed has exercised that jurisdiction by denying the Sierra Club's request to enjoin the proposed race.

In a followup letter dated November 12, the district manager affirmed his determination regarding BLM's lack of jurisdiction and advised appellant of his right of appeal to the Board "limited to the issue of the Bureau's lack of jurisdiction."

In its statement of reasons to this Board appellant contends that BLM improperly declined to take jurisdiction of the protest and/or recognize the notice of appeal. Appellant further contends that this appeal is not moot if the October 22, 1980, permit is amended to allow future races, and that should a new application be required, BLM's last minute issuance of such permits and their failure to respond to a timely filed appeal or protest in accordance with the applicable regulation is a problem likely to recur.

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2/ The race was not held because Checker's Motorcycle Club failed to obtain certain city or county permits.

3/ The fact that appellant also submitted a notice of appeal to this Board did not commit the matter to our jurisdiction. The regulations require a notice of appeal to be filed with BLM. See 43 CFR 4.411(a).

The issue of mootness raised by appellant relative to BLM application and interpretation of the Department's appellate review procedure is linked to the question of whether the district manager erred in declining to take jurisdiction of appellant's protest. BLM did lack jurisdiction to adjudicate the protest; however, the lack of jurisdiction was not predicated on the pending civil action but the filing of the notice of appeal. The ultimate error committed by BLM was rejecting appellant's timely filed notice of appeal, and advising appellant to file a protest.

[1] Even though Judge Gray, on October 22, 1980, refused to enjoin the race, BLM was precluded by Departmental regulations from implementing the decision when the notice of appeal was filed absent authority from the Board. 43 CFR 4.21(a) provides:

Except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal. However, when the public interest requires, the Director or an Appeals Board may provide that a decision or any part of it shall be in full force and effect immediately.

BLM incorrectly advised appellant that the pending civil action deprived it of jurisdiction to accept and process the appeal. The regulation regarding finality of Departmental decisions for purposes of judicial review, 43 CFR 4.21(b), states:

No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be an agency action subject to judicial review under 5 U.S.C. sec. 704, unless it has been made effective pending a decision on appeal in the manner provided in paragraph (2) of this section.

This regulation is designed to comply with the provision of the Administrative Procedure Act that agency action shall not be considered final so as to be subject to judicial review pending appeal to superior agency authority where the agency so provides by regulation and further provides that the action is inoperative pending appeal. 5 U.S.C. § 704 (1976). The action of BLM in returning appellant's notice of appeal asserting that jurisdiction of the matter had been preempted by the United States District Court is contrary to this regulation and effectively blocked administrative review. It is also apparent from the transcript of the hearing held March 3, 1981, before Judge Hill on which he based his order of April 2, 1981, dismissing the action, that he anticipated that the Board would review the BLM action on the issue of availability of administrative review (Tr. 13-18).

Departmental regulations mandate the acceptance of all documents which are pertinent to the administration of the public lands. See Milton Cann, 16 IBLA 374 (1974). Logic, therefore, would dictate that a document accepted is processed accordingly. Insofar as BLM may have believed that the pending civil action represented an exclusive election of remedies on the part of appellant, this belief was properly the subject of a motion to dismiss the appeal which should have been filed with this Board. <sup>4/</sup> This Board has exclusive power to decide who may appeal to it. State of Alaska, 46 IBLA 56 (1980); State of Alaska, 42 IBLA 94 n.4 (1974); see generally Francher Brothers, 33 IBLA 262, 264-65 (1975); BLM Manual, 1841.15. The Board's jurisdiction is triggered at the time of the filing of notices of approval with BLM, and no subsequent action by BLM can affect an appellant's rights before the Board.

It is well established that when an appeal from a decision of a BLM official is properly filed, that official loses jurisdiction over the case and has no further authority to take any action on the case until jurisdiction over it is restored by the Board action disposing of the appeal. James T. Brown, 46 IBLA 265 (1980); State of Alaska, 46 IBLA 56 (1980). Any adjudicative action taken by BLM relating to the subject matter of the appeal after a timely appeal is filed is a nullity since BLM will have acted without jurisdiction. James T. Brown, *supra*; Warren D. Elmore, 42 IBLA 91 (1979); Utah Power Light Co., 14 IBLA 372 (1974). See Audrey I. Cutting, 66 I.D. 340, 351-52 (1959).

The race was not held, so, as to the merits of this appeal, the matter is moot. <sup>5/</sup> The record indicates that BLM is processing a new application filed by the Checker's Motorcycle Club to hold another race in 1981. We expect BLM to comply with the applicable regulations, aware of its limited authority to act further in the matter should a notice of appeal be filed. <sup>6/</sup>

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<sup>4/</sup> Based on Sierra Club's participation in the original BLM consideration of issuing the permit, it seems clear that it was a party to the case within the meaning of 43 CFR 4.410, even in the absence of a timely filed protest, and thus would have standing to appeal. See California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977).

<sup>5/</sup> Unlike the situation in Sierra Club, 57 IBLA 79 (1981), involving the Parker 400 race, where the parties filed lengthy briefs directed to the substantive questions raised in the appeal, parties herein have focused almost totally on the procedural problems which arose in this case. These we have dealt with. We believe, however, that any substantive questions which may be involved herein are best left to the initial determination of BLM in the context of a new application, which has apparently been filed. <sup>6/</sup> We would expect that BLM will make every effort to conclude its action on the pending application sufficiently in advance of the scheduled event to allow for the completion of administrative review of any resultant appeal or protest.

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 as modified.

Gail M. Frazier  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

