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Gene Seidlitz  
District Manager  
Winnemucca District Office  
5100 East Winnemucca Boulevard  
Winnemucca, Nevada 89445

Dear Mr. Seidlitz,

I'm appealing Burning Man 2012-2016 Special Recreation Permit Environmental Assessment DOI-BLM-NV-W030-2012-0007-EA.

My statement for reasons is below

- I've received no evidence that Burning Man has ever received a BLM-mandated Performance Evaluation. Thus, BRC has never had a completed Special Recreation Permit (SRP). The BLM Director has stated that if the SRP process cannot be completed by the field office, then no SRP shall be issued. The Performance Evaluation would determine if BRC fulfilled the stipulations of the SRP. Cory Roegner has provided me with inspection reports but these reports do not cover all the stipulations.
- The 2011 Special Recreation Permit Decision states that there should be "a maximum of 50,000 participants." Stipulation 1 of the 2011 SRP permit states that the resources are "designed to handle an average of 50,000 participants per day." BRC has stated in the media that "the current permit allows "in the neighborhood" of 58,000 participants to be present at any one time." Is BRC in violation of stipulation 1? If so, then rewarding BRC by increasing the number of attendees is inappropriate.
- Burning Man is not a leave-no-trace event. The dunes that appeared starting in 2000 have prevented other groups from using the desert. The 2007 trash fence dune persisted until after the 2011 event.

My statement of standing is that I am a long-time visitor to the Black Rock Desert and that due to the large number of incidental dunes that have appeared after 2000, my ability to land sail on the desert is greatly reduced. In addition, as a member of the public, I'm concerned that Burning Man violated the population stipulation in 2011 and possibly before and yet Burning Man is being rewarded with a population increase from 50,000 to 60,900. As a member of the public, my concern is that this will set a precedent for other SRP holders to violate stipulations and be rewarded.

I am asking that Burning Man stay at 50,000 people in 2012 and that the BLM issue the SRP-mandated annual performance evaluation.

The following pages include details to support my claims.

Regards,

Christopher Brooks

## *Performance Evaluation*

The BLM's Recreation Permit Administration Handbook H-2930-1 (2006) from [http://www.blm.gov/wo/st/en/prog/Recreation/recreation\\_national/recreation\\_fees\\_/blm\\_recreation\\_fee.html](http://www.blm.gov/wo/st/en/prog/Recreation/recreation_national/recreation_fees_/blm_recreation_fee.html) covers how the BLM administers Burning Man's permit. Page 47 and 48 covers Performance Evaluations and states:

“A performance evaluation is required of all commercial and competitive permittees and may be required for other types of permits. The purpose of a performance evaluation is to evaluate a permittee's performance and compliance with the stipulations and terms of the permit. At a minimum, an annual evaluation must be completed.”

The post inspection memos do not address how well BRC fulfilled each stipulation.

For example, the 2009 Burning Man Permit Stipulations found at [http://www.burningman.com/media/doc/pdf/blm\\_stipulations/2011\\_blm\\_stipulations.pdf](http://www.burningman.com/media/doc/pdf/blm_stipulations/2011_blm_stipulations.pdf) lists 31 stipulations “as well as the 16 terms and conditions listed on the back of the permit form 2930-1 and applicable items in the Closure Orders published in the Federal Register.”

In the 2011 Burning Man Permit Stipulations document, Stipulation 1 is:

“Black Rock City, LLC (BRC) is required to manage its advance ticket sales and on-site ticket sales in such a manner that the safety infrastructural resources of the event, which are designed to handle an average of 50,000 participants per day for the eight-day event, are not overtaxed, and that NEP A concerns from the 2006 Environmental Assessment are not compromised. If during the event it appears that the peak population is likely to exceed BRC's ability to provide adequate infrastructural resources, then BRC will promptly notify BLM of the projected event population and provide detailed contingency plans for how to handle the additional participants. BRC shall provide the Bureau of Land Management (BLM) with the number of participants within the event site at noon each day according to an agreed upon reporting standard with BLM during the period of site occupancy (August 8th through September 19th). For historical purposes and press inquiries, BRC shall also provide BLM with the recorded peak population for the entire event. BLM can request population data any time during the event. BRC shall also provide BLM with detailed information of the number of staff and participants on the event site for the August 8th through September 19th period within 60 days after the event. This information shall include daily counts for the non-event period.”

The 2011 post inspection memo does not specifically mention whether stipulation 1 was met or not.

The 2009 post inspection memo states:

“The size of the event both in population and footprint decreased this year and the cleanup was more effective when compared to 2008. If population and event footprint trends upward again, at some point there is a risk that the cleanup effort becomes too large and the standard would be exceeded.”

Was stipulation 1 met? If so, then what methods were used to determine the maximum population?

On June 24, 2012, I received email from Cory J. Roegner, Assistant Field Manager, BLM Black Rock Field Office that stated:

“In 2011, the BLM issued a Special Recreation Permit (SRP) Decision which authorized the Burning Man event to occur for a one-year period, with a maximum of 50,000 participants. During the 2011 event, the population exceeded this limit on two days: 9/2/11 (53,341) and on 9/3/11 (53,735). BLM believes, based upon these population exceedances, that BRC failed to comply with Stipulation #1 of their SRP. After considerable BLM review and discussion, on October 24, 2011, the BLM issued a Notice of Noncompliance Decision to BRC and placed BRC on probationary status as a Special Recreation Permit holder. BRC has since appealed the Notice of Noncompliance to the Interior Board of Land Appeals (IBLA). Due to the pending appeal, the BLM cannot comment further on the merits of the 2011 population issue. It is unknown when the IBLA will issue a decision on BRCs appeal.”

However, I’ve never received evidence that an annual Performance Evaluation has been completed by the BLM for Burning Man’s SRP.

The other stipulations should be evaluated and that information included in a Performance Evaluation.

Unfortunately for the public, H-2930-1 states “Ratings are confidential between the BLM and the permittee, to the extent allowable by law or regulation.” However, I have received no evidence that a formal Performance Evaluation has ever been written by the BLM and delivered to Black Rock City LLC or its successor. In this case, there are no discernable reasons that the Performance Evaluations remain confidential. If there are, then these reasons should be clearly documented.

After the August 14, 2010 deaths of eight people in Johnson Valley at an event with a SRP, the BLM Director’s Instruction Memorandum from <http://www.blm.gov/ca/st/en/fo/barstow/johnson/incidentreport-review.html> states:

“The proper administration of an SRP requires numerous steps and the full engagement of the BLM staff and managers. The authorized officer may issue an SRP only when it has been their determination that the BLM has the capacity to properly administer the permit. If the field office cannot fulfill, or complete, all the necessary steps of a use authorization, then no SRP shall be issued.”

Furthermore, H-2930-1 states “The permittee will be given written notice of results of annual performance evaluations not later than 90 days after the conclusion of the permittee’s operating season”. Where is this date documented?

A performance evaluation is part of the necessary steps and I’ve seen no indication that a performance evaluation that addresses each stipulation has ever been performed.

Clearly, unless the BLM can produce copies of the 2006-2011 Performance Evaluations, the BLM has not been following its own rules.

As per the BLM Director, if the BLM cannot produce a Performance Evaluation, then the SRP should not be issued. Clearly, this is in no one’s best interests, but the BLM must produce Performance Evaluation for the previous SRP before issuing a new permit.

#### *50,000 Participants*

How did a maximum of 50,000 participants become an average of 50,000 participants per day become 58,000 people being present?

The 2011 Special Recreation Permit Decision states:

“Black Rock City, LLC shall be authorized to conduct the Burning Man event on public lands in Pershing County, Nevada for a one-year period (2011), with a maximum of 50,000 participants.”

Stipulation 1 of the 2011 Permit states:

“which are designed to handle an average of 50,000 participants per day for the eight-day event”

The April 7, 2012 San Francisco Chronicle states:

“Goodell said the current permit allows “in the neighborhood” of 58,000 people to be present at any one time in the 5-square-mile encampment.”

It seems that BRC failed to meet stipulation 1. Rewarding BRC by increasing the number of participants to 58,000 is inappropriate.

The number of participants should remain at 50,000 until such time that controls are in place to measure the number of participants and Burning Man has kept the number at or below 50,000 participants.

### *Dunes*

I've extensively researched the appearance of the dunes on the Black Rock Desert, see <https://sites.google.com/site/blackrockdunes/>. The reality is that the dunes are a recent phenomenon. Other users of the desert, including the land sailors and the land speed record groups are unable to use the Black Rock Desert because of the dunes.

The dust storms at the Black Rock Desert are large enough to be the subject of a research paper: “Dust storm over the Black Rock Desert: Larger-scale dynamic signatures,” Journal Of Geophysical Research, Vol. 116, D06113, 22 PP., 2011.

The Burning Man event is not a “Leave no trace” event, the 2007 trash fence dune persisted until after the 2011 event.

The dunes should be formally surveyed so that trends concerning the degradation of the desert can be quantified and used in planning.