

FULL FORCE AND EFFECT DECISION RECORD

DETERMINATION OF NEPA ADEQUACY (DNA) FOR A TEMPORARY LITE SITE COMMUNICATION FACILITY DOI-BLM-NV-W030-2015-0019-DNA

Introduction

Annually, for eight weeks, August through September, and the Burning Man Special Recreation Event takes place on the Black Rock Desert. This recreation event has been held on the Black Rock Desert since as early as 1990. Attendance at this event has grown steadily and in recent years has seen attendance numbers reaching 65,000 + participants. These numbers do not include BLM employees, BLM law enforcement, County law enforcement or emergency medical personnel or Burning Man organizers who provide support for the Event.

Due to the remote nature of the area and the solitude and primitive aspects of the area provides, cellular and other forms of wireless communication coverage is limited and in some areas non-existent. An event like Burning Man essentially creates a new city within a month with limited communications for emergency services.

The proposed action is to bring in a temporary lite site tower facility which will provide temporary cellular and wireless communications in an effort to bolster efficient safety and emergency responses and provide enhanced ability of BLM employees to conduct compliance, monitoring and resource protection efforts during the Burning Man Event.

Compliance/Conformance

I have reviewed the temporary lite site tower facility project and the Determination of National Environmental Policy Act Adequacy (DNA) and have determined that the proposed action is in conformance with the Black Rock Desert-High Rock Canyon Emigrant Trails and Contiguous Wilderness Resource Management Plan (RMP), 2004, and complies with the Federal Land Policy and Management Act, (FLPMA) 1976 and other applicable laws.

2.2.20 Recreation: REC-2: Permit systems may be implemented to mitigate resource impacts in area where visitation is causing resource damage, user conflict or crowding at attraction areas, or specific uses create safety concerns. (Note: Permits would be used to limit visitation numbers, increase education, or maintain public safety.)

Consultation and Coordination in Development of the DNA

Consultation and coordination was done as part of the original *Burning Man 2012-2016 Special Recreation Permit Environmental Assessment* (NVW03500-12-01). The complete list of the 30 consulting and coordinating parties is on page 8-1 of the environmental assessment. Since the original decision record for the Burning Man event, on-going tribal consultation with the Summit Lake Paiute tribe has occurred on a variety of issues related to the Burning Man event.

DECISION

On the basis of the information contained in the Temporary Lite Site Communication Facility DNA, DOI-BLM-NV-W030-2015-0019-DNA, it is my determination that implementation of the proposed action will not have environmental impacts beyond those already addressed in the existing NEPA documents cited in the DNA.

Based on the aforementioned factors, and the following rationale for making this decision effective immediately, it is my decision to implement the project, for one month, to provide support during the 2015 Burning Man Event.

Rationale

The proposed action will provide temporary cellular and wireless communications for BLM employees, BLM law enforcement and other law enforcement agencies contributing to the safety and emergency services during the 2015 Burning Man Event. The temporary lite site tower will enhance the ability for law enforcement, safety, security, compliance, monitoring and resource protection efforts at the event. This facility will also enhance the ability of regular government employees to conduct compliance, monitoring and resource protection efforts at the event. Any impacts to the viewshed will be temporary in nature and limited to less than two months.

Authority

The authority for this decision is contained in 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.
 - Section 303(a) of FLMPA allows the Secretary to issue regulations necessary to implement the provisions of the Act within respect to the management, use and protection of the public lands, including the property located thereon; And, (c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and 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]

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.

43 CFR §2800 Rights-of-Way

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 William Mack, Jr., Field Manager, Black Rock Field Office, 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 4.471(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.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

/s/William Mack, Jr.
William Mack, Jr
Field Manager
Black Rock Field Office

8/19/15
Date