



RAINER HUCK, ET AL.

168 IBLA 365

Decided April 18, 2006

Editors's Note: Appeal Filed, No. 2:05CV503DAK *aff'd sub nom.*, [Williams v. Bankert](#), 2007 WL 3053293 (D. Utah 2007) Oct 18, 2007.



United States Department of the Interior  
Office of Hearings and Appeals  
Interior Board of Land Appeals  
801 N. Quincy St., Suite 300  
Arlington, VA 22203

RAINER HUCK, ET AL.

IBLA 2003-169, et al.

Decided April 18, 2006

Appeals from a decision of the Field Office Manager, Price, Utah, Field Office, Bureau of Land Management, approving the San Rafael Route Designation Plan for off-highway vehicle use. EA-UT-067-94-010.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Land Use Planning--Public Lands: Generally

A BLM management decision implementing a resource management plan will be affirmed if the decision adequately considers all relevant factors including environmental considerations, reflects a reasoned analysis, and is supported by the record, absent a showing of clear reasons for modification or reversal. Mere differences of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision.

2. National Environmental Policy Act of 1969: Generally--National Environmental Policy Act of 1969: Finding of No Significant Impact

A BLM decision to approve an action based on an EA and FONSI generally will be affirmed if BLM has taken a “hard look” at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. A party challenging BLM’s decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or

that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Mere differences of opinion provide no basis for reversal.

APPEARANCES: Rainer Huck, Salt Lake City, Utah, pro se; Robert J. Telepak, Bosque Farms, New Mexico, pro se; Robert L. Norton, Edgewood, New Mexico, pro se; Don Keele, Bonnie Keele, Glenys Sitterud, Scott Jacobson, Ruxton B. Noble, Victor Johnson, pro sese, and Annette Allen, Castle Dale, Utah, for SouthEastern Utah O.H.V. Club; James E. Karkut, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management; and Stephen H.M. Bloch, Esq., Salt Lake City, Utah, for intervenor Southern Utah Wilderness Alliance.

#### OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Rainer Huck, Robert J. Telepak, Robert L. Norton, and the SouthEastern Utah O.H.V. Club, Don Keele, Bonnie Keele, Glenys Sitterud, Scott Jacobson, Ruxton B. Noble, Victor Johnson, and Mark H. Williams (referred to collectively as SUOC), <sup>1/</sup> have separately appealed the February 3, 2003, Finding of No Significant Impact (FONSI) and Decision Record (DR) (DR/FONSI), issued by the Field Office Manager, Price, Utah, Field Office, Bureau of Land Management (BLM), approving the San Rafael Route Designation Plan (Travel Plan) for off-highway vehicle (OHV) use. <sup>2/</sup> The approved Travel Plan implemented Alternative Four of the January 31, 2002, environmental assessment (EA) prepared for the Plan (EA-UT-067-94-010), with minor modifications described in the attached Errata to the EA and its associated Map 2. By order dated Feb. 17, 2004, the Board denied Huck's petition for a stay of BLM's decision pending review and granted the motion to intervene filed by the Southern Utah Wilderness Alliance (SUWA). <sup>3/</sup>

<sup>1/</sup> Although SUOC's Notice of Appeal/Statement of Reasons (SOR) identifies Mark Williams as an appellant, he did not sign the SOR.

<sup>2/</sup> These appeals have been docketed as IBLA 2003-169 (Huck), IBLA 2003-170 (Telepak), IBLA 2003-171 (Norton), and IBLA 2003-172 (SUOC). BLM has filed a motion to consolidate these appeals which we took under advisement in an order dated Feb. 17, 2004. Although Huck objects to consolidation of the appeals because, inter alia, some aspects of his appeal are unique and deserve to be adjudicated individually, we grant BLM's motion and consolidate the appeals for purposes of review and decision. Huck's individual concerns, as well as those of the other appellants, have been thoroughly addressed in this consolidated decision.

<sup>3/</sup> On Jan. 21, 2005, Huck filed a "Motion for Timely and Expedited Ruling" on his  
(continued...)

## Background

The Travel Plan culminates a process initiated by the San Rafael Resource Area Resource Management Plan (RMP) issued in May 1991. The RMP placed the lands within the San Rafael Resource Area, which now is administered by the Price Field Office, into one of four categories of off-road vehicle (ORV) <sup>4/</sup> use: Open to ORV use (281,820 acres); open to ORV use with seasonal restrictions (11,600 acres); limited to designated roads and trails (1,018,650 acres); or closed to ORV use (151,770 acres). (RMP at 68, 69, Map 17.) <sup>5/</sup> The RMP clarified that the ORV use designations did not apply to state, county, or BLM system roads or to private or state inholdings; did not distinguish between recreational and nonrecreational use; allowed ORV use in a closed or limited area under an authorized permit; and could only be changed through a plan amendment. Id. at 65, 68.

The RMP identified deer and elk crucial winter ranges (12/01 to 04/15) and antelope crucial habitat (05/15 to 06/15) as areas open to ORV use with seasonal restrictions. Id. at 68. It also specified the areas in which ORV use would be limited to designated roads and trails, including Copper Globe, Dry Lake Archaeological District, Pictographs, and Swasey Cabin areas of critical environmental concern (ACECs); portions of Highway I-70 Scenic Corridor, Muddy Creek, Middle San Rafael Canyon, San Rafael Reef, Segers Hole, and Sids Mountain ACECs; existing land leases; the San Rafael Swell special recreation management area; Semiprimitive Nonmotorized (SPNM) recreation opportunity spectrum (ROS)

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<sup>3/</sup> (...continued)

appeal. Our decision moots this request which we accordingly deny. We note that on June 15, 2005, Huck, Telepak, Norton, and SUOC filed a complaint in Federal district court challenging the Travel Plan. Williams v. Gubbins, No. 2:05CV00503 DAK (D. Utah filed June 15, 2005).

<sup>4/</sup> Although the terms off-highway vehicle (OHV) and off-road vehicle (ORV) have been used interchangeably by the public, industry, and BLM for many years, only the term off-road vehicle has a legally established definition in Presidential Executive Orders and BLM's related 43 CFR Part 8340 regulations. See EA at 4 n.2. We use the terms interchangeably.

<sup>5/</sup> The RMP places no land in the fifth listed category, "Limited to existing roads and trails." RMP at 68.

class areas; <sup>6/</sup> developed recreation sites; critical soils; riparian and aquatic habitat; and bighorn sheep crucial habitat. Id.

The RMP delineated various special resource management conditions affecting the areas within which OHV use would be limited to designated roads and trails (the “limited to designated roads and trails” category). It tentatively classified segment 2 of the Green River as “wild” and segment 6 of Muddy Creek as “scenic” under the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. § 1273(b) (2000), and directed that adequate measures be taken to protect the identified values of those river segments until Congress either accepted or rejected the tentative classification. (RMP at 65-66, 88-89.) The RMP also specified that SPNM-ROS class areas outside ACECs would “be managed to provide a predominantly natural environment with limited evidence of human use and restrictions and, where possible, to provide an environment of isolation.” Id. at 89. The RMP directed that SPNM-ROS class areas be “managed to provide a predominantly natural environment with limited evidence of human use and restrictions and, where possible, to provide an environment of isolation,” id., adding that these special management directives reflected the conditions present when the RMP was prepared and could only be changed through a plan amendment. Id. at 65. Additionally, the RMP specifically designated the Highway I-70 Scenic Corridor, Muddy Creek, San Rafael Reef, Segers Hole, and Sids Mountain ACECs as Visual Resource Management (VRM) Class I areas. <sup>7/</sup> Id. at 70, 81-82, 84-85; see also id. at 71, Map 18.

Although the RMP set the parameters for designating routes within the “limited to designated roads and trails category,” it did not determine which specific roads and trails should be designated as open to ORV use; rather, it left that task to the Price Field Office and encouraged public participation in the designation process. Id. at 65, 68. The Price Field Office began the designation process in 1992 when it sought public stakeholder participation and input on routes in the San Rafael area. BLM met monthly for about 18 months with diverse stakeholders including County Commissioners, representatives from OHV clubs, environmental groups, mountain

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<sup>6/</sup> ROS classes describe and provide a range of recreational uses based on activity, setting, and experience. SPNM areas have “[h]igh probability of experiencing solitude and closeness to nature with a high degree of challenge and risk. Little interaction with other users. Access and travel is non-motorized on trails, some primitive roads and cross country.” (EA at 86.)

<sup>7/</sup> The objective of a VRM Class I area is to preserve the existing character of the landscape by protecting the areas from visible change. (EA at 23.) Accordingly, “only natural ecological changes and very little management activities are allowed. Any contrast created within the characteristic landscape must not attract attention.” (EA at 24.)

bike clubs, hiking groups, and other users of the public lands and received over 1,000 comments solicited from stakeholder constituents. See EA at 80-81; DR/FONSI at 2. BLM prepared a preliminary route designation map synthesizing the previously gathered information and released it for public review in 1997. BLM also briefed the Utah congressional delegation on the proposal and held formal public meetings in various locations throughout Utah and Colorado. Id.; see also EA at 81. BLM received over 1,500 additional comments on the preliminary proposal which it used to develop the alternatives and analysis presented in the EA prepared for the Travel Plan pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000). (DR/FONSI at 2; EA at 81.)

The EA explained that the proposed action constituted the final step in implementing the RMP’s OHV decisions by identifying and designating routes open for travel and specifying allowable modes of travel on a few particular routes. It stated that, pursuant to the RMP, route designations were needed

to ensure that the use of OHVs on public lands within the OHV limited category would be designed to (1) provide for protection of critical soils; (2) provide for protection of scenic resources; (3) protect crucial wildlife habitat; (4) provide for recreational opportunities[;] and (5) provide special management for certain vegetation, cultural, and historic mining resources, among others.

(EA at 4.)

The EA recited the rationale for the RMP’s placement of various areas within the limited to designated roads and trails category, including

6. Portions of Highway I-70 Scenic Corridor - to protect scenic values and the surrounding viewshed;

7. Portions of Muddy Creek ACEC - for its scenic and historic values \* \* \*;

\* \* \* \* \*

9. Portions of San Rafael Reef ACEC - scenic values and relict vegetation;

10. Portions of Segers Hole ACEC - for recreational and scenic values;

11. Portions of [Sids] Mountain ACEC - for recreational and scenic values;

\* \* \* \* \*

13. Wild and Scenic Rivers - to protect eligibility status and their Wild and/or Scenic classification for all or portions of Segments 1 and 3 of the San Rafael River; and Segments 1, 2, 3, 4, 5, and 6 of the Muddy River; and Segments 1, 2, and 3 of the Green River.

\* \* \* \* \*

15. Semi Primitive Non-Motorized Recreation Opportunity Spectrum (ROS) class areas - to protect that ROS category in order to provide a predominantly natural environment with limited evidence of human use and restrictions and where possible to provide an environment of isolation.

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17. Critical Soils - to protect highly saline soils or soils highly susceptible to erosion. The goal is to maintain as much vegetative cover as possible.

18. Riparian and Aquatic Habitat - to prevent soil erosion, stabilize critical soils, and protect riparian vegetation and reduce surface disturbance.

19. Bighorn Sheep Crucial Habitat - to protect habitat from deterioration and protect animals from interference during lambing from 4/15 - 6/1.

20. Deer and Elk Crucial Winter Ranges - to protect forage and browse species from 12/01 - 04/15.

21. Antelope Crucial Habitat - to protect fawning areas from interference by humans from 5/15 to 6/15.

(EA at 4-5.)

The EA acknowledged that the Price Field Office had initiated a revision of its two existing land use plans, the 1991 San Rafael RMP and the 1983 Price River Management Framework Plan, and would replace the two existing plans with one

revised RMP. It explained that the revised RMP would provide opportunities to reconsider the route designations made in the Travel Plan in light of the planning goals and objectives espoused in the alternatives, but that, pending completion of the revised RMP, the route designations made in the Travel Plan would remain in effect. (EA at 5-6.)

The EA summarized the issues pertinent to the route designations, including those identified in the RMP, new issues arising since the issuance of the RMP, and issues brought forth by the public. The issues derived from the RMP focused on OHV use and its impacts on critical soils and resultant erosion, historic and cultural resources, scenic values, natural values tied to the SPNM-ROS class, crucial wildlife habitat, and recreational opportunities. (EA at 9.) New issues influencing the criteria for determining which routes should or should not be open to OHV use included:

1. A proliferation of routes, many of which have no purpose or go to the same general destination as other routes already established;
2. Conflict between motorized and non-motorized users \* \* \*.
3. Impacts on federally listed threatened and endangered species based on new data and knowledge, and new listings;
4. Impacts on Wilderness Study Areas [(WSAs)]; [and]
5. Impacts on lands found to have wilderness character as a result of a wilderness inventory conducted by the BLM and portrayed in the 1999 Utah Wilderness Inventory.

(EA at 10.) The issues raised by the public focused on the seven additional areas identified by the Utah Wilderness Coalition (UWC) as having wilderness character, which BLM independently determined had a reasonable probability of having wilderness character. Id.; Errata at 3-4.

The EA identified eight alternatives, four of which it carried forward for detailed analysis and four of which were eliminated from expanded consideration. The eliminated alternatives included: (1) the Revised Statute § 2477 (R.S. 2477) <sup>8/</sup>

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<sup>8/</sup> Section 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1970), commonly referred to as R.S. 2477, was repealed by section 706(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2793 (1976). R.S. 2477 provided: “The right of way for the construction of highways over public

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alternative, which would designate all as open routes asserted by Emery County under R.S. 2477; (2) the complete route closure alternative, which would not designate any routes available for motorized recreational use; (3) the historical trails alternative, which would designate all routes historically permitted for motorcycle events; and (4) the connecting trails alternative, which would connect local communities and U.S. Forest Service (USFS) trails and roads west of State Route 10 with the proposed trails on BLM land. (EA at 12-13.)

BLM rejected the R.S. 2477 alternative because no regulations currently existed addressing the assertion or recognition of R.S. 2477 rights-of-way, courts would ultimately determine the validity of R.S. 2477 assertions, and recognition or rejection of the thousands of R.S. 2477 claims asserted by Emery County was beyond the scope of the EA. The EA pointed out, however, that nothing in it was intended to affect the validity of any R.S. 2477 assertions, and that BLM would adjust its travel routes to reflect any decisions on R.S. 2477 assertions. (EA at 12.) BLM declined to pursue the complete route closure alternative because that alternative did not conform to the RMP's designation of the area as limited rather than closed to OHV use, would not meet the purpose and need of the Travel Plan, and would block access to areas that remain open to OHV use. Id. The EA dismissed the historical trails alternative, pointing out that some of the motorcycle tracks were no longer present, others were visible but not highly evident in the environment, and some coincided with inventoried routes carried forward in other alternatives, adding that the Price Field Office would continue to consider applications for motorized events on the historical routes. Id. at 12-13. As to the connecting trails alternative, BLM determined that the expanse of the trail system and the numerous unresolved issues such as easement acquisition and county and city support rendered the alternative beyond the scope of the EA. Id. at 13.

Turning to the four alternatives considered for detailed analysis, the EA first identified the management actions common to all those alternatives. These actions included the discontinuance of the March 21, 2000, emergency OHV closure (65 FR 15169 (Mar. 21, 2000)) within the area affected by the Travel Plan, and the use of the designated routes within WSAs on a conditional basis as long as the use did not impair the wilderness suitability of the WSAs; the superseding, as to OHVs, of the February 24, 1992, emergency limitation of all vehicles, including mountain bikes, to designated roads in the San Rafael Wedge (57 FR 6330 (Feb. 24, 1992)); the inapplicability of the designations to state, county, or BLM system roads; the

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<sup>8/</sup> (...continued)

lands, not reserved for public uses, is hereby granted.” See Armando Fernandez, 165 IBLA 41, 46 n.10 (2005). Although R.S. 2477 is no longer in effect, valid existing rights established prior to the Oct. 21, 1976, enactment of FLPMA were preserved by section 701(a) of FLPMA. See 43 U.S.C. § 1701 note (a) (2000).

continuance of current restrictions on roads and rights-of-way authorized under permits; the uniform treatment of recreational and non-recreational vehicle uses; the usage of signs, barricades, maps, kiosks, and public education efforts to direct users to appropriate available routes; the monitoring of designated routes to ensure compliance with the goals and objectives of the RMP and applicable laws, regulations, and policy; the retention of permitted or authorized use in accordance with the underlying permit or authorization regardless of whether the utilized route was designated in the Travel Plan; and the case by case consideration of permits for new or improved access where routes are not available, with appropriate NEPA analyses. (EA at 13-14.)

The EA described each of the alternatives considered for detailed analysis. Alternative One would designate all existing inventoried routes (as of the February 2001 inventory) in the limited OHV category as available for motorized travel, including all pre-existing inventoried ways in the seven WSAs, i.e., those ways existing in 1980 when the lands were inventoried for WSA designation. <sup>2/</sup> (EA at 14-15.) This alternative, which would designate a total of 1,074 miles of routes including 1,045 miles for all motorized vehicles and 29 miles designated only as motorcycle trails, would optimize and promote motorized recreational opportunities and encourage dispersed motorized use over the entire limited OHV category area containing existing routes. Id. at 15. While the EA denominated Alternative One as the No Action Alternative, BLM noted that it differed from the current situation in several ways, such as opening the vehicle ways in the WSAs closed by emergency order and employing signs, kiosks, route maps, and monitoring to curb unauthorized cross-country OHV use. Id.

Alternative Two, which would designate 819 miles of routes as available for all motorized vehicle use, was designed to maximize protection to natural, scenic, and wilderness-related values and to maintain existing ROS settings while authorizing numerous routes for motorized recreational opportunities outside the protected areas. Id. Under this alternative, all existing routes in the limited OHV category would be available for OHV travel except for those within WSAs, BLM wilderness inventory areas (WIAs) found to have wilderness characteristics in the 1999 Utah Wilderness Inventory, and SPNM-ROS class areas. Id.

Alternative Three, the objective of which was to balance motorized opportunities with the underlying needs to protect critical soils, scenic resources, and crucial wildlife habitat and to provide special management for certain vegetation, cultural, and historic mining resources, among others, would designate a total of

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<sup>2/</sup> A “way” is a “vehicle route maintained solely by the passage of vehicles which has not been improved and/or is not being maintained by mechanical means to ensure relatively regular and continuous use.” (EA at 86.)

580 miles of routes, with 557 miles available for all motorized vehicle types and 23 miles denominated only as motorcycle trails. Id. at 15-16. Based on resource issues and concerns as well as public comments, this alternative reviewed the RMP's directives in light of the current affected environment. It would allow motorized travel on three pre-existing inventoried ways in Sids Mountain WSA and some routes in WIAs and SPNM-ROS class areas, but would not designate routes in the other seven affected WSAs and in SPNM-ROS class areas if the routes conflicted with resource concerns. Id. at 16. Alternative Three utilized the following criteria to determine which routes would be available to motorized travel:

1. Routes that serve as important access for recreation.  
Routes important for recreation include, but are not limited to, routes to viewpoints and features of interest, scenic loops and routes to trailheads. The designated OHV routes would provide a spectrum of riding difficulties (easy, moderate, challenging) without compromising resource values and the safety of users.
2. Routes that could be reasonably patrolled and maintained via signs and structural installation.
3. Routes that generally comply with [VRM] objectives.

Id. This alternative also identified the types of routes generally not considered for designation, including:

1. Duplicate routes to the same location;
2. Dead end routes that are not manageable (perhaps because they provide easy access to closed areas, routes serving illegal wood cutting areas);
3. Routes causing a conflict between motorized and non-motorized use which affect the expectations and safety of both the non-motorized and motorized user's experience[;]
4. Routes which cause resource damage by inviting "route proliferation" (multiple parallel trails, hill climbs, "cheat" routes around difficult spots, crushing of cryptogamic soil areas)[;]
5. Routes that are naturally re-vegetating, such as seldom used seismic lines[;]

6. Routes through riparian areas where OHVs could trample young shoots which would prevent the regrowth and establishment of the riparian area[;]

7. Routes that have re-established cryptogamic soils or are situated in areas of pristine critical soils susceptible to damage[;]

8. Routes that have the most potential to affect threatened or endangered species[; and]

9. Routes that could impact the tentative eligibility of wild and scenic river segments, as per the San Rafael RMP.

Id. at 16-17.

The EA denoted Alternative Four as the proposed alternative. This alternative, which designated a total of 663 miles of routes, with 640 miles available for all motorized vehicle types and 23 miles open only as motorcycle trails, utilized the same basic criteria for route selection as Alternative Three but gave greater weight to more intensified OHV opportunities than did Alternative Three. Id. at 17. As a result, Alternative Four would provide additional motorized opportunities in the form of loop riding possibilities and access within certain washes and to specific points of geological interest, while sustaining critical soils, scenic resources, and crucial wildlife habitat and providing special management for certain vegetation, cultural, and historic mining resources, among others. Id. In contrast to Alternative Three, Alternative Four would designate four (rather than three) pre-existing inventoried ways in Sids Mountain WSA as available for motorized use and would allow use of the well-known Behind-the-Reef route and the Devil's Racetrack, the latter of which is located in Sids Mountain WSA. Id.

The EA discussed the portions of the existing environment that could be affected by the described alternatives. The discussion focused on the resources and uses identified in the RMP and the issues raised during public and internal scoping, such as recreation, including visitor management, SPNM-ROS class areas, and hunting; visual resource management; ACECs; wilderness related resources, including WSAs, WIAs, and UWC's proposed wilderness areas; wild and scenic rivers; private lands; wildlife habitat, including desert bighorn sheep, mule deer and elk, and pronghorn antelope habitat; special status plant, bird, and mammal species; riparian habitat; nonnative invasive plant species (weeds); wild horses and burros; critical soils; water quality and surface hydrology; cultural resources; and paleontologic resources. See EA at 18-42.

After first identifying the assumptions underlying its impact analysis (EA at 43-44), the EA analyzed the environmental consequences, including the cumulative impacts, of implementing each of the four alternatives. See EA at 43-79. The EA summarized the impacts of each alternative on the identified resources in Table 4.1, which provided the number of miles of routes available for OHV use by resource for each alternative. See EA at 74-75, Table 4.1. Alternative Four would designate 663 miles of routes affecting recreation resources, 33 miles of routes in SPNM-ROS class areas, 84 miles of routes in VRM Class 1 areas, 96 miles of routes in ACECs, 46 miles of routes in WSAs, 32 miles of routes in WIAs, 52 miles of routes in citizen proposed wilderness areas, 0 miles of routes in wild and scenic river areas, 36 miles of routes in bighorn sheep habitat, 11 miles of routes in mule deer and elk habitat, 74 miles of routes in pronghorn antelope habitat, 38 miles of routes in special status plant habitat, 10 miles of routes in riparian habitat, 663 miles of routes in nonnative invasive species habitat, 171 miles of routes in wild horse and burro areas, 207 miles of routes affecting critical soils, 663 miles of routes affecting cultural resources, and 53 miles of routes affecting paleontological resources. Id. BLM determined that none of these resources would be significantly adversely affected and most would be beneficially impacted by implementation of Alternative 4. See id. at 66-74. The EA's cumulative impact analysis concluded that, since there were no known reasonably foreseeable actions in the San Rafael Swell that would lead to further closure or restrictions in the limited OHV category area, no cumulative impacts to recreational activities were expected from route designation. Id. at 78.

The EA set out an implementation and monitoring plan. See EA at 82-83. <sup>10/</sup> The EA also included maps of the routes designated in each of the alternatives.

BLM released the EA for public review and comment on February 7, 2002, extending the comment period until April 22, 2002. BLM received approximately 1,200 substantive comments on the Travel Plan, including information on additional routes suggested for inclusion in BLM's route inventory database and on revegetated routes proposed for removal from the inventory database. As a result of BLM's field check of the public's information, BLM corrected the inventoried route baseline map shown as Alternative One in the EA. (DR/FONSI at 2; Errata Map 1.) These corrections added approximately 70 additional baseline miles of inventoried routes for Alternative One, for a total of 1,150 miles of OHV routes. (Errata at 1.) BLM also modified Alternative Four as a result of the public comments, adding approximately 14 miles of routes to that alternative for a total of 677 miles of routes identified for OHV use, including 41 miles for single track use and 5 miles restricted to vehicles 52" or less. Id. at 1-2; see Errata Map 2. BLM concluded that the route changes did not affect the overall analysis of either Alternative One or Alternative Four. Id. at 1, 2.

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<sup>10/</sup> The implementation and monitoring Plan set out in the EA was replaced in its entirety by the Plan delineated in the Errata to the EA. See Errata at 5-7.

DR/FONSI

The Field Office Manager issued his DR/FONSI on February 3, 2003. He concluded that the selection of any of the four alternatives would benefit many components of the environment because cross-country OHV use would be curbed by signs, kiosks, barricades, dissemination of designated route travel maps, and monitoring efforts. He noted that restricting OHV use to designated routes would help protect important sensitive resources such as riparian vegetation, threatened, endangered, and other special status species, and cultural and paleontological resources; would create fewer disturbances to wildlife species; would reduce motorized and non-motorized conflicts in certain areas; and would enhance user safety and the recreational experience. (DR/FONSI at 1.) Therefore, based on the analysis in the EA and the rationale provided in the DR, the Field Office Manager determined that the Travel Plan would not have a significant effect on the human environment and that an environmental impact statement (EIS) was not required. Id.

The Field Office Manager decided to implement Alternative Four as described in the EA, with the minor modifications set out in the attached Errata to the EA and its associated Map 2. That alternative designated approximately 677 miles of routes in the San Rafael Swell and surrounding areas as open to motorized travel, including motorcycles and all terrain vehicles (ATVs), while closing the remaining 468 miles of routes in the limited to designated roads and trails categories. Id. <sup>11/</sup> He explained that he selected this alternative because it provided a balanced approach to OHV use and management of other resources. Id. at 3.

The Field Office Manager described the San Rafael Swell region as a massive, steep, rugged anticlinal uplift containing a spectacular sandstone reef dissected with slot canyons and, behind the reef, an irreplaceable mosaic of stunning canyons, grasslands, and eroding arches and buttes. He noted that these special values underlay the RMP's placement of the area in the limited to designated roads and trails category in order to protect critical soils, scenic resources, and crucial wildlife habitat and provide recreational opportunities and special management for certain vegetation, cultural, and historic mining resources, among others. Id. He explained that the approved Travel Plan met these parameters while allowing a myriad of motorized opportunities, including a variety of OHV loop rides and single track

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<sup>11/</sup> He also noted that OHV use in the antelope fawning habitat in the San Rafael Desert would be limited to designated roads and trails from May 15 to June 15 each year; that OHV use in the deer and elk crucial winter ranges located in the foothills adjacent to USFS lands west of Highway 10 would be limited to designated roads and trails from December 1 to April 15 each year; and that these areas would be open to OHV use during all other times of the year. Id.

motorcycle trails, which provide recreational access to destination points and scenic overlooks. Id.

The Field Office Manager stated that 468 miles of routes were not designated for motorized travel mainly because they were

(1) duplicate routes to destination points; (2) dead end routes; (3) routes causing resource damage by inviting “route proliferation” (multiple parallel trails, hill climbs, additional routes around difficult spots); (4) routes that are naturally revegetating; (5) routes with conflicts between motorized and non-motorized users; (6) routes through riparian areas; (7) routes through critical soils susceptible to damage; (8) routes that have the most potential to affect threatened or endangered species; (9) routes that could affect cultural resources; (10) and routes that could impact the tentative classification of eligible wild and scenic river segments, as per the San Rafael RMP. Two Federal Register Notices[,] released in 1992 and 2000 respectively, had already closed some of these routes in the Wedge Portion in the Middle San Rafael River ACEC and in six of the seven [WSAs] within the San Rafael. These routes were closed to prevent further deterioration of the Wedge area’s endangered plant and wildlife resources as well as to prevent the impairment of wilderness values. These routes remain closed under this Decision.

Id. He pointed out that his decision maintained the status quo established by the March 2000 Emergency OHV order which allowed continued OHV use on four pre-existing inventoried ways in the Sids Mountain WSA as long as wilderness impairment did not occur, noting that subsequent monitoring had shown that the condition of the WSA was improving due to better user compliance fostered by impact control measures such as barriers, signs, and increased on-the-ground presence. Id.

The Field Office Manager explained that the rationale for the specific route designations could be found in two documents available in the Price Field Office, the Purpose and Needs Assessment for Public Land Non-System Roads (Purpose and Needs Assessment) and the Field Report on Specific Routes Brought Forth from Public Comments (Field Report), which set out the conflicts and uses of each inventoried route on a route-by-route basis. (DR/FONSI at 3-4.) He added that the attached BLM Response to Comments and Errata to the EA provided further details on these and other routes. Id. at 4. He specifically discussed several routes of particular public concern, including some relevant to these appeals:

- ◆ [Segers] Hole - All routes on public land south and east of the State section 2 are closed to motorized use. These routes are in an [ACEC] designated in the 1991 San Rafael RMP. The ACEC is to be managed as a [VRM] Class I category area. Increased OHV use has created proliferated routes that are damaging scenic values and are not meeting the VRM Class 1 objectives.
  
- ◆ Junes Bottom - This route is closed to motorized use. Of concern is (1) route proliferation and damage to cryptogamic soils, and; (2) protecting the tentative classification of “wild” on an eligible wild and scenic river segment identified in the San Rafael RMP. Occasional motorized access to an old homestead site may be provided for family heritage purposes through the Special Recreation Use permitting process pending additional NEPA analysis.
  

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- ◆ [Sids] Mountain - The following specific routes are “conditionally open” to motorized use: Coal Wash, the dugway entering Coal Wash, North and South Forks to Coal Washes, Eva Conover, Fix-it-Pass to Cane Wash, Justesen Flats Access Route and the Devil’s Racetrack. These routes would remain open only if motorized travel does not impair the suitability of the WSA for congressional wilderness designation. The routes would continue to be frequently monitored.
  
- ◆ Muddy Creek - This route is closed to motorized use to protect riparian and watershed resources. Hydrologically it is considered to be “functioning at risk,” in part due to OHV use. The Muddy Creek is identified in the San Rafael RMP as eligible for wild and scenic river designation with a tentative classification of scenic. Current OHV route proliferation is jeopardizing this tentative classification.
  
- ◆ Upper Little Wild Horse - This route is temporarily closed to motorized travel until repair and rehabilitation is completed. Motorized travel will then be limited to the designated route.

Id.

The Field Office Manager proffered his reasons for not selecting each of the other alternatives. He rejected Alternative One, which would have left the maximum

mileage of inventoried routes in the limited category open to OHV use, because it provided minimal protection of critical soils, scenic resources, crucial wildlife habitat, threatened and endangered species habitat, and special management objectives designed to protect certain vegetation, cultural resources, and historic mining resources. This alternative also would have left open duplicate and dead end routes, created route proliferation management problems, inadequately protected naturally revegetating routes, and perpetuated routes impacting the tentative wild and scenic river segment classifications. Id.

He did not select Alternative Two, which would have closed all routes within WSAs, WIAs, and SPNM-ROS class areas, because it did not provide a balanced approach to motorized recreation opportunities and selectively protected only critical soils, scenic resources, crucial wildlife habitat, and special management objectives relating to certain vegetation, cultural, and historic mining resources. Id. at 4-5. He found that this alternative would have placed much of the quality scenic areas in the San Rafael Swell off limits to motorized recreationists, made prime Desert Bighorn Sheep hunting areas inaccessible by vehicles, and closed all the single track motorcycle trails. Id. at 5.

The Field Office Manager declined to adopt Alternative Three because that alternative would not have balanced motorized and non-motorized recreation activities. He indicated that this alternative would have limited motorized loop opportunities by closing the popular Devil's Racetrack and the Behind-the-Reef route, among others, and eliminated the spectacular scenic experiences associated with those loop opportunities. Id.

The Field Office Manager set out the monitoring and implementation components of the Travel Plan. He noted that monitoring methods would conform to the methods under development by the Utah Statewide OHV team and would range from general incidental written observations related to compliance of OHV activities to more complex intensive studies where issues or problems arose. Id. He pointed out that monitoring studies for the four "conditionally open" routes in Sids Mountain WSA would continue on a regular basis to ensure that suitability of the WSA for Congressional wilderness designation was not being impaired. Id. He stated that implementation would include maps and increased signs to inform recreational users of the new restrictions; that BLM would work with state, local, and other Federal law enforcement entities to patrol the area; and that BLM would continue to encourage partnerships and volunteer agreements with organizations, groups, and individuals to help with sign/kiosk building and installation,

rehabilitation projects, and monitoring, and to serve as public contact and information distribution sources. Id. <sup>12/</sup>

### Arguments of the Parties

#### Rainer Huck, IBLA 2003-169

On appeal, Huck contends that the Travel Plan discriminates against him because he is mobility impaired and will no longer be able to visit most of the closed sites, including Muddy River Road, Pastures Road, Segers Hole Road, Last Chance Canyon Road, Iron Wash Road, Mackey Flats Wash Road, Chute Canyon Road, Saddle Horse Canyon Road, Salt Wash Road, Wild Horse Canyon Road, Junes Bottom Road, and Upper Little Wild Horse Canyon Road, among others. (Huck SOR at 2.) He asserts that the Travel Plan ignores BLM's duty to manage the public lands under the principles of multiple use set out in the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(a) (2000), and alleges that the preparers of the EA were biased against motorized recreation. (Huck SOR at 3.) He cites statements in the EA which he maintains demonstrate that anti-OHV sentiment. Id. at 3 and attached Mar. 15, 2002, comments on the EA.

Huck avers that the lands of the San Rafael Swell are public facilities, the management of which must not violate the civil rights of United States citizens, including the right to travel, and that the Travel Plan's restrictions on motorized access violate the rights of motorized travelers. Id. at 3-4. He also maintains that the Plan is discriminatory and violates the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2000), because it allows unrestricted access by muscle-powered vehicles while banning the motor-powered vehicles necessary to allow people who lack sufficient strength, health, or endurance to power a vehicle to visit some areas. (Huck SOR at 4.)

Huck objects to BLM's refusal to address the validity of asserted R.S. 2477 roads. He contends that the vast majority of routes closed by the Travel Plan, including Muddy River Road, Iron Wash Road, Mackey Flats Wash Road, Chute Canyon Road, Saddle Horse Canyon Road, Salt Wash Road, Junes Bottom Road, Wild Horse Canyon Road, and Upper Little Wild Horse Canyon Road, are R.S. 2477 roads over which BLM has no closure authority. Id. He further insists that the Plan is biased in favor of maximum wilderness and wild and scenic river

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<sup>12/</sup> The Field Office Manager acknowledged that, while the Travel Plan conformed to the 1991 San Rafael RMP, as well as Federal regulations, laws, and policies, the RMP was currently under revision. He stated that the route designations would remain in effect until completion of the new RMP, but recognized that the new RMP could consider changes in the route designations in the Travel Plan. Id.

designations and attempts to further that bias by manufacturing wilderness through road closures in currently non-pristine areas. Id. Additionally, Huck complains that the Plan ignored many important comments in reaching its pre-determined outcome, and is so grossly restrictive and discriminatory that it will be unenforceable and will turn law-abiding citizens into criminals simply because they want to continue to enjoy the public lands. Id. at 4-5.

Robert J. Telepak, IBLA 2003-170

In his appeal, Telepak contends that the route closures in the Travel Plan are arbitrary and capricious, ignore the actual facts he and others presented in their comments, and evince BLM's unlawful denial of any meaningful public involvement in the route designation process. (Telepak SOR at 2. <sup>13/</sup>) Telepak complains that BLM ignored his formal written request for feedback on how his public comments were interpreted and categorized, citing BLM's failure to provide him with a marked up copy of his comments before issuing the DR/FONSI and the lack of any marks on the copy finally provided. He avers that BLM ignored and disregarded his comments and that the Response to Comments attached to the DR/FONSI clearly shows that BLM had predetermined its decision regardless of the facts and public comments. Id. at 3-4.

Telepak asserts that the decision to close several key routes unlawfully implements management standards inconsistent with the RMP. Specifically, he challenges the closure of the Junes Bottom, Bull Bottom, Trin Alcove/Entrada Gap, and Muddy River roads to protect tentative wild and scenic river classifications, alleging that the closures are designed to create river segments eligible for wild and scenic river designation, even though the classification criteria are not met, by arbitrarily closing existing roads. Telepak contends that this strategy is a corollary of the BLM management practice of treating WSAs as if they had already been congressionally designated as wilderness. Id. at 4.

Telepak elaborates on two examples, Junes Bottom Road and Segers Hole Road. Telepak cites evidence he and others provided showing that the existence of Junes Bottom Road demonstrates that segment 2 of the Green River does not warrant the tentative classification of "wild" made in the RMP and that the RMP's classification, therefore, is wrong. Id. at 5; see also Telepak July 22, 2003, Response to BLM's Answer at 1. He further maintains that only a small amount of cryptogamic soils exist in the area of Junes Bottom Road which negates BLM's reliance on those soils as justification for the road's closure. He also notes that BLM's online map describing the Travel Plan shows the road even though the RMP found no trace of it,

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<sup>13/</sup> Telepak's, Norton's, and SUOC's SORs are not paginated.

and questions BLM's allowance of occasional motorized access to an old homestead site on the road when it asserts that the road does not exist. (Telepak SOR at 5-6.)

As to Segers Hole Road, Telepak denies that OHV traffic has created proliferated routes damaging the scenic values of the ACEC in which it is located. He contends that Segers Hole is one of the remotest parts of the San Rafael Swell and is rarely visited by anyone. According to Telepak, the roads present in the area are old oil and gas exploration roads, not new OHV proliferation routes, and are not visible from the cliff to the west overlooking the Segers Hole view. In any event, Telepak avers that signs could easily keep vehicles on one road, an option BLM failed to even consider. Id. at 6. In short, he submits that BLM has unlawfully subverted the interim management of eligible segments of wild and scenic rivers in an attempt to guarantee that designation, has deliberately delayed, withheld, or ignored meaningful public input, and has used arbitrary and capricious standards inconsistent with the RMP to effect road closures. Id. at 7.

Robert L. Norton, IBLA 2003-171

In his SOR, Norton contends that the 1991 RMP was flawed and that BLM used inconsistent, arbitrary criteria to determine proposed road closures and SPNM areas, while ignoring published detailed route information, maps, and photographs. He maintains that BLM's closure of 41 percent of the existing secondary routes manifests the agency's intent to expand WSAs and shut as many motorized routes as possible, as well as its bias against motorized recreation and for wilderness advocacy groups. (Norton SOR at 1.) Norton asserts that BLM ignored his comments and arguments in favor of keeping various routes open and failed to consider mitigation measures such as signs before proceeding with route closures. Id. at 2.

Specifically, Norton challenges BLM's closure of Segers Hole, Eagle Canyon road in Sids Mountain WSA, Bull Bottom Trail to Trin-Alcove Bend Overlook in Entrada Gap, and Junes Bottom Road along the Green River. He asserts that he and his elderly parents suffer from various health conditions and will not be able to visit these areas without motorized access. Id. As to Segers Hole, Norton denies that OHV use has created proliferated routes damaging scenic values, and asserts that those routes actually were created by oil and gas exploration. Id. He disputes BLM's closure of Eagle Canyon road in Sids Mountain WSA because it is a dead end, pointing out that the "pour-off" at the end of the clearly well-defined route has significant scenic values. Id. Norton also disputes BLM's determination that route proliferation mandates the closure of the route from Bull Bottom Trail to Trin-Alcove Overlook in Entrada Gap, a scenic loop paralleling the Green River. He asserts that the many braided trails are not recent proliferations created by OHV use but have existed for a number of years, and complains that BLM failed to consider closure of the braided trails and signs to keep motorized traffic on the desired direct route. Id.

As far as Junes Bottom Road is concerned, Norton contends that BLM has ignored the extraordinary historical significance of the road which was built in the early 1930s; that the elderly Marsing family members might not survive the extended NEPA process necessary to authorize a special recreation use permit allowing motorized access to the old Marsing homesite on the road; and that BLM has not shown that the well-defined, highly scenic road has caused any damage to cryptogamic soils. Id. at 3.

Norton objects to BLM's tentative "wild" classification of the Green River segment, averring that numerous routes exist on both sides of the river which preclude the segment from that classification. He notes that, contrary to the Price Field Office's tentative classification, BLM's Moab Field Office, which manages the other side of the Green River, does not consider the river eligible for wild and scenic river status. Id. He cites numerous scenic routes along both sides of the river as evidence of man's activities and contends that the river should be designated "recreational" rather than "wild" or "scenic." Id. He maintains that Junes Bottom and the adjacent areas along the Green River do not meet the statutory guidelines for wild and scenic rivers and have illegally been classified de facto as such without site-specific analysis or public input. He also submits that BLM has ignored the fact that active motorized routes currently exist in congressionally recognized wild and scenic river segments. Id. at 4. Norton further disputes the emergency closures previously implemented by BLM and complains about BLM's unresponsiveness to his suggestions that it work with interested OHV groups to implement mitigation measures and install signs and kiosks which would allow for the continuation of traditional uses and access in the planning area. Id.

#### SUOC, IBLA 2003-172

On appeal, SUOC contends that BLM's closure of Junes Bottom Road, Bull Bottom Road, Trin Alcove/Entrada Gap Road, and Muddy River Road to protect the tentative "wild" classification identified in the RMP unlawfully implements a management standard for routes accessing eligible segments of the Muddy and Green Rivers that significantly departs from the RMP. SUOC maintains that by unlawfully establishing such standards and arbitrarily closing these routes, BLM has essentially guaranteed that the tentatively eligible segments of the Muddy and Green Rivers will be designated as suitable for those designations. (SUOC SOR at 5.) SUOC asserts that the RMP determined only the eligibility of the segments and that the site-specific analysis and public participation necessary to determine actual suitability have not yet been completed. It adds that while the interim management standards prescribed in the RMP for these eligible river segments allow OHV travel, such travel is limited to designated roads and trails. Id. at 6-7.

SUOC specifically objects to BLM's conclusions in the Affected Environment section of the EA that management activities are not allowed to damage the existing river segment classifications, that continuation of OHV use could jeopardize the tentative "scenic" classification of segment 6 of Muddy Creek, and that OHV use of the Junes Bottom Road is jeopardizing the tentative "wild" classification of segment 2 of the Green River. Id. at 7-8. SUOC maintains that these conclusions represent a deliberate attempt to imply that a suitability determination has already been made, even though BLM has not performed the required site-specific analysis and has simply inferred that various routes are no longer evident. Id. at 8.

SUOC further avers that even if BLM's management standard conforms to the RMP, its use of a perceived "threat" to the tentative classifications as the rationale to close the routes nevertheless is arbitrary and capricious because these popular routes provide unique and valuable recreational experiences without significant damage to resources and their designation would not threaten a future "wild" or "scenic" classification for any eligible river segment. Id. SUOC asserts that BLM has now finalized the eligibility determinations, which will be circulated for public comment, but suggests that BLM's closure of the routes makes a suitability determination a foregone conclusion. Id. at 8-9. In any event, SUOC submits that designation of the river segments as wild or scenic would not necessarily preclude motorized access, citing USFS guidance and precedent. Id. at 9.

SUOC disputes BLM's claim that concerns about route proliferation and damage to cryptogamic soils justify the closure of Junes Bottom Road, Bull Bottom Road, Trin Alcove/Entrada Gap Road, and Muddy River Road, averring that not only has BLM presented no site-specific information documenting any proliferated routes near these areas, but also that these roads receive very little use due to their remoteness and, in one case, seasonal availability. SUOC finds BLM's route proliferation justification especially capricious given BLM's simultaneous claim that the routes should not be open because they are no longer evident. Id. at 10. SUOC acknowledges that cryptogamic soils exist throughout the planning area but denies that OHV use creates any potential for significant undue damage to or disturbance of those soils. SUOC further avers that BLM has left routes open in areas with much more cryptogamic soils, using other management practices to minimize or eliminate harm to these sensitive soils. Id., citing Affidavit of Bonnie Keele.

SUOC also challenges BLM's decision to close Route "B" which is a loop from the upper Red Ledge Road and County Road 708, Route "D" from Eli Hollow to Rock Canyon, the Upper Sid and Charley Road, the Red Valley Road Complex, Big Ridge Bypass Road, the Segers Hole Road complex, portions of Short Canyon Road, Sand Bench Road, and the loop road from Copper Globe to the Link Flat Road. It maintains that these closures are arbitrary and capricious and unsupported or directly contradicted by the data. (SUOC SOR at 11.) It asserts that BLM failed to properly

quantify the nature and magnitude of the impacts related to those routes and neglected to consider adequately the direct economic and social effects of the closures. Id. at 11-12. SUOC accepts the criteria utilized for designating the routes but insists that BLM should have considered site-specific data to weigh the socioeconomic value of the routes in relation to the criteria. SUOC alleges that, although some routes have been created since the 1991 adoption of the RMP, the record demonstrates that OHV use is generally occurring where it always has occurred, and, therefore, that the site-specific data and analysis do not support BLM's reliance on route proliferation as justification for the closure of these routes. Id. at 12-13.

SUOC cites BLM's closure of Segers Hole on the ground that increased OHV use has created proliferated routes, asserting that the record demonstrates that the routes in this remote and inaccessible area are seldom used and that little, if any, proliferation has occurred. Id. at 13, citing Affidavit of Don Keele. SUOC posits that BLM's proliferation claim rests on use of routes constructed for oil and gas exploration, which, according to SUOC, is legal and does not constitute proliferation. SUOC adds that any minimal route proliferation which might be occurring arises from the lack of maps or route markers, omissions which could be rectified by BLM's provision of such maps and route markers, options BLM failed to consider when making its designation decision. (SUOC SOR at 13.) SUOC similarly dismisses VRM requirements as justifications for the closures, asserting that the existing roads have been visible for hundreds of years and that, even if the roads were closed, other roads remaining open for activities such as livestock management on State land would continue to be visible. SUOC further objects to BLM's failure to consider impartially the tremendous socioeconomic value of these routes. Id. In short, SUOC insists that no rational connection exists between the facts and several route closure decisions. Id. at 14.

SUOC also argues that BLM failed to adequately assess cumulative impacts, specifically, the Travel Plan's impacts on dispersed camping and OHV staging areas.<sup>14/</sup> (SUOC SOR at 14.) SUOC avers that the Plan closes the majority of camping spots located adjacent to or at the end of most closed routes, thus belying BLM's claim that the majority of campsites in the San Rafael area will continue to be accessible by vehicle. Id. at 15, citing Affidavit of Paul Conover. SUOC similarly asserts that BLM completely ignored the Plan's impacts on staging areas for OHV use

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<sup>14/</sup> Cumulative impacts refer to impacts on the environment resulting from the incremental impact of the specific action at issue when added to other past, present, and reasonably foreseeable future actions. See 40 CFR 1508.7. Since SUOC does not identify any action other than the Travel Plan, its arguments are more properly characterized as objections to the comprehensiveness of BLM's analysis of the Plan's direct and indirect effects. See 40 CFR 1508.8.

which serve as sites for parking and unloading vehicles and as space for inexperienced riders to hone their skills. Id.

Finally, SUOC contends that BLM denied the public a meaningful opportunity to participate in the Plan's development and, as a consequence, based the Travel Plan on an inaccurate route inventory. SUOC avers that, contrary to the requirements of FLPMA, BLM deliberately withheld and delayed meaningful public involvement, ignored public input addressing the accuracy of the route inventory, and delayed its analysis to reach a predetermined outcome. According to SUOC, this disregard of public involvement led to the arbitrary closure of the Iron Wash trail east of the San Rafael Reef, the Badlands Trail, the Pink Trail, the Ridge Route, the Pastures Road, and the Five Miles of Whoops. Id. at 16. SUOC asserts that, although BLM solicited and received public information, BLM did not sufficiently incorporate that information into the route inventory and the Travel Plan. Specifically, SUOC complains that, while correcting some of the inaccuracies revealed by the public, BLM ignored other significant information showing that numerous routes considered non-existent or reclaimed in the initial route inventory, including single track motorcycle trails, actually were used and visible. Id. at 17. SUOC maintains that routes were closed or not seriously considered in the planning process because BLM discarded or deliberately ignored input from interested public parties. Id.

SUOC submits that this disregard for these public comments demonstrates BLM's bias against OHV use in general and motorcycle trails in particular, especially when contrasted with the uncritical adoption of public input addressing wilderness issues. Id. at 18. SUOC argues that BLM's elevation of the personal bias of its employees above the application of sound recreation management extended beyond the inaccuracies in the route inventory to the closure of popular single track motorcycle trails, citing as an example, the closure of the popular Purple Trail which makes a loop out of a dead end, is adjacent to other motorcycle trails, has important intrinsic value to recreationists, and provides a unique experience, all of which, under sound recreation management, support keeping the trail open. Id. at 19. SUOC suggests that BLM's failure to implement OHV management activities shown to substantially reduce or eliminate undesirable impacts from OHV use has led to much of the perceived OHV problem and requests that the identified route closures be reversed and BLM directed to reconsider the Travel Plan's effects on OHV staging areas and dispersed camping. Id. at 20.

#### BLM's Consolidated Answer

In its answer, BLM denies that the challenged route closures lack support in the record. BLM recites the evidence justifying the closure of five of the identified routes: Junes Bottom route; Muddy Creek route; Segers Hole Road Complex; Trin Alcove/Entrada Gap Road; and Bull Bottom Road. BLM describes the

Junes Bottom route, which is listed as Routes 104L, 105L, and 106L in the Purpose and Needs Assessment, Part Four (Administrative Record (AR), Volume (Vol.) 5, Technical Book (Tech. Bk.) 1, Purpose and Needs Assessment, Route Attributes, Part Four; Map IV), as an eight and one-half mile, primarily unconstructed historic trail leading to Junes Bottom on the Green River, the use of which has increased in recent years due to increased publicity. BLM asserts that the decision to close the road to motorized use was based on concerns about route proliferation, damage to cryptogamic soils, impacts to critical highly saline or erosion-susceptible soils, conflicts with the area's SPNM-ROS classification, and inconsistency with the RMP's tentative "wild" classification of segment 2 of the Green River, all of which find ample support in the record. (BLM Answer at 13-14, citing DR/FONSI at 4; Response to Comments WSR1; EA at 5, 28, 47, 54; RMP at 65.) BLM adds that the closure is consistent with the RMP's directive that BLM take measures to protect those segments of the Green, San Rafael, and Muddy Rivers tentatively classified as eligible for protection under the WSRA, pending Congressional action on the segments. (BLM Answer at 14; Response to Comments WSR2; RMP at 65, 87-89.)

BLM explains that Muddy Creek is a watercourse in a deep sandstone canyon through the San Rafael Reef within the Muddy Creek ACEC which the RMP requires to be managed to protect historical and scenic values. BLM points out that the protection of scenic values includes management according to VRM Class I objectives which only allow natural ecological changes, limited management activities, and man-made contrasts within the characteristic landscape that do not attract attention. (BLM Answer at 14-15; EA at 24; RMP at 82, 83, 100.) BLM describes the Muddy Creek route (Routes 560L and 561L, Purpose and Needs Assessment, Part Three (AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Three; Map III)) as a 5-mile braided network of trails criss-crossing the Muddy Creek approximately 31 times and continuing on the benches. (BLM Answer at 15, citing Errata at 5 ¶ 21; Response to Comments REC35; EA at 35, 50.) As support for the closure of this route, BLM cites references in the record showing that heavy OHV traffic has expanded and multiplied this network; that Muddy Creek's periodic flooding has led to even more trails as certain segments have become isolated and abandoned; that OHV use has impacted riparian vegetation throughout the length of Muddy Creek, the condition of which has caused BLM to classify the area as "functioning at risk;" that OHV use has broken down creek banks, exposing the creek bottom and banks to accelerated erosion; that OHV use has jeopardized the RMP's tentative "scenic" classification of segment 6 of Muddy Creek; and that conflicts have occurred between motorized and non-motorized users of Muddy Creek. (BLM Answer at 15; Errata at 5 ¶ 21; Response to Comments REC35, RIP3, RIP6; EA at 19, 28, 35, 50.)

BLM points out that the Segers Hole roads complex consists of a network of washes and trails accessing old drill holes and views of Muddy Creek Canyon within

the Segers Hole ACEC, which the RMP directs must be managed as a VRM Class I area to protect scenic values. (BLM Answer at 15-16; Response to Comments REC34; EA at 4, 24; RMP at 70, 84-85, 89, 100.) BLM argues that its decision to close the numerous routes comprising the Segers Hole roads complex (Routes 711-739, Purpose and Needs Assessment, Part Three (AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Three; Map III)) was correctly based on route proliferation's damaging the area's scenic values and thwarting the attainment of VRM Class I objectives. (BLM Answer at 16; DR/FONSI at 4.)

Although appellants challenge the closure of the Trin Alcove/Entrada Gap Road, BLM observes that the Trin Alcove Road (Route 103L, Purpose and Needs Assessment, Part Four (AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Four; Map IV)), which provides access to an overview of the Green River and to a popular camping spot, remains open in the Travel Plan. As to the Entrada Gap road (Route 102L, Purpose and Needs Assessment, Part Four (AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Four; Map IV)), which connects the Trin Alcove and Bull Bottom routes, BLM explains that its closure is warranted by the route's location within a SPNM-ROS class area containing critical soils and by the proliferation of routes caused by its use. (BLM Answer at 16; Response to Comments WSR1.)

BLM notes that the portion of Bull Bottom Road providing a view of the Green River (Route 100L, Purpose and Needs Assessment, Part Four (AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Four; Map IV)) remains open. The closed portion of the route (Route 101L, Purpose and Needs Assessment, Part Four (AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Four; Map IV)) leads down to the Green River, and, according to BLM, was properly closed to protect the RMP's tentative "wild" classification of segment 2 of the Green River, to conform to the area's designation as a SPNM-ROS class area with critical soils, and to prevent further proliferation of other routes in the area. (BLM Answer at 17; Response to Comments WSR1; AR, Vol. 5, Tech. Bk. 1, Route Attributes, Part Four.)

According to BLM, SUOC's challenges to other routes are nothing more than conclusory allegations insufficient to provide compelling reasons for modification or reversal of the Travel Plan or to meet SUOC's burden of establishing through objective proof that BLM's approval of the EA was premised on a clear error of law or a demonstrable error of fact, or that BLM failed to consider a substantial environmental question of material significance to the Travel Plan. (BLM Answer at 17-18.)

BLM denies appellants' claims that it ignored public input in the process of preparing the Travel Plan, averring that those complaints are belied by the record.<sup>15/</sup> BLM recites its numerous activities to engage the public in the process of developing the Plan, including public meetings and comment solicitations before and after preparing both the preliminary route designation map and the EA. (BLM Answer at 19.) BLM asserts that the 25-page Response to Comments, the re-evaluation of the Travel Plan and reversal of certain of the proposed route closures, and the Errata clarifying or correcting the baseline data and text in the EA reflect its careful consideration of the public input. Id. at 19-21, citing Response to Comments NEPA12, REC4, REC6, REC7, REC9, REC10, REC11, REC12, REC19, REC20, REC22, REC29, REC34, REC35, REC37, REC38, REC46, REC47, REC48, REC52, REC53, RIP5, RIP6, RIP8, WLD3, WLD4, WSR1, WSR2.

BLM also maintains that the Travel Plan is consistent with the San Rafael RMP, as required by FLPMA, 43 U.S.C. § 1712 (2000), and its implementing regulations, 43 CFR 1601.0-5(c), 1610.5-3. BLM notes that it closed the Junes Bottom and Entrada Gap routes and one of the Bull Bottom routes to protect the RMP's tentative classification of segment 2 of the Green River as "wild" and chose not to designate the OHV route through Muddy Creek in order to protect the RMP's tentative classification of segment 6 of Muddy Creek as "scenic." According to BLM, appellants' contention that BLM's closure of these routes manipulates and changes the on-the-ground conditions to ensure designation and protection of the river segments ignores the fact that, while the RMP provided that OHV use should be limited to designated roads and trails to protect the tentative classifications, it did not make those designations. (BLM Answer at 21.) BLM submits that, rather than imposing a new management standard unlawfully exceeding the RMP's interim protection decisions, the Travel Plan simply implements those decisions and thus is fully consistent with the RMP. Id. at 21-22.

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<sup>15/</sup> Although SUOC characterizes the public participation issue as a FLPMA issue, BLM asserts that it actually is a NEPA issue. BLM explains that 43 U.S.C. § 1712(f) and 43 CFR Part 1600, cited by SUOC, apply only to the land use planning process, i.e., the preparation, amendment, and revision of an RMP, not decisions implementing that RMP, such as the Travel Plan. BLM contends that the applicable public participation requirements are found in the regulations implementing NEPA, such as 40 CFR 1500.2(d) and Part 1503, and that BLM fully complied with those regulations. See BLM Answer at 19 n.9. SUWA raises the same issue in its answer, adding that even if FLPMA and its regulations imposed public participation obligations on BLM with regard to the Travel Plan, which they do not, BLM met its responsibilities when it involved the public in the preparation of the Travel Plan. See SUWA Answer at 11.

BLM contends that the implementation and monitoring of the Travel Plan fully comports with its responsibilities under FLPMA. BLM avers that Norton's argument that BLM is unlawfully managing areas as a de facto wilderness relies on inaccurate language in the EA (EA at 83) which was corrected in the Errata (Errata at 5-7) to properly apply FLPMA's nonimpairment standard (43 U.S.C. § 1782(c) (2000)) and therefore does not show error in BLM's decision. (BLM Answer at 22-23.) BLM similarly maintains that the Travel Plan is fully consistent with FLPMA's multiple use mandate, 43 U.S.C. § 1732(a) (2000). BLM explains that, contrary to Huck's contention, multiple use does not mean that all multiple uses must be allowed on all areas of public lands. BLM argues that FLPMA creates a versatile framework for public land management which grants BLM discretion to balance multiple uses and to allow or restrict certain multiple uses as long as such management conforms to the governing land use plan. (BLM Answer at 23-24.)

BLM dismisses appellants' NEPA arguments as groundless, asserting that the EA fully considered the impacts of all four alternatives on all relevant resources. BLM contends that, contrary to Huck's and others' comments that the EA lacked an adequate discussion of the economic impacts of the Travel Plan, it performed that analysis and summarized it in the Errata incorporated into the EA. Id. at 25, citing Errata at 3 ¶ 11; Response to Comments ECON1 to ECON4. BLM discounts SUOC's contention that the EA did not adequately consider recreational and socioeconomic values, averring that SUOC's failure to identify the purportedly omitted values undermines that contention. (BLM Answer at 25.)

BLM denies that it erroneously neglected to address the Travel Plan's effect on dispersed camping and OHV staging areas, pointing out that it considered the effect of the Plan on dispersed camping and concluded that the majority of known camp sites in the San Rafael area would continue to be accessible by vehicle, a conclusion SUOC has offered no credible information, much less objective evidence, to rebut. Id.; Response to Comments REC23. SUOC's reliance on the affidavit of Paul Conover to support its claim is misplaced, BLM submits, because that affidavit, which is actually a March 3, 2003, letter to the Price Office Field Manager, merely states that his family has camped in certain locations and asks how dispersed camping will be allowed. According to BLM, the issue of the Plan's impacts on OHV staging areas was never previously raised by any party and therefore was not carried forward for analysis in the EA, and, in any event, SUOC's generalizations do not constitute objective proof necessary to establish error in the EA. (BLM Answer at 26.)

BLM further maintains that it considered the potential cumulative impacts of the Plan, determined that the Plan should have beneficial impacts to all natural resources, and accordingly found that the Plan would not have significant cumulative impacts. Id., citing EA at 76-79. BLM insists that SUOC's mere assertion to the

contrary does not establish error in the EA's cumulative impacts analysis. (BLM Answer at 26.)

BLM argues that appellants' allegations of bias lack objective proof and should be rejected. BLM points out that a claim of bias on the part of a government agent must be based on personal interest and that unsupported allegations of bias should be disregarded. Id. at 27. Since none of the appellants has shown the requisite personal interest, BLM asserts that they have failed to establish their bias claims. Id. at 27-28.

BLM addresses the additional arguments raised in Huck's SOR. BLM contends that Huck's argument that the Travel Plan discriminates against OHV users and violates their civil rights has been brought in the wrong forum since the Board does not decide constitutional issues. Id. at 28. BLM refutes Huck's claim that the Travel Plan ignored R.S. 2477, pointing out that the EA identified a possible alternative designating all asserted R.S. 2477 rights-of-way but eliminated it from detailed analysis because recognizing or rejecting asserted R.S. 2477 rights-of-way was beyond the EA's scope. BLM added that it would adjust its travel routes if necessary to reflect any future R.S. 2477 decisions. Id. at 28-29, citing EA at 12; Response to Comments TRANS1. Finally, BLM maintains that Huck's claim that the Travel Plan is unenforceable rests on nothing more than a stream of assumptions and unsupported conclusions and is irrelevant to determining whether BLM complied with applicable law in reaching its decisions. (BLM Answer at 29.) Accordingly, BLM asks the Board to affirm the decision to adopt the Travel Plan. Id. at 30.

#### SUWA's Consolidated Answer

In its Answer, SUWA asserts that the route closures along the Green River and Muddy Creek are consistent with the RMP's directive to protect wild and scenic values and do not violate FLPMA. (SUWA Answer at 6.) SUWA contends that the Travel Plan followed the RMP's management guidelines which require that interim management of segment 2 of the Green River and segment 6 of Muddy Creek protect the identified values until Congress acts on the tentative classifications of those segments. Id. at 7. SUWA avers that at the time the RMP was prepared no human intrusions such as vehicle routes were evident along segment 2 of the Green River and no OHV use was occurring on segment 6 of Muddy Creek. Id. at 6-7, citing EA at 28 and 47, respectively. SUWA maintains that BLM's findings that recent increased OHV traffic near segment 2 of the Green River had made noticeable an historic route that had been reclaimed by 1991 and that segment 6 of Muddy Creek was currently receiving seasonally heavy OHV use in the creek bed and associated flood plain amply justify BLM's conclusion that the continued and increasing OHV use was threatening the wild and scenic values of those rivers, and in accordance with the

RMP, demanded the closure of the routes traversing those areas. (SUWA Answer at 7, citing EA at 28, 47.)

SUWA further insists that appellants' consistency arguments are without merit. SUWA disputes SUOC's claim that BLM inferred route conditions instead of conducting the requisite site-specific analysis of the Junes Bottom route. SUWA avers that, although BLM did infer that the route was reclaimed in 1989, when the draft San Rafael RMP EIS was prepared, based on the draft RMP's failure to find any routes in the area, the observations in the EA that OHVs were now accessing Junes Bottom and that the route was now noticeable in the area clearly demonstrate that BLM performed the requisite site specific analysis during the formulation of the Travel Plan and support the conclusion that recent OHV activity had caused a formerly unnoticeable route to become perceptible. (SUWA Answer at 8, citing EA at 28.) SUWA further asserts that appellants have provided no support for their contention that OHV use would not threaten any future wild and scenic river classification and thus have not shown error in BLM's determination that such use is incompatible with the tentative designations. (SUWA Answer at 9; EA at 47.)

As to appellants' assertion that BLM failed to present any site specific information regarding route proliferation, SUWA points out that the current visibility of the previously unnoticeable Junes Bottom and Muddy Creek Routes undercuts that claim, as does the description of route proliferation along Muddy Creek found in the Errata at 5, Point 21. (SUWA Answer at 9-10.) SUWA also maintains that, contrary to appellants' insistence that soil resource damage is a specious justification for the route closures, the record provides ample support for BLM's conclusion that OHV use can harm soils through compaction and accelerated erosion. Id., citing Response to Comments WSR1; EA at 35, 37.

SUWA contends that BLM provided appellants with an opportunity for meaningful involvement in the preparation of the Travel Plan as required by NEPA. Not only did BLM offer numerous occasions for the public to comment on the Travel Plan throughout the process which began in 1992, but SUWA submits that the appellants were aware of and fully participated in that comment process. (SUWA Answer at 11-12, citing Huck SOR at 2, Telepak SOR at 3, Norton SOR at 1, and SUOC SOR at 2.) SUWA asserts that the record demonstrates that BLM carefully considered appellants' comments regarding specific OHV routes when it formulated the Travel Plan. Specifically, SUWA points to Response to Comments WSR1, addressing comments regarding trails near the Green River such as Trin Alcove/Entrada Gap, Bull Bottom, and Junes Bottom; DR/FONSI at 4, discussing the Segers Hole routes; Response to Comments REC4, covering routes near the San Rafael Reef, including the Pink Trail, Ridge Route, and others; and Response to Comments WILD3 and WILD4, handling routes in Eagle Canyon, Iron Wash, Old Woman Wash, and Ernie Canyon. (SUWA Answer at 12-13.)

SUWA avers that BLM took a hard look at the information it received regarding OHV trails, added some routes to the inventory, and rejected others because they could not be located in the field, had been reclaimed, or received little or no use. Id. at 13-14, citing Errata at 1. According to SUWA, appellants' disagreement with BLM's conclusions does not suffice to overturn the decision to close the challenged routes, and their unsupported and non-specific comments regarding other routes do not meet their burden of showing error in BLM's decisions. (SUWA Answer at 13-14.)

SUWA argues that the route closures mandated by the Travel Plan are reasoned and supported by the record. SUWA notes that BLM is specifically authorized to manage motor vehicle use on public lands to minimize impacts to natural and cultural resources and has the authority to exclude OHVs from particular public lands as long as its decision is not arbitrary and capricious and is supported by a rational basis. Id. at 14. Appellants' arguments to the contrary notwithstanding, SUWA maintains that BLM adequately considered recreational and socioeconomic values in the Travel Plan and that the decisions in the Travel Plan are grounded in reason and supported by the record. SUWA cites the EA at 44-45, 51-52, 58-59, and 66-67, as well as the Errata at 3 Point 11, as record evidence that BLM adequately analyzed the impacts of each alternative on motorized and non-motorized recreation and on socioeconomic concerns. (SUWA Answer at 14-15.) SUWA further asserts that BLM's finding that increased OHV use had created route proliferation damaging scenic values and precluding attainment of VRM Class I objectives clearly provided a rational basis for BLM's decision to close routes in Segers Hole, among other areas, and that appellants' mere disagreement with BLM about the interpretation of the on-the-ground facts, including the source and effects of that route proliferation, falls far short of providing a compelling reason to overturn BLM's determinations. Id. at 15-16, citing DR/FONSI at 4.

SUWA contends that the Travel Plan adequately addressed the impacts, including the cumulative impacts, to camping and OHV staging areas. SUWA asserts that BLM discussed the impacts to camping in Response to Comments REC6, concluding that, although some camping spots would no longer be accessible by vehicles, the majority of known camp sites would still be available for motorized access. (SUWA Answer at 16.) SUWA disputes appellants' assertions that the Travel Plan closes the vast majority of camping sites which are located adjacent to or at the end of most closed routes, averring that the sole evidence in this regard proffered by appellants, the affidavit of Paul Conover, does not support this ambiguous claim. Id. As to OHV staging areas, SUWA alleges that this issue was not raised in previous comments, was not identified by BLM as an issue, and therefore should not be considered for the first time on appeal. Id. at 17-18.

SUWA maintains that appellants' other arguments fail because they are unsupported by fact or law. SUWA submits that Huck's allegation that BLM violated

FLPMA's multiple use mandate ignores the well-settled principle that multiple use does not prevent BLM from excluding a particular use from part of the public lands, and that his claim that BLM violated his civil rights lacks any supporting facts or law and has been brought in the wrong forum since the Board does not address constitutional concerns. Id. at 18-19. SUWA contends that appellants' complaints of bias rest on nothing more than hyperbole and fail to show the requisite personal interest needed to establish bias on the part of a governmental employee. Id. at 19. SUWA also asserts that, contrary to Norton's contention, BLM properly used emergency closures to close routes such as Old Woman Wash, Ernie Canyon, and Iron Wash, adding that the Travel Plan rescinded and replaced those closures so they are not before the Board. Id. Finally, SUWA argues that Huck's assertion that the Travel Plan is unenforceable not only lacks any supporting facts or law, but has no bearing on the Plan's compliance with the law. Id.

### Discussion

[1] BLM has the authority pursuant to FLPMA, 43 U.S.C. § 1701 (2000), and other acts and executive orders, to regulate the use and operation of ORVs on the public lands. See 43 CFR Part 8340; Rocky Mountain Trials Association, 156 IBLA 64, 70 (2001); Robert P. Muckle, 143 IBLA 328, 332-33 and n.1 (1998). Consistent with the general precedent governing challenges to BLM decisions implementing land use management plans, a BLM activity plan implementing the ORV decisions in an RMP or other ORV management plan will be affirmed if the decision adequately considers all relevant factors including environmental impacts, reflects a reasoned analysis, and is supported by the record, absent a showing of compelling reasons for modification or reversal. Rocky Mountain Trials Association, 156 IBLA at 70, citing James R. Sebastian, 146 IBLA 138, 142 (1998); High Desert Multiple-Use Coalition, 124 IBLA 125, 128 (1992); see also Daniel T. Cooper, 154 IBLA 81, 84-85 (2000); Stan Rachesky, 124 IBLA 67, 70 (1992).

Appellants have the burden of demonstrating by a preponderance of the evidence that BLM committed a material error in its factual analysis, that BLM failed to give due consideration to all relevant factors, or that no rational connection exists between the facts found and the choices made. Utah Trail Machine Association, 147 IBLA 142, 144 (1999). Mere differences of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision. Southern Utah Wilderness Alliance, 128 IBLA 382, 389 (1994); High Desert Multiple-Use Coalition, 124 IBLA at 128; Oregon Shores Conservation Coalition, 83 IBLA 1, 6 (1984); Magic Valley Trail Machine Association, Inc., 57 IBLA 284, 287 (1981). Appellants have not met their burden of showing that the challenged aspects of BLM's Travel Plan should be reversed.

Appellants collectively contend that the disputed route closures violate FLPMA because they lack support in the record, conflict with the San Rafael RMP, and ignore FLPMA's multiple use mandate. They also contend that the BLM personnel preparing the Plan were biased against OHV use and that the Plan is discriminatory, violates their rights, and fails to comply with NEPA. None of these arguments convinces us that BLM's decision should be reversed.

As a preliminary matter, to the extent appellants object to various areas' placement in the limited to designated roads and trails category, the tentative wild and scenic river segment designations, the SPNM-ROS class identifications, and the VRM Class I determinations, we note that those decisions were made in the 1991 RMP and are outside the Board's appellate jurisdiction. See, e.g., Rio Grande Rapid Transit, 161 IBLA 225, 227 (2004); Oregon Natural Resources Council Action, 148 IBLA 186, 190 (1999). Because an RMP guides and controls future management actions and establishes management policy, its approval is subject only to protest to the Director of BLM, whose decision is final for the Department. 43 CFR 1610.5-2; California Association of Four Wheel Drive Clubs, Inc., 108 IBLA 140, 141 (1989); Oregon Shores Conservation Coalition, 83 IBLA 1, 2 (1984). Accordingly, we will not address the arguments challenging decisions made in the RMP. <sup>16/</sup>

Appellants contend that the Travel Plan does not conform to the RMP as required by 43 CFR 1610.5-3(a). The RMP did not designate the open roads and trails in the limited to designated roads and trails areas; rather it left the actual route designations to the Price Field Office. The RMP did, however, provide management parameters for those designations, including specific goals for sensitive areas such as segment 6 of Muddy Creek ("scenic") and segment 2 of Green River ("wild") identified in the RMP as potentially eligible for inclusion in the National Wild and Scenic Rivers System, SPNM-ROS class areas, and VRM Class I areas. The RMP explicitly required that interim management of the potentially suitable river segments serve to protect the identified values until Congress acted on the potential classification (RMP at 65); that SPNM-ROS class areas be managed "to provide a predominantly natural environment with limited evidence of human use and restrictions and, where possible, to provide an environment of isolation," id. at 89; and that land use proposals be evaluated to determine whether visual impacts can be adequately mitigated to meet the existing VRM class objectives. Id. at 70. The RMP also directed that critical soil areas with highly saline or highly erodible soils be managed to maintain vegetative cover at or above the level necessary to avoid exceeding the Soil Conservation Service critical soil loss threshold and that riparian

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<sup>16/</sup> We also conclude that Norton's objection to the 2000 emergency closure is untimely and that, in any event, the Travel Plan superceded that closure, albeit by maintaining the status quo. See EA at 13; DR/FONSI at 3.

and aquatic habitat be managed to prevent deterioration of riparian condition. Id. at 90, 91.

The decisions made in the RMP reflected the conditions existing on the ground in 1991 when the RMP was issued. In order to satisfy the RMP directives, BLM compared the current conditions to those existing in 1991 and made its designations based on the changes in conditions. BLM found that OHV use in the sensitive areas delineated in the RMP, including segment 6 of Muddy Creek and segment 2 of Green River, SPNM-ROS class areas, and VRM Class I lands, had been adversely affected by increased OHV use since 1991, with route proliferation, heightened route visibility, and sensitive and cryptogamic soil damage. Although appellants claim that BLM applied management standards inconsistent with those set out in the RMP in reaching these conclusions and in closing various routes in those sensitive areas, the record clearly shows that, to the contrary, BLM carefully implemented the specific management directives set out in the RMP. Accordingly, we find that the Travel Plan conforms to the RMP.

The crux of appellants' appeals centers on their objections to various route closures. Some of those objections focus on the purportedly erroneous preliminary wild and scenic river classifications. As noted above, however, the RMP made these determinations and the Board has no authority to review the correctness of the classifications. Appellants' corollary contention that BLM improperly treated those river segments as if they had already been determined to be eligible, rather than simply as potentially eligible, by closing routes inconsistent with the classification fails because the RMP explicitly directed BLM to preserve the identified values underlying the tentative classifications which were based on conditions existing in 1991. The WSRA, 16 U.S.C. § 1273 (2000), sets out the qualities necessary for inclusion in the National Wild and Scenic River System:

(b)(1) Wild river areas - These are rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(b)(2) Scenic river areas - These are rivers or sections of rivers that are free of impoundment, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in many places by roads.

BLM logically assumed that segment 6 of Muddy Creek and segment 2 of Green River met the statutory parameters for scenic and wild rivers, respectively, in 1991 when the RMP was issued, looked at the current site-specific conditions, and based its closure decisions on the need to preserve the segments' qualifications in

light of the recent increased OHV use. Although appellants characterize BLM's actions as guaranteeing the segments' ultimate eligibility, we find that BLM simply followed the RMP's directives for managing potentially eligible river segments and decline to reverse those challenged route closures.

Appellants also complain that the closures are not supported by the record and/or conflict with the evidence on the ground. They dispute BLM's reliance on route proliferation as justification for various route closures, asserting that either no proliferation has occurred or that OHVs did not create any of the proliferated routes and that BLM provided no site-specific data supporting the claimed route proliferation or showing negative impacts from any increased OHV routes. They also deny that increased OHV use has damaged cryptogamic and critical soils and assert that BLM accorded insufficient weight to the recreational experience the closed routes provide. The record, however, belies appellants' contentions. As our thorough recitation of the facts and the parties' arguments makes clear, the record contains ample support for BLM's conclusions. BLM analyzed all of the inventoried routes, including each of the challenged routes, and documented its site-specific determinations in the Purpose and Needs Assessment and Field Report. BLM further responded to appellants' objections to the disputed route closures in the Response to Comments. See, e.g., Response to Comments REC24 through REC38, REC42, REC47, REC48. BLM also considered the recreational experience in choosing Alternative Four over other alternatives closing additional popular OHV routes. While appellants may disagree with BLM's findings and conclusions, they have offered no objective proof showing error in BLM's assessments. The affidavits submitted by various appellants, as well as their arguments, essentially represent nothing more than differences of opinion with BLM's decisions and do not suffice to establish error in BLM's amply supported determinations.

Appellants' other challenges to the specific route closures similarly fail. Huck contends that the vast majority of the closed routes are R.S. 2477 routes over which BLM has no jurisdiction and objects to BLM's cavalier dismissal of R.S. 2477 considerations. BLM identified the alternative of designating all asserted R.S. 2477 routes in the EA, but eliminated that alternative from detailed analysis because courts would ultimately determine the validity of the R.S. 2477 assertions and because recognizing or rejecting the thousands of R.S. 2477 claims asserted by Emery County was beyond the scope of the EA. See EA at 12. Ordinarily the determination whether an R.S. 2477 road is a public highway is left to the state courts (see Paul B. Smith, 153 IBLA 334, 344 n.4 (2000); Eddie S. Beroldo, 123 IBLA 156, 159 n.4 (1992)), but an exception has been recognized where a determination by BLM is necessary to facilitate proper administration of the public lands. Courtney Ayers, 122 IBLA 275, 278 (1992); Sierra Club, 111 IBLA 122, 128-29 (1989); Leo Titus, Sr., 89 IBLA 323, 338, 92 I.D. 578, 587 (1985). This case does not fall within the exception. BLM did not need to decide the validity of the R.S. 2477 assertions in

order to make its route designations, especially since it did not intend its analysis to affect any R.S. 2477 validity determinations and indicated that the Plan would be adjusted to reflect any R.S. 2477 decisions. (EA at 12.)

The record in this case is unclear as to the status of the specific routes subject to BLM's closure determination, *i.e.*, whether and when the routes had already been closed at the time BLM issued the challenged EA. We are aware that on March 22, 2006, Secretary Gale Norton issued a Memorandum entitled "Departmental Implementation of Southern Utah Wilderness Alliance v. Bureau of Land Management (SUWA v. BLM), 425 F.3d 735 (10th Cir. 2005)," explaining that the Tenth Circuit decision in SUWA v. BLM "necessitates that the Department of the Interior revisit its existing policies interpreting and implementing the statute commonly known as 'R.S. 2477.'" We contemplate that any action taken by BLM in implementing its EA will fully comport with the "Guidelines for Implementation of SUWA v. BLM Principles" attached to Secretary Norton's Memorandum.

The Board very recently decided Charles W. Nolen, 168 IBLA 352 (2006), which involved an appeal from a BLM decision implementing the Fort Stanton Area of Critical Environmental Concern Route Designation Plan (RDP) for the Roswell, New Mexico, Resource Area. Nolen argued, *inter alia*, that "RS 2477 easements were created at least 86 years prior and continue to date," and that "Federal agencies have no authority on RS 2477 easements." 168 IBLA at 358, *quoting* SOR at 2. The Board evaluated this argument in the context of the Tenth Circuit's decision in SUWA v. BLM, and held that "the material presented by appellant fails to establish any error in BLM's administrative determination that none of the roads closed by the RDP are covered by R.S. 2477," and that "nothing in the materials presented by appellant \* \* \* meets his burden to show evidence of public use of the closed roads under State law." 168 IBLA at 361. This reasoning applies equally to Huck's R.S. 2477 argument. Huck has proffered no evidence supporting his claim that the challenged routes qualify as R.S. 2477 rights-of-way. Accordingly, we find no error in BLM's analysis of the R.S. 2477 alternative. <sup>17/</sup>

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<sup>17/</sup> That said, we note that the record shows that Emery County's position before the Department was that every route in the county, over 2,400 miles of road, both constituted an R.S. 2477 way and also was "owned" by the County and could never be closed by BLM. *E.g.*, Nov. 23, 1997, Letter from Emery County to BLM. A clear reading of the decision in SUWA v. BLM refutes Emery County's position. First, any route that did not exist in 1976 could not qualify as an R.S. 2477 route. Second, the Tenth Circuit made clear that R.S. 2477 routes are "rights-of-way" over Federally-owned lands; they are not fee interests owned by the local government entity. Third, the Court made clear that any R.S. 2477 route must be shown to meet two conditions: (1) the Federal landowner must have objectively manifested an

(continued...)

We also reject Huck's contention that the Travel Plan violates FLPMA's multiple use mandate. Sections 102(a)(7) and 302(a) of FLPMA, 43 U.S.C. §§ 1701(a)(7) and 1732(a) (2000), direct BLM to manage public lands under the principle of multiple use, which is defined in part as "the management of public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; \* \* \* [and] the use of some land for less than all of the resources." 43 U.S.C. § 1702(c) (2000). The principle of multiple use does not preclude BLM from excluding a particular use from part of the public lands; rather "[t]he essence of the multiple use mandate is simply to require a choice regarding the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place on any given area of the public lands at any one time." Utah Trail Machine Association, 147 IBLA at 144; see Oregon Shores Conservation Coalition, 83 IBLA at 8. BLM weighed the competing resource values in the limited to designated roads and trails OHV category and designated routes which best accommodated those competing values, including the OHV recreational experience and the special management directives. Huck has not shown that BLM's weighing of the resource values was unreasonable, and his simple disagreement with the balance BLM chose does not establish that the closure of various OHV routes violated FLPMA's multiple use mandate.

Huck also contends that the Travel Plan violates the civil rights of U.S. citizens, including the right to travel, by subjecting OHV users to onerous regulations and restrictions not imposed on other user groups. To the extent this argument can be construed as an objection, on equal protection grounds, to the constitutionality of the Travel Plan, this Board, as a quasi-judicial body within the Department of the Interior and the Executive Branch of the Government, is not the proper forum to consider constitutional challenges. Laguna Gatuna, Inc., 131 IBLA 169, 173 (1994); see Fred E. Payne, 159 IBLA 69, 80 (2003); Organized Sportsmen of Lassen County, 124 IBLA 325, 330 (1992); Slone v. Office of Surface Mining Reclamation & Enforcement, 114 IBLA 353, 357-58 (1990). In any event, the record demonstrates that the designations in the Travel Plan reasonably balanced the

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<sup>17/</sup> (...continued)

intent to dedicate the property to public use as a right-of-way, and (2) the public must have manifestly accepted the use of the route. 425 F.3d at 769. The only way for the Department to address OHV issues is through the land-use planning process. To the extent that the Department must engage in a 10-year quest to inventory routes OHV users may have carved out of the public lands by virtue of repetitive use, the debate of the sort manifested by these appeals over the existence (or lack thereof) of a claimed route strongly undercuts the suggestion that the first element of this test (Federal landowner dedication) has been met as to such a route.

interests of motorized and non-motorized users, and Huck has not shown that the designations unduly restrict the use of OHVs in the limited to designated roads and trails areas.

Huck further asserts that BLM's decision violates the ADA, 42 U.S.C. §§ 12101-12213 (2000), because it imposes no restrictions on muscle-powered vehicles but bans motor-powered vehicles in many areas, thus "disenfranchising" people physically incapable of using muscle power to travel over difficult terrain. (Huck SOR at 4.) The ADA prohibits discrimination against disabled Americans in employment, public services, public transportation, public accommodations, telecommunications, and some services provided by private entities. Huck has not shown that he falls within the category of citizens the ADA seeks to protect,<sup>18/</sup> nor has he pointed to any specific section of the ADA allegedly violated by BLM in closing some trails to OHV use. See Utah Trail Machine Association, 147 IBLA at 145. Moreover, we would reject any construction of the ADA which would compel the Secretary to establish or maintain recreational opportunities in "routes" for disabled citizens that she would not otherwise be required to maintain for any citizen. Accordingly Huck has failed to establish that the Travel Plan violates the ADA.<sup>19/</sup>

Huck and other appellants also allege that the BLM employees who prepared the Travel Plan and EA were biased against OHV use. They base their bias claim on language in the EA and other record documents and on BLM's designation decisions. A claim of bias on the part of a Government agent must be based on personal interest rather than employment. See Ronald A. Pene, 135 IBLA 143, 151 (1996), and cases cited. Appellants have not shown the requisite personal interest here. Accordingly, we reject their unsupported bias allegations. Id. and cases cited.

[2] Appellants' remaining arguments question BLM's compliance with NEPA requirements. A BLM decision to approve an action based on an EA and FONSI will generally be affirmed if BLM has taken a "hard look" at the proposed action, identified relevant areas of environmental concern, and made a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. Bark, 167 IBLA 48, 76 (2005); Armando Fernandez, 165 IBLA 41, 49 (2005); Great Basin Mine Watch, 159 IBLA 324, 352 (2003); Southern Utah Wilderness Alliance, 158 IBLA

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<sup>18/</sup> The Act defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (2000).

<sup>19/</sup> Huck also claims that the Travel Plan is unenforceable. This contention, however, is irrelevant to the issues before us.

212, 219 (2003); Owen Severance, 118 IBLA 381, 385 (1991). A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision is premised on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the proposed action. Bark, 167 IBLA at 76; Armando Fernandez, 165 IBLA at 49; Great Basin Mine Watch, 159 IBLA at 353; Southern Utah Wilderness Alliance, 158 IBLA at 219-20; The Ecology Center, 140 IBLA 269, 271 (1997). Mere differences of opinion provide no basis for reversal. Rocky Mountain Trials Association, 156 IBLA at 71.

Appellants contend that BLM failed to provide a meaningful opportunity for public participation in the process leading to the adoption of the Travel Plan.<sup>20/</sup> They complain that BLM ignored or insufficiently weighed public input both in preparing the route inventory and in selecting the designated routes from that inventory. The regulations implementing NEPA direct a Federal agency to “[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment.” 40 CFR 1500.2(d); see also 40 CFR 1503.1(a)(4) (requiring an agency to request comments from the public on a draft EIS) and 1503.4 (addressing an agency's response to comments on a draft EIS). The record here demonstrates that, beginning in 1992, BLM engaged the public in all phases of the route designation process, held numerous meetings, solicited and received thousands of comments, analyzed the comments, evaluated the proposed additions to the route inventory in the Field Report, responded to the comments in the Response to Comments, and modified the route inventory, EA (see Errata), and designated routes (see DR/FONSI) in response to the comments. These actions more than satisfy BLM's obligation to provide meaningful public participation in the designation process. Appellants actually object not to their opportunities to participate in the process, but to BLM's refusal to adopt all their comments and suggestions. These mere differences of opinion provide no basis for reversal of BLM's well-supported decision.

Finally, SUOC questions the sufficiency of BLM's impacts analysis, averring that the EA failed to address adequately socioeconomic, camping, and OHV staging area impacts. See 40 CFR 1508.8 (defining effects and impacts). The record, however, refutes these contentions. The Errata contains a comprehensive analysis of the Travel Plan's effects on socioeconomic issues including local economics. (Errata at 3.) SUOC has presented no objective proof undermining that analysis. BLM also

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<sup>20/</sup> Although appellants, particularly SUOC, characterize their public participation arguments as FLPMA issues, we agree with BLM and SUWA that the public participation issue is actually a NEPA issue. As BLM notes, 43 U.S.C. § 1712(f) and 43 CFR Part 1600 apply only to the land use planning process, *i.e.*, the preparation, amendment, and revision of an RMP, not to decisions implementing that RMP, such as the Travel Plan. See n.15, supra.

addressed the Travel Plan's effect on dispersed camping in the Response to Comments REC23, stating that camping areas were taken into account during the route inventory and designation process. BLM concluded that, although some camping spots might no longer be available for motorized access, the majority of known camp sites in the area would continue to be accessible by vehicle. BLM noted that this issue had not been brought forth as an issue for analysis because of the numerous remaining camping opportunities, adding that routes going to campsites were noted during the route inventory and taken into consideration in the route designation process. (Response to Comments REC 23.) SUOC has presented no probative, objective evidence establishing error or insufficiency in BLM's analysis of the Plan's impacts on camping areas.

BLM acknowledges that it did not discuss the Travel Plan's impacts on OHV staging areas. It explains, however, that this issue was never previously raised and thus was not carried forward for analysis in the EA. SUOC has offered no proof that the Travel Plan will affect OHV staging areas nor shown that this belatedly raised concern constitutes a substantial environmental question of material significance to the Travel Plan warranting reversal of the Plan. See, e.g., Bark, 167 IBLA at 76.

To the extent not specifically addressed herein, appellants other arguments have been considered and rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James F. Roberts  
Administrative Judge

I concur:

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Lisa Hemmer  
Administrative Judge