

FOREST GUARDIANS

IBLA 2003-327

Decided April 3, 2006

Appeal from a decision by the St. George, Utah, Field Office, Bureau of Land Management, finding no significant environmental impacts and authorizing the Fort Pearce Ridge Trail Designation Project, for off-highway vehicle recreation use. UT-100-02-EA-04.

Affirmed.

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

FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. FLPMA does not contain any per se prohibition of off-road vehicle use. The Board will not reverse, as violative of FLPMA, a BLM decision to designate an off-highway vehicle trail and to close others in sensitive, environmentally protected areas, where such action was expressly envisioned in relevant land use planning documents.

2. Environmental Quality: Environmental Statements--
National Environmental Policy Act of 1969:
Environmental Statements

A decision designating an off-highway vehicle trail adjacent to a sensitive riparian area is properly affirmed where the project identifies riparian resources as critical elements of the human environment and the Decision Record/Finding of No Significant Impact concludes that, in the absence of the proposed action diverting off-highway vehicle use away from the riparian area, continued use of the riparian lands by such vehicles will cause increasing degradation.

APPEARANCES: Jon-Paul Oliva, Santa Fe, New Mexico, for Forest Guardians; James E. Karkut, Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HEMMER

Forest Guardians appeals from a June 6, 2003, Decision Record and Finding of No Significant Impact (DR/FONSI) issued by the St. George Field Office (SGFO) Manager, Bureau of Land Management (BLM), designating the Fort Pearce Ridge Motorized Off-Highway Vehicle (OHV) Trail on public lands adjacent to the Fort Pearce Wash, in south central Washington County, Utah. The DR/FONSI is based on the June 2003 Environmental Assessment UT-100-02-EA-04 (EA).

The Fort Pearce Wash is an intermittent stream channel which traverses from southeast to northwest across the Arizona/Utah border southeast of St. George, Utah. A natural spring feeds the channel north of the Arizona border near historic Fort Pearce.^{1/} (EA at 13, 16, 21, 24 (Figure 3.1).) Surface water typically runs for a distance of less than a half-mile through the Wash, except during seasonal high precipitation periods. *Id.* at 16. The Wash drains into the Virgin River southeast of St. George, and eventually joins the Colorado River. *Id.* at 13, 17.

During the past 50 years, Fort Pearce Wash has been frequented by motorized OHV enthusiasts. (EA at 1.) Popularized by organized competitive and non-competitive OHV events, the Wash provides OHV users with a natural access between open OHV areas near Sand Mountain, which lie to the north, and OHV trails across the Arizona border. *Id.* Warner Valley Road permits easy access to the Wash from a number of locations. (EA Figure 3.1.)

In 1998, BLM resource specialists proposed that the Wash be closed entirely to OHV use. (EA at 11.) Around this time, the SGFO conducted a “three-year interdisciplinary analysis of all uses” along the Wash, including “domestic livestock grazing” and “motorized and non-motorized recreation.” (EA at 2.) Alternatives to use of the Wash by OHV users and other recreationists were considered. *Id.* The consensus of the BLM resource team, with input from a variety of sources, was that,

^{1/} Historically, the Wash provided a means of access for both Native American Tribes and Euro-American settlers across rugged terrain between lands in northwestern Arizona and southwestern Utah. (EA at 21.) The bank north of the spring was a desirable overnight camping spot for both Native Americans and settlers. *Id.* In 1866, local militia constructed Fort Pearce, an outpost overlooking the spring along the north side of the Wash. *Id.* The Fort was actively used until 1873, and is now listed on the National Register of Historic Places. *Id.*

unless any proposed new travel route was linked with “both the existing Warner Valley/Sand Mountain access road network and the designated Honeymoon and Sunshine Trails in Arizona,” OHV users would continue to use unauthorized routes that maintained their traditional patterns of use. Id.

In March 1999, within a context of expanding urban growth and BLM decisions limiting OHV use on public lands in other parts of the St. George basin, BLM approved the *St. George Field Office Record of Decision and Resource Management Plan* (RMP), which opened approximately 40,725 acres on and surrounding Sand Mountain to OHV recreational use by designating the Sand Mountain Special Recreation Management Area (SRMA). (RMP at 2.42.) The RMP also designated several Areas of Critical Environmental Concern (ACECs). The Warner Ridge/Fort Pearce ACEC (ACEC) was created within the Sand Mountain SRMA and includes the Fort Pearce Wash area, as well as a portion of Warner Ridge. (EA at 1-2; RMP at 2.62, and Maps 2.12 (at 2.85) and 2.17 (at 2.90).)

The RMP closed the actual Fort Pearce Historic Site, on the north side of the Wash, to OHV use. (RMP at 2.43.) It did not, however, adopt the 1998 proposal to close the Warner Ridge/Fort Pearce ACEC to OHV use. To the contrary, the RMP left the remainder of the ACEC open for OHV use on designated roads and trails. (RMP at 2.47.) The RMP expressly envisioned that BLM would issue decisions designating such roads and trails (RMP at 2.48), and that, within the Sand Mountain SRMA, BLM would work with OHV user groups to identify and develop trail systems to connect the southern Utah Sand Mountain trails with trails in Arizona. (RMP at 2.42.) Until activity plans designating roads and trails could be developed, ACECs would be managed as limiting OHV use to “existing roads and trails,” unless they had been closed to OHV use prior to issuance of the RMP. Id. at 2.48-2.49. No such prior closures existed for the Fort Pearce Wash. See 45 FR 63,557-58 (Sept. 25, 1980.)

The Historic Site is located within the Fort Pearce grazing allotment, and cattle have traditionally watered at the natural spring outflow located near the Site. (EA at 19.) In September 2000, BLM issued EA UT-045-00-EA-14 (Grazing EA), authorizing grazing in the Fort Pearce and Honeymoon Trail Allotments. That EA found, as a result of a rangeland health assessment, that the Fort Pearce riparian zone is in a “functioning-at-risk category” (Grazing EA at 1; EA at 19) and recommended the construction of a half-acre “fenced water lot and [a quarter-]mile of livestock fencing to restrict livestock from access to the riparian area” (EA at 19). The grazing EA identified a need to isolate the riparian area in the Fort Pearce Wash from OHV use.

After completion of the Grazing EA, BLM focused on devising a trail that would connect the open OHV areas on Sand Mountain to Arizona OHV trails, as recommended in the RMP, and that would divert OHV use away from the riparian zone. (EA at 2.) BLM considered a northern route following an existing OHV route

used during prior dirt bike competitive events, which intersects Warner Valley Road about 7/10 of a mile northwest of the Historic Site and runs “approximately ¼ mile north of the existing parking area at historic Ft. Pearce,” but eliminated this route from further study because it would have “crossed steep terrain, potentially accelerating soil erosion” if used year-round, creating “unacceptably high environmental impacts.” (EA at 11; see also EA at Figure 2.1.) Additionally, the EA concluded that the northern trail would have been too hazardous for less experienced users. Id. The EA also considered a “no action alternative,” but noted that this option would be environmentally inferior because, in the absence of a managed designated trail around the riparian area, OHV users would continue to travel in the riparian areas of the Wash. (EA at 11.)

The EA contains a “Project Map” at Figure 2.1 (EA at 8), which depicts the proposed, designated trail connecting to Warner Valley Road outside of range improvement fences northeast of the Historic Site. The Trail crosses and then runs to the south of the Wash and outside of the critical riparian zone. Redundant routes likely to impair resource values would be closed to all OHV use. Id., see also EA at 9. Closed trail segments include those along the north side of the Wash and a number of trails which criss-cross the riparian area. All routes crossing the Wash near the Historic Site would be closed, with rangeland fencing and/or trail fencing preventing access.

The proposed OHV route would be approximately four miles long, and would be limited to small, motorized OHVs, such as all-terrain vehicles (ATVs) and dirt bikes. (EA at 7.) The EA contemplated that the designated trail would be closed to use by horseback riders and hikers to avoid resource conflicts. (EA at 9.) The trail would be a “double track trail (5 feet to 6 feet wide), with occasional wide spots for gathering.” (EA at 9.) Approximately 1,200 feet of new trail would be constructed; the remainder of the trail would traverse an existing user-created route. Id. Two trailhead access points would display safety information signs, kiosks containing user education materials, and visitor register boxes. Id. Trail construction would be compatible with grazing improvements, and trail markings would be installed along the designated route and at closed routes. Id.

Several local OHV trail organizations would, along with local volunteers, “assist with signing, trail maintenance, patrol, rider education, and data gathering in monitoring and maintenance of the trail system.” (EA at 10.) Bike patrol volunteers would be trained to remove invasive, non-native plants along the trail network. Id. Visitor registers at the trailheads would record visitor use patterns. Id. Maintenance actions would be conducted, as needed, “to maintain trail width and reduce erosion and damage to other structures.” Id. BLM would retain authority to reroute sections of the trail for resource protection. Id. Cooperative agreements with local motorcycle and ATV user groups would be formalized “to assist BLM with long-term

maintenance of all trailhead facilities.” Id. The proposed designation would include provisions for special events and tours, including the issuance of special recreation permits, which could be canceled “based on BLM’s evaluation of resource condition, event-related impacts, or noncompliance by the permit holder.” Id.

The EA compared environmental impacts of designating the proposed trail with the impacts of taking no action, with regard to the following resources: soils, vegetation, water resources, threatened and endangered and special status species, other wildlife, livestock grazing and rangeland health, heritage resources, the ACEC, recreation uses, visual resource management, and socio-economic values (EA at 25-36). It also assessed the cumulative impacts of the proposed action. Id. at 36-39. Over the long term, most resource values were expected to improve as the result of closing all user-created OHV routes except the designated route, redirecting OHV use south of and around the riparian area, and limiting its use to small ATVs and dirt bikes. Id. at 25-36. The EA discussed cumulative impacts associated with future development of the planned Sand Hollow Reservoir and the Sand Hollow Recreation Management Area. (EA at 37-39.) The EA acknowledged that ATV/dirt bike use of the Wash might increase as the result both of the development of the designated trail linking nearby recreation areas to those in Arizona, and also the “shrinking availability of open space” for OHV use in southern Utah and adjoining southern Nevada. Id. at 38. The EA concluded, however, that controlling how the Wash is used by motorized OHVs would result in beneficial cumulative impacts. Id. at 38-39. Finally, the EA concluded that no irreversible or irretrievable commitments of resources would result from the proposed action. Id. at 39.

The DR/FONSI approved the proposal to designate the limited OHV trail and terminate use of alternative existing trails. The SGFO Manager concluded that “[w]ithout the designated trail and trailhead, * * * the area would remain essentially unmanaged,” permitting unlimited full-sized OHV use in riparian areas of the Wash, resulting in their continued deterioration. (DR/FONSI at 6.) The SGFO Manager found that the designated trail would reduce impacts to riparian habitat and to “National Register eligible or listed properties” and enhance public recreation opportunities “through a managed trails system for users.” (DR/FONSI at 7.) The Manager noted that “minor, short-term impacts to soils, vegetation, wildlife, and visual resources” would occur during construction. Id. “Long term,” the FONSI noted, “small amounts of vegetation and wildlife habitation would be lost.” Id. The SGFO Manager noted that “the U.S. Fish and Wildlife Service concurred with a determination that the preferred alternative ‘may affect, but is not likely to affect,’” threatened or endangered species and their critical habitat. Id. at 9. Accordingly, the Manager found that there were no significant adverse impacts to the proposed action, and that an environmental impact statement (EIS) was not required. Id. He authorized the proposed action contingent upon monitoring commitments made in the EA. Id.

In its Statement of Reasons (SOR), Forest Guardians' principal contention is that the designation of the trail violates the RMP, and that violating the RMP in turn constitutes a violation of sections 102 and 103 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701, 1702 (2000). Forest Guardians reasons that because, prior to the designation, "there [we]re currently no designated OHV trails" within the ACEC, BLM violates the RMP to propose and adopt them because it "is proposing to designate a trail through an area where no legal OHV trails exist." (SOR at 9, 12.)

[1] Forest Guardians is correct to interpret FLPMA to require BLM to implement decisions consistent with the governing land use management plan. Section 202(a) of FLPMA, 43 U.S.C. § 1712(a) (2000), directs the Secretary to develop land use plans for the public lands, and section 302(a), 43 U.S.C. § 1732(a) (2000), requires her to manage the public lands "in accordance with" such land use plans. Following approval of an RMP, "all future resource management authorizations and actions * * * shall conform to the approved plan." 43 CFR 1610.5-3(a).

Where Forest Guardians' argument fails is in its convoluted and illogical interpretation of the RMP. As described above, a central feature of the RMP was to direct BLM to manage OHV use. The RMP expressly set forth BLM's land management decision to establish the ACEC and to allow OHV use within it only on designated trails. Forest Guardians' suggestion that BLM meant in the RMP to close the ACEC to OHV use because there were no pre-existing designated trails invests the RMP with the absurd construction that it was meant to close the ACEC to OHV use but was afraid to articulate that outcome and so limited such use to trails that did not and never could be designated without another RMP amendment. Even assuming we would otherwise choose to adopt such a circular construction of a plain planning document, we could not do so here, where the RMP expressly determined that BLM "will work with user groups * * * to * * * develop OHV trail systems" (RMP at 2.42); that BLM will adopt activity plans to establish such trail systems (RMP at 2.48); and even that BLM would ensure the connectivity of the trail system between the Sand Mountain SRMA and northern Arizona (RMP at 2.42). The DR/FONSI is plainly not inconsistent with the March 1999 RMP. The Board will not reverse, as violative of FLPMA, a BLM decision to designate an OHV trail and to close others in sensitive environmentally protected areas, where such action was expressly envisioned in the relevant land use planning documents. Colorado Mountain Club, 161 IBLA 371, 380 (2004). ^{2/}

^{2/} Forest Guardians' argument that the chosen action requires an RMP amendment is likewise derivative of its refusal to acknowledge the plain intent of the RMP, and we consider it no further.

Forest Guardians nonetheless argues that OHV trails cannot be designated within the ACEC because such use is inherently inconsistent with policies set forth in sections 102(a)(7) and (a)(8) of FLPMA, 43 U.S.C. §§ 1701(a)(7) and (a)(8) (2000), and with the definitions of “areas of critical environmental concern,” and “multiple use,” found, respectively, in sections 103(a) and (c) of FLPMA, 43 U.S.C. §§ 1702(a) and (c) (2000). (SOR at 10-12.) Section 102(a) of FLPMA imposes broad stewardship duties upon the Department, including the requirement to manage land on the basis of “multiple use,” 43 U.S.C. § 1701(a)(7) (2000), and in a manner that will protect the quality of environmental values, including “preserv[ing] and protect[ing] certain public lands in their natural condition.” 43 U.S.C. § 1701(a)(8) (2000). An “area of critical environmental concern” is defined by section 103(a) of FLPMA, 43 U.S.C. § 1702(a) (2000), as an area “within the public lands where special management attention is required * * * to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes * * *.” The “multiple-use” mandate in FLPMA requires a choice of the appropriate balance to strike between competing resource uses, recognizing that not every possible use can take place fully on any given area of the public lands at any one time, often necessitating a trade-off between competing uses. Wildlife Damage Review, 150 IBLA 362, 368 (1999), and cases cited.

These FLPMA provisions simply do not compel BLM to close the Warner Ridge/Fort Pearce ACEC to OHV use. FLPMA establishes that BLM must manage the public lands for multiple uses by the public, including outdoor recreation. But considering a similar argument, we have already held that FLPMA contains no per se prohibition against off-road vehicle use; rather, BLM regulates and establishes criteria for the use and operation of such vehicles on the public lands under its regulations at 43 CFR Part 8340. Colorado Mountain Club, 161 IBLA at 379, citing 43 CFR Part 8340. ^{3/} Accordingly, we will not conclude here, as Forest Guardians urges us to do, that notwithstanding the unambiguous language of the governing RMP, FLPMA prohibits BLM from implementing the terms of that management plan as they relate to OHV use.

Notably, in the cited case, appellant, like Forest Guardians, chose to ignore an evident agency goal to funnel OHV use into a particular location, with the assistance of the affected public, and thereby divert ongoing unauthorized recreational use by the public from damaging critical resources. There we said:

^{3/} BLM regulations ensure that OHV trails may not be located in wilderness or primitive areas. 43 CFR 8342.1(d). In other areas, BLM rules provide for restricting OHV use in “limited” or “closed” areas. 43 CFR 8340.0-5(g) and (h). Nothing in BLM rules requires what Forest Guardians suggests – that BLM must equate ACEC’s to “closed” areas.

It is thus incumbent upon appellants, in challenging the Billings Canyon Jeep Trail as a violation of FLPMA, to establish a violation of the statute or regulation by the specific activity authorized here, rather than merely to assert that it is a permitted use they do not endorse. Appellants do not dispute BLM's contention that this kind of activity is occurring at a fast-increasing rate in the Bangs Canyon area, even on an unauthorized basis. BLM is attempting to grapple with a real-world situation in an effort to stop unauthorized use in more sensitive areas by attempting to direct traffic, literally, to a permitted and authorized location within a recreation area with little competing recreation use. Further, BLM has established with public input an adopt-a-trail program to obtain cooperation on the part of the jeepers in protecting the trail. BLM has chosen an area with little rainfall and sparse vegetation, on which to place a challenging trail where jeepers cannot turn around or strike out across other lands in an unplanned or unauthorized fashion. Appellants' overly narrow description of the situation fails to articulate a clear violation of FLPMA or its implementations.

Colorado Mountain Club, 161 IBLA at 379-80.

The same logic controls here. BLM has designated a limited-use OHV trail on the south side of the Fort Pearce Wash, diverting ongoing use from trails criss-crossing critical riparian areas to a route south and away from them. BLM struck a practical compromise between competing uses while providing protection for sensitive riparian areas and historic and cultural values within the ACEC. Forest Guardians clearly disagrees with BLM's ultimate decision to allow OHV use to continue near the Wash. But it has not demonstrated that BLM is wrong to conclude that channeling OHV use into an authorized trail has a better chance of success at reducing unauthorized OHV damage to the riparian area from current "social trails" than the total prohibition on OHV use between open OHV areas Forest Guardians would prefer. Mere differences of opinion provide no basis for reversal of a BLM decision. Charles W. Nolen, 166 IBLA 197, 204-05 (2005).

[2] Forest Guardians contends that the proposed action violates section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (2000), on grounds that the EA fails to take a "hard look" at the impacts of the trail designation on riparian areas and water quality. (SOR at 13-14, 18-19.) Forest Guardians contends that, had BLM taken the requisite "hard look," it would have determined that the proposed action would significantly impact the environment, requiring preparation of an environmental impact statement (EIS). Id. at 16-18. Additionally, Forest Guardians argues, the EA fails to comply with NEPA because it fails to consider "a range of reasonable alternatives." Id. at 14-16, citing 42 U.S.C. § 4332(2)(E) (2000).

In preparing an EA to assess whether an EIS is required under NEPA, an agency must take a “hard look” at the proposal being addressed and identify relevant areas of environmental concern so that it can make an informed determination as to whether the environmental impact is insignificant or impacts will be reduced to insignificance by mitigation measures. Southern Utah Wilderness Alliance, 164 IBLA 33, 36 (2004), and cases cited; see Colorado Mountain Club, 161 IBLA at 381. “An EA need not discuss the merits and drawbacks of the proposal in exhaustive detail. * * * So long as an EA contains a ‘reasonably thorough discussion of . . . significant aspects of the probable environmental consequences,’ NEPA requirements have been satisfied.” Bales Ranch, Inc., 151 IBLA 353, 358 (2000), quoting Don’t Ruin Our Park v. Stone, 802 F. Supp. 1239, 1247-48 (M.D. Pa. 1992), and authorities cited. A party challenging BLM’s decision has the burden of demonstrating with objective proof that the decision is based on a clear error of law or demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of significance to the proposed action. Great Basin Mine Watch, 159 IBLA 324, 353 (2003), citing Southern Utah Wilderness Alliance, 158 IBLA 212, 219-20 (2003); The Ecology Center, 140 IBLA 269, 271 (1997). Mere differences of opinion provide no basis for reversal. Mona Sindelar, 167 IBLA 185, 190 (2005); Colorado Mountain Club, 161 IBLA at 382; Rocky Mountain Trials Association, 156 IBLA 64, 71 (2001).

Forest Guardians fails to meet this burden. It claims that the EA does not “convincingly address” water quality issues, repeatedly charging that BLM used “generalized science” to evaluate the proposed impacts of the project, and inadequately considered foreseeable impacts. (SOR at 13, 2.) But Forest Guardians’ arguments relate only to impacts that “OHV use is known to cause,” *id.* at 13, rather than specific impacts on the Fort Pearce Wash alleged to be generated by the subject decision. According to Forest Guardians, “[t]here can be no doubt that the proposed trail will cause a loss of stream bank stability and erosion,” among other impacts. *Id.* In setting forth its arguments, Forest Guardians presents a general disagreement with OHV use, but no single specific allegation of error on the part of BLM in its environmental analysis.

BLM identified riparian resources as critical elements of the human environment. It is plain from the EA that ongoing OHV use was taking place within the critical riparian area at the time of the RMP. It is also plain that the point of the trail designation was to follow the RMP’s goals of diverting OHV use within the ACEC to a single designated trail which bypasses the riparian area, and of providing continuity between northerly OHV open areas in the Sand Mountain SRMA and to the south in Arizona. Failing entirely to acknowledge these aspects of the proposed

action, Forest Guardians' argument is merely a complaint against OHV use which fails to meet its burden under NEPA.^{4/}

Forest Guardians contends that the decision violates section 7 of the Endangered Species Act (ESA), as amended, 16 U.S.C. § 1536 (2000). (SOR at 19-21.) Forest Guardians alleges that BLM failed to consider impacts of the proposed action on the "dwarf bear-claw poppy" and "siler's pincushion cactus" and thus failed to comply with the formal consultation requirements of the ESA requiring BLM to consult with the Fish and Wildlife Service (FWS) concerning whether the proposed action is likely to jeopardize the continued existence of those species or result in the destruction or adverse modification of critical habitat. Id. BLM responds that BLM had no obligation to consult with FWS about these species because neither plant is found in the area of the Trail project. (BLM Response at 26.)

The RMP identifies these species as occurring within the ACEC. (RMP at 2.23, 2.62.) As a result, the RMP identifies application of prescriptions "to protect and improve these values," including the requirement that OHV use be confined to designated trails. Thus, we begin with the notion that trail designation was a prescription imposed by the RMP expressly to protect those species. The EA and the separate Grazing EA make clear that BLM conducted inventories in the Fort Pearce grazing allotment and along the riparian zone for special status species. The only identification of either species as a result of the inventories appeared in the grazing allotment "near Spendlove well." (Grazing EA at 7.) The OHV EA under review identified two "vegetative communities" within the project area: an "upland zone" containing "desert shrub/grassland species," and the riparian zone, which supports habitat for riparian plant life, including the "seep-willow, black willow (coyote willow), Gooding willow, Fremont's cottonwood, Russian olive, tamarisk bulrush, spikerush, and cattails." (EA at 16.) "Regulations implementing the ESA establish a staged process for complying with the ESA. First, an agency must determine whether an endangered or threatened species may be present in the proposed action area."

^{4/} Forest Guardians' contention BLM failed to consider a reasonable range of alternatives to the proposed action is equally non-specific. (SOR at 14-16.) Other than generalized arguments regarding alternatives analysis, the only option Forest Guardians suggests BLM should have considered is total closure of the Wash to OHVs. Forest Guardians concedes that BLM actually considered that alternative but rejected it because there are no other viable routes between the Sand Mountain SRMA and the lands in Northern Arizona. Forest Guardians argues that a connection between the two OHV locations is unnecessary. (SOR at 14.) As noted above, connecting the two locations by OHV use was an express management decision in the RMP. (RMP at 2.42.) We have no jurisdiction to reconsider that conclusion here, Friends of the River, 146 IBLA 157 (1998); nor will we characterize BLM's rejection of the cited alternative as a failure to consider it.

Native Ecosystems Council, 160 IBLA 288, 297 (2004). BLM did not locate or identify either the dwarf bear-claw poppy or the siler's pincushion cactus as occurring within the project area. Moreover, BLM received comments from FWS that concurred with BLM's determination that "the proposed action may affect, but is not likely to adversely affect, the California condor * * * and southwestern willow flycatcher." (FWS Memorandum dated April 29, 2003, at 2.)

Forest Guardians does not contend that the BLM inventories or FWS' conclusions were erroneous or inadequate. See Southern Utah Wilderness Alliance, 164 IBLA at 46. It offers no evidence or contention indicating the presence of the dwarf bear-claw poppy and/or the siler's pincushion cactus within the project area. Nor does it justify its suggestion that OHV use of the designated trail, or even the increased use attributable to the trail, is likely to adversely affect these species, thus requiring a formal consultation with FWS. 16 U.S.C. § 1536(a)(2) and (c)(1) (2000); 50 CFR 402.12(d)(1) and 402.14(a); Southern Utah Wilderness Alliance, 161 IBLA 15, 23 (2004), citing National Wildlife Federation, 126 IBLA 48, 65-66 (1993). Forest Guardians fails to establish that BLM violated section 7 of the ESA.^{5/}

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

Lisa Hemmer
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

^{5/} Forest Guardians argues that BLM's decision violates the "antidegradation" requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251-1387 (2000). Forest Guardians' argument is based entirely on its assertion that "OHV use degrades water quality." (SOR at 19.) Given its total failure to acknowledge conditions on the ground, including five decades of pre-existing OHV use in the Wash, we cannot substantiate Forest Guardians' presumption that this decision will further degrade the quality of water in the Wash and we consider this argument no further.