

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW03000/L51050000.EA0000 LVRCF1101300 241A; 11-08807]

Notice of Temporary Closures and Restrictions on Specific Uses of Public Lands in Washoe County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Partial Closure and Public Land Use Restrictions.

SUMMARY: Notice is hereby given that under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Winnemucca District, Black Rock Field Office will implement and enforce the following temporary partial closure and use restrictions to protect public safety and resources on public lands within and adjacent to the Smoke Creek Desert.

DATES: The temporary restrictions will be in effect from August 29, 2011 to September 06, 2011.

FOR FURTHER INFORMATION CONTACT: Gene Seidlitz, District Manager, Bureau of Land Management, Winnemucca District, 5100 E. Winnemucca Boulevard, Winnemucca, NV 89445-2921, telephone: (775) 623-1500, e-mail:

gene_seidlitz@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTAL INFORMATION: These temporary restrictions affect public lands on the Smoke Creek Desert within the Black Rock Field Office in Washoe County, Nevada.

The legal description of the affected public lands is:

Mount Diablo Meridian, Nevada

Unsurveyed T. 30 N., R. 20 E.,

Sections; 1 through 36 (All sections within the township and range; There are no private lands within these sections)

Unsurveyed T. 30 N., R. 21 E.,

Sections; 4, 5, and 6 (There are no private lands within these sections)

Unsurveyed T. 31 N., R. 20 E.,

Sections; 1, 2, 10, 11, 12, 13, 14, 15, 16, and 21 through 36 (There are no private lands within these sections)

Unsurveyed T. 31 N., R. 21 E.,

Sections; 1 through 36 (All sections within the township and range; There are no private lands within these sections)

Unsurveyed T. 31 N., R. 22 E

Sections; 5 and 6 (There are no private lands within these sections)

Unsurveyed T.31 ½ N., R 22 E

Sections; 31, 32, and 33 (There are no private lands within these sections)

Unsurveyed T. 32 N., R 20 E

Sections; 35 and 36 (There are no private lands within these sections)

Unsurveyed T. 32 N., R 21 E

Sections; 1, 2, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, and 36 (There are no private lands within these sections)

Unsurveyed T. 32 N., R. 22 E

Sections; 1 through 36 (All sections within township and range; There are no private lands within these sections)

Unsurveyed T.32 N., R. 23 E

Sections; 7, 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33 (There are no private lands within these sections)

Unsurveyed T. 33 N., R. 21 E

Section; 36 (There are no private lands in this section)

Unsurveyed T. 33 N., R 22 E

Sections; 31, 32, and 33 (There are no private lands within these sections)

The public closure and restricted use area comprises 109, 440 acres, more or less, in Washoe County, Nevada.

The closure area is known as the Smoke Creek Desert.

The closure and use restrictions are necessary to provide a safe environment for members of the public visiting the Smoke Creek Desert and to protect public land resources by addressing law enforcement and public safety concerns associated with an overflow of public land users that are not able to attend the Burning Man Festival. Members of the public are actively promoting a Burning Man alternative festival they are calling the “Smoke Creek Gathering.” The promotion indicated the following: “Thousands want tickets to Burning Man. There is a solution for the brave. We’ve organized another festival that will take place the same week of Burning Man (August 29 to September 5) in

the Smoke Creek Desert approximately 4 miles west of Gerlach, NV.” “This new festival is outside the exclusion zone for Burning Man set up by the BLM. Several art cars and installations that cannot go to Burning Man will be present, ice will be sold, and a utilitarian form of port-a-potties will be provided. Come this year because it’s gonna be big and unrestricted but next year it’ll have to sell out (figuratively) to get permitted. A list of things/activities permitted on the Smoke Creek Playa and not permitted on the Black Rock Playa include: Driving personal vehicles, burning stuff wherever you want, unrestricted fire effects and fireworks, shooting ranges (against the side of a hill), vending, dogs, public showers”. Some of the activities listed are restricted on public lands during the Burning Man Festival. In addition, special recreation permits, issued from the BLM, are required prior to organizing an event of this type on public lands under 43 C.F.R. 2931.2(a), and would normally include terms and conditions to protect the public lands and to ensure the health and safety of participants, due to the potential hazards associated with activities being promoted for the “Smoke Creek Gathering.” The promotion for the Smoke Creek Festival suggests that activities on the BLM administered lands within the Smoke Creek Desert can be unrestricted to the extent that anything goes and “attendees are responsible for their own safety.” Such statements implying unrestricted use of the public lands are misleading, since activities such as unprotected burning, fire effects, fireworks, and shooting ranges on public lands are subject to restrictions and controls. This Closure and Restriction Order is designed to alert the public that on public lands, existing regulations and laws control the use of the public lands, and to further impose specific temporary use restrictions in light of the advertised Smoke Creek Gathering to ensure the protection of the public and the public land

resources.

Other non-permitted festivals have been organized through social media on BLM administered lands in the past, such as Fourth of July and Burning Bush. These anonymously organized and unauthorized gatherings have brought anywhere from 800 to 3,000 participants. During these non-permitted gatherings many of the same activities that are mentioned in the promotion quoted above for the Smoke Creek Festival were also advertised and took place on the public lands. In 2010 and 2011, the unauthorized Fourth of July gathering on BLM administered lands within the Black Rock Desert resulted in unsafe practices that required significant law enforcement presence and resulted in the issuance of multiple citations for activities posing a danger to the public, including unsafe operation of motor vehicles and possession of controlled substances. Also during these prior non-permitted gatherings BLM found evidence of extremely hazardous activities such as the shooting of full propane containers, shooting of full size vehicles being driven by remote control, use of fire effects (torches, flame throwers, and flame spewing devices) conducted in close proximity to an audience, and projectile throwing devices that launch projectiles without exact knowledge of the ending location. These unauthorized events have also, in prior years, led to serious injuries and/or death of participants who have engaged in hazardous activities or been in close proximity to such activities. Due to these prior experiences at unauthorized gatherings promoted through social media, BLM has determined it is necessary to implement a closure and restriction on use of the public lands in the area being promoted for an unauthorized and “unrestricted” gathering involving activities that pose a danger to the public and to public land resources.

Many of the activities promoted for the unauthorized Smoke Creek Gathering are subject to existing federal regulations and state laws and violations of those laws will be addressed on a case-by-case basis under existing authorities. However, because of the possibility of a large unauthorized gathering of members of the public, additional restrictions are necessary to ensure public safety and to protect public land resources.

A Closure and Restriction Order is the most appropriate management option for this situation as the promoters of this event have refused to identify themselves or to comply with the BLM's permitting requirements, thereby making it impossible for BLM to protect public lands and resources as well as human life through its normal special recreation permitting process. A Closure and Restriction Order is required to be specifically tailored to the time frame and restrictions on uses or activities that are necessary to provide a safe environment for the public and protect public land resources, while avoiding imposing restrictions that may not be necessary during the remainder of the year. This Closure and Restriction Order is narrowly tailored to the time frame advertised for the Smoke Creek Gathering (August 29 – September 6, 2011) and to those uses or activities that could pose a serious threat to the life, health and well-being of members of the public who use those public lands during the period of the promoted gathering.

The BLM will post information signs about the Closure and Restriction Order at the BLM Black Rock Station in Gerlach, Nevada. This Closure and Restriction Order also will be posted in the BLM Winnemucca District Office. Maps of the affected area and other documents associated with the Closure and Restriction Order are available at the Winnemucca District Office, at the above address, and at the BLM Black Rock

Station in Gerlach, Nevada. The Closure and Restriction Order will be handed out by BLM Law Enforcement Officers patrolling the area. To the extent possible, this Closure and Restriction Order will also be posted through social media (Craigslist, Facebook, Twitter) to notify interested users of these public lands.

Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733 (a)), 43 CFR 8360.0-7, and 43 CFR 8364.1, the BLM will enforce the following temporary closure and restrictions within and adjacent to the Smoke Creek Desert:

I. Restricted Uses -- Between August 29, 2011 and September 6, 2011:

A. Alcohol

1. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion is prohibited.

2. Possession of alcohol by minors

a) The following are prohibited:

(1) Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.

(2) Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

b) This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his

lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

3. Operation of a motor vehicle while under the influence

a) Title 43 CFR 8341.1(f) 3 prohibits the operation of an off-road motor vehicle on public land while under the influence of alcohol, narcotics, or dangerous drugs.

b) In addition to the prohibition found in 43 CFR 8341.1(f)3, it is prohibited for any person to operate or be in actual physical control of a motor vehicle while:

(1) The operator is under the combined influence of alcohol, a drug, or drugs to a degree that renders the operator incapable of safe operation of that vehicle; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath.

c) Tests:

(1) At the request or direction of any law enforcement officer authorized by the Department of the Interior to enforce this closure and restriction order, who has probable cause to believe that an operator of a motor vehicle has violated a provision of paragraph (a) or (b) of this section, the operator shall submit to one or more tests of the blood,

breath, saliva, or urine for the purpose of determining blood alcohol and drug content.

(2) Refusal by an operator to submit to a test is prohibited and proof of refusal may be admissible in any related judicial proceeding.

(3) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(4) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

d) Presumptive levels

(1) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (b)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(2) The provisions of paragraph (d)(1) of this section are not intended to limit the introduction of any other

competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or multiple drugs, or any combination thereof.

4. Definitions:

a) Open container: Any bottle, can, or other container which contains an alcoholic beverage, if that container does not have a closed top or lid for which the seal has not been broken. If the container has been opened one or more times, and the lid or top has been replaced, that container is an open container.

b) Possession of an open container includes any open container that is physically possessed by the driver or operator, or is adjacent to and reachable by that driver or operator. This includes but is not limited to containers in a cup holder or rack adjacent to the driver or operator, containers on a vehicle floor next to the driver or operator, and containers on a seat or console area next to a driver or operator.

B. Drug Paraphernalia

1. The possession of drug paraphernalia is prohibited.

2. Definition: Drug paraphernalia means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing,

packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of any state or Federal law, or regulation issued pursuant to law.

C. Disorderly Conduct

1. Disorderly conduct is prohibited.
2. Definition: Disorderly conduct means that an individual, with the intent of recklessly causing public alarm, nuisance, jeopardy, or violence; or recklessly creating a risk thereof:
 - a) Engages in fighting or violent behavior.
 - b) Uses language, an utterance or gesture, or engages in a display or act that is physically threatening or menacing, or done in a manner that is likely to inflict injury or incite an immediate breach of the peace.
 - c) Obstructs resists or attempts to elude a law enforcement officer, or fails to follow their orders or directions.

D. Fires

The ignition of fires on the surface of the Smoke Creek Desert without a burn blanket or burn pan is prohibited.

E. Fireworks

The use, sale or possession of personal fireworks is prohibited except for uses of fireworks approved by Washoe County, Nevada.

F. Waste Water Discharge

The dumping or discharge to the ground of grey water is prohibited. Grey water is water that has been used for cooking, washing, dishwashing, or bathing and contains soap, detergent, food scraps, or food residue.

G. Weapons

1. The possession and/or discharge of any weapon is prohibited by an individual who is under the influence of alcohol or controlled substances.
2. The prohibitions above shall not apply to county, state, tribal, and Federal law enforcement personnel, or any person authorized by Federal law to possess a weapon.
3. Definitions:
 - a) Weapon means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, spear gun, hand thrown spear, sling shot, irritant gas device, electric stunning or immobilization device, explosive device, any implement designed to expel a projectile, switch blade knife, any blade which is greater than 10 inches in length from the tip of the blade to the edge of the hilt or finger guard nearest the blade (e.g., swords, dirks, daggers, machetes), or any other weapon the possession of which is prohibited by state law. Exception: The regulation does not apply in a kitchen or cooking environment or where an event worker is wearing or utilizing a construction knife for their duties at the event.

b) Firearm means any pistol, revolver, rifle, shotgun, or other device which is designed to, or may be readily converted to expel a projectile by the ignition of a propellant.

c) Discharge means the expelling of a projectile from a weapon.

Any person who violates the above rules and restrictions in the temporary closure order may be tried before a United States Magistrate and fined no more than \$100,000, imprisoned for no more than one year, or both, 18 U.S.C. 3571 and 18 U.S.C. 3559.

Authority: 43 CFR 8364.1

Gene Seidlitz
Manager, Winnemucca District