



THE WILDERNESS SOCIETY & IDAHO CONSERVATION LEAGUE

176 IBLA 358

Decided February 18, 2009



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

THE WILDERNESS SOCIETY & IDAHO CONSERVATION LEAGUE

IBLA 2008-214

Decided February 18, 2009

Appeal from the June 17, 2008, Decision Record/Finding of No Significant Impact of the Field Manager, Challis (Idaho) Field Office, Idaho Falls District, Bureau of Land Management, approving the Challis Comprehensive Travel Management and Transportation Plan.

Affirmed; motion for reconsideration denied as moot.

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

When implementing a Resource Management Plan directive to establish a travel management plan wherein off-highway vehicle use would be limited to routes and ways identified in BLM's Intensive Wilderness Final Inventory, BLM properly may rely on the maps and site-specific documentation it placed in its files when the Inventory was performed. When the Final Inventory explicitly incorporates by reference maps and site-specific documentation contained in BLM's record of the Inventory, the approval of a travel management plan designating for off-highway vehicle use routes and ways identified in such Inventory record will be determined to be in conformance with the Resource Management Plan.

APPEARANCES: Nada Wolff Culvery, Esq., Denver, Colorado, for appellants; Thomas H. Dyer, State Director, Idaho State Office, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KALAVRITINOS

The Wilderness Society and Idaho Conservation League (collectively, The Wilderness Society or appellants) have appealed from and petitioned for a stay of the effect of the June 17, 2008, Decision Record/Finding of No Significant Impact (DR/FONSI or Decision) of the Field Manager, Challis (Idaho) Field Office, Idaho

Falls District, Bureau of Land Management (BLM), approving that part of the Challis Comprehensive Travel Management and Transportation Plan (TMP) designating off-highway vehicle (OHV)<sup>1</sup> use in Wilderness Study Areas (WSAs).<sup>2</sup> BLM based the DR/FONSI on a June 2, 2008, Environmental Assessment (EA) (ID-330-2006-EA-2403), prepared pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (2000).

### *I. Background*

#### *A. Resource Management Plan*

On July 29, 1999, BLM adopted the RMP governing general management of nearly 800,000 acres of public land in the Challis Resource Area, within Lemhi and Custer Counties, Idaho, for public recreational and other uses.<sup>3</sup> In adopting the RMP, the State Director, in a July 29, 1999, Record of Decision (RMP ROD), limited motorized travel, which was growing in popularity in the Resource Area, to existing roads, ways, and trails, with the exception of 8 miles of roads/trails, which he closed to OHV use. RMP ROD at 2, 47, Map 33. This represented a marked change from the prior management system that generally permitted cross country motorized travel in the Resource Area. RMP ROD at 2; EA at 4.

Significantly for this appeal, the RMP provided that “OHV use in WSAs would be limited to roads, vehicle ways, and trails that were identified in the Idaho Intensive Wilderness Final Inventory (November 1980) [(1980 Wilderness Inventory or Final Wilderness Inventory)]” as having been in existence at the time of the

<sup>1</sup> An OHV is defined at page 156 of the Challis Resource Management Plan (RMP) as “[a] motorized vehicle which can travel off of constructed road surfaces, such as a motorcycle, all-terrain vehicle, four-wheel drive vehicle, or snowmobile.”

<sup>2</sup> The Board received eight other appeals of the DR/FONSI, docketed as *David S. Richmond*, IBLA 2008-203; *Stephen R. Cobbley*, IBLA 2008-204; *Steven E. & Margaret A. Clay*, IBLA 2008-205; *Marshall & Jolene Ogden*, IBLA 2008-209; *Philip & Katie Fredrickson*, IBLA 2008-210; *Kevin & Brenda Edwards*, IBLA 2008-211; *Gary L. Kimble*, IBLA 2008-221; and *Board of County Commissioners of Custer County (County)*, IBLA 2008-223. In an order dated Sept. 24, 2008, we held that the County did not have standing to appeal and dismissed its appeal in IBLA 2008-223. We also granted The Wilderness Society’s petition for stay in this appeal and denied the petitions for stay requested by the appellants in IBLA 2008-203, 2008-209, and 2008-210. BLM has filed a Request for Reconsideration of the Sept. 24, 2008, order granting the stay in this appeal.

<sup>3</sup> Federal lands in the Resource Area consist of public lands administered by BLM and lands administered by the Forest Service (FS), U.S. Department of Agriculture, in the Sawtooth National Recreation Area (SNRA) of the Sawtooth National Forest.

October 21, 1976, enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1785 (2000).<sup>4</sup> RMP at 48, 70; *see* EA at 4. The RMP also provided that within five years BLM must “develop a transportation plan for the Resource Area,” which would consider the desirability of improving, restricting, or closing existing routes, as well as constructing new routes, so as to provide “an adequate road and trail system” on public lands that “satisf[ies] the public need for recreation, commodity production, access, and safety, and . . . facilitate[s] management of BLM resources and programs.” RMP at 62.

To that end, BLM, following adoption of the RMP, continued the process of identifying existing routes. In describing its extensive efforts to analyze and verify the roads, ways, and trails in existence in WSAs in 1976, as established by subsequent inventories of that time period, and in 1999, when the Challis RMP ROD was signed, BLM provides numerous examples of internal inconsistencies within the Final Wilderness inventory, and discrepancies among inventories and other BLM inventory documents produced between 1980 and 1999. *See* Response to Petition for Stay at 14-15; Answer at 3-4, 11-12, 14-17; letter to the Board dated Aug. 27, 2008; DR/FONSI 9-10.

To begin, the Final Wilderness Inventory only specifically addresses two of the seven WSAs in the Challis Resource Area. Moreover, the narratives for those two WSAs (Burnt Creek and Borah Peak) are of limited utility, as, for example, they mention 4-wheel drive access routes to watering troughs and reservoirs, but do not specifically identify their locations or depict them on maps,<sup>5</sup> apparently because “these developments are localized,” rather than major, or substantially noticeable intrusions. DR/FONSI at 9. Elsewhere, the Final Wilderness Inventory specifically refers to two tracks in the Corral-Horse Basin WSA, but does not depict them on the map, and, conversely, maps routes in the Jerry Peak WSA, which are not mentioned in the narrative. Answer at 3. Because of the paucity of information contained in the RMP and Final Wilderness Inventory, BLM also reviewed other WSA inventories and Environmental Impact Statements (EISs), dated from 1979 up to and including the

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<sup>4</sup> BLM had been directed by section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (2000), to review, within 15 years after Oct. 21, 1976, “roadless” areas of 5,000 acres or more that had been inventoried as having “wilderness characteristics,” described by the Wilderness Act, 16 U.S.C. §§ 1131-1136 (2000), for potential designation as wilderness areas under the Act. Section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (2000), provides for the interim management of WSAs, pending Congressional action on proposals by the President, at the recommendation of the Secretary of the Interior, to designate or not designate the WSAs as wilderness.

<sup>5</sup> The maps are of poor quality and do not include legends. They do not appear to depict U.S. Forest Service rights-of-way in existence at the time of the inventory.

1991 Idaho Wilderness Study Report, finding that these documents were often at odds with one another or with the Challis RMP, and that the inventories focused only on man-made intrusions that were considered noticeable, substantial, or major. DR/FONSI at 10; Answer at 4.<sup>6</sup> BLM determined that the “best available information” that would provide “the required detail regarding historic status of roads needed to complete travel planning,” was aerial photography, used in conjunction with the various inventories, EISs, and reports in BLM’s inventory files, and it concluded that “[n]ot only did the aerial photography identify routes in existence at the time of WSA designation, but they also identified routes that have been extended or created since designation.” DR/FONSI at 10.

In June 2006 BLM issued the “BLM Challis Field Office Travel Map.” 71 Fed. Reg. 31202 (June 1, 2006). Explanatory text on the Travel Map indicates that the map depicts travel routes available for public use as established by the Challis RMP, and that all motorized travel is limited to existing roads, routes, and trails until a new, comprehensive TMP, which was then being prepared, was established, pursuant to the RMP ROD.

### B. Travel Management Plan

BLM undertook extensive public scoping and planning, holding seven public meetings, to gather input on development of a proposed TMP. To analyze the environmental impacts of the TMP, BLM prepared a 145-page EA, considering three alternatives—a no-action alternative (Alternative 1), and two action alternatives.<sup>7</sup> On February 8, 2008, BLM sent the draft EA to over 200 interested members of the public, and provided 30 days for comment. BLM received numerous comments

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<sup>6</sup> At page 4 of its Answer, BLM notes the following examples: The 1982 Final EIS mentions, without mapping, several routes in Jerry Peak not identified elsewhere; the 1986 Final EIS depicts on a legendless map routes up Baby Creek and Squaw Creek, but does not mention them in the narrative; the 1989 EIS re-analyzes former WSAs dropped from consideration; and the 1991 Wilderness Study Report uses the same map as the Final Wilderness Inventory, yet also notes 8 miles of unimproved vehicle ways not depicted on the map.

<sup>7</sup> Under the no action alternative, the management system adopted by BLM in the RMP would continue, leaving all existing roads and trails, generally as identified on the Travel Map, open to motorized vehicle use. *See* EA at 11. Under Alternatives 2 and 3, BLM would *designate* some of the existing roads and trails as open and close others to motorized vehicle use. The effect would be to close, respectively, approximately 6 and 12 percent of the existing routes, under Alternatives 2 and 3. *See id.* at 12, 14. Regarding designated routes in WSAs, BLM provided for a seasonal closure (Oct. 1 - Dec. 31) in Alternative 3 only. *See id.* at 15.

focused on specific areas, including WSAs. The record reflects The Wilderness Society's involvement in this predecisional process, including submission of comments by e-mail correspondence on various dates and by letter dated March 14, 2008.

Following BLM's analysis of the public's comments, the Field Manager issued the June 2008 DR/FONSI, approving a modification of the proposed TMP, which incorporates elements of Alternatives 2 and 3. The decision permanently closes 297 miles of existing roads and trails,<sup>8</sup> reducing the total mileage from 2,484 to 2,187,<sup>9</sup> and provides for construction of 30 miles of new routes to be designated as open to motorized travel (subject to certain restrictions). DR/FONSI at 6.

Of particular relevance to the present appeal is BLM's determination, based on aerial photographs and other documents, that a total of 140 miles of routes had existed in the WSAs when Congress enacted FLPMA on October 21, 1976.<sup>10</sup> See EA at 35-36. It noted an additional 42 miles of routes in the WSAs, created by unauthorized use after that date, and decided to close them to motorized vehicle use.

EA at 35; DR/FONSI at 10. BLM decided to designate approximately 100 miles of the routes in existence on October 21, 1976, as open to motorized vehicle use, and to impose a motorized seasonal closure within the boundaries of all WSAs from October 1 to December 31, except the Borah and Little Boulder WSAs, in order to improve non-motorized, big game hunting opportunities and reduce unauthorized off-road use in WSAs. DR/FONSI at 4-5, 8, 12; see EA at 15.

The Field Manager concluded that the TMP conformed to the RMP, and that it met increasing public demand for motorized and non-motorized recreational use of

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<sup>8</sup> The permanent closure would encompass 23 miles of existing routes in WSAs, which were either dead-end spur routes, routes that are difficult or impossible to find on the ground, or routes that are redundant or otherwise unnecessary. See BLM Response to Notice of Appeal/Petition for Stay (Response) (The Wilderness Society) at 8, 11; DR/FONSI at 5.

<sup>9</sup> BLM states that most of the route closures would not affect motorized access to areas of the public lands, since "the[] [closed] routes represent, almost exclusively, parallel/redundant routes where alternative motorized access remains available," adding: "BLM's goal is to maintain motorized access to *areas* where motorized access currently exist[s][.]" Response (County) at 6. It also notes that "any *areas* which the BLM felt required additional protection (Wilderness Study Areas)[] became subject only to seasonal motorized access closures, rather than permanent closures under the decision." *Id.*

<sup>10</sup> BLM states in its Response at page 11 that "only approximately 100 miles of [those 140 miles of] routes would be open to motorized use."

roads and trails, while adequately protecting the environment and other important resource values. DR/FONSI at 1, 9. He further determined that BLM was not required by section 102(2)(C) of NEPA to prepare an EIS before approving the TMP, stating that implementing the TMP was not likely to significantly affect any aspect of the human environment. *See* DR/FONSI at 2-4.

## II. *The Wilderness Society's Appeal*

The Wilderness Society objects to BLM's decision to designate what it considers to be an estimated 38 miles of primitive vehicle routes or ways beyond those "identified" in the 1980 Wilderness Inventory as open to motorized vehicle use.<sup>11</sup> SOR at 1, 3. It asserts, based on its own assessment, that none of the 38 miles of challenged WSA routes opened by BLM to motorized vehicle use were identified in the 1980 Wilderness Inventory as having been in existence at the time of FLPMA's enactment on October 21, 1976, and further argues that BLM cannot rely on historical aerial photographs to determine that the routes were actually motorized vehicle routes as of October 21, 1976, if the 1980 Wilderness Inventory does not "indicate their existence." *Id.* at 3. Appellants contend that BLM's decision to designate motorized vehicle routes in the WSAs that were not identified in the Final Wilderness Inventory thus does not conform to the RMP's land use planning directive to limit OHV use in the WSAs to routes "identified" in the Final Wilderness Inventory,<sup>12</sup> and violates the land use plan conformance requirement of section 302(a) of FLPMA, 43 U.S.C. § 1732(a) (2000), and its implementing regulation, 43 C.F.R. § 1610.5-3(a), to "conform" "[a]ll future resource management authorizations and actions . . . to the approved plan."<sup>13</sup> Appellant alludes to the

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<sup>11</sup> The Wilderness Society appears to place the 38 miles of routes within the boundaries of three WSAs: Corral-Horse Basin, Jerry Peak, and Borah Peak. *See* Notice of Appeal/Petition for Stay (NA/Petition) at 3.

<sup>12</sup> *See* RMP at 48, 70; EA at 4.

<sup>13</sup> The Wilderness Society notes that "[c]onformity" is defined by 43 C.F.R. § 1601.0-5(b) to mean "that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment."

non-impairment mandate of section 603(c) of FLPMA<sup>14</sup> and the regulatory travel management directive of 43 C.F.R. § 8342.1(a),<sup>15</sup> but does not attempt to challenge the decision under section 603(c) with any evidence in support of such a claim. The SOR states that “even if the agency could support its contention that it might not be technically adding *new* ways in the WSAs, the BLM is not making the appropriate inquiry,” averring simply and with some logical inconsistency that these “*added* routes are likely to lead to impairment because “they will cut through” the WSAs. *Id.* (emphasis added).

BLM, in its Answer, rebuffs appellants’ contentions, essentially advocating an interpretation of the RMP that takes into account the totality of that planning document. BLM acknowledges the appearance of inconsistency between the scope of routes BLM considered for OHV use in WSAs in the TMP and the scope of routes authorized by certain language in the RMP, which, read in isolation, arguably confines OHV use to those routes “identified” in the 1980 Final Wilderness Inventory. BLM asserts, however, that appellants’ restrictive reading of the RMP is unreasonable in light of (1) the totality of the RMP, which refers to “existing” routes throughout the document, and (2) the obvious incompleteness of the referenced Final Wilderness Inventory and maps, which did not purport to identify every route then in existence, but instead made it clear that “only the major, or substantially noticeable intrusions” were depicted on the maps. Answer at 3. To demonstrate the futility and inappropriateness of attempting to rely on the Final Wilderness Inventory and maps

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<sup>14</sup> WSAs are subject to the non-impairment mandate of section 603(c) of FLPMA, while they remain under consideration by Congress for designation as wilderness areas. BLM’s implementation of the non-impairment mandate of section 603(c) of FLPMA is undertaken pursuant to its Interim Management Policy for Lands under Wilderness Review (IMP), which is set forth in BLM Handbook H-8550-1 (Rel. 8-67 (July 5, 1995)). The IMP directs BLM to manage WSAs, during the period of wilderness review, such that “the wilderness resource will be dominant in all management decisions where a choice must be made between preservation of wilderness suitability and other competing uses.” IMP, I.B., at 8. BLM is, however, authorized to allow existing “primitive vehicle routes (“ways”)” to remain in WSAs, during the period of wilderness review, since they were not regarded at the time of inventory as impairing the suitability of the WSA for wilderness designation: “There is nothing in this IMP that requires such facilities to be removed or discontinued. On the contrary, they may be used and maintained as before, as long as this does not cause new impacts that would impair the area’s wilderness suitability.” IMP, I.B.7., at 12; *see id.* at 16; EA at 16-17; *Southern Utah Wilderness Alliance*, 142 IBLA 164, 165-66 (1998); *Uintah Mountain Club*, 112 IBLA 287, 292 (1990).

<sup>15</sup> The regulation at 43 C.F.R. § 8342.1(a) requires that “[a]reas and trails shall be located. . .to prevent impairment of wilderness suitability.”

as an all-inclusive list of existing routes, BLM notes, for example, that the Final Wilderness Inventory includes narratives for only two of the seven WSAs in the Challis Resource Area, and that the attached maps do not identify many range improvements and access routes, including those explicitly identified in the Final Wilderness Inventory narratives provided for the only two referenced WSAs. *Id.* at 3, 11.

When read in this light, BLM asserts, the intent of the RMP regarding travel in WSAs is illuminated: BLM is directed to limit OHV use in WSAs to roads, vehicle ways, and trails that existed at the time of inventory, not only to those “identified” in the Final Wilderness Inventory. BLM asserts that, given the general incompleteness and inconsistency of the Final Wilderness Inventory documents and maps and the RMP’s directive, it was proper for BLM to utilize the best available evidence—in this instance aerial photographic evidence—to determine those routes in existence at the time of the inventory and to base the TMP route decisions on that information. Moreover, BLM asserts, the TMP included no additional routes that were created *after* the time of inventory, “but instead, reduced authorized routes by 23 miles and further imposed a seasonal closure on approximately 135,813 acres,” which “is approximately 17.1% of the total acres of public lands in the Challis Field Office.” Answer at 20. In interpreting the RMP, BLM asks the Board to consider that the wilderness inventories focused on man-made intrusions, which were considered noticeable, substantial or major, and to appreciate the historical context of the inventories, that is, had BLM known that Congress would not act upon the recommendations for more than 30 years, it likely would have spent more time detailing where these “two tracks’ and various range improvements were, rather than making scattered references to them.” *Id.* at 4-5.

On November 24, 2008, BLM filed a Request for Reconsideration of the Board’s order granting The Wilderness Society’s request for a stay in this appeal, arguing, as in its Answer, that this Board should consider all relevant language and analysis in the final and proposed RMP, because (1) the RMP as a whole makes clear that BLM is to consider “existing routes,” and (2) it is impossible to determine what routes existed at the time of inventory by relying only on the Final Wilderness Inventory and maps. In addition, the Request for Reconsideration provides numerous references to the RMP and FEIS and to other pertinent documents, including the 1980 Wilderness Inventory, 1982 Final EIS, 1986 Big Lost-Pahsimeroi Final EIS, 1989 Proposed Plan Amendments and Final EIS for Small Wilderness Study Areas Statewide, and 1991 Wilderness Report, all or portions of which BLM has now provided, which, BLM avers, demonstrate that the intent of the RMP is to limit

authorized OHV use to routes in existence at the time of inventory.<sup>16</sup> Request for Reconsideration at 2-11.

In response, appellants mischaracterize BLM's position as "conced[ing] that the designation of additional motorized routes in [WSAs] that were not identified in the 1980 Inventory would not conform to the Challis RMP," whereas BLM has repeatedly stated that the IMP explicitly allows for existing facilities, including routes, to continue to remain in WSAs under Specific Policy Guidance, #7, and has consistently asserted that the TMP designated no new routes. Response to Request for Reconsideration at 1; *see also* Request for Reconsideration at 9. Appellants also assert that "[t]here is no support for the BLM's new interpretation, which would permit the agency to disavow the plain language of the RMP," and that BLM exaggerates the impact of the Board's Order. Response to Request for Reconsideration at 2.

Because we are adjudicating this appeal on the merits, the Request for Reconsideration is denied as moot.

### *III. Discussion*

In our September 24, 2008, Order we held that The Wilderness Society had shown a likelihood of success on the merits of their arguments concerning motorized travel in WSAs, and satisfied the other criteria for a stay. We stated that "[r]egardless of whether there were routes in existence on October 21, 1976, other than those described in the narratives and depicted on the maps of the 1980 Final Wilderness Inventory, the fact remains that the RMP limits OHV use to those routes 'identified' in that Inventory, not to routes in existence on October 21, 1976," and "[i]n these circumstances, Wilderness Society has shown a likelihood of success on the merits of its argument that BLM's decision, as it relates to the designation of the 38 miles of challenged WSA routes as open to motorized travel, does not conform to the RMP." Order at 7.

We begin with the ROD for the RMP, which states that "BLM's decision is to select a modification of the Proposed RMP, with accompanying Attachments, Glossary, and Maps . . . as the approved Challis RMP." RMP ROD at 1. Specifically with respect to OHV use in the Challis Resource Area, under "OHV Use Goal 1, #1(a)" the RMP establishes the general rule that unless subject to greater restrictions on use, the Resource Area is open to OHV use on existing roads and ways:

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<sup>16</sup> BLM also asserted that an IBLA decision "based largely on a single statement out of the proposed and final RMPs" could affect "nearly one hundred thousand acres of public lands more than the final RMP intended." Request for Reconsideration at 2.

Unless an area has an expanded limitation or is designated as “closed” to OHV use (see Goal 1, #2-7 below), [OHV] use throughout the Challis Resource Area would be designated as “limited” to existing roads, vehicle ways, and trails yearlong (see *Glossary*: “existing roads, vehicle ways, and trails,” p. 150<sup>[17]</sup> and “[OHV] use designations,” p. 156; also see *Map 33: OHV Use*). (Note: Any newly constructed road, trail, or parking area authorized by the BLM during the life of the RMP would be considered an “existing” road or trail.)

RMP ROD at 47.

Goal 1, #3 identifies OHV closures or limitations in WSAs and WSAs released from wilderness review that would constitute “*exceptions to the RA-wide limitation described in Goal 1, #1 above . . .*” (Emphasis added.) Accordingly, Goal 1, #3, under “Designated WSAs,” expressly provides that “[e]xcept for the road and trail closures stated below,<sup>[18]</sup> OHV use in WSAs would be limited to roads, vehicle ways, and trails *that were identified in the Idaho Intensive Wilderness Final Inventory (November 1980).*” RMP at 48 (emphasis added); *see also* RMP at 70. The RMP includes the same provision for WSAs released from wilderness review. *Id.* at 48-49. We thus discern in these provisions a progression from the general to the specific, and from less restricted use to more restricted use tied to wilderness values.

In these circumstances, we see no reason to depart from an interpretation that gives full weight to the plain meaning of the term “identified,” and therefore adhere to the interpretation of the RMP’s directive regarding OHV use in WSAs, which we

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<sup>17</sup> The Glossary provides two definitions of “existing”—the first for WSAs and the second for the remainder of the Challis Resource Area:

Existing roads, vehicles ways, and trails - For the purposes of the Challis RMP, “existing” is defined as the following: For [WSAs], “existing” refers to roads, vehicle ways, and trails which existed as of the Idaho Intensive Wilderness Inventory Final Decision (November 1980). For the remainder of the Challis Resource Area, “existing” refers to (a) roads, vehicle ways, and trails which exist at the time the [ROD] for the Challis approved RMP is signed, and (b) any newly constructed road, trail, or parking area authorized by the BLM during the life of the RMP. Also see *road*; *vehicle way*; and *trail*.

<sup>18</sup> Goal 1, #3(a)(1) excludes the following closures to OHV use: “In the Jerry Peak WSA, the existing trail below Herd Lake and road above Herd Lake would be closed to motorized vehicle use to maintain primitive values, and maintained as trails for non-motorized use only (see Map 47: WSAs - Jerry Peak and Corral-Horse Basin WSAs).”

articulated in our September 24, 2008, stay order—*i.e.*, that OHV use in WSAs (and WSAs released from wilderness review) is limited to existing roads, vehicle ways, and trails identified in the Final Wilderness Inventory (with the exception of the trail below and road above Herd Lake).

We turn, at this time, to the explicit language of the Final Wilderness Inventory now before us. A close look at the Final Wilderness Inventory and maps reveals the following:

The narratives included here are *summaries* of more detailed intensive inventory reports available in the BLM Idaho district offices. These summaries present a *brief, overall picture* of Idaho's intensive inventory decisions. For more detailed, site specific information, refer to the district files. More detailed maps and photographs are also contained in these files.

Final Wilderness Inventory at 23 (emphasis added).

Appellants rely upon the narrative summaries and maps of the Final Wilderness Inventory in support of their arguments on appeal, as if they, rather than the underlying inventory data from which they were drawn, constitute the inventory record. However, from the language quoted above, it is clear that, in those narrative summaries and maps, BLM did not purport to provide or duplicate in the final report all the pertinent information it had collected regarding actual conditions in the WSAs, nor is it reasonable or practical to expect BLM to have done so. Instead, in the Final Wilderness Inventory, BLM expressly incorporated the more detailed, first-hand, contemporaneous documents in its files on which it relied in its TMP decision by reference thereto. Therefore, the dispositive question is whether anything in the underlying record of the inventory effort shows that the disputed primitive routes or ways in fact were “identified” in the 1980 Wilderness Inventory.

The record of the Inventory includes the subject historic aerial photographs showing roads, vehicle ways, and trails that were not “major, or substantially noticeable intrusions.” Answer at 3. Appellants do not directly challenge the authenticity of those photographs as contemporaneous records of the Inventory, nor claim that they do not depict less prominent primitive routes or ways. To the contrary, they argue that the photographs do not constitute “sufficiently reliable data to justify adding ways into WSAs.” SOR at 3. Specifically, The Wilderness Society contends BLM cannot use the photographs, because “without on-the-ground verification at the time of the inventory, the photos cannot be relied upon as the sole proof of existing ways.” *Id.* We disagree. BLM conducted on-the-ground inventory activities, and it has since discovered discrepancies within and between the 1980 and 1991 documents and instances in which the narratives or maps are vague, less than

informative, or inconsistent. *See* DR/FONSI at 9-10; *see also* Answer at 3-4, 12. Properly stated, the issue is whether BLM properly may rely on photographs or other evidence contained in the record of the inventory activities to resolve conflicts or supply answers where gaps in the documentation exist. We are aware of no general principle or precedent that prevents BLM from doing so, and appellants have cited none. We therefore turn to the question of whether appellants have shown any specific reason why the photographs cannot or should not be used to help resolve the questions posed by the inventory record in this case.

Appellants offer the declaration of Brad Brooks and maps he prepared to support the assertion that there were no “inconsistencies or conflicting information in the documents used to determine routes in WSAs” as the predicate for their conclusion that BLM therefore exclusively relied on the photographs. *See* Ex. 4, ¶ 10 to NA/Petition. Brooks argues that the photographs “may or may not actually show motorized routes, which may or may not have been in existence at the time of the relevant wilderness inventory.” *Id.*, ¶ 11. Since the routes cannot now be “ground-truthed to demonstrate if they were motorized routes (as opposed to game trails or other features that can appear on aerial photographs),” and since the routes

were not displayed on any of the maps in the 1980 Wilderness Inventory, the 1991 Idaho Wilderness Study Report, or any of the other documents used by BLM, their existence at the time of the inventory is factually suspect at best, and there is no compelling reason that they should be presumed to exist or [be] designated as open for public use.

*Id.* Brooks prepared a map, which purports to show an additional 38 miles of routes in WSAs. We are not persuaded by Brooks’ general dismissal of inconsistencies among the relevant documents. The DR/FONSI at 9-10 identified the nature of the inconsistencies, as did BLM in its Response at 14-15; Answer at 3-5, 11-12, 14-17; and letter to the Board dated August 27, 2008. Appellants have not directly refuted BLM’s specific enumeration of the flaws in the inventory materials. To the extent appellants offer maps to support Brooks’ conclusion that no such inconsistencies and inadequacies exist, we note only that BLM has also pointed out inconsistencies between the information in appellants’ maps and the source documents they believe are an accurate illustration of the results of the inventory efforts. *See* Answer at 12-14. In addition, however, the TMP actually reduced the authorized mileage in WSAs by 23 miles (and 267 miles in the Resource Area), and subjected approximately 17.1 percent to seasonal closures. *See* DR/FONSI at 5. Appellants do not challenge these figures, yet they maintain their claim that using the aerial photographs to resolve questions presented by the inventory record added 38 miles of routes within WSAs, making no effort to explain or reconcile the opposing conclusions.

[1] No error is demonstrated merely because BLM consults aerial photographs that are part of its official inventory records and data. More than opinion and speculation are required to discharge appellants' burden of showing that such aerial photographs do not constitute accurate depictions or are otherwise unreliable. Where, as here, BLM has persuasively shown that inventory maps and narratives are incomplete, inadequate, or inconsistent, BLM properly may review the inventory record as a whole, including contemporaneous aerial photographs, to provide explanation, clarification, and confirmation in determining which routes were identified in the inventory. In light of the explicit language of the 1980 Wilderness Inventory stating that it was a summary of the underlying inventory data and information and appellants' failure to show or suggest any error or inaccuracy in such site-specific information, they have not shown by a preponderance of the evidence that BLM authorized new OHV use on routes that had not been identified in the Inventory. We thus reject appellants' contentions that the TMP failed to conform to the RMP or violated pertinent law and regulations.

When implementing an RMP directive to establish a TMP wherein OHV use would be limited to routes and ways identified in BLM's Final Wilderness Inventory, BLM properly may rely on the maps and site-specific documentation it placed in its files when the Inventory was performed. When the Final Wilderness Inventory explicitly incorporates by reference maps and site-specific documentation contained in BLM's record of the Inventory, the approval of a travel management plan designating for OHV use routes and ways identified in such inventory record will be determined to be in conformance with the RMP.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision approving that part of the TMP designating OHV use in WSAs is affirmed.

\_\_\_\_\_/s/  
Christina S. Kalavritinos  
Administrative Judge

I concur:

\_\_\_\_\_/s/  
T. Britt Price  
Administrative Judge