

ALVIN R. PLATZ ET AL.

IBLA 89-408

Decided March 30, 1990

Appeal from a decision of the Folsom Resource Area Manager, Bureau of Land Management, denying application for motorized access across public land located in the North Fork American River Wild River Corridor. CA CA-20525.

Reversed and remanded.

1. Rights-of-Way: Federal Land Policy and Management Act of 1976--Rights-of-Way: Conditions and Limitations--Rights-of-Way: Nature of Interest Granted--Wild and Scenic Rivers Act

In denying a right-of-way authorizing motorized access to private property across lands included in a wild and scenic river area, BLM acted contrary to sec. 12(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1283(b) (1982), and the implementing regulations at 43 CFR 8351.2-1, since the record established that appellants and their predecessors have historically used motorized vehicles in reaching their property.

APPEARANCES: Paul S. Simmons, Esq., Stuart L. Somach, Esq., Sacramento, California, for appellants; Burton J. Stanley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE IRWIN

At the direction of the Chief Administrative Judge, exercising his responsibility for the internal management and administration of the Board, 43 CFR 4.2(c), this appeal has been granted expedited consideration because the matter has previously been before the Board.

Appellants, Al Platz and his partners in the Gold Ring Placer Mine Properties partnership, originally appealed the July 21, 1987, decision of the Area Manager, Folsom Resource Area, Bureau of Land Management (BLM), that denied them access by motor vehicle to their property lying within the boundaries of the corridor along the North Fork American River, which is designated as a wild river under the Wild and Scenic Rivers Act (WSRA). See 16 U.S.C. § 1274(a)(21) (1982). BLM's decision denied such access because "motorized land and water vehicles [were] prohibited within the wild river boundary" by the North Fork American River Management and Development Plan (Management Plan). We set that decision aside by order dated June 29, 1988, and remanded the case for re-adjudication because

[t]he statement of reasons [submitted by appellants] raises significant questions whether BLM considered the provisions of applicable statutes and regulations, i.e., 16 U.S.C. 1283(b) (1982), 16 U.S.C. 3210(b) (1982), and 43 CFR 8351.2-1(b)(2), in making the decision. <sup>1/</sup> We have examined the case record forwarded by BLM and conclude that the record does not reflect that BLM's adjudication of this case was guided by applicable law.

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<sup>1/</sup> We note that 43 CFR 8351.2-1, which was promulgated after the completion of the Management and Development Plan that BLM found was controlling in this case, provides that the authorized officer may issue orders which close or restrict the use of lands and water surfaces within the boundaries of any component of the

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fn. 1 (continued)

National Wild and Scenic River System but that such orders may exempt owners or lessees of property within the boundaries of the designated wild and scenic river area. 43 CFR 8351.2-1(b)(2).

BLM met with appellants in August 1988 and, as agreed, they filed an application for a right-of-way "for motorized vehicle access (trail bikes) on existing trail to private property" the following month.

The Area Manager's March 21, 1989, decision granted "pedestrian and equestrian use of the existing trail \* \* \* across the public land for the reasons stated [in pages 2-4 of the decision] above" and offered appellants a right-of-way grant for 10 years (Decision at 5). The decision recited that the provisions referred to in the Board's June 29, 1988, order had been "specifically considered in this decision-making" and contained brief discussions of the applicability of those provisions.

Appellants filed a notice of appeal from BLM's March 21, 1989, decision on April 21, 1989. On May 15, 1989, they requested an extension of time until July 14, 1989, in which to file a statement of reasons (SOR), which was duly granted. Appellants' SOR was timely filed. BLM's response, filed August 21, 1989, was a one-page declaration of the Area Manager that he had not discussed the case during a November 1988 visit to the Board.

As previously noted, appellants' property is a former placer mining claim, patented in 1879, which they purchased in 1983. It is surrounded by public lands within the boundary of the North Fork American River, which is classified as a wild river under the Wild and Scenic Rivers Act.

16 U.S.C. § 1274(a)(21) (1982); 45 FR 58635 (Sept. 4, 1980); see Attachment 2, January 31, 1989, Land Report. 1/ BLM's March 21, 1989, decision incorporated verbatim the analysis contained in its January 31, 1989, Land Report.

In considering "what constitutes appropriate access for the reasonable use and enjoyment of the subject property" under section 1323(b) of the Alaska National Interest Lands Conservation Act (ANILCA), BLM reasoned as follows: (1) access to the property over the existing steep trail has historically been by foot or horse; (2) appellants use the property for recreation, not residence; (3) motorized access would be inconsistent with management of the wild river corridor; and (4) horseback access is adequate for recreational use of the property. 2/

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1/ Wild river areas are "[t]hose 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." 16 U.S.C. § 1273(b)(1) (1982).

2/ In its decision BLM considered it "clear" that it is "obligated to provide access to the Platz property" under section 1323(b) of ANILCA, which provides:

"Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary of Interior may prescribe, the Secretary shall provide such access to nonfederally owned land surrounded by public lands managed by the Secretary under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-82) as the Secretary deems adequate to secure to the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to access across public lands."

16 U.S.C. § 3210(b) (1982).

According to BLM, its decision grants appellants "a mode of access which will meet [their] needs for transportation and packing in supplies, a mode commensurate with the reasonable use and enjoyment of a remote recreation site" (Decision at 5).

BLM's January 31, 1989, Land Report contains the following passages, quoted in the decision, that indicate the information upon which it based its decision:

The property \* \* \* is located in the bottom of the North Fork American River Canyon near Green Valley. \* \* \* To the south [of the canyon], where access to Mr. Platz property is possible, the elevation drops 2,000 feet in about 1 1/2 miles. This area is remote and undeveloped; no roads have been constructed into this portion of the canyon. Access to the property has always been by the Green Valley Trail. The Green Valley Trail has, for over one hundred years[,] provided access along a narrow, steep and winding trail to the river.

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fn. 2 (continued)

Appellants assert that section 1323(b) of ANILCA applies nationwide, citing the Board's decision in Utah Wilderness Association, 80 IBLA 64, 91 I.D. 165 (1984), involving BLM's dismissal of a protest filed by Utah Wilderness Association (Utah Wilderness) against the issuance of a road right-of-way to Shell Oil Company (Shell). In affirming BLM's decision, the Board concluded that "Shell has a right of access to the state land in section 36 by virtue of section 1323(b) of ANILCA." 80 IBLA at 77, 91 I.D. at 173. The Board based its decision in part upon Montana Wilderness Ass'n v. U.S. Forest Service, 655 F.2d 951 (9th Cir. 1981), in which the U.S. Court of Appeals for the Ninth Circuit held that section 1323(a) of ANILCA applies nationwide. 655 F.2d at 957.

The right-of-way in question in Utah Wilderness Association expired by its own terms on the same day the Board issued its decision. Utah Wilderness filed an action in the U.S. District Court for the District of Utah, asking that the matter be remanded to the Board with instructions to reverse the BLM decision, or to require BLM to analyze the proposed right-of-way under the standards of section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1982), rather than under section 1323(b) of ANILCA. Shell moved to dismiss Utah Wilderness' claims as moot. The District Court concluded that "[a]fter a thorough review of the record and careful consideration, the court concludes that proper resolution of the plaintiff's claims calls for dismissal of this action as moot but with an order directing the IBLA to vacate its opinion upholding the grant of the right-of-way." Utah Wilderness Ass'n v. Clark, No. C84-0472J, memo. op. at 6 (D. Utah, Dec. 16, 1985). Consequently, this Board issued an order on Feb. 26, 1986, vacating its decision in Utah Wilderness Association, *supra*.

Because the District Court did not address whether the Board was correct in applying section 1323(b) of ANILCA to public lands situated in Utah, but rather ordered the Board to vacate its decision to that effect, there is no Board precedent on the scope of section 1323(b). Because we decide in this case that appellants' right of access is secured by section 12(b) of the WSRA, we need not address whether such access would be secured by section 1323(b) of ANILCA as an independent matter.

\* \* \* The Green Valley Trail never evolved into a road simply because the terrain precludes a road.

\* \* \* \* \*

Since historic access to the Platz property was by trail and because even miners found it more reasonable to skid equipment down into the canyon than to try to build a road, access must be confined to forms of access commensurate with the capability of the Green Valley Trail. \* \* \* Previous access has apparently been adequate for construction and maintenance of a cabin and for conducting mining operations. In fact, the cabin on the Platz property has been used and enjoyed for decades by pedestrian and equestrian access. As far as is known, equestrian travel was the preferred method of access.

(Decision at 2-4).

BLM's decision states that it "specifically considered" section 12(b) of the WSRA, 16 U.S.C. § 1283(b) (1982), and 43 CFR 8351.2-1. BLM concluded that its decision was consistent with section 12(b) of the WSRA, which provides that "[n]othing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party." BLM reasoned as follows:

Non-motorized access has been the principal access means historically, at the time of passage of the Act, and at the date of purchase of the private parcel by the grantee. Because no legal access to the subject private parcel across public lands has ever been established under the Federal Land Policy and Management Act (FLPMA), pursuant to 43 CFR 2800, no specific rights of access, other than "casual use," have existed. Therefore, no existing rights, privileges or contracts, affecting public lands were abrogated since none existed. [Emphasis in original.]

(Decision at 5).

In addition, BLM stated that appellants were not entitled to an exemption under 43 CFR 8351.2-1 from the prohibition against motorized vehicle use within the boundaries of the North Fork American River, as embodied in the Management Plan. In BLM's opinion,

[b]ecause motorized vehicle use within the Wild River boundary is specifically prohibited in the management and development plan adopted to meet the intent of Congress for Wild Rivers, and a lesser degree of access than motorized will meet the grantee's needs, an exemption from the motorized use restriction is not indicated.

(Decision at 5).

In their SOR, appellants emphasize that "BLM now apparently acknowledges that pedestrian access is inadequate to ensure 'the reasonable use and enjoyment' of the property" (SOR at 11). In appellants' view, pedestrian access would not enable them to "carry supplies or materials to make the type of improvements to the cabins and associated facilities that BLM has authorized. \* \* \* Nor can the owners go to and from the cabin rapidly in the event of a medical or other emergency." Id. at 11-12. Thus, argue appellants, "[t]he remaining question is whether the BLM Decision or Record can support a conclusion of access via mules or horses is adequate to ensure the reasonable use of the property." Id.

According to appellants, answering that question must take into account the fact that appellants "have the right to use trail bikes on the Green Valley Trail for the first two miles of the trail. The Forest Service has recently reissued a trail use permit authorizing that use."

Id.; SOR, Exh. L. The portion of the trail at issue is the one-half mile from the river corridor boundary to appellants' cabin. Appellants place their right-of-way application into the following perspective:

The owners do not wish to install a road or to widen the trail by one inch. They do not ask that the trail be opened for recreational vehicle use. Nor do the considerations that might apply to recreational use limit BLM's duty to provide access for private property owners. The owners["] use of the last one-half mile segment of the trail will be minimal. They estimate that the total number of round-trips on this section will be approximately one each per month (Declaration of Platz, ¶ 15), which amounts to about eight hours per year of trail use. [Emphasis in original; footnote omitted.]

(SOR at 12-13).

A BLM decision to grant or deny an application for a right-of-way is generally an exercise of the discretion granted to the Secretary under section 501 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1982). As an appeals board acting on behalf of the Secretary, we have "plenary authority to review de novo all official actions and to decide appeals from such actions on the basis of a preponderance of the evidence in cases involving substantive rights, or on the basis of public policy or public interest in cases involving the exercise of discretion" unless "the scope of appellate review by or on behalf of the Secretary [has been diminished or constrained] by the Secretary himself in a duly promulgated regulation, or by the Congress through enacted law." United States Fish & Wildlife Service, 72 IBLA 218, 220-21 (1983). When we review a BLM decision granting or denying an application for a right-of-way, we look to see whether the record shows the decision to be a reasoned

analysis of the factors involved, made in due regard for the public interest, and no sufficient reason is shown to disturb the decision. Dwane Thompson, 88 IBLA 31, 35 (1985); Nelbro Packing Co., 63 IBLA 176, 185 (1982); Stanley S. Leach, 35 IBLA 53, 55 (1978); Jack M. Vaughan, 25 IBLA 303, 304 (1976). In this case we conclude that a preponderance of the evidence establishes that a complete ban on motorized access deprived appellants of their existing rights, contrary to section 12(b) of the WSRA.

[1] Section 10(a) of the WSRA, 16 U.S.C. § 1281(a) (1982), provides, with reference to the administration of the "national wild and scenic rivers system," that "[m]anagement plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area." In addition, section 12(a) provides:

The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System \* \* \* shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this chapter.

However, as noted, section 12(b) of the WSRA, 16 U.S.C. § 1283(b) (1982), provides that "[n]othing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without the consent of said party." (Emphasis added.)

We find that BLM's decision denying appellants' access to their private property by trail bike in this case amounts to an abrogation of

"existing rights" within the meaning of section 12(b) of the WSRA. Platz and his wife purchased the property, which was patented under the mining laws in 1879, from a Mr. Goddard in 1983, and thereafter conveyed it to a partnership consisting of themselves and three other couples (SOR (Platz Declaration at 1-2)). As noted by BLM, the Green Valley Trail has provided access to the subject property for over 100 years (Decision at 3).

BLM states that "[a]s far as is known, equestrian travel was the preferred method of access" to appellants' property, and that its decision "does not diminish any rights previously granted since none existed" (Decision at 4-5). In the Land Report upon which BLM based its decision, BLM states that "[h]istorically, access to the private parcel has been non-motorized, using the existing trail" (Land Report at 2).

BLM's assessment of the historical means of access to the Platz property may be accurate when viewed as a century-long matter. However, our concern under section 12(b) of the WSRA relates to appellants' "existing rights." Platz asserts that he has "first-hand knowledge of the use of the property and the access route to the property over the last thirty years, as does each of the partners, as [they] visited the property regularly in that period prior to having bought it" (SOR (Declaration of Platz at 2)). He states that "[d]uring the time [he] visited the property when Mr. Goddard was the owner, [he] routinely used a motorbike to come and go," and that "[t]here were never any complaints from either the Forest Service or BLM." Id. at 4. He states that Goddard's predecessor, who owned the property for at least 15 years, "used a modified motorcycle, or 'tote-goat.'" Id. Further, Milan Jones, who was lessee of the property when Platz bought it

from Goddard, "used a three-wheel trail bike for access to the property." Id. at 5; SOR, Exh. R (Letter from Milan Jones dated May 9, 1989). The case file contains other letters supporting the claim that various types of motorized vehicles have been used to gain access to the Platz property since at least 1960 (SOR, Exhs. S and T), and that the Green River Trail is too steep in places for equestrian access (SOR, Exh. U).

The record does not support BLM's conclusion that equestrian access to the Platz property will necessarily be less damaging to the Green River Trail than access by motorized vehicle. In the environmental assessment (EA) prepared in conjunction with the Land Report, BLM states that "[b]ecause portions of the subject trail consists [sic] of excessively steep pitches (25% - 30%), an attempt to maintain traction on these sections would result in severe rutting of the trail surface" (EA at 8). BLM indicates that "[t]he construction of water bars at proper intervals per BLM standards would aid in removing runoff water and would help provide erosion control in the steep rutted sections of the trail." Id. at 9. However, with regard to equestrian access, BLM states that "[s]ome damage to the trail surface would result from saddle or pack horse use, especially during wet soil conditions." Id. at 11. Again, BLM would condition the right-of-way grant for equestrian access upon the "installation of water bars at proper intervals, per BLM standards." Id. at 11-12.

Platz counters BLM's conclusion that motorized vehicles will cause more damage to the terrain than horses, stating that "because the trail is only two-feet wide, horses do damage to surrounding vegetation, and cause erosion to a greater extent than the trail bikes with low pressure, wide

wheels and low gearing that we use on the trail" (SOR (Platz Declaration at 4)).

Assuming, arguendo, that BLM is correct in its conclusion that trail bike use of the Green River Trail will cause more damage than equestrian access, we remain unpersuaded that such additional damage, which in any event would not appear to be significantly greater, justifies denying appellants the mode of access to their property which has been, according to the record, the primary mode of access for nearly the last three decades. Relevant to our conclusion on this issue is the EA prepared by the Forest Service (FS) subsequent to the joint FS/BLM decision dated January 11, 1984, wherein FS and BLM determined to allow Platz to use motorized transportation from the trailhead to the wild river boundary, but not along the remaining half mile to the Platz property. In this EA, FS considered three alternatives for use of the portion of the Green River Trail under its jurisdiction: (1) construct and reconstruct a standard hiking trail with an 18- to 24-inch trail tread for the entire trail length, allowing Platz to operate a trail bike thereon; (2) construct the trail with a trail tread width of 48 inches to the wild river boundary, again allowing Platz motorized access; and (3) no action. In adopting the second alternative, FS stated:

While foot or horse travel is one form of access, it is difficult for [Platz] to use and enjoy his property to the extent possible without a more sophisticated form of travel. Mr. Platz has been allowed to operate a trail bike on the trail for two years and has assisted with trail maintenance; therefore, off-road vehicle

use will not be a new development. A 48" trail would not detract from wilderness character.

(FS EA at 3). On June 29, 1989, FS issued a "use permit" allowing appellants to use motorcycles on the Green Valley Trail from the trailhead up to the wild river boundary, subject to conditions relating to maintenance and repairs to the trail. <sup>3/</sup> We think the FS approach will sufficiently protect the values along the remaining half mile from the wild river boundary to the Platz property.

Our review suggests that BLM's reliance upon the Management Plan is overstated. In its decision, BLM stated that "[i]n this case, the management plan prohibits motorized equipment. The purpose of this prohibition is to preserve the sense of remoteness and solitude consistent with a wild river" (Decision at 4). We find that the Management Plan does not expressly or necessarily, in all cases, prohibit the use of motorized equipment in the North Fork American River corridor. BLM's assertion that all motorized access has been prohibited within the management boundaries is explicitly contradicted by the Land Report. The Land Report states:

If motorized use within the Wild River Corridor were authorized by this action, the precedent would be set for owners of all private inholdings within a Wild River Corridor to acquire motorized access. To date, only those motorized

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<sup>3/</sup> We do note that in a letter dated Feb. 9, 1989, the Forest Supervisor informed the BLM Area Manager that: "Based on the discussion of facts contained in your documents, I concur with and fully support, your proposed decision to not allow motorized access within the Wild North Fork American River corridor."

uses that existed at the time of Wild River designation have been "grandfathered in."  
[Emphasis added.]

(Land Report at 16). To the extent, therefore, that we have concluded that trail bike access to the Platz property was a use "existing" at the time of wild river designation, the theoretical basis for BLM's decision is severely eroded. Even assuming that such use was prohibited, we interpret the Management Plan as reflecting the concern in section 12(b) of the WSRA that "existing rights, privileges or contracts" of private parties not be abrogated. In this case, it would be improper to invoke the prohibition mentioned in the Management Plan, since, in our view, that prohibition would constitute an abrogation of appellants' "existing rights," i.e., the use of motorized access to their property.

The Management Plan (SOR, Exh. F) contains a section entitled "Management Guidelines" which addresses the subject of transportation in the North Fork American River corridor:

Transportation. Motorized land and water vehicles and suction dredges will be prohibited within the wild river bound-ary. Trails in close proximity (parallel) to the river will not be expanded without determination of the need for additional access. Trail bridges will be allowed across the river where they are needed and are comparable with the natural character of the area.

Access to private lands and valid mining claims existing prior to January 1975 shall be controlled to cause the least adverse effect on the wild river environment.  
[Emphasis added.]

(Management Plan at 9-10).

We find merit in appellants' view that "[i]t is clear that landowners entitled to access are on a different footing than others who wish to enter the corridor solely on the basis of their status as members of the public" (SOR at 17). <sup>4/</sup> This "different footing," as appellants point out, is reflected in the regulations at 43 CFR 8351.2-1, which implement the WSRA. Those regulations provide, in pertinent part:

(a) The authorized officer may issue written orders which close or restrict the use of the lands and water surface administered by the Bureau of Land Management within the boundary of any component of the National Wild and Scenic River System when necessary to carry out the intent of the Wild and Scenic Rivers Act. Each order shall:

- (1) Describe the lands, road, trail or waterway to which the order applies;
- (2) Specify the time during which the closure or restriction applies;
- (3) State each prohibition which is applied; and
- (4) Be posted in accordance with paragraph (d) of this section.

(b) A written order may exempt any of the following persons from any of the prohibitions contained in the order:

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<sup>4/</sup> The concern with the rights of private landowners is reflected in other provisions of the Management Plan. For example, although "[t]he management of private land within the River Management Zone will be compatible with wild classification," the Management Plan at pages 4-5 further provides:

"The cost to landowners to meet this need was recognized in the Wild and Scenic Rivers Act and provisions made for monetary compensation through purchase of land in fee or of scenic easements. \* \* \* The landowner will be paid a fee to compensate him for property rights granted to the government. Reimbursement will be based on the present value of the property--determined by a professional real estate appraiser--and the value of property rights granted to the government." (emphasis in original).

Further, the initial paragraph of the Management Guidelines states that the "guidelines which involve restrictions of private land will be in effect only when the right to make these restrictions has been purchased." Id. at 5.



lands or water surfaces, it must issue such a written order. Under 43 CFR 8351.2-1(a)(1)-(3), this order must include a description of the affected lands, road trail or waterway; state the time during which the closure or restriction applies; and state the prohibition which applies.

As noted, the regulations do not expressly preclude the use of motorized vehicles in a wild and scenic rivers corridor. Subsection (e) of 43 CFR 8351.2-1 provides:

When provided by a written order, the following are prohibited:

- (1) Going onto or being upon land or water surface;
- (2) Camping;
- (3) Hiking;
- (4) Building, maintaining, attending or using a fire;
- (5) Improper disposal of garbage, trash or human waste;
- (6) Disorderly conduct; and
- (7) Other acts that the authorized officer determines to be detrimental to the public lands or other values of a wild and scenic river area. [Emphasis added.]

We interpret this regulation to mean that if BLM wishes to prohibit the use of motorized vehicles in the North Fork American River corridor, it may do so on the basis that it constitutes an "other act" which is detrimental to the area.

Assuming that BLM has issued a written order specifically prohibiting the use of a motorized vehicle in a wild and scenic river area, subsection

(b) of 43 CFR 8351.2-1 provides that certain persons may be exempted from the prohibition by written order, among them "[p]ersons with written permission authorizing the otherwise prohibited act or omission," and "[o]wn-ers or lessees of property within the boundaries of the designated wild and scenic river area." This provision answers BLM's concern that granting to appellants the right of access to their property by means of motorized vehicle will open up the area to motorized vehicle use by the public at large. See Land Report at 16. Assuming BLM has issued a written order specifying a prohibition and has posted it in accordance with 43 CFR 8351.2-1, a person must possess an order of exemption from that prohibition, or risk the penalties described at subsection (f) of the regulation.

We note that there is no indication in the case file that BLM has issued a written order or orders prohibiting the use of motorized vehicles in the North Fork American River corridor. BLM perhaps assumed that the adoption and publication of the Management Plan in the Federal Register complied with the written order requirement of 43 CFR 8351.2-1. We reject that notion. Subsection (a)(4) requires that a written order be posted in accordance with 43 CFR 8351.2-1(d), which provides:

Posting is accomplished by:

- (1) Placing a copy of an order in each local office having jurisdiction over the lands affected by the order; and
- (2) Displaying each order near and/or within the affected wild and scenic river area in such locations and manner as to reasonably bring the prohibitions contained in the order to the attention of the public.

A basic reason why BLM must adhere to this "posting" requirement relates to the penalties BLM may impose when a person violates a prohibition established in the written order. Subsection (f) of 43 CFR 8351.2-1 provides that "[a]ny person convicted of violating any prohibition established in accordance with this section shall be punished by a fine of not to exceed \$500 or by imprisonment for a period not to exceed 6 months, or both, and shall be adjudged to pay all costs of the proceedings." Publication of the Management Plan in the Federal Register, even if it contained a binding prohibition against all use of motorized vehicles in the North Fork American River area, would not accomplish "posting" and its objectives as defined in the regulations.

In light of BLM's intention to prohibit motorized vehicle use in the North Fork American River corridor, it should issue a written order to that effect which complies with the content and posting requirements of the regulation, and upon issuing appellants' right-of-way for trail bike access to their property, exempt them by written permission from the prohibition. 5/

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5/ We do not imply that appellants' right-of-way to their property is unconditional. 43 CFR 8351.2-1(b)(1) authorizes the inclusion in any written permission of "such conditions considered necessary for the protection of a person, or the lands or water surface and resources or improvements thereon." Further, a right-of-way is required under section 505 of FLPMA, 43 U.S.C. § 1765 (1982), to contain terms and conditions which will, inter alia, "minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment." The implementing regulations provide that BLM shall impose stipulations which shall include, inter alia, "[r]equirements for restoration, revegetation and curtailment of erosion of the surface of the land, or any other rehabilitation measure determined necessary," and "[r]equirements designed to control or prevent damage to scenic, esthetic, cultural and environmental values (including damage to fish and wildlife habitat), damage to Federal property and hazards to public health and safety." 43 CFR 2801.2(b)(1) and (3). See Bob Strickler, 106 IBLA 1 (1988) (BLM may require individuals to obtain a formal right-of-way to gain access to private property by means of a road across Federal

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 reversed and remanded for action consistent with this opinion.

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Will A. Irwin  
Administrative Judge

I concur:

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James L. Burski  
Administrative Judge

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fn. 5 (continued)

lands, which right-of-way shall reasonably provide for maintenance of the road so as to prevent damage to the road and surrounding property).

While BLM may condition approval of a right-of-way upon acceptance of conditions for the protection of the public interest, those conditions must not be inconsistent with or tend to unreasonably burden the right-of-way. See Donald R. Clark, 56 IBLA 167 (1981). In the instant case, the Forest Service previously allowed appellants' motorized use of that portion of the Green Valley Trail under its jurisdiction subject to the following conditions:

"1. All erosion control devices (water bars) will be cleaned out annually with work completed no later than 10/31. All obvious damage caused by your vehicle will be repaired immediately.

"2. Any fallen snags blocking trail access will be removed for a width of 4 ft., 2 ft. each side of trail centerline.

"3. Trail use will be restricted to (one) motorcycle type vehicle operated by yourself." (Letter to Platz, dated Dec. 23, 1982, from Foresthill Ranger District, FS). We see no legitimate reason why appellants' use of the questioned portion of the Green Valley Trail cannot be conditioned upon similar measures which will adequately protect the area.