

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
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Instruction Memorandum No. 2005-066
Expires: 09/30/2006

To: All Field Officials

From: Assistant Director, Renewable Resources and Planning

Subject: Policy Guidance Implementing and Clarifying Final and Supplementary Rules for "Permits for Recreation on Public Lands"

Program Area: Permits for Recreation on Public Lands

Purpose: This Instruction Memorandum (IM) will provide additional policy and clarification of existing policy for implementation of 43 CFR 2930, dated October 1, 2002, recently issued supplemental 43 CFR 2930, dated February 6, 2004, and Bureau of Land Management (BLM) Manual and Handbook, H-2930-1, released March 30, 2004 and October 7, 2003 respectively. The IM addresses issues in planning, annual/multi-year permits, re-enactments, waiving special recreation permits (SRPs) and SRP fees, cost recovery, statewide permits, time off BLM public lands for organized groups and competitive events, letters of agreement, county roads and county claimed highways, public advertising, and permitted use by other programs.

It is not the intent of this IM to reiterate existing policy and guidance in the subject documents but to clarify and add policy not contained in these publications. To receive the full benefit from these documents, recreation personnel and managers involved in recreation permitting should read and study their contents.

Policy/Action:

Planning: Successful recreation permitting for activities on public lands and related waters begins with the planning process. Permitting should be viewed not as a separate activity, but as a means to facilitate implementation of Field Office's recreation management plan objectives. The application process to obtain an SRP is not to be used to prohibit and/or severely restrict otherwise allowable activities. Issuance of a (SRP)

must serve the public interest and support the goals and objectives of land use planning.

It is imperative that areas which will have restrictions on users, (i.e., numbers, season of use, location, group size or other conditions that limit the user) be identified and quantified during the resource management plan (RMP) process. At the very least, areas should be identified as sites designated specifically for certain activities. The details to implement the decisions in the RMP would be established in a site specific recreation area management plan. The activity plan identifies the specific recreation prescription or action to be taken to implement the decisions made in the RMP. These decisions need to be made with public scrutiny and involvement. Land use allocation decisions made through the planning process with public involvement are definitive and require little to no additional scrutiny or analysis.

Annual/Multi-year Permits: When an "organized group" has multiple events that require an SRP in the same year (i.e., an off highway vehicle (OHV) or a hiking club having several member events), consider issuing the group an annual or, if applicable, a multi-year permit. Annual permits for multiple events or multi-year permits for an annual event or multiple events, are appropriate when the proposed use area and proposed activities do not change from event to event. Deviations from approved routes, areas, or activities would have to be approved before their use; any significant deviation would likely require issuance of a new permit. Post Use Reports, fees, etc. would be required for each event as required under single use permits.

Re-enactments: Historical re-enactments are generally considered to be recreational as they are leisure activities. These events may require permits as outlined in the manual. By definition, recreation is to: restore, renew, and refresh: refreshment of strength and spirit, and a means of diversion.

Waiving SRPs and Fees: It is the BLM's policy that we will not waive SRP requirements or SRP fees in exchange for volunteer work. We will recognize significant volunteer contributions through the BLM Volunteer Recognition program. Local managers may reward volunteer work by a group or individual with a local or regional recreation pass (Recreation Use Permit) or with Secretary approval, a national recreation pass (i.e., Golden Eagle).

Co-sponsored Events: BLM will co-sponsor an event only when there is a clear benefit to the BLM public lands and there is a direct association to accomplishing a management objective or purpose as outlined in a land use planning process, as outlined on page 35 of the subject handbook. On the rare occasion that BLM co-sponsors an event; neither an SRP nor associated fees are required. However, BLM will not waive fees for educational, therapeutic, or fundraising events if the activity or event meets the conditions and requirements for an SRP.

Cost Recovery: Cost recovery applies to all Federal activities that convey special benefits to recipients beyond those accruing to the general public. The purpose of cost

recovery is to have individuals or groups that are clearly the beneficiary of an activity on BLM public lands shoulder the costs associated with providing, administering, and monitoring that activity or event. However, OMB Circular A-25 6a(4) states "No charge will be made for a service when the identification of a specific beneficiary is obscure, and the service can be considered primarily as benefiting broadly the general public."

In general, regulations are written broader and with more flexibility than policy documents. In writing the subject regulations, BLM wrote that "we may charge a fee for recovery of the processing costs." In the Manual/Handbook where the BLM makes a decision on how to incorporate the regulations into BLM policy, the Bureau narrows the scope of the regulations from "may" to "will." Interpreted, the BLM has established a national policy that "cost recovery of direct expenses related to the permit will be charged" when the other conditions for requiring cost recovery, established in the subject regulations, Handbook, and this IM, are met.

In determining what costs (H-2930-1, page 25) to include in cost recovery assessments, keep in mind that only these costs that are directly related to the recreation event itself and that do not broadly benefit the general public can be charged including the following:

- If BLM is unable to complete inventories in a timely manner, and in order to expedite the permit process and to reduce or avoid cost recovery, applicants may provide required products such as environmental analysis, inventory information, global positioning systems or graphic information system map or location products. Under these circumstances, costs can not be recovered from the SRP applicant;
- Law enforcement directly related to the activity or event is a direct cost;
- If the underlying activity/event to be permitted does not require a law enforcement presence then the applicant can not be charged the costs for law enforcement. Participants should not be required to pay for the cost of law enforcement in order to provide for their own protection caused by actions from outside groups;
- Indirect costs would be charged when the event is large enough that the costs listed in the handbook can easily be attributed to the support of the permitted activity or event; these would generally be activities such as a large cross country challenge course or an event such as Eco-Challenge;
- The pre-application consultation process is not a charge of cost recovery, cost recovery starts upon receipt of a completed application;
- Programmatic environmental assessments are not charged to cost recovery;
- Inventories for cultural or heritage resources required under the Endangered Species (ESA) and Natural Historic Preservation Acts (NHPA) may be a cost recovery charge, where needed to fulfill permit-specific (NHPA) 106, (ESA) or National Environmental Protection Act (NEPA) information or mitigation requirements;

- Monitoring an event for damage to inventoried resources or permit compliance that might occur as a direct result of the permitted event is an appropriate charge but routine monitoring of resources as required by law or policy is not an appropriate cost recovery charge;
- Labor costs will be determined by individual salary rate and not by the State average work month cost;
- Where BLM has a duty to inventory public land resources, inventories generally benefit the public and not just the applicant. Baseline inventories for natural and cultural resources are not paid for under cost recovery. As an example, if existing areas, roads, and trails are determined "open" for all travel as a result of an RMP decision, the BLM would not charge the applicant, for these same roads and trails to be inventoried for cultural, heritage, or species under the Endangered Species Act, as the inventory benefits "broadly the general public".

The BLM is preparing additional guidance for using the cost recovery account. In the interim, follow the existing procedures as outlined in the Handbook, H-2930-1, page 24-25, and the procedures outlined in BLM Manual 1323 and this IM when setting up cost recovery accounts. Use of the cost reimbursable account, 7100, is not appropriate.

Statewide Permits: Blanket statewide permits will not be issued for commercial, competitive, or organized group activities or events held on BLM public lands. Permitted recreation activities involving more than one jurisdiction (i.e., two or more BLM offices, other agency lands, private lands, etc.) may require the development of joint permits. Joint permits are appropriate only in cases where a permitted, individual activity crosses jurisdictional boundaries. Examples are linear events (Pony Express, hand cart re-enactments, point to point races, or endurance events) or when the permitted activity occurs in more than one jurisdiction, such as where a big game hunting unit crosses a Field Office boundary and the guide is hunting over the entire unit. In such cases, joint permits are used when it is a benefit to the BLM in the proper and orderly administration of the permit. It is not done solely for the convenience of the permittee. Joint permits are not appropriate unless a specific activity (an individual hunt, tour, etc.) crosses an administrative boundary. As an example, an outfitter that hunts cougar in all the Field Offices within a state is not eligible for a single, statewide permit. Generally, the permit is issued by the office where the activity takes place except in the case of joint permits. However, where the State agency takes a lead role in the licensing of outfitters and guides and the BLM has an MOU in place with that State agency BLM permits can be issued in accordance with the agreement with that State licensing board. Under no circumstance will we issue statewide permits. Local, State governing bodies or private property owners may also require separate permits or authorizations. Should separate authorizations be necessary, the permittee is responsible for securing appropriate agency clearances and/or permits, and providing proof if requested by the BLM.

Time Spent Off of Federal Lands: A discount for time off public lands is appropriate

for commercial, competitive and organized group events. Use Table 1 - Discounts for Non-Public Lands on page 27 of the subject handbook for a guide to determine the discount. The key to successfully determine the time off public lands is to agree with the permittee, prior to issuing the permit, when and where the trip or event starts and ends on public lands. In no case, may the discounted SRP fee be less than the minimum fee.

Letters of Agreement: Many BLM Field Offices have identified areas where organized groups may be accommodated with a minimum of inconvenience. When organized group use is taking place in an area that is appropriate and there are no major concerns over the activity, consider preparing a "Letter of Agreement" to cover the activity. The Letter of Agreement documents several things, (1) an activity was considered, analyzed, and determined not to require an SRP, (2) that the group contacted and worked with the BLM in planning their activity which provided an opportunity for the applicant to better plan their activity in a manner that does not require permit issuance and oversight, and (3) if the group or event does not conform to the parameters outlined in the Letter of Agreement, future events will be subject to an SRP. A Letter of Agreement is not an authorization for the event. For further explanation refer to Attachment 1 and H-2930-1, Appendix C-8.

County Roads and County Claimed Highways: It is the policy of the BLM that any highway claimed under R.S. 2477 that has not been adjudicated or issued to another entity through a right-of-way (ROW), are considered BLM public lands. Any direct or indirect use of the BLM public lands that meets the definition of commercial use, has an element of concern for public health or safety, has potential for resource damage, or requires monitoring or management must have a commercial SRP, (e.g., sightseeing, jeep tours, bird watching, an event to raise funds for charity, etc). Events and activities that occur entirely on county roads that cross BLM lands are generally not subject to an SRP but might be if there is a concern for significant resource damage or other concerns as outlined on pages 11-12 in the subject Handbook. Most rights-of-way, including county roads and adjudicated RS-2477 highways are nonexclusive. BLM may permit any other activity not provided for in the ROW grant. Likewise, BLM may impose permit requirements on county and state roads when necessary to protect public health and safety or protect public lands and resources.

Public Advertising: Refer to 43 CFR 2932.5 (1) (iii), "paid public advertising" may characterize the activities as a commercial event which would require a permit. Paid public advertising by the applicant is a very strong indicator that the activity is commercial. Consider it in context of the other criteria that characterizes commercial activity. If there is any doubt, the group should be carefully examined and monitored. Lack of paid public advertising does not render an event non-commercial. Consider advertising to be public if it is an inducement for anybody to participate, as opposed to an invitation to members of an identifiable, local membership organization such as a church, social club, outdoors club or ATV club.

Permitted Use by Other Programs: If a use authorized by another program has a commercial recreation component (i.e., paleontology or archaeology tour or excavation or recreational mining) an SRP will be required in addition to the program permit.

Background: BLM published the final rule on Permits for Recreation on Public Lands in the Federal Register on October 1, 2002, supplemental rules in February 2004, and a Policy Statement and Handbook in October 2003. The regulations and policy were issued as policy and guidance for Permits for Recreation on Public Lands. It has been two years since the final rules were issued and almost a year since the Handbook was published. Since the new policy has been in effect, there have been inconsistencies in administering the policy and new issues have surfaced regarding policy application.

Time Frame: The additional policy and clarification of existing policy will remain in effect until the Recreation Permit Administration Manual/Handbook H-2930-1 is revised to reflect the policy change.

Budget Impact: Little to no impact.

Manual/Handbook Sections Affected: The IM will result in a revision of Handbook 2930-1 to reflect the clarification and additional policy for Special Recreation Permits.

Coordination: This has been coordinated through the National Landscape Conservation System, WO-170; Heritage Resources, WO-240; Fish, Wildlife and Botany, WO-230; Lands and Realty, WO-350; Legislative Affairs, WO-620 ; Public Affairs, WO-610; and State Recreation Program Leads.

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