United States Department of the Interior

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JUL 23 2013

CERTIFIED MAIL 7010 3090 0000 2183 0334 – RETURN RECIEPT REQUESTED

DECISION

William R. Peterson Black Rock City, LLC P.O. Box 884688 San Francisco, CA 94188-4688	: : :	Special Recreation Permit NVW03500-13-01

INTRODUCTION

The Bureau of Land Management (BLM), Winnemucca District (WD), Black Rock Field Office has completed the Burning Man 2013-2016 Special Recreation Permit (SRP) Determination of NEPA Adequacy (DNA), DOI-BLM-NV-W030-2013-0013-DNA. The DNA evaluated BLM proposed changes to the 2012-2016 stipulations and Black Rock City LLC's (BRC) application for a multi-year (2013-2016) Burning Man Event SRP and associated maximum participant population level of 68,000 for the 2013 event. The event would be held on public lands managed by the BLM in Pershing County, Nevada on the Black Rock Desert playa, approximately 10 miles northeast of the community of Gerlach, Nevada.

In 2012, the Burning Man 2012-2016 Special Recreation Permit Environmental Assessment (EA), DOI-BLM-NV-W030-2012-0007, was completed for the Burning Man Event. The Decision Record (DR) and the Finding of No Significant Impact (FONSI) are dated 06/12/2012. One of the conditions of the DR was that:

> "The SRP for the 2012 event may only be for a one-year permit, rather than a five-year permit as proposed. Should Black Rock City LLC comply with the terms and conditions of their 2012 permit, issuance of a multi-year permit for 2013-2016 may be considered."

The SRP Evaluation completed in 2012 found BRC to be in compliance with special stipulations and eligible for a multiple year permit for the remaining four years that were analyzed in the EA. Although BRC is now eligible for a multi-year permit, "Authorization for any events during the 2012-201 periods is subject to a separate SRP decision." (2012 DR Condition)

The 2012 DR and the 43 CFR §2930 *Permits for Recreation on Public Lands* call for an evaluation of stipulations:

> "Prior to issuance of any year's SRP decision, a detailed review and evaluation of the previous year's event will be conducted; as necessary, the special stipulations will be modified (subject to NEPA) to address issues and concerns raised during the previous event or otherwise identified for the applicable year's event. (2012 DR Condition)
>
> The federal regulations for Special Recreation Permit administration provide for amending special stipulations "if necessary to protect public health, public safety, or the environment." 43 CPR 2932.56 (a).
>
> In addition to the 13 general terms listed on the back of permit form 2930-01, the authorized officer may require the permittee to comply with any reasonable special stipulations or conditions necessary to protect the lands or resources involved, reduce user conflicts, or minimize health and safety hazards.

To achieve the above goals, the BLM in coordination with BRC reevaluated all the stipulations set forth in the 2012 DR to ensure that a 2013 Special Recreation Permit would adequately address issues of public safety and environmental protection. Following a detailed review and evaluation of BRC's 2012 SRP, the authorized officer in coordination with BRC, and in consultation with Pyramid Lake Paiute Tribe and Nevada Department of Transportation determined there was need to modify the Burning Man 2012-2016 Special Recreation Permit Stipulations. The proposed changes are described in the DNA. The commencement and ending dates for the 2013 event are proposed to be August 12 through September 13, with the actual event occurring August 26 through September 2, 2013.

With respect to a determination of maximum population to be allowed for any specific event year, the 2012 DR specified the following condition be applied to any SRP issued.

> "Each year's SRP decision and/or the special stipulations attached thereto will specify the maximum population allowed for that year's event. The maximum population authorized in any year may not exceed 70,000 participants, as that term is defined in the EA, unless the requisite additional NEPA analysis is completed." (2012 DR Condition)

DECISION

Based on the Burning Man Special Recreation Permit 2013-2016 DNA, it is my decision to modify the Burning Man 2012-2016 Special Recreation Permit Stipulations as described in the DNA. The modified stipulations are referred to as the Burning Man 2013-2016 Special Recreation Permit Stipulations and are attached herein.

It is my decision to 1) authorize Black Rock City LLC to conduct the Burning Man event on public lands in Pershing County, Nevada for a four-year period (2013-2016); 2) authorize maximum of 68,000 participants for the 2013 event and; 3) authorize the 2013 event to extend from August 12 through September 13, with the actual event occurring August 26 through September 2, 2013. My decision is subject to the implementation of the attached Burning Man 2013 Special Recreation Permit Stipulations (2013-2016 SRP Special Stipulations with 2013 approved dates and population inserted) and the following conditions carried over from the 2012 DR:

1) The SRP for any year is subject to cancellation or modification during the permit period based upon performance of the permittee, changes in law, regulation or policy, changes in resource conditions, or upon newly available information.

2) Authorization for any events during the 2013-2016 periods is subject to a separate SRP decision. Prior to issuance of any year's SRP decision, a detailed review and evaluation of the previous year's event will be conducted; as necessary, the special stipulations will be modified (subject to NEPA) to address issues and concerns raised during the previous event or otherwise identified for the applicable year's event.

3) Additionally, each year's SRP decision and/or the special stipulations attached thereto will specify the maximum population allowed for that year's event. The maximum population authorized in any year may not exceed 70,000 participants, as that term is defined in the 2012-2016 Environmental Analysis (EA), unless the requisite additional NEPA analysis is completed.

The permit period for the 2013 event extends from August 12 through September 13, with the actual event occurring August 26 through September 2, 2013.

RATIONALE

Rationale for this decision is based on factors including, but not limited to:

1. This decision is in compliance with the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000, which was enacted by Congress to create special designations for 1.2 million acres of public lands managed by the BLM in northwestern Nevada.

2. This decision is in conformance with the Resource Management Plan (RMP), approved July 2004 for the Black Rock-Desert–High Rock Canyon Emigrant Trails National Conservation Area and Associated Wilderness and other Contiguous Lands in Nevada.

3. The SRP Evaluation completed in 2012 found BRC to be in compliance with special stipulations and eligible for a multiple year permit for the remaining four years that were analyzed in the EA.

4. BLM consulted with Pyramid Lake Paiute Tribe and Nevada Department of Transportation, the two governments involved in the development of the *Burning Man 2012-2016 Special Recreation Permit Stipulations.*

5. Based on the consultation, coordination and previous public involvement that has occurred, it is determined that this is a well informed decision.

6. Based on the DNA, it is determined that this decision will not result in any undue or unnecessary environmental degradation of the public lands and is consistent with federal, state, and local laws, regulations and plans.

7. On the basis of the information contained in the DNA, implementation of the proposed action will not have environmental impacts beyond those already addressed the EA.

8. The 2012 DR and FONSI support this decision. There would be no change in the selected alternative identified in the 2012 DR. There would be no change in the rationale identified in the 2012 DR.

9. Reviewing the maximum population level each year allows BRC, the BLM and other cooperators to plan and administer the event in a more predictable and orderly manner, assures that available infrastructure in the area of the event is able to support the participants, and in turn improves protection of natural and cultural resources.

10. Implementation of the Burning Man 2013-2016 Special Recreation Permit Stipulations will serve to monitor for impacts and reduce or prevent impacts.

11. Based on the President's National Energy Policy and Executive Order 13212, the Proposed Action will not generate any adverse energy impacts or limit energy production and distribution. Therefore, no "Statement of Adverse: Energy Impact" is required per WO IM No 2002-053 and NV IM 2002-049.

AUTHORITY:

43 CFR §2930 Permits for Recreation on Public Lands

43 CFR §2932 Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas.

The statutory authorities underlying the regulations in this part are the Federal Land Policy and Management Act, 43 U.S.C. 1701 et seq., and the Federal Land Recreation Enhancement Act, 16 U.S.C. 6801 et seq.

(a) The Federal Land Policy and Management Act (FLPMA) contains the Bureau of Land Management's (BLM's) general land use management authority over the public lands, and establishes outdoor recreation as one of the principal uses of those lands (43 U.S.C. 1701(a)(8)). Section 302(b) of FLPMA directs the Secretary of the Interior to regulate through permits or other instruments the use of the public lands, which includes commercial recreation use. Section 303 of FLPMA authorizes the BLM to promulgate and enforce regulations, and establishes the penalties for violations of the regulations.

(b) The Federal Land Recreation Enhancement Act (REA) authorizes the BLM to collect fees for recreational use in areas meeting certain criteria (16 U.S.C. 6802(f) and (g)(2)), and to issue special recreation permits for group activities and recreation events (16 U.S.C. 6802(h).

(c) 18 U.S.C. 3571 and 3581 et seq. establish sentences of fines and imprisonment for violation of regulations.

[72 FR 7836, Feb. 21, 2007]

APPEAL PROVISIONS

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Gene Seidlitz, District Manager, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Attached Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the

appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890.

Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.47I(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

1) The relative harm to the parties if the stay is granted or denied;
2) The likelihood of the appellant's success on the merits;
3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Sincerely,

Gene Seidlitz
District Manager
Winnemucca District

Attachments:
Burning Man 2013-2016 Special Recreation Permit Special Stipulations
Burning Man 2013 Special Recreation Permit Special Stipulations
Form 1842-1