OREGON CHAPTER OF THE SIERRA CLUB,
WILDERNESS WATCH;
GEORGE STROEMPLE,
CENTRAL OREGON LAND, LLC;
STEENS MOUNTAIN LANDOWNER GROUP

172 IBLA 27 Decided July 25, 2007

United States Department of the Interior
Office of Hearings and Appeals
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IBLA 2004-291, 2004-319, 2004-320 Decided July 25, 2007

Appeals from a decision record and finding of no significant impact issued by the Field Manager, Andrews Resource Area (Burns, Oregon, Field Office), Bureau of Land Management, approving motorized use of the Ankle Creek route to gain access to private inholdings within the Steens Mountain Wilderness area. EA No. OR-027-02-011.

Petition for Reconsideration of September 24, 2004, Order granted and appeal reinstated; Decision affirmed as modified.

1. Wilderness Act

In authorizing access to inholdings under regulations that implement section 5(a) of the Wilderness Act, 16 U.S.C. § 1134(a) (2000), BLM will approve only the mode, route, and degree of access that inholders enjoyed at the time of wilderness designation.

2. Wilderness Act

Under regulations implementing the mandate to assure adequate access under the Wilderness Act, BLM is required to identify routes and modes previously used to access inholdings and to select the combination of routes and modes which will cause the least impact on wilderness character. 43 C.F.R. § 6305.10(a). BLM properly exercises its discretion by considering impacts to solitude and from the existence of observable routes within a wilderness area and selecting the alternative it

determines will have the least impact on wilderness character.

3. Wilderness Act

Since a motorized route approved for inholder access is specifically provided for under section 5(a) of the Wilderness Act, 16 U.S.C. § 1134(a) (2000), it is excepted from the prohibition against roads and motor vehicle use under section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c) (2000).

4. Wilderness Act

Where BLM approves motorized access to inholders which is similar in nature, degree, and effect to that which they enjoyed at the time of wilderness designation, it acts consistent with its responsibility to "preserve" wilderness character under section 4(b) of the Wilderness Act, 16 U.S.C. § 1133(b) (2000).

5. Wilderness Act

The Wilderness Act does not prohibit access to a commercial enterprise which is located on an inholding where that enterprise is permitted by BLM under section 4(d)(5) of the Wilderness Act, 16 U.S.C. § 1133(d)(5) (2000). Such access is allowed but may be limited under standards applicable to granting access to the inholding at issue.

6. Wild and Scenic Rivers Act

By authorizing and limiting motor vehicle use near and across a river to the type, level, and nature of use occurring at the time it was designated as a "wild river area" under section 101(a) of the Wild and Scenic River Act, 16 U.S.C. § 1251(a) (2000), BLM acts consistent with its obligation to protect the values which caused that river to be so designated, unless it is demonstrated by objective evidence that its authorization will "substantially interfere" with others' use and enjoyment of that river or

area under section 10(a) of the Wild and Scenic River, 16 U.S.C. § 1281(a) (2000).

7. National Environmental Policy Act of 1969: Finding of No Significant Impact--National Environmental Policy Act of 1969: Environmental Statement

To support a finding of no significant impact, an environmental assessment must take a hard look at the environmental consequences of a proposed action, identify relevant areas of environmental concern, and make a convincing case that environmental impacts from the proposed action are insignificant.

8. Wilderness Act

The general requirements and restrictions of the Wilderness Act, including its implementing regulations, apply to all wilderness areas unless Congress enacts specific provisions and standards for the administration of an area when designating it as a wilderness area. Where specific provisions and standards are enacted, they must be given effect by BLM in its decisionmaking affecting that wilderness area.

APPEARANCES: Ronni Flannery, Esq., Huson, Montana, for Wilderness Watch and Oregon Chapter of the Sierra Club; Richard H. Allan, Esq., Portland, Oregon, for George Stroemple, Central Oregon Land, LLC, and Steens Mountain Landowner Group; and Bradley Grenham, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

The Oregon Chapter of the Sierra Club and Wilderness Watch (collectively, environmental appellants) have jointly appealed from a Finding of No Significant Impact/Decision Record (FONSI/DR) issued by the Andrews Resource Area Field Manager, Burns (Oregon) District Office, Bureau of Land Management (BLM), adopting a proposal to authorize access to four inholdings in the vicinity of Ankle Creek within the Steens Mountain Wilderness Area (Wilderness Area). BLM issued its FONSI/DR after analyzing the proposed action in the Ankle Creek Inholder Access Environmental Assessment, OR-027-02-011 (EA), pursuant to the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4370f (2000). The

environmental appellants contend that BLM's grant of access was excessive under applicable statutes and regulations and that its environmental analysis was inadequate. George Stroemple, Oregon Land, LLC, and the Steens Mountain Landowner Group (collectively, landowner appellants) also appealed and filed a joint Statement of Reasons (SOR) asserting that BLM's decision is too restrictive and ignored statutory guarantees of access to their inholdings. By Order dated September 29, 2004, the Board dismissed Wilderness Watch for its apparent lack of standing to pursue this appeal.

BACKGROUND

The 170,025-acre Wilderness Area lies within the 425,550-acre Steens Mountain Cooperative Management and Protection Area (Cooperative Management Area) and is about 60 miles south of Burns, Oregon. The Wilderness Area was added to the National Wilderness Preservation System on October 30, 2000, with enactment of the Steens Mountain Cooperative Management and Protection Act (Steens Act), 16 U.S.C. § 460nnn-61 (2000). As to administration of the Wilderness Area, Congress identified the Wilderness Act of 1964, *as amended*, 16 U.S.C. §§ 1131-1136 (2000), as the "general rule," 16 U.S.C. § 460nnn-62(a) (2000), but identified special requirements for wilderness boundaries, grazing, and access to in-holdings, 16 U.S.C. § 460nnn-62(b)-(d) (2000).

Congress generally defines wilderness as "an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions." 16 U.S.C. § 1131(c) (2000). A wilderness area "generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable." *Id.* The Steens Act designates certain lands within the Cooperative Management Area as the Steens Mountain Wilderness Area and certain creeks as additional components of the National Wild and Scenic Rivers System (e.g., Mud Creek and Ankle Creek, tributaries of the Donner and Blitzen River). 16 U.S.C. §§ 460nnn-61 and 460nnn-71(a) (2000).

After a wilderness area is established, the Department is "responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character." 16 U.S.C. § 1133(b) (2000).[1] Wilderness area administration

[1] As to the purposes for which the Steens Mountain Wilderness Area was established, Congress specified they were, *inter alia,* to "maintain the cultural, economic, ecological and social health of the Steens Mountain area in Harney County, Oregon" and to promote "recreation operations on private and public lands." Steens Act (continued...)

and management are often complicated by the existence of privately-held lands within its boundaries. While section 4(c) of the Wilderness Act provides that "[e]xcept as specifically provided for in this chapter, and subject to existing private rights, there shall be . . . no permanent road within any wilderness area designated by this chapter and . . . there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats . . . within any such area," section 5(a) of the Act separately directs BLM to grant inholders "such rights *as may be necessary to assure adequate access*" to their inholdings. 16 U.S.C. §§ 1133(c), 1134(a) (2000) (emphasis added); *see Barnes v. Babbitt*, 329 F. Supp. 2d 1141, 1155, 1157 (D. Ariz. 2004); *Alleman v. United States*, 372 F. Supp. 2d 1212, 1227 (D. Or. 2005). Congress more specifically provided for inholder access under the Steens Act: "The Secretary shall provide *reasonable access* to non-federally owned lands or interests in land within the boundaries of . . . the Wilderness Area *to provide the owner of the land or interest the reasonable use thereof*." 16 U.S.C. § 460nnn-22(e)(1) (2000) (emphasis added). The tension between allowing motorized access to inholdings, a responsibility to preserve wilderness character, and a general duty to prohibit roads and motorized vehicles within a wilderness area lies at the heart of these appeals.

The motorized route at issue is a 17-mile segment of the Ankle Creek "road" that had long been used by inholders, their guests, commercial lessees, and predecessors-in-interest. It traverses a diverse landscape. Pictures in the record show it crossing open, flat areas and rocky, steep slopes. The route appears very primitive and is difficult even for some four-wheel-drive vehicles to navigate. In places, it is starting to fade and become revegetated. The route begins at Newton Cabin, just south of South Steens Campground off the South Steens Loop Road, where there is a locked gate. Before arriving at the inholdings, the route crosses Indian Creek, Mud Creek, and Ankle Creek, all of which are designated "wild river" tributaries within the Donner and Blitzen Wild and Scenic River system.

Upon designation of the Steens Mountain Wilderness Area, BLM closed a number of dirt roads to motorized public access and provided interim access to the inholdings of 25 private landowners pending determinations on the mode, route, and degree of access to be allowed to each of their properties.[2] BLM then sought

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[1] (...continued)
§ 1(b)(1), (11), 16 U.S.C.§ 460nnn note. Section 111(a) also directs the Department to manage the area so as to recognize and allow "current and historic recreational use." 16 U.S.C. § 460nnn-21(a)(2) (2000).

[2] The record indicates that BLM positioned gates "to restrict the general public from operating motorized vehicles within the wilderness area" but provided keys for these gates to individuals seeking access to their inholdings. *See, e.g.*, Nov. 14, 2002,
(continued...)

information from landowners regarding their historic uses and need for access to their inholdings:

> Under [BLM] wilderness management regulations reasonable access would be determined on a case-by-case basis by conducting an analysis of the routes and modes of travel that 1) existed on the date Congress designated the Wilderness and 2) will serve the reasonable purposes for which the private land is held or used and cause the least impact on wilderness character (43 C.F.R. 6305.10(a)). If you have a need to secure reasonable access to your land by motorized or mechanized access through the wilderness, please let us know.

Apr. 26, 2002, Letter from Andrews Resource Area Field Manager, BLM. Inholder responses evince a belief that their access was unrestricted. For example, in a letter dated June 3, 2002, Florence Ellis stated, "I want to come and go from my Steens Mt. land the way I have for the last 86 years," and in a letter dated May 24, 2002, John and Cindy Witzel stated, "the purposes for accessing these properties, motorized and non-motorized, prior to the Act were multi-purpose, unrestricted, and unfettered." *See also* Letter from Stroemple's counsel, received Feb. 18, 2003; Letter from the Steens Mountain Advisory Committee (SMAC), dated May 12, 2004.[3]

BLM thereafter issued a scoping notice and responded to comments and concerns regarding the four inholdings at issue by preparing the EA. Two of the subject inholdings are owned by Central Oregon Land, LLC (Stroemple)[4]; the other two are owned by Annette Fisherman (referred to by BLM as the "Ellis" properties due to their longtime ownership by Fisherman's mother, Florence Ellis).[5] While the Fisherman properties were held within her family for many years preceding

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[2] (...continued)
BLM Letter to Florence Ellis.

[3] A unique feature of the Steens Act was the creation of the 12-member SMAC "to advise the Secretary in managing the Cooperative Management and Protection Area." 16 U.S.C. § 460nnn-51(a) (2000). The Secretary is required, *inter alia*, to consult with SMAC in preparing and implementing a comprehensive management plan for the Cooperative Management and Protection Area, including the Wilderness Area. 16 U.S.C. § 460nnn-52(b) (2000); *see* 16 U.S.C. § 460nnn-21(b) (2000).

[4] The Stroemple parcels are situated in secs. 8 and 9, T. 34 S., R. 33 E., and secs. 1 and 2, T. 35 S., R. 32¾ E., Willamette Meridian. Stroemple acquired his properties from Henry Blair after wilderness designation.

[5] The Fisherman parcels are situated in sec. 36, T. 34 S., R. 33 E., and secs. 1 and 2, T. 35 S., R. 32¾ E., Willamette Meridian.

designation of the Wilderness Area, they had been under lease to Roaring Springs Ranch and were later leased to John and Cindy Witzel, doing business as Steens Mountain Packers, Inc.

BLM made the following findings regarding the historical use of and access to these four inholdings:

> In the past, the four inholdings have been accessed with motorized vehicles across public land by way of the Ankle Creek Road. Access has been seasonal, generally May through October, due to snow or wet road conditions during winter and early spring. An estimated five vehicles per week, of which three trips are estimated to be from landowners and lessees, used some portion of the Ankle Creek Road weekly prior to the Wilderness Designation. Vehicular use increased each September and October during big game hunting seasons, when approximately seven to nine hunting camps were located in proximity to the Stroemple and Ellis properties. . . .
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> . . . Activities occurring or which have occurred on the Ellis inholdings include camping, hunting, commercial outfitting, livestock grazing, and day-use recreation/visitation. Past activities for the Stroemple parcels were primarily livestock grazing and current uses are primarily hunting and day-use recreation/visitation.

EA at 2. The EA also identified and analyzed four alternative routes and modes of transportation for accessing these inholdings through the Wilderness Area. EA at 4-6. Under Alternative A, BLM would designate nearly 9 miles of the Ankle Creek route for motorized access to one of Fisherman's parcels and to one of Stroemple's parcels, with a limit of one round trip per week each (maximum of four vehicles traveling together) from May 15 to November 15. Motorized access to each inholder's other parcel would be by permission of the other inholder. Alternative B would authorize access by non-motorized means only. Under Alternative C ("Retain Current Route"), and in lieu of requiring permission from other inholders under Alternative A, BLM would authorize use of the 17-mile Ankle Creek route. Alternative D would also allow "maintenance of the [2.5-mile] Berrington Trail with hand tools so the Stroemple inholdings could be accessed with 4-wheeler All Terrain Vehicles." *Id*. at 5-6.[6]

[6] BLM considered three other alternatives: no action; access partially through private land; and unfettered access. EA at 6. It elected not to analyze these

(continued...)

BLM facilitated a special session of the SMAC to obtain its recommendation concerning wilderness inholder access:

> Their recommendation recognizes the need to provide reasonable access while letting seasons, route conditions, weather, etc., determine how and when to access the properties. They have also recommended the use of Cooperative Management Agreements to specifically outline the terms and conditions of the access authorization and that the Ankle Creek inholdings should be the Burns District's top land acquisition priority.

EA at 3. After considering the varying comments and recommendations received, BLM adopted Alternative C, coupled with monitoring and mitigation measures:

> As a result of the environmental analysis presented in the EA, and consideration of public comments, it is my decision to authorize reasonable motorized use of the Ankle Creek Route, to be used for accessing the private inholdings, as identified under Alternative C of the EA. This decision also provides direct access to the southern Stroemple parcel from the Ankle Creek Route. Motorized access for landowners, lessees, guests or agents may occur to the extent that the route does not improve to a condition more highly developed than that which existed at the time Congress designated the area as wilderness. If monitoring indicates that motorized use is causing the route to become more obvious, use would be reduced in order to return the route to the desired condition. Access to the Ankle Creek Route would be from the southern segment of the Steens Mountain Loop Road and would be authorized during the period of time, generally May 15 to November 15, when damage to the Steens Mountain Loop Road and Ankle Creek Route would not occur.

FONSI/DR at 4. The mitigation measures include: (1) identifying motorized routes within the wilderness on public recreation maps so visitors can recreate away from the routes if desired, and (2) providing information at major entry points to inform

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[6] (...continued)
alternatives because the no action alternative would be inconsistent with the statutory mandate to provide inholders with access to their property, because the private property owner was not interested in allowing access across his property, and because the landowner appellants supported elements of Alternative C.

hikers of potential or occurring motor vehicle activity. *Id.* at 5. BLM also explained how impacts on visitors and visual resources would be minimized:

> . . . Mitigating measures including signing and maps, will identify the Ankle Creek Route as a Service/Permit Use Route and explain that periodic motorized use is allowed to access private land. BLM will also work with the landowners and lessees in trying to provide a system of notifying visitors when motorized use is actually occurring. These combined measures should minimize unwanted encounters between motor vehicles and wilderness visitors.
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> . . . .
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> Impacts to visual resources from motorized use of the Ankle Creek Route would be insignificant. The route would retain primitive road-like features, however, elimination of public vehicular use should result in most portions of the route becoming less visually evident than at the time of designation. Motorized activity will be noticeable to visitors hiking and in close proximity to the route but vehicular encounters will be infrequent and short lived.

Id. at 3.

ANALYSIS

Before considering the parties' statements of reasons, we address Wilderness Watch's request that we reconsider our determination that it lacks standing to pursue this appeal. Wilderness Watch was earlier dismissed because it had not demonstrated that it was adversely affected and had made no definitive claim that its members use the Ankle Creek area. Wilderness Watch has since supplemented the record with member affidavits declaring and demonstrating their use of the public lands in question. *See, e.g., Coalition of Concerned National Park Retirees*, 165 IBLA 79, 85-86 (2005). In keeping with prior Board decisions, we grant reconsideration and reinstate Wilderness Watch's appeal. *See John L. Falen*, 149 IBLA 347 (1999); *Southern Utah Wilderness Alliance (On Reconsideration)*, 132 IBLA 91 (1995).

Turning to the merits, environmental appellants' several claims of error are based largely on their characterizing BLM's decision as authorizing "unlimited" motorized access along the Ankle Creek route. The decision, however, belies that characterization. BLM elected to provide access based upon monitoring route conditions, comparing them to those that existed at the time of wilderness designation and, if it became necessary, by limiting future access to these inholdings:

> . . . Motorized access for landowners, lessees, guests or agents may occur to the extent that the route does not improve to a condition more highly developed than that which existed at the time Congress designated the area as wilderness. If monitoring indicates that motorized use is causing the route to become more obvious, use would be reduced in order to return the route to the desired condition . . . . One of the concepts which the SMAC developed and which is implemented in Alternative C is the reliance on desired wilderness conditions to govern motorized trips rather than a predesignated numerical limit on trips. As detailed in the EA and this Decision Record, Alternative C will protect physical conditions in the wilderness since, among other reasons, it is tied to not allowing the Ankle Creek Route to become more developed or more obvious than prior to wilderness designation. . . .
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> . . . .
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> . . . The Ankle Creek Route will be monitored intensely to assure that its condition does not improve and shall remain available to the public for nonmechanized and nonmotorized uses . . . . BLM will use photographs to monitor the character of the route to assure that widening and deepening of the existing tread marks does not occur and so the route does not otherwise become more highly developed than authorized. Vegetation and soil disturbance outside the existing tread width is not authorized. If the route changes to a condition that is more highly developed than what existed in October 2000, the BLM will make adjustments to vehicle access to restore the route to its previous condition. Maintenance necessary to maintain the landowner's [sic] reasonable access or to protect or enhance wilderness resources may be conducted by the BLM or authorized by the BLM consistent with applicable regulations.

FONSI/DR at 4, 5; *see also* EA at 4 ("Routes would not be maintained to a condition more highly developed than they were at the time of Wilderness designation.").

The foregoing demonstrates that BLM authorized only limited access and imposed limitations to ensure that inholders' use of the Ankle Creek route does not exceed pre-wilderness designation levels.[7] In fact, BLM considered but expressly

[7] BLM's Management of Designated Wilderness Areas Handbook (H-8560-1) identifies principles basic to sound wilderness management. Two of these wilderness management principles are particularly applicable to the circumstances presented:
(continued...)

rejected an alternative based upon unfettered inholder access. EA at 6. We therefore find environmental appellants' characterization of BLM's decision as allowing "unlimited" use and access by these inholders to be both unfair and inaccurate. Stripped of this mischaracterization, we turn to the environmental appellants' specific claims regarding BLM's alleged noncompliance with the Wilderness Act and BLM's implementing regulations,[8] the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. §§ 1271-1287 (2000), and NEPA. The landowners' appeal asserts error under the Steens Act. BLM answered, the environmental and landowner appellants each responded, and BLM then replied.

Wilderness Act

Environmental appellants raise four issues under the Wilderness Act: whether BLM exceeded its authority under regulations implementing the Wilderness Act; whether roads are *per se* prohibited within a wilderness area; whether BLM failed to preserve the Wilderness Area's wilderness character; and whether BLM's action improperly facilitated a commercial enterprise within a wilderness area. Each of these issues will be discussed separately below.

1. Whether BLM Exceeded its Authority Under Regulations Implementing the Wilderness Act.

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[7] (...continued)

(j) Only the minimum regulation necessary to achieve wilderness management objectives should be applied. Indirect techniques should be tried before direct methods.

(k) Wilderness management should involve principles that recognize the variation in naturalness and solitude between and within wilderness areas. The objective is to prevent further loss of naturalness and solitude and to restore substandard settings rather than letting all areas in the National Wilderness Preservation System deteriorate to the lowest existing condition.

Handbook at I.A.1. BLM's decision is consistent with these principles, including its use of indirect techniques (i.e., by limiting access based upon changes in the appearance of the Ankle Creek route, rather than X trips by Y vehicles).

[8] Environmental appellants assert error in BLM's authorizing motorized access across a wilderness area because its decision "exceeds that permitted under controlling regulations; . . . would result in the establishment of a permanent road through wilderness; . . . fails to preserve wilderness character; . . . would not have the least impact on wilderness character; . . . [is not] necessary to serve the reasonable purpose for which the wilderness inholdings are held or used; . . . facilitates a prohibited commercial enterprise." Response to BLM Answer at 2.

The Wilderness Act requires that inholders be provided adequate access to their properties. 16 U.S.C. § 1134(a) (2000). BLM issued regulations to implement the Wilderness Act, including provisions for determining that combination of routes and modes of transport which is adequate for inholder access:

> If you own land completely surrounded by wilderness, BLM will only approve that combination of routes and modes of travel to your land that—
>
> (1) BLM finds existed on the date Congress designated the area surrounding the inholding as wilderness, and
>
> (2) BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character.

43 C.F.R. § 6305.10(a). As explained in the preamble: "By providing for BLM land managers to approve only access routes that were in existence at the time of wilderness designation, the final rule in many cases effectively ratifies the inholder's original choice of route and mode of travel." 65 Fed. Reg. 78358, 78369 (Dec. 14, 2000). Since it is undisputed that landowners and/or their predecessors-in-interest accessed these inholdings by motorized vehicle along the Ankle Creek route, we find no error in BLM approving this route and mode of travel. The frequency of access allowed by BLM, however, is a separate and distinct issue.

[1] 43 C.F.R. § 6305.10(c) provides that once a route and mode of transport is approved under 43 C.F.R. § 6305.10(a), it is then authorized under 43 C.F.R. Part 2920:

> BLM may give access to inholdings by permit under existing part 2920, using its administrative discretion under this final rule to determine what access is adequate and causes the briefest and most limited impacts on wilderness character . . . . BLM will only approve the kind and degree of access that you enjoyed immediately before the wilderness area across which you must travel to reach your inholding was designated as wilderness . . . .

65 Fed. Reg. at 78360. So long as the "degree of access" authorized under Part 2920 is no greater than that which was enjoyed at the time of wilderness designation, BLM acts within the bounds of its discretionary authority under the Wilderness Act. Mathematical precision is not required in determining the degree of access to be approved under applicable regulations implementing the Wilderness Act. Based upon our review of the record, we find the degree of access allowed and the limits imposed by BLM are consistent with the degree of access previously enjoyed by these inholders to their properties, under and as required by rules implementing the Wilderness Act.

This case stands in marked contrast to the circumstances we recently faced in *Wilderness Watch*, 168 IBLA 16 (2006). We there reversed in part and vacated in part BLM's inholder access decision under the Wilderness Act because the level of access approved by BLM was significantly greater than predesignation levels (i.e., "regular and continuous use" vs. "light use" by random vehicles),[9] *id*. at 38, 39, and because BLM had made no findings and the record was devoid of any evidence concerning pre-designation inholder access to their properties, *id*. at 41-43. Here, BLM determined the level of motorized access previously enjoyed by these inholders, expressly limited access to predesignation levels, prohibited route improvements, and imposed monitoring requirements to ensure that the approved Ankle Creek route does not become more obvious than at the time of wilderness designation. EA at 2, 4; FONSI/DR at 4, 5.

Environmental appellants separately assert that 43 C.F.R. § 6305.10(a)(2) was violated because BLM did not demonstrate that motorized access to these inholdings was "necessary" and because the selected alternative "would not have the least impact on wilderness character" of the several alternatives considered by BLM. Environmental Appellants' Statement of Reasons (ESOR) at 19-21.

Environmental appellants assert that before BLM can authorize motorized access to inholders it must first make a separate determination that *motorized access* "is necessary to allow the inholders to continue using and enjoying their parcels." ESOR at 20.[10] We disagree. The Wilderness Act requires BLM to provide inholders

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[9] BLM approved increased access to develop a horse-breeding ranch and authorized reconstructing a route that had not been used by the inholders or their predecessors in interest. 168 IBLA at 21-22, 23, 34-37. Wilderness Watch also raised issues under NEPA, contending that "BLM did not adequately analyze the indirect and cumulative effects of the proposed road construction and the subsequent motorized access." 168 IBLA at 32. *See* discussion *infra*.

[10] Environmental appellants contend that motorized access is not necessary because an inholder-lessee was willing to forego motorized travel if it were compensated for the additional cost of accessing these inholdings by "pack strings and other nonmotorized means." ESOR at 21. Even if compensation had been paid to that lessee, it would have had no effect on the other inholder's rights and little effect on the inholder-lessor's right of access to her properties. They also claim that access to build on these inholdings is unreasonable and should have been evaluated by BLM, ESOR at 21, but fail to recognize that the decision on appeal prohibits the bringing in of building supplies or construction equipment if it would change the appearance of this route from what it was at the time of wilderness designation. Whether access for that purpose or any other purpose is reasonable and should be allowed are issues not

(continued...)

with "such rights as may be necessary to assure adequate access" to their properties, 16 U.S.C. § 1134(a) (2000); BLM rules at 43 C.F.R. § 6305.10 implement that requirement by specifying the sequence of actions and decisions that must be made by BLM when granting access to inholders under the Wilderness Act: identify which combinations of routes and modes of transport had been used or were in use by inholders at the time of wilderness designation, 43 C.F.R. § 6305.10(a)(1); determine which of those combinations "will serve the reasonable purposes for which the non-Federal lands are held or used"; and select that combination of routes and modes which BLM determines will "cause the least impact on wilderness character," 43 C.F.R. § 6305.10(a)(2). We discern no procedural requirement under this rule for BLM to make a separate, discrete finding of necessity before granting inholders access by motorized vehicle. Simply stated, compliance with rules implementing the Wilderness Act constitutes compliance with that Act's directive to provide "such rights as may be necessary to assure adequate access" to inholdings within a wilderness area.

[2] As to impacts on wilderness character and BLM's selection from among the available alternatives under 43 C.F.R. § 6305.10(a)(2), appellants contend that BLM should have selected Alternative A because it would have lesser impacts. ESOR at 19-20. We see the balance to be struck in preserving wilderness character as a choice between limiting access based on the appearance of a route across a wilderness area (Alternative C) or on the number of times a vehicle can be seen and heard transiting that wilderness area (Alternative A).[11] *Cf. Wilderness Watch v. Mainella*, 375 F.3d 1085, 1092-93 (11th Cir. 2004). There may be a difference between Alternative A's express limitation of no more than 416 vehicle trips per year along the Ankle Creek route (2 weekly round trips by up to 4 vehicles per trip for 26 weeks per year) and the selected alternative's limitation based upon observed impacts to that route, but we are unpersuaded that BLM erred in its selection of Alternative C. Environmental appellants' prefer Alternative A because it might result

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[10] (...continued)
currently before us and upon which we express no opinion. *See* discussion *infra*.

[11] BLM considered that its preferred alternative would result in less (not more) travel along the Ankle Creek route than was occurring at the time of wilderness designation. *See* FONSI/DR at unnumbered at 2 ("since vehicular use by the public is no longer allowed, traffic is expected to be less than historical levels and, therefore, the route is expected to become less visually evident than at the time of designation"), 3 ("elimination of public vehicular use should result in most portions of the route becoming less visually evident than at the time of designation," "vegetation cover would be maintained at or above levels that existed at the time of wilderness designation," and "soil stability should improve beyond predesignation levels due to the expected reduction of motorized use").

in fewer trips affecting their members' "perception of naturalness, solitude, and primitive recreation experiences," but that alternative could have a greater impact on wilderness character if inholders responded to its trip limits by using larger vehicles to transport materials, equipment, and/or customers to their inholdings and/or otherwise causing the Ankle Creek route to become more noticeable and road-like than at the time of wilderness designation. Accordingly, we find no error in BLM's determination under 43 C.F.R. § 6305.10(a)(2) that its selected Alternative C will have the least impact on wilderness character vis-a-vis Alternative A.

2. Whether All Roads are Prohibited Within a Wilderness Area.

[3] Environmental appellants claim that all roads are prohibited within a wilderness area. ESOR at 17-18. While section 4(c) of the Wilderness Act prohibits permanent roads and the use of motorized vehicles or equipment within a wilderness area, this prohibition is not absolute:

> *Except as specifically provided for in this chapter*, and subject to existing private rights, there shall be . . . no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purposes of this chapter, . . . there shall be no temporary road, no use of motorized vehicles, [or] motorized equipment . . . within any such area.

16 U.S.C. § 1133(c) (2000) (emphasis added). Since section 5(a) of the Wilderness Act specifically provides for access to inholdings, 16 U.S.C. § 1134(a) (2000), it follows that access approved under that provision and its implementing regulations is necessarily excepted from the road and motorized use prohibition of section 4(c). 16 U.S.C. § 1133(c) (2000). It is irrelevant whether the approved route is road-like or appears to be road,[12] so long as it existed at the time of wilderness designation

[12] BLM was directed to study "roadless" areas for possible designation as wilderness by section 603(a) of the Federal Land Policy and Management Act of 1975, 43 U.S.C. § 1782(a). It typically cherrystems roads "which have been improved and maintained by mechanical means to ensure relatively regular and continuous use" when defining wilderness boundaries, and considers other routes usable by motor vehicles to be "ways." *See Kennecott Corp*., 66 IBLA 249, 254-55 (1982) and cases cited. Since the Ankle Creek route was not cherrystemmed, we assume at the time of wilderness designation that it was not then a "road" and had not been improved to support regular and continuous use by automobiles and other motorized vehicles. EA at 7 ("The Ankle Creek route is basically a primitive two-track suitable for high clearance vehicles traveling at slow speeds.").

and is not improved thereafter.[13] As expressly stated in BLM's wilderness management rulemaking: "You may maintain existing routes to the degree you or your predecessors maintained them at the time of wilderness designation. BLM will not allow you to upgrade your access routes beyond the condition that existed on the date Congress designated the area as wilderness, unless the improvement would protect wilderness resources from degradation." 65 Fed. Reg. at 78370.[14] Having determined that BLM's decision reflects a proper exercise of its discretionary authority under the Wilderness Act and 43 C.F.R. § 6305.10(a), *see* discussion *supra*, we reject environmental appellants' overbroad claim that this route and all "roads are simply incompatible with wilderness." ESOR at 17.

3. Whether BLM Failed to Preserve the Area's Wilderness Character.

[4] Environmental appellants next assert that since motorized access can adversely impact one's wilderness experience (e.g., sights, sounds, and other indicia of motorized vehicle use), BLM must prohibit all motorized access to comply with its statutory mandate to preserve wilderness character. ESOR at 18-19. Although BLM is "responsible for preserving the wilderness character of the area," 16 U.S.C. § 1133(b) (2000), we do not read this directive as prohibiting motorized access where, as here, such access is similar in nature, degree, and effect to that which existed at the time of wilderness designation. BLM limited inholder access to preserve conditions as they existed and were enjoyed at the time of wilderness designation. Appellants seek not to preserve what was, but to enhance their members' future wilderness experiences by eliminating pre-existing motorized access so that routes become less road-like and vehicles do not intrude upon their sense of solitude. Although their desire is understandable, they would have BLM improve conditions beyond those that existed at the time of wilderness designation and which gave rise to designating this a wilderness area at the expense of inholders' rights to access their properties. By allowing continued (but limited) motorized access to

[13] Access under the specific provisions of the Steens Act are similarly excepted from the Wilderness Act's prohibition on roads and motorized vehicle use. The precise contours of that exception, however, are yet to be determined (e.g., whether a route can be constructed or improved to be a road or become more road-like). *See* n. 12 and discussion *infra*.

[14] Since no repairs or improvements to the approved Ankle Creek route are authorized by BLM's decision, this case is readily distinguishable from *Barnes v Babbitt*, 329 F.Supp.2d 1141, 1146 (D. Ariz. 2004), where the court reversed our decision allowing an inholder to improve his access route for use by pickup trucks. *See also Wilderness Watch*, 168 IBLA at 39-40, 43.

these inholdings, we find that BLM acted consistent with its responsibility to preserve the wilderness character of this area.[15]

4. Whether BLM Improperly Facilitated Motorized Use by a Commercial Enterprise.

Prior to and after wilderness designation, the Ellis inholdings had been and continue to be leased and used for commercial outfitting, first by the Roaring Springs Ranch and then by Steens Mountain Packers, the current lessee. The operators of the Roaring Springs Ranch apparently accessed these inholdings by motorized vehicle before this area was designated as a wilderness; Steens Mountain Packers sought similar motorized access and holds a commercial special recreation (use) permit to enter the Wilderness Area from these inholdings by nonmotorized means. *See* EA at 2; Answer at 17; 16 U.S.C. § 1133(d)(5) (2000) ("Commercial services may be performed within the wilderness areas . . . to the extent necessary . . . for realizing the recreational or other wilderness purposes of the areas"). Environmental appellants do not challenge Steens Mountain Packers' BLM-issued permit for nonmotorized outfitting into the Wilderness Area, but contend that motorized access across the Wilderness Area to get to these inholdings facilitates a commercial enterprise and violates section 4(c) of the Wilderness Act, 16 U.S.C. § 1133(c) (2000). ESOR at 21-24. We disagree.

Section 4(c) of the Wilderness Act provides, in pertinent part, "*[e]xcept as specifically provided for in this chapter*, and subject to existing private rights, there shall be no commercial enterprise . . . within any wilderness area." 16 U.S.C. § 1133(c) (2000) (emphasis added). Since the Wilderness Act specifically provides for access to inholdings under 16 U.S.C. § 1134(a) (2000), it follows that access approved under that provision and its implementing regulations is also excepted from the commercial enterprise prohibition under section 4(c) of the Wilderness Act. 16 U.S.C. § 1133(c) (2000)[16]; *see* discussion *supra*.

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[15] Environmental appellants broadly claim that BLM's decision improperly attempted to balance competing interests under the Wilderness Act and applicable implementing regulations, ESOR at 24-25, but have since narrowed that claim to BLM's failure "to faithfully apply the standards set by law." Reply at 5. Since this balancing claim is derivative and little more than a summary characterization of its several other claims of error, we need not separately address that argument.

[16] Appellants reliance on the Ninth Circuit's decision in *Wilderness Society v. USFWS*, 353 F.3d 1051 (2003), is misplaced. ESOR at 22-24. At issue there was a special use permit allowing a consortium of commercial fishermen to enter a wilderness area, erect a base camp, recover fish for their eggs, and transport those eggs to a hatchery

(continued...)

[5] Motorized access along the Ankle Creek route for commercial and other purposes predated wilderness designation, *see* EA at 2; 43 C.F.R. § 6305.10(a)(1). BLM's subsequent issuance of a commercial special use (recreation) permit to Steens Mountain Packers demonstrates that its outfitting business is a reasonable use of these inholdings, *see* 43 C.F.R. § 6305.10(a)(2). Under these circumstances, BLM could not have denied continued motorized access to inholdings that had been and continued to be used as the base for a commercial outfitting business, consistent with its obligation to provide "rights necessary to assure adequate access." Environmental appellants have failed to demonstrate that BLM violated the Wilderness Act or acted arbitrarily or capriciously by allowing continued motorized access to these inholdings by a commercial lessee and its customers.[17]

Wild and Scenic Rivers Act

The Ankle Creek route approved by BLM crosses Ankle Creek and Mud Creek, stream segments which are now "wild river areas" under the WSRA. *See* Steens Act § 301(a), 16 U.S.C. § 460nnn-71 (2000). All rivers and streams that are or were free-flowing are eligible for designation as wild, scenic, or recreational. 16 U.S.C. § 1273(b) (2000). Wild river areas are there defined as "[t]hose rivers or sections of rivers that are free of improvements and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America." 16 U.S.C. § 1273(b)(1) (2000).[18] Once designated by Congress (or by the Secretary of the Interior upon application of a Governor under State law), 16 U.S.C. § 1273(a) (2000), wild river areas are managed pursuant to section 10(a) of the WSRA:

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[16] (...continued)
where they would be grown and later introduced into rivers outside the wilderness area to enhance the commercial sockeye salmon fishery. The court held that since this permitted activity was a commercial enterprise, it was subject to the general prohibition of 16 U.S.C. § 1133(c) (2000). The issue here is not whether outfitting is a commercial enterprise or permitted by BLM; it clearly is. Environmental appellants do not oppose that permitted activity, only how a commercial outfitter and its customers can access its leased inholdings.

[17] Commercial lessees do not have a right to unlimited access by or for their customers. They are subject to the same prohibitions and limitations under BLM's access decision as are lessor-inholders (e.g., prohibition on road improvements and additional access limits if route conditions become more noticeable than at the time of wilderness designation).

[18] By contrast, a designated scenic river area is "accessible in places by roads," and a recreational river area is one which is "readily accessible by road or railroad." 16 U.S.C. §§ 1273(b)(2) and (3) (2000).

> Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting the esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on special attributes of the area.

16 U.S.C. § 1281(a) (2000).[19]

Environmental appellants contend that BLM's decision "is grossly inconsistent with the very essence of 'wild' rivers" and fails to protect these streams' recreational value or to consider their other outstandingly remarkable values (OR values), claiming that BLM's extremely limited discretion under the WSRA precludes it from allowing continued motorized travel along the Ankle Creek route where it crosses these wild stream segments. ESOR at 25-29. We disagree.

Prior to the Steens Act, the Ankle Creek route was generally accessible by motorized vehicle between approximately July 1 and October 30 (depending on road and weather conditions). 45 Fed. Reg. 62212 (Sept. 18, 1980). By designating the Ankle and Mud Creeks as "wild river areas," Congress necessarily determined that this pre-existing route's proximity to these streams and motorized crossings are not inconsistent with these streams being "generally inaccessible except by trail." 16 U.S.C. § 1273(b)(1) (2000). We are bound by that legislative determination and, therefore, must reject appellants' claim that continued motor vehicle use of the Ankle Creek route is "grossly inconsistent" with the WSRA.

Appellants next assert that because this decision will result in motor vehicle sights and sounds having "negative impacts to the recreational values of the wild river segments," perforce BLM failed to protect this OR value. ESOR at 27-28. In managing wild rivers under the "very broad requirements of the WSRA," 16 U.S.C. § 1281(a), BLM is vested with "substantial discretion in its management of protected river areas." *Sierra Club v. U.S.*, 23 F. Supp.2d 1132, 1137 (N.D. Cal. 1998); *cf. Wiley Beaux*, 171 IBLA 58, 67 n. 6 (2007), and cases cited. However, BLM cannot limit uses that are consistent with a stream segment's designation as wild river area

[19] Nearly identical language was earlier viewed by the Department as being intended "to maintain the status quo with respect to the character of the river and related adjacent lands at the time of its designation as a national scenic river area." *See 1968 U.S. Code Cong. and Admin. News*, 3801, 3817, 3825.

unless such use would "substantially interfere with" others' enjoyment of the values which caused that stream to be designated a wild river area. 16 U.S.C. § 1281(a) (2000). BLM here recognized that adverse effects to recreational values could occur under its selected alternative, but it determined that such effects would be "few and short term" and less than historical levels. FONSI/DR at 2; *see also* EA at 11-12, 13-14.

[6] The Ankle Creek route was used by the public long before these streams were designated as wild river areas. *See* 45 Fed. Reg. 62212. After designation, BLM installed a gate on the Ankle Creek route to prevent the public from using that route and crossing these streams by motorized means. *See* BLM Correspondence to Ellis, Nov. 14, 2002. By ensuring that use of the Ankle Creek route could be no greater than what was occurring at the time of designation and by prohibiting motorized use of that route by the public, we find that BLM not only "protected," but also "enhanced," the recreational value of these designated stream segments.

Environmental appellants also assert that BLM failed adequately to consider adverse impacts to these streams' scenic (visual), vegetation, and wildlife OR values. ESOR at 28-29. BLM identified Wild and Scenic Rivers, including their OR values for recreation, scenic (visual), vegetation, and wildlife resources, as a Critical Element in its consideration of access alternatives. EA at 6, 7, 11-12. Based upon our review of this record, we find that each of these OR values was considered, evaluated, and separately addressed by BLM. FONSI/DR at 2; EA at 9-10, 17-18.

Environmental appellants clearly disagree with BLM's conclusions under the WSRA. They fail, however, to demonstrate that BLM's determination that adverse effects to recreational values would be few, short-term, and less than historic levels was in error, that limited motorized vehicle use of the Ankle Creek route would "substantially interfere" with their enjoyment of that OR value, 16 U.S.C. § 1281(a) (2000), or that BLM failed adequately to consider other OR values in its WSRA decisionmaking.

National Environmental Policy Act

Section 102(2)(C) of NEPA requires consideration of potential impacts of a proposed action in an environmental impact statement (EIS) if that action is a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C) (2000). A BLM decision approving an action based on an EA and FONSI, rather than an EIS, generally will be affirmed if BLM has taken a "hard look" at the proposal being addressed and identified relevant areas of environmental concern so that it could make an informed determination as to whether the proposal's impacts are insignificant or will be reduced to insignificance by the adoption of appropriate mitigation measures. *Biodiversity Conservation Alliance*, 169 IBLA 321,

331 (2006); *National Wildlife Federation*, 169 IBLA 146, 154-55 (2006); *Rainer Huck*, 168 IBLA 365, 401 (2006); *Colorado Mountain Club*, 161 IBLA 371, 381-82 (2004). In determining whether BLM took a hard look at environmental consequences, including cumulative impacts, the Board is guided by a rule of reason. *See National Wildlife Federation*, 169 IBLA at 155; *Colorado Mountain Club*, 161 IBLA at 381. A party challenging BLM's decision has the burden of demonstrating with objective proof that the decision or FONSI is 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 proposed action. *Biodiversity Conservation Alliance*, 169 IBLA at 155; *National Wildlife Federation*, 169 IBLA at 155; *Rainer Huck*, 168 IBLA at 402. Mere differences of opinion about the likelihood or significance of environmental impacts provide no basis for reversal. *Western Slope Environmental Resource Council*, 163 IBLA 262, 285 (2004); *Colorado Mountain Club*, 161 IBLA at 381; *San Juan Citizens Alliance*, 129 IBLA 1, 14 (1994). It is against these principles that we consider environmental appellants' several NEPA claims.

[7] Environmental appellants contend that an EIS was required because BLM's decision will result in significant cumulative impacts [20] by establishing a precedent for other, similar access decisions within the Wilderness Area. ESOR at 31-33. BLM responded to this concern by emphasizing that "[p]roximity to existing routes, past modes of access and other regulatory criteria are included when determining reasonable access" and that such decisions are made on a case-by-case basis "based on each individual inholding's need." EA at 19. BLM represents that future access decisions will be made only after an EIS is issued for its comprehensive management plan for the entire Steens Mountain Cooperative Management Area, as mandated by section 111(b) of the Steens Act, 16 U.S.C. § 460nnn-21(b) (2000). Answer at 18; *see* 16 U.S.C. § 460nnn-22(a) (2000) (BLM's comprehensive plan must "address the maintenance, improvement, and closure of roads and trails as well as travel access."). In light of BLM representations and express requirements for determining access under the Wilderness and Steens Acts, which focus on the facts of each case, we find that BLM has established a convincing case that the cumulative impacts of its decision are insignificant or likely to be so. Accordingly and under a rule of reason, we conclude that BLM's analysis is adequate.

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[20] NEPA and Council on Environmental Quality (CEQ) regulations require agencies to consider the cumulative impacts of proposed actions, which are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions . . . ." 40 C.F.R. § 1508.7. *See also* Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18033 (Mar. 23, 1981).

In reply to the Government's Answer, environmental appellants raise a new issue, claiming that BLM violated CEQ regulations by allowing inholders to continue accessing their properties by motor vehicle pending a decision herein. Response at 3-4. With enactment of the Steens Act and its designation of the Wilderness Area, the Ankle Creek route was closed to motorized travel on October 30, 2000. BLM effected that closure by placing gates on that route, but it gave keys to inholders to enable them to continue traveling to their properties until such time as a final decision was made on the route, mode, and degree of access to be granted them.[21] Environmental appellants assert that giving keys to inholders violated 40 C.F.R. § 1506.1(a).

CEQ regulations provide in pertinent part that "[u]ntil an agency issues a record of decision . . . , no action concerning the proposal shall be taken which would: (1) Have an adverse environmental impact; or (2) Limit the choice of reasonable alternatives." 40 C.F.R. § 1506.1(a). Unlike a new action or activity which could have adverse environmental impacts of a yet-to-be-evaluated and quantified magnitude, giving keys to allow continuing inholder access simply maintained the status quo until BLM could make an informed decision. Since appellants fail to identify how giving keys and allowing interim access to inholders would have had an adverse environmental impact different in kind or degree from what was occurring at the time of wilderness designation, we reject their claim of error under 40 C.F.R. § 1506.1(a)(1). *Cf.* 516 Department Manual 11.5.E (20) (categorical exclusion from NEPA review for short-term rights of way). Nor have they identified how interim access could "limit the choice of reasonable alternatives" to be considered by BLM. BLM considered itself bound by 43 C.F.R. § 6305.10 and, as such, only the routes, modes, and degree of access enjoyed at the time of wilderness designation could be considered in determining inholder access under the Wilderness Act. *See* discussion *supra*. Since post-designation access would be irrelevant to BLM's decisionmaking under 43 C.F.R. § 6305.10, interim access could not affect or limit its choice of reasonable alternatives under 40 C.F.R. § 1506.1(a)(2). Accordingly, appellants have failed to demonstrate that BLM violated 40 C.F.R. § 1506.1 by giving inholders keys to enable them to access their properties until a formal decision was made by BLM under the Wilderness and Steens Acts.[22]

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[21] After more than 3 years, BLM finally determined these inholders' rights of access. More than 6 years have now passed, and other inholders are still awaiting BLM decisions on how and under what circumstances they can access their properties. Answer at 18.

[22] Environmental appellants separately claim that the EA failed to consider the environmental impacts of "illegal" access by inholders (i.e., pre-decisional access by inholders, as allowed by BLM, and Stroemple's use of, and improvements to, a trail

(continued...)

Steens Act

In designating the Steens Mountain Wilderness Area, Congress enacted special provisions for the administration of that area:

> (a) GENERAL RULE.—The Secretary shall administer the Wilderness Area in accordance with this title and the Wilderness Act (16 U.S.C. 1131 et seq.) Any reference in the Wilderness Act to the effective date of that act (or any similar reference) shall be deemed to be a reference to the date of the enactment of this Act.
>
> . . . .
>
> (c) ACCESS TO NON-FEDERAL LANDS.—The Secretary shall provide reasonable access to private lands within the boundaries of the Wilderness Area, as provided in section 112([e [23]]).

Steens Act § 202, 16 U.S.C. § 460nnn-62 (2000). Whereas the general rule of the Wilderness Act provides that inholders "shall be given such rights as may be necessary to assure adequate access to [their inholdings]," 16 U.S.C. § 1134(a) (2000), section 112(e) of the Steens Act includes special provisions governing access within the Wilderness Area:

> (e) ACCESS TO NONFEDERALLY OWNED LANDS.—
>
> (1) REASONABLE ACCESS.—The Secretary shall provide reasonable access to nonfederally owned lands or interests in lands within the boundaries of the Cooperative Management and Protection Area and the Wilderness Area to provide the owner of the land or interest the reasonable use thereof.
>
> (2) EFFECT ON EXISTING RIGHTS-OF-WAY.—Nothing in this Act shall have the effect of terminating any valid existing rights-of-way on Federal lands included in the Cooperative Management and Protection Area.

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[22] (...continued)
within the Wilderness Area). ESOR at 34-36. This claim must be rejected because inholders' interim access was not illegal, appellants proffer no evidence that the environmental impacts of pre-decisional use of the Ankle Creek route was different in kind or degree from that considered in the EA, and Stroemple's "illegal" use of a trail occurred after BLM's decision. *See* Answer at 19.

[23] Although the Steens Act refers to section 112(d), the codifiers state (and we agree) that this reference "probably should be to section" 112(e). 16 U.S.C. § 460nnn-62(c) note 1 (2000).

16 U.S.C. § 460nnn-22 (2000). Landowner appellants contend that BLM applied the wrong standard and failed to grant them more and better protected access rights under the Steens Act, erroneously determined that they did not possess easements or rights-of-way through the Wilderness Area, and imposed arbitrary and capricious monitoring conditions. Landowner Appellants' Statement of Reasons (LSOR).[24]

BLM recognized that the Steens Act's reasonable access for reasonable uses standard applied, but considered itself bound by regulations implementing the adequate access requirements of the Wilderness Act. FONSI/DR at 4-5; EA at 1, 3 ("Wilderness areas are subject to stringent management constraints to protect Wilderness as described in the Wilderness Act and implementing regulations [43 C.F.R. § 6305.10]"). BLM's decision granting limited access is well within its discretionary authority under the adequate access standard of the Wilderness Act and 43 C.F.R. § 6305.10. *See* discussion *supra*. Landowners, however, claim that BLM should have granted them more and greater access to their properties under the Steens Act.

[8] As a matter of statutory construction, the specific provisions of the Steens Act (reasonable access for reasonable use) necessarily take precedence over the general rule reflected in the Wilderness Act (necessary to assure adequate access). Congress articulated a different standard in the Steens Act [25]; had it intended the same standard to apply, it would not have enacted the special provisions found at 16 U.S.C. §§ 460nnn-22(e) and 460nnn-62(c) (2000). We have earlier observed that adequate access for reasonable uses under the California Desert Protection Act (CDPA), 16 U.S.C. § 410aaa-78 (2000), "is a statutory grant of an access right to inholders that is broader than that afforded by 5(a) of the Wilderness Act, 16 U.S.C. § 1134(a)." *Wilderness Watch*, 156 IBLA 17, 20 (2001). Moreover and as explained in response to comments on 43 C.F.R. § 6305.10:

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[24] Landowner appellants also fear BLM's decision prohibits motorized access between November 15 and May 15. Response to BLM Answer at 6. Rather than a prohibition, BLM's authorization of access "during the period of time, generally May 15 to November 15, when damage to the Steens Mountain Loop Road and Ankle Creek Route would not occur," FONSI/DR at 4, appears to be little more than a recognition and admonishment that use of the Ankle Creek route during winter weather conditions (generally November 15 to May 15) could cause that route to be damaged and become more obvious. Accordingly, motorized winter access is allowed, but if it results in the Ankle Creek route becoming more obvious, "BLM will make adjustments to vehicle access to restore the route to its previous condition." FONSI/DR at 5.

[25] Adequate means "barely sufficient or suitable," whereas reasonable means "not exceeding the limit prescribed by reason." Random House College Dictionary (1973).

> One comment noted that designations of individual wilderness areas by Congress may contain statutory provisions that supercede the Wilderness Act or [Federal Land Policy and Management Act]. This is true, in such a case the statutory provision would also supersede these regulations. It is not our intent to account for every such exception to the general requirements of the Wilderness Act.

65 Fed. Reg. at 78362; *see also Wilderness Watch*, 156 IBLA at 22. We therefore agree with appellants that the statutory grant of access rights under the Steens Act is different from and potentially broader than under the Wilderness Act [26] and that BLM is not bound by general rules implementing the Wilderness Act's adequate access standard when determining access under the Steens Act.

On the other hand, landowner appellants' claim to unfettered, unrestricted, unlimited access is clearly overbroad and inconsistent with the Steens Act. They urge that we remand this matter "to BLM to address comprehensively all of the means of access to which the private inholders are entitled," specifically asserting that BLM should approve access by snowmobile and Stroemple's use of and improvements to the Berrington Trail (Alternative D, EA at 5-6). LSOR at 6. Rather than deciding those issues, BLM properly deferred further action until it received additional facts and prepared a separate EA. Feb. 14, 2003, BLM Transmittal Letter of its Decision; EA at 3, 4; Answer at 23. BLM must render a decision interpreting and applying the reasonable access for reasonable use standard of the Steens Act to the facts then presented before we can determine whether it acted properly in denying or granting access by other modes (e.g., snowmobile), routes (e.g., Berrington Trail) and for other, reasonable uses. Until such time as a decision is made and a record presented, it is premature for us to address these Steens Act access issues here.

Landowner appellants next claim that access rights could be limited by BLM if and when they transfer their properties. LSOR at 7. Access approved by BLM must be reflected in an authorization issued under Part 2920. 43 C.F.R. § 6305.10(c). The subsequent transfer of that authorization to others is subject to BLM approval and may be modified, 43 C.F.R. § 2920.7(j), but any such approval or modification must be consistent with applicable law. Accordingly, if BLM were to limit a transferee's access (as feared by inholders), it would have to engage in reasoned decisionmaking in consideration of the facts then presented. Until such a decision is made, it is premature to suggest or for us to find that BLM will violate the Steens Act.

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[26] House Report 929, 106th Cong., 2d Sess., accompanying H.R. 4828, which later became the Steens Act, identified proposed changes to existing law. We note that the only changes identified affected the WSRA. *See also* Steens Act § 202, 16 U.S.C. § 460nnn-62.

Landowner appellants' claim that BLM failed to recognize that they had easements or rights-of-way to access their inholdings is misplaced and without merit. The Steens Act addresses this issue as follows: "Nothing in this Act shall have the effect of terminating any valid existing rights-of-way . . . ." 16 U.S.C. § 460nnn-22(e)(2) (2000); *see* 16 U.S.C. § 1133(c) (2000) ("existing private rights"). Landowners provide no evidence that they possess any easement, right-of-way, or other existing private right to access their inholdings. It therefore appears that their argument is simply an attempt to bootstrap their inchoate, statutory right to reasonable access under 16 U.S.C. § 460nnn-22(e)(1) (2000) into a "valid existing" property interest for purposes of 16 U.S.C. § 460nnn-22(e)(2) (2000). *Cf. Barnes v. Babbitt*, 329 F. Supp. 2d 1141, 1149-50 (D. Ariz. 2004). We reject that attempt.

Landowner appellants also contend that their providing annual reports and BLM's possible use of electronic counters are illegal as well as unreasonable under the Steens Act. LSOR at 7-8. BLM responds that these monitoring conditions are in aid of its "trying to provide a system of notifying visitors when motorized use is actually occurring." Answer at 24, *citing* FONSI/DR at 5. BLM's rationale is not illogical. How this monitoring would enable BLM to inform wilderness users when motorized travel will occur is unexplained, but we do not believe these conditions are unreasonable in light of the minimal obligations imposed upon inholders. They also assert that these measures are unnecessary because BLM limits access based on impacts to, not the number of trips along, the Ankle Creek route. LSOR at 7. If such impacts occur, we note and BLM emphasized that it "will make adjustments to vehicle access to restore the route to its previous condition." FONSI/DR at 5. Direct access limits may then be necessary and appropriate, in which case the level and time of access, particularly between November 15 and May 15, would clearly be relevant (if not essential) to BLM's informed decisionmaking on how best to further limit access. We therefore conclude that appellants failed to demonstrate that these monitoring conditions are illegal, arbitrary, capricious, or unreasonable.

SUMMARY

The Ankle Creek route had been used by inholders and others to access these properties long before the Wilderness Area was designated. BLM authorized and limited their motorized access to these inholdings and ensured that this route is neither improved nor becomes more obvious or noticeable than at the time of wilderness designation. In doing so, BLM acted well within its discretionary authority under the Wilderness Act, its implementing regulations, and the Wild and Scenic Rivers Act. We do not find that BLM violated applicable NEPA requirements and conclude that its decision and EA pass environmental muster under a rule of reason. With respect to landowners' appeal and their claimed entitlement to greater access under the Steens Act than under the Wilderness Act, we agree that their standards are different and that in making determinations under the special access

provisions of the Steens Act, BLM is not bound by general rules implementing the Wilderness Act. Nonetheless, BLM must first determine access before we can decide whether its action in granting or denying access under the Steens Act is proper and supported by the record then presented. We affirm BLM's decision under the Wilderness Act, but modify it to the extent it determined that BLM is bound by regulations implementing the Wilderness Act when making access decisions under the Steens Act. We leave it to BLM to determine whether and to what extent those rules may be helpful in decisionmaking affecting access under the Steens Act.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Wilderness Watch's petition for reconsideration of our September 24, 2004, Order is granted and its appeal is reinstated, and the decision appealed from is affirmed.

/s/
James K. Jackson
Administrative Judge

I concur:

/s/
James F. Roberts
Administrative Judge