



WILEY F. & L'MARIE BEAUX

171 IBLA 58

Decided January 31, 2007

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IBLA 2004-310

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Appeal from a decision of the Salmon (Idaho) Field Office, Bureau of Land Management, rejecting a right-of-way application to upgrade an existing road along the Salmon River to access private land. IDI-34593.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Applications--Rights-of-Way: Federal Land Policy and Management Act of 1976--Wild and Scenic Rivers Act

Under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. When BLM uses its discretionary authority to reject an application for a land use authorization, it must provide a rational basis for its decision. A BLM decision rejecting a right-of-way application will be affirmed when the record shows that BLM balanced the application against resource values of concern, including preservation of the wild and scenic characteristics of the area, and concluded that the application is inconsistent with applicable land use plans.

2. Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Applications--Rights-of-Way: Federal Land Policy and Management Act of 1976--Wild and Scenic Rivers Act

In denying a right-of-way application for the upgrading of an existing road in a wild and scenic river study area, BLM may not, according to section 12(b) of the Wild and Scenic Rivers Act, 16 U.S.C. § 1283(b) (2000), and the implementing regulations at 43 CFR Subpart 8351,

abrogate any existing rights of the private party without the consent of said party.

APPEARANCES: Wiley F. and L'Marie Beaux, Sagle, Idaho, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Wiley F. and L'Marie Beaux have appealed from a decision of the Salmon (Idaho) Field Office, Bureau of Land Management (BLM), rejecting their application for a year-round road right-of-way (ROW) along the Salmon River corridor to access their private land located in Lemhi County, Idaho (IDI-34593). The application includes a proposal to upgrade approximately 10,000 feet of an existing two-track trail located on the west side of the Salmon River in secs. 11 and 14, T. 19 N., R. 21 E., Boise Meridian, Idaho.

In its decision, BLM explained that it deemed appellants' application to be inconsistent with the purposes for which the affected public lands are being managed. BLM stated that the public lands in the area where the existing trail is located are managed in accordance with two land use plans, the Lemhi Resource Management Plan (RMP), issued in April 1987 and amended in 2001, and the Upper Salmon River Recreation Area Management Plan (RAMP), issued in September 1986, and provided a brief summary of applicable provisions of those plans.

The Lemhi RMP includes "public welfare and safety" as a factor in BLM's land use planning and decision-making process. (Lemhi RMP at 9.) More importantly, the Lemhi RMP provides that the Salmon River from North Fork to its headwaters has been identified as a potential Wild and Scenic Study River, and that BLM must manage the area to prevent unnecessary degradation until review and action by Congress has been completed. Id. at 46.

The Upper Salmon River RAMP states that the Upper Salmon River is listed in the Nationwide River Inventory, and that, according to BLM policy, it must be treated as if it were already a part of the National River System (NRS), with any activity approved for the area not to impair the potential suitability of the river for inclusion in the NRS. In BLM's view, approving the ROW would be incompatible with the management objectives of the Upper Salmon River RAMP, under which the subject land must be managed to "preserve its natural, scenic, and undeveloped qualities," to protect the habitats for fish and wildlife species, and to protect affected "cultural resources sites." (Decision at 2, quoting Upper Salmon River RAMP at 15.) Equally as critical, according to BLM's decision, is that the Upper Salmon River RAMP states that BLM will "[g]rant no leases or rights-of-way which would adversely affect

recreation or scenic values, or endanger the river's water quality and free-flowing nature." (Decision at 2, quoting Upper Salmon River RAMP at 22.)

BLM's decision reflects an effort to evaluate appellants' ROW application against the objectives reflected in the land use plans. As stated by BLM, appellants' private land is located directly on the Salmon River within the Upper Salmon River RAMP area, and is bordered to the north and west by public land. The existing jeep trail, which appellants wish to upgrade and use, is located along the west side of the Salmon River and, according to BLM, has not been used for several years and is presently "not passable." (Decision at 2.) As described by BLM, "the road is approximately 15-20 feet from the bank of the river," and "[t]he slope along the area between the road and the river is approximately 60-80%." Id. In order to upgrade the road to meet BLM standards, BLM explained, the road would have to be widened to safe widths, requiring "large cut slopes within the river corridor," resulting in "surface disturbance through areas of important cultural resource sites" and the depositing of soil and rock into the Salmon River, "either directly by material falling into the river or by increased soil erosion as a result of the project." Id. at 3.

BLM explained further how appellants' proposed project would impact three major resources within the Salmon River corridor. First, BLM states that the road cuts through the river canyon, and that increased travel on the road, once it is upgraded, would impair the visual resources of the canyon. Under the Lemhi RMP, the river corridor must be managed in a BLM Visual Resources Class II category, the objective of which "is to retain the existing character of the landscape and keep changes to the characteristic landscape minimal," so that "activities may be seen, but should not attract the attention of the casual observer." Id., quoting Lemhi RMP at 13. Appellants' proposed project, states BLM, would violate visual Class II standards. Further, BLM states, "[t]he potential for cumulative effects on the visual resources within the river corridor and the surrounding public lands resulting from the upgrading of the road and future use by the public and private land owner would undermine BLM's responsibility to 'retain existing character of the landscape.'" Id. Such increased use would affect the "long term visual qualities of the river corridor" and impair "the potential suitability of the river to be included in the national river system." (Decision at 3.) In addition, BLM states that the project would be inconsistent with the Upper Salmon River RAMP requirement "that the river corridor be managed to protect its natural, scenic, and undeveloped qualities." Id.

The second major resource which BLM states would be negatively impacted by the project is the "river's anadromous fisheries habitat." Id. BLM explains:

The importance of the river as an anadromous fishery has been clearly established, with the river being designated as a "highest-valued fishery." The potential for disturbance to fisheries habitat resulting

from your proposed use would be high due to slope sloughing and debris entering the river. The potential for significant cumulative effects to fisheries habitat from soil erosion resulting from soil disturbance during construction and maintenance would be in conflict with BLM's stated management objectives within the river corridor.

Id.

BLM's stated concern with "cultural resources," the third major resource which it determined would be affected by the project, is less specific. BLM states that "about 2,500 feet of road \* \* \* would involve cultural resource concerns and approximately 4,600 feet of road \* \* \* has adjoining talus slope." Id. BLM describes these resources as "fragile and nonrenewable," with "significant socio-cultural values as well as excellent archaeological research potential." Id. BLM simply says that it is required by law to protect these cultural resources, citing the Lemhi RMP, and "[t]herefore, disturbing these cultural sites along and in the road area is prohibited." Id. BLM points to "a very real possibility of talus slope failure during road construction," which "would affect the cultural resources of the area, present potential safety hazards, and potentially add sediment and material to the river." Id.

On the subject of access to appellants' property, BLM states simply "that this existing road/trail is not the only access to [their] property," with "an existing road that accesses [their] property from the west across private property." Id. at 4. BLM reminded appellants that they had "presented a design for a bridge across the river to BLM personnel in earlier meetings, and [had] provided assurances that the bridge was a feasible alternative method to access the property." Id.

BLM concluded that the action proposed in appellants' ROW application "is in conflict with the stated management direction" contained in the Lemhi RMP, the Upper Salmon River RAMP, and "associated activity plans, amendments, and designations." Id. Accordingly, BLM rejected their application, citing 43 CFR 1610.5-3(a) ("All future resource management authorizations and actions \* \* \* shall conform to the approved [resource management] plan").

In their statement of reasons (SOR) for appeal, appellants describe and document BLM's history of interest in acquiring their property. Upon purchasing the property in the spring of 1998, appellants contacted BLM regarding use of the existing road for access, and Stephanie Snook, Realty Specialist, Upper Columbia-Salmon Clearwater District, BLM, responded that they would be required to apply for an ROW and mailed them a pamphlet entitled "Obtaining a Right-of-Way on Public Lands," as well as the forms to submit. (SOR at 1; Attachment 1.) Also, during the ensuing 4 ½ years, BLM and appellants attempted to facilitate BLM's

desire to acquire the property by exchange or purchase. By early 2002, BLM had approved an appraisal of the property, which established a value lower than appellants expected. However, they assert that BLM assured them that “if [they] would accept the appraisal, the BLM was ready to move quickly to close the deal \* \* \*.” (SOR at 2; Attachment 2.) The anticipated transaction, by which appellants were to sell the subject property to Rayonier, Inc., which would then exchange that property to BLM for other BLM land, never transpired. (Attachment 5 (Memorandum of Understanding signed by BLM and appellants).) Rayonier “backed out when [it] could not obtain access to the BLM property [it] wanted to obtain from [BLM].” (Attachment 6.)<sup>1/</sup>

BLM also presented what appellants describe as an “unbelievable cost estimate for just the processing of any future right-of-way” to Brent Thompson, Thompson & Associates, who was preparing an appraisal of appellants’ property. (SOR at 2; Attachment 3.) This cost estimate, dated February 28, 2002, prepared by Snook, was for \$52,650 and included the statement: “I hope these estimates provide you with the information you need to give the Beaux’s to help them reach their decision about developing their property at Camp Creek, south of Salmon, Idaho.” *Id.* Appellants construe this statement as an indication that “BLM intended to or could use their considerable power to keep [their] property from ever being used or developed.” (SOR at 2.) They point out that five months earlier, on September 19, 2001, Snook submitted a cost estimate for \$33,000. (SOR at 2; Attachment 4.)

In their SOR, appellants dispute BLM’s claim that the three identified “major resources” would be affected by upgrading the existing road. As for BLM’s statement that “road cuts and increased travel on the road would impair the visual resources of the river canyon” (Decision at 2), appellants counter that their “application is for the clean-up & maintenance of the existing road bed and not a total reconstruction of this road.” (SOR at 3.) They assert that “[t]he old road cut exists on the hillside above the river [on the west] as it has for scores of years and will continue to be visible for generations to come,” and that the existing roadbed “is strong & stable[,] has no wash-outs and is 12 to 15 feet wide[,] and when cleaned up will be more than wide

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<sup>1/</sup> Appellants attach to their SOR a copy of a Memorandum of Agreement, dated Mar. 12, 2001, between BLM and themselves, reflecting the plan involving Rayonier, Inc. (Attachment 5.) By letter faxed to appellants on Sept. 15, 2002, BLM responded to appellants’ request for written confirmation that it planned to acquire their property, informing them that Rayonier had backed out of the deal, but stating that BLM believed it had found a funding source to purchase the property, subject to approval by BLM’s Washington, D.C., office. (Attachment 6.) By letter dated Nov. 26, 2002, BLM informed appellants that it did “not have funding necessary to purchase [their] property,” and was “unable to make any commitment to purchase [their] property at this time.” (Attachment 7.)

enough for [their] use.” Id. They further explain that “[o]n the East Side of this stretch of river is the paved US Highway 93 which runs right along the river’s edge,” and given that “[t]his stretch of river is hardly pristine \* \* \* clean up and the small travel increase on this old road will have virtually no visual impact on this area of the river.” Id. at 3-4.

Appellants discount BLM’s fear that upgrading the road will impact the “river’s anadromous fisheries habitat” (Decision at 2), arguing that they “do not intend to make additional road cuts that could cause ‘soil and rock being deposited into the Salmon River,’ as stated by the BLM.” (SOR at 4.) They assert that their “Application specifically addresses this item by providing that the road ‘Will be developed \* \* \* across the steep rock slope areas by cleaning up slough and rock fall (care taken to not let materials fall to river).” Id., quoting ROW Application (Attachment 8). Further, contend appellants, the old roadbed presently has “sloughing upper banks depositing fines upon and over the roadbed and when it rains or during spring runoff these fines are washed toward the river.” (SOR at 4.) They assert that their “proposal to overlay the road bed with heavier, [coarser] materials will in fact stabilize the road surface and minimize these problems” and result in an improvement of the fisheries habitat rather than causing it harm. Id.

Appellants likewise challenge BLM’s generalized conclusion that their project will affect “cultural resources.” They concede “that the suspected areas of cultural resource importance is in those areas along the river that are the flattest areas and to our knowledge these areas are only suspected of containing important quantities of cultural artifacts as they have never been officially surveyed or tested.” Id. They emphasize that their “application does take these areas into account and protects them.” Id. They indicate that their development of the road will involve overlaying a “4” to 6” of ‘road mix gravel’” across the flat areas, with no excavation and no surface disturbance, and that there would be no requirement for a “survey or BLM testing to determine the exact location of or extent of the sensitive areas since our application calls for a continuous protective layer for the entire road length.” Id. Appellants cite the September 19, 2001, letter from Snook regarding a cost estimate for road improvements in which she states that BLM would require the 4,500’ portion of concern to “have a minimum of 6” road surface lift in order to assure coverage and protection of any cultural resources.” (SOR at 5, citing Attachment 4.) Appellants conclude that BLM’s cultural resources concern “becomes a non-issue.” (SOR at 5.)<sup>2/</sup>

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<sup>2/</sup> As for BLM’s view that the project is incompatible with the Lemhi RMP and the Upper Salmon River RAMP, appellants contend that BLM’s analysis is not supported by the record, that there is no “rational connection between the facts found and the choice made,” and that BLM abused its discretion in denying their ROW application. (SOR at 5.) Of particular note is their response to BLM’s conclusion that upgrading

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Appellants vigorously dispute BLM's conclusions that the "existing road/trail is not the only access to [their] property," because another existing road "accesses [their] property from the west across private property," and that construction of a new bridge across the river is also a "feasible alternative method to access the property" from the east.<sup>3/</sup> (SOR at 6, quoting Decision at 4.) As for the other existing road, appellants contend that it does not provide "reasonable access" given that a portion of it traverses  $\frac{3}{4}$  of a mile of BLM land across which BLM has already indicated that it would deny an ROW application. See Memorandum of telephone call on Aug. 5, 2004, from Wiley Beaux to Gloria Javokac, Idaho State Office, BLM (SOR, Attachment 11).<sup>4/</sup>

In response to BLM's reminder that they had earlier presented a design for a bridge across the river that would provide them alternative access, appellants claim that BLM did not then take their proposal seriously and should not now be allowed to use the bridge option as a basis for denying their ROW application:

The simplest way to cover this is simply to state the obvious. **No road, No bridge.** To construct a 200' clear span bridge over the river we will have to get heavy equipment including cranes, heavy earth movers, concrete trucks, etc. to the west side of the river on our property. To move this type of equipment we will need to rebuild the old road (not just clean up and maintain as we have proposed) to the standards, probably well in excess of the road the BLM has erroneously projected and rejected for this right-of-way application. Not surprisingly, once

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<sup>2/</sup> (...continued)

the road will result in "unnecessary and undue degradation" in violation of the Lemhi RMP. They contend that their improvement of the road "will be minimal and the amount of use will be light." Id. They assert that their proposed use of the road will not "impair the potential suitability of the river for inclusion in the National River System." Id.

<sup>3/</sup> The record does not address with any degree of resolution whether there is reasonable alternative access to appellants' property. The existence of such alternative access may be, in an appropriate case, a relevant factor in BLM's evaluation of an ROW application for access to private property. However, the consideration BLM appears to have given the possibility of alternative access herein was very limited, and its decision does not appear to have been based upon the presence of alternative access.

<sup>4/</sup> Attachment 11 represents that Jakovac stated that appellants "could just use the old road as it is." According to that memorandum, she is also reported to have stated that she had no "ideas or suggestions" for appellants other than to sell or trade the land to BLM.

such a road is built, there is no longer any need for the bridge. Based upon the BLM's overreaction and rejection of our current right-of-way application, we believe that it is a pretty safe bet that they would not approve the type of road that we would need to move in the necessary bridge building equipment. It is surprising to us that the BLM even brought up the bridge concept, considering that they already knew everything stated above.

(SOR at 7.)

In a March 16, 2004, e-mail to Jakovac, Snook indicated that the decision rejecting appellants' ROW should emphasize non-conformance with the Lemhi RMP and the Upper Salmon River RAMP. In a March 17, 2004, e-mail to Jakovac, Scott Forssell, Realty Specialist, Coeur d'Alene Field Office, BLM, agreed, stating: "[W]e should deny [the] application based on non-conformance with the land use plan. Period. The issues \* \* \* re: obligated access are legal issues that [appellants] can pursue in court after we deny [their] application, and after IBLA rules on our denial." He mentioned specifically the possibility that appellants may claim access to their property under section 1323(b) of the Alaska Native Claims Conservation Act of 1980 (ANILCA), 16 U.S.C. § 3210(b) (2000), but advised against granting their ROW on that basis. (E-mail dated Mar. 17, 2004, from Forssell to Jakovac.)<sup>5/</sup>

<sup>5/</sup> Section 1323(b) of ANILCA, 16 U.S.C. § 3210(b) (2000), provides:

"Notwithstanding any other provision of law, and subject to such terms and conditions as the Secretary 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 (FLPMA)] as the Secretary deems adequate to secure the owner the reasonable use and enjoyment thereof: Provided, That such owner comply with rules and regulations applicable to access across public lands."

With regard to whether this provision applies to access to private lands surrounded by public lands outside Alaska, the Board recently observed, in Wilderness Watch, 168 IBLA 16, 43-44 (2006):

"The issue of whether this section applies to public lands [outside Alaska] managed by BLM has been a source of considerable debate before the Board. Initially, the Board presumed that the provision applied outside of Alaska. E.g., Mathilda B. Williams, 124 IBLA 7, 12 (1992), citing Utah Wilderness Association, 80 IBLA 64, 77, 91 I.D. 165, 173 (1984), vacated on judicial remand (Order, Feb. 26, 1986). Later, based on the vacatur of the United Wilderness Association decision, the Board decided that the question remained an open one. Southern Utah Wilderness Association, 127 IBLA 331, 366, 100 I.D. 370, 389 (1993). Suffice it to say that the Board has not reached a definitive conclusion on the point. Bear River Development

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[1] We begin with the general rule that under section 501(a)(6) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1761(a)(6) (2000), a decision to issue a right-of-way is discretionary. See, e.g., Mark Patrick Heath, 163 IBLA 381, 388 (2004); Douglas E. Noland, 156 IBLA 35, 39 (2001), and cases cited therein. When BLM uses its discretionary authority to reject an application for a land use authorization, or to impose a condition upon such use, it must provide a rational basis for its decision. Mark Patrick Heath, *supra*; Fallini v. BLM, 162 IBLA 10, 34 (2004); James M. Chudnow, 70 IBLA 225, 226 (1983); James E. Sullivan, 54 IBLA 1, 2 (1981). As we have said, to successfully challenge a discretionary decision,

[t]he burden is upon an appellant to demonstrate, by a preponderance of the evidence, that BLM committed a material error in its factual analysis or that the decision generally is not supported by a record showing that BLM gave due consideration to all relevant factors and acted on the basis of a rational connection between the facts found and the choice made.

International Sand & Gravel Corp., 153 IBLA 293, 299 (2000); Utah Trail Machine Association, 147 IBLA 142, 144 (1999).

Thus, our present objective is to determine whether BLM properly exercised its discretionary authority in denying appellants' ROW application. Under its land use plans, BLM appropriately balanced appellants' proposed ROW application, the principal feature of which was to upgrade the existing road, against the resource values of concern, primarily preservation of the wild and scenic characteristics of the study area. The record, as summarized above, shows that BLM has undertaken such an analysis. BLM concluded that upgrading the existing road would not conform to governing land use plans, and would undermine its mandate to protect the wild and scenic characteristics of the area. BLM's conclusion that appellants' ROW application was inconsistent with governing land use plans provided a rational basis for its decision, and we hereby affirm it. Mark Patrick Heath, *supra*, and cases cited.

[2] As noted, the Lemhi RMP and the Upper Salmon River RAMP provide that BLM will manage the river corridor as if it were already included in the NRS.

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<sup>5/</sup> (...continued)

Corporation, 157 IBLA 37 (2002) (plurality of opinions)."

In addition, we note that the record contains an "Application of Assertion of Right of Way" under Revised Statute (R.S.) 2477 by Stanton C. Miller, the date of which we are unable to determine from the copy in the record, but prior to Sept. 5, 1997, when the application was notarized.

BLM's decision denying appellants' application to upgrade the existing road is properly evaluated in the context of the Wild and Scenic Rivers Act (WSRA), 16 U.S.C. §§ 1271-1287 (2000), and implementing regulations. Section 101(a) of the WSRA, 16 U.S.C. § 1281(a) (2000), provides, with respect to 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." Subsection 12(a) of the WSRA provides that the Secretary of the Interior "shall take such action respecting management policies, regulations, contracts, [and] plans \* \* \* as may be necessary to protect such rivers in accordance with [the WSRA]," including "any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion." 16 U.S.C. § 1283(a) (2000) (emphasis added.) Of importance to our present inquiry is subsection 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." 16 U.S.C. § 1283(b) (2000) (emphasis added).

We endorse BLM's management of the Upper Salmon River corridor so as not to impair the river's suitability for inclusion in the NRS as consistent with section 12(a) of the WSRA, 16 U.S.C. § 1283(a) (2000). We do not construe BLM's decision, however, as "abrogat[ing] any existing rights, privileges, or contracts affecting Federal lands held by [appellants]" under section 12(b) of the WSRA. BLM's denial of appellants' ROW application was based upon its conclusion that upgrading the existing road was inconsistent with the wild and scenic values for which the area was being managed. BLM's decision does not state that the existing road is being closed or that use at existing levels is being denied or curtailed. BLM may determine that a proposed activity is detrimental to the values of the wild and scenic river area, and may restrict it in accordance with 43 CFR Subpart 8351. Moreover, if BLM deems use of the existing road to be permissible, there is a level of discretion in whether and how such access may be restricted. Again, however, BLM's exercise of discretion must have a rational basis. See, e.g., Wilderness Watch, 156 IBLA at 22; Alvin R. Platz, 114 IBLA 8, 23, 97 I.D. 125, 133 (1990).<sup>6/</sup>

<sup>6/</sup> In Platz, the Board ruled that "denying appellants' access to their private property by trail bike \* \* \* amounts to an abrogation of 'existing rights' within the meaning of section 12(b) of the WSRA." 114 IBLA at 17, 97 I.D. at 129. The Board applied the regulations at 43 CFR Subpart 8351, which provide that "[t]he 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." 43 CFR 8351.2-1(a). The Board noted that the regulation was written so as to protect the "existing rights" of landowners

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

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James F. Roberts  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge

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<sup>5/</sup> (...continued)

whose property is affected by prohibited uses, including motorized access to private property. The Board stated:

“We agree that such use may be prohibited, as a general matter, provided that BLM complies with the procedures set forth in the regulations. However, we think the regulations contain procedures designed to protect the ‘existing rights’ of private landowners who will be affected by the prohibition. Specifically, with regard to private property access, we note that in the preamble to the final rule found at 43 CFR 8351.2-1, BLM responded to the comment that it ‘cannot restrict uses of or close private lands, water inholdings or valid rights of access in wild and scenic areas,’ by saying that it ‘is not attempting to restrict uses of or close private lands or rights,’ and that ‘[s]ection 8351.2-1(a) has been rewritten to make this clear.’ 45 FR 51740 (Aug. 4, 1980).”

114 IBLA at 23, 97 I.D. at 133; see also Wilderness Watch, 156 IBLA 17 (2001); Wilderness Watch, 168 IBLA at 43.

We also note that our affirmance of BLM’s decision rejecting appellants’ application for an ROW under FLPMA and 43 CFR part 2800 is without prejudice to the assertion of any right to use the existing jeep trail asserted by appropriate parties under R.S. 2477 or sec. 1323(b) of ANILCA, 16 U.S.C. § 3210(b) (2000).