



OWYHEE COUNTY, IDAHO

179 IBLA 18

Decided March 29, 2010



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

OWYHEE COUNTY, IDAHO

IBLA 2009-217

Decided March 29, 2010

Appeal from a decision by the Owyhee Field Office, Bureau of Land Management, approving the Murphy Subregion Travel Management Plan. ID-BD3000-09-03.

Affirmed.

1. Federal Land Policy and Management Act of 1976:  
Generally--Statutory Construction

The Omnibus Public Land Management Act of 2009 requires the Secretary to prepare one or more *travel management plans* for Federal lands in Owyhee County, Idaho, in accordance with the Federal Land Policy and Management Act of 1976, and expresses Congress's intent that a *transportation plan* for the Owyhee Front in Owyhee County be completed by March 30, 2010. A construction of the Omnibus Act that would require BLM to prepare a *single* travel management plan for the Owyhee Front is properly rejected as inconsistent with the Act's express direction that *one or more* travel management plans be prepared for Federal lands in Owyhee County.

2. Act of July 26, 1866--Federal Land Policy and Management Act of 1976: Coordination with State and Local Governments--Public Lands: Generally

The assertion of a R.S. 2477 right-of-way that has not been raised or recognized under applicable Federal law does not require BLM to relinquish or curtail its responsibilities for managing and administering public lands or for preparing plans

to manage transportation needs on the public lands.

3. Federal Land Policy and Management Act of 1976:  
Coordination with State and Local Governments

While BLM must coordinate with State and local governments to ensure consistency with State and local plans at the land use planning phase, the Federal Land Policy and Management Act of 1976 does not require individual decisions or subsequent, more detailed plans implementing an approved land use plan to be consistent with a State or local plan.

4. Federal Land Policy and Management Act of 1976:  
Coordination with State and Local Governments

Where the record demonstrates BLM repeatedly met and consulted with County government, thoroughly considered its views, and complied with a protocol for coordination with local government, the appellant has not established that BLM violated its coordination obligations under the Federal Land Policy and Management Act of 1976.

APPEARANCES: Charles L. Saari, Murphy, Idaho, for Owyhee County; Stephanie Balzarini, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE JACKSON

Owyhee County (the County) appeals from the April 17, 2009, Decision Record/Finding of No Significant Impact (DR/FONSI) by the Manager, Owyhee Field Office (Marsing, Idaho), Bureau of Land Management (BLM), approving the Murphy Subregion Travel Management Plan (TMP) and its designation of roads and trails

available for off-highway vehicle (OHV) use.<sup>1</sup> For the reasons discussed below, we affirm BLM's decision on appeal.<sup>2</sup>

### *BACKGROUND*

The TMP addresses OHV use in the Murphy Subregion, a 233,000-acre component of the Owyhee Front Special Recreation Management Area (SRMA). Such use was limited to existing roads and trails by BLM's 1981 Owyhee Management Framework Plan and its 1987 Owyhee Off-Road Vehicle Management Plan. As noted in the July 1999 Proposed Owyhee Resource Management Plan and Final Environmental Impact Statement (RMP/EIS):

This designation [OHV use on existing roads and trails only] has proved ineffective at stabilizing the motorized road and trail network in this popular riding area, as there has been a steady expansion of jeep roads and trails. Staff analysis of the road and trail network in a 50 square mile portion of the Owyhee Front indicated development of over 90 miles of new roads and trails . . . from 1987 to 1998. This proliferation of unplanned roads and trails has led to decreased scenic quality, conflicts with sensitive plant populations, habitat fragmentation, erosion, and water quality concerns. There is also some conversion of trails from wildlife or game trails to motorcycle trails, and from motorcycle trails to ATV [all terrain vehicle] trails and jeep trails.<sup>[3]</sup>

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<sup>1</sup> By order dated Oct. 7, 2009, we denied the County's stay request. By order dated Dec. 30, 2009, the DR/FONSI was affirmed in a separate appeal by Karen Steenhof, docketed as IBLA 2009-216, which claimed BLM failed adequately to consider impacts on golden eagles in approving the TMP.

<sup>2</sup> The County submitted a Statement of Reasons (SOR) with exhibits on June 12, 2009, an initial reply on Aug. 31 (Reply), and another on Oct. 13, 2009 (Second Reply). BLM responded on July 16 and Sept. 22, 2009 (Answer and Second Answer). BLM submitted an unindexed, untabbed, unpaginated, multi-volume administrative record (AR) and other, similarly organized supplemental materials (BLM Supp.). The County submitted a Statement of Reasons (SOR) with exhibits on June 12, 2009, an initial reply on Aug. 31 (Reply), and another on Oct. 13, 2009 (Second Reply). BLM responded on July 16 and Sept. 22, 2009 (Answer and Second Answer). BLM submitted an unindexed, untabbed, unpaginated, multi-volume administrative record (AR) and other, similarly organized supplemental materials (BLM Supp.).

<sup>3</sup> As also stated in response to comments, RMP/EIS at C-66:

The pioneering of new roads and trails is a concern, and a transportation system limited to existing roads and trails, such as the current designation on the Owyhee Front, has not been able to adequately address the issue in heavily used or sensitive areas.

(continued...)

RMP/EIS at III-40. It then explained its proposed Alternative E in the following terms:

In order to provide for OHMV [off-highway motor vehicle] use of the resource area while protecting the natural resource base, Alternative E proposes to transition certain areas to a designated road and trail system. Areas where OHMV access would be limited to designated routes include the Owyhee Front SRMA . . . . The process of identifying and designating the transportation network in these designated areas is projected to be completed within five years after RMP approval. . . .

Until specific route designations have been established for an area, OHMV use in that area will be limited to existing roads and trails . . . . All components of the transportation network will be evaluated with the intent to provide quality OHMV opportunities balanced with other resource concerns. . . .

*Id.* at IV-279. The December 1999 Owyhee Resource Management Plan (RMP) selected Alternative E and specified actions to implement its management objectives:

1. Manage and limit OHV “recreational use” in the SRMA “to designated roads and trails, except as otherwise posted.” RMP at 35, M-28.
2. Intensively manage the SRMA for “OHV use, horseback riding, wild horse viewing, hunting, sightseeing, camping, mountain biking, and rock hounding.” *Id.* at 36-37, 124.
3. “Provide for the evaluation, expansion, or modification of existing motorized and non-motorized trail systems to further public opportunities to safely enjoy recreational settings, consistent with other management objectives, in the . . . Owyhee Front SRMA.” *Id.* at 40.

BLM’s implementation of the RMP and its management objectives lies at the heart of this appeal.

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<sup>3</sup> (...continued)

Alternative E proposes to gradually move portions of the resource area to a designated road and trail system. The designation process will enable the staff and the public to evaluate the transportation network and determine which roads and trails are useful components of the network.

BLM inventoried existing roads and trails within the SRMA by aerial photography and on-the-ground verification between 2001 and 2003. Answer at 2. BLM thereafter issued a TMP scoping notice on April 19, 2007 (Scoping Notice), AR Vol. 1, which included a map of inventoried routes and solicited public comment before developing “a managed route system designed to sustain a variety of public uses over the long term . . . without degrading natural or cultural resources.” Scoping Notice at unpaginated 2. It noted that “dramatic increases in recreational use of public lands” have resulted in soil, vegetation, wildlife, and ranching impacts, “new, unauthorized roads and trails,” the need for a greater law enforcement presence, and “new conflicts between motorized and non-motorized recreational users.” *Id.* The “Owyhee County Recreation Trail Plan for the Owyhee Front” that had been developed by the Owyhee County Recreation Task Force (RTF)<sup>4</sup> was later adopted by County Resolution No. 08-02 on February 25, 2008 (Trail Plan). SOR, Ex. F. The Trail Plan identified 448 route miles for OHV recreational use, specified that all other trails should be closed, and provided that such closures did not apply to “administrative use” by grazing permittees, BLM, or emergency personnel.

Based on scoping comments and the views expressed during public forums, in discussions with the RTF, and at coordination meetings with Owyhee County, BLM issued a draft environmental assessment (EA) for public comment on September 17, 2008 (Draft EA). AR Vol. 1. The Draft EA considered three alternatives: continue existing use by designating all 1,270 miles of existing roads and trails in the Murphy Subregion as open to OHV use (Alternative A, essentially the “no action” alternative); open 834 miles of existing routes to OHV use and close the remainder (Alternative B, the proposed action); and open 448 miles of existing routes to OHV use (Alternative C, the County Alternative). *See* Draft EA at 21-27. Alternative C would close all routes not designated as open under the County Trail Plan, including those dead-ending on private land or at range improvements (822 route miles). *Id.* at 24, 26. If the County Alternative were selected, BLM noted: “Fencing or rock barriers may be required to prevent use of closed roads or trails.” *Id.* at 25.

During and after the comment period on the Draft EA, BLM held additional public meetings and met with both the RTF and the County on numerous occasions. *See* Answer, Ex. 3. The County commented by correspondence dated November 10, 2008, and identified errors, inaccuracies, and inconsistencies in the Draft EA (County Comments). AR Vol. 1. Key issues of concern involved administrative use, seasonal closures, County assertions under R.S. 2477,<sup>5</sup> and consistency/coordination

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<sup>4</sup> The RTF included “representation of all forms of recreational use,” was formed by the County, and provided it with advice on recreational uses and policies. Reply at 3.

<sup>5</sup> Section 8 of the Act of July 26, 1866, 43 U.S.C. § 932 (1970), commonly referred (continued...)

obligations under section 202(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712(c) (2006). County Comments at 1, 2, 4, 5-6, 7. After meeting with the County and discussing its concerns, BLM responded in writing on December 12, 2008 (BLM Response with Attachment). AR Vol. 1. It recognized their meeting “was very helpful to BLM in understanding some of the unstated intent and/or assumptions upon which the County’s Resolution [No. 08-02] was crafted” and stated that “if the County clarifies their resolution, all routes will be covered in some fashion.” BLM Response at unpaginated 1. BLM then responded to the County’s key concerns:

- Administrative Use BLM learned from their meeting that the County intended that administrative use by grazing permittees should be allowed on trails closed to recreational use and that trails for administrative use not be eliminated or rehabilitated. BLM Response, Attach. at 2. It explained that large scale administrative designations are avoided due to their impracticability and unworkability because “extensive experience on road/trail restrictions has shown time and again that physical barriers are necessary.” *Id.* BLM then suggested that the County “submit a new map if they propose to designate administrative use so that BLM can revise our analysis of their alternative,” adding that “gates and fencing would probably increase greatly as there is a difference in the action(s) needed to close a route (scarify, seed, maybe temporary barrier) versus the permanent control devices (gates) that would be needed to control access onto administrative routes.” *Id.*; *see id.* at 8 (“Alternative C does not limit BLM’s ability to designate administrative access; however, the County [Trail] Plan does not identify any routes to be designated for administrative access.”).
- Seasonal Closures BLM understood the County’s seasonal concerns focused largely on grazing allotments, noted “it would be difficult to close areas to one user just because another user was utilizing that same area” (*e.g.*, grazing permittees), but stated if problems arose, they would be addressed on a case-by-case basis and “may include working with the permittee to install cattleguards or perhaps dispatching the law enforcement ranger or other BLM personnel to resolve the issue and/or avoid a problem in the future.” *Id.* at 1.

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

to as R.S. 2477, states: “The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.” Although repealed by FLPMA, valid existing rights established prior to its repeal were preserved. *See* 43 U.S.C. § 1701 note (2006); *Southern Utah Wilderness Alliance (SUWA) v. Bureau of Land Management*, 425 F.3d 735, 740-41 (10th Cir. 2005).

- R.S. 2477 BLM stated it lacked authority to adjudicate County assertions under R.S. 2477, citing *SUWA v. BLM*, [425 F.3d at 755-58], and that a resolution of those assertions was not necessary before designating routes for OHV use under the RMP. BLM Response, Attach. at 3.
- FLPMA Coordination/Consistency BLM represented: “A discussion on coordination and consistency will be added. BLM complied with this requirement when we coordinated the development of our land use plan [for] the Owyhee RMP.” *Id.* at 2.

The parties continued their dialogue on these issues over the next several months. By correspondence dated March 9, 2009, BLM explained that travel management plans can designate routes as either open, closed (no use at any time), administrative (individual use permitted for specified purposes on closed routes), or limited (*e.g.*, recreational use restricted by season or type of vehicle). BLM Supp. at 1. BLM added that its case-by-case resolution of user conflicts could include additional signage, temporary closures, adjusted grazing practices, and increased enforcement. *Id.* at 2. The County responded by preparing a paper for discussion at a coordination meeting with BLM on March 13, 2009 (White Paper). SOR, Ex. K. The White Paper recognized that grazing and recreational conflicts could be dealt with by designating certain routes as either “limited” or “administrative,” represented that such designations could not be timely completed, and urged that routes closed under the County Trail Plan remain open for any administrative use (*i.e.*, only routes “without a legitimate management purpose would be closed to all uses”). *Id.* at 2, 4. Meanwhile, BLM prepared a new proposed Alternative D for inclusion in the final EA and discussed that alternative with the County at their March 13 meeting.<sup>6</sup>

The Omnibus Public Land Management Act of 2009 (Omnibus Act) was enacted on March 30, 2009, directing the Secretary to coordinate with the County and “prepare 1 or more travel management plans for motorized and mechanized off-highway vehicle recreation for the land managed by the Bureau of Land Management in [Owyhee] County” and expressing the intent of Congress that “a transportation plan for the Owyhee Front” be completed by March 30, 2010. Pub. L. No. 111-11, § 1507, 123 Stat. 991, 1040 (2009). Ten days later, the County adopted Resolution No. 09-11, which rescinded and revised its Trail Plan and stated the County’s expectation that it be notified of “any potential inconsistencies” between its plan and BLM’s proposed TMP and provided with “the substantive legal reasons for any such inconsistency” and that “all County roads will be clearly identified as such on all maps and that such roads will not be included in or counted as part of the BLM travel

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<sup>6</sup> The RTF attended that meeting, and its meeting notes indicate that both Alternative D and the White Paper issues were discussed. *See Answer*, Ex. C at 4-5.

and transportation management system.” SOR, Ex. F at ¶¶ 2, 3. Perceiving that BLM’s new Alternative D would establish a “vast recreational route system” and that enforcement would likely be inadequate and ineffective, this resolution specified: “BLM must have in place a process for immediately addressing non-compliance by modifying or removing route designations” and “accept responsibility and provide the funding necessary to repair or mitigate . . . damage” to range improvements and private property caused by recreational users. *Id.* at ¶¶ 15, 17.

BLM issued its DR, FONSI, and EA (ID-130-2007-EA-3431) on April 17, 2009. BLM stated its proposed Alternative D “represents cooperative planning and consultation” and “a general consensus” between and among the County, the RTF, and BLM, and that it provides “for a safer riding environment” that promotes “public health and safety.” EA at 33; FONSI at 2.<sup>7</sup> BLM selected Alternative D because it met the RMP’s recreation management objectives by emphasizing “improved motorized recreational opportunities” and by protecting “environmentally sensitive locations.” FONSI at 3; DR at 3, 4. Most routes dead-ending at private land boundaries would be closed under the TMP; the remainder of those routes, as well as routes dead-ending on BLM land, would be signed as dead-ends and have fencing or other barriers installed to prevent route expansions (where appropriate). EA at 35-36; *see* DR at 2. The TMP would establish seasonal closures to protect sage grouse and utilize adaptive management to address conflict “after consulting with trail users and local officials,” which could include “closures of existing trails, designation of routes as administrative access only, reallocation of uses on a particular route or portion of a route, increased Law Enforcement patrols, adjustment of grazing practices, or public notices.” EA at 19; *see* DR at 2; FONSI at 1. BLM explained that by closing routes, “educating and informing the public with signage throughout the trail system, and providing higher levels of enforcement and public contact, transportation planning would reduce or mitigate impacts from higher anticipated recreation use resulting from projected population growth in the region.” EA at 104. This appeal timely followed.

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<sup>7</sup> BLM also stated the “purpose of an R.S. 2477 assertion is to preserve public access and use pending a future court determination,” noting that closing an additional 400 route-miles under Alternative C, the County Alternative, would result in overcrowding, compromise rider safety, and “push the masses of recreationists to other areas,” resulting in additional resource damage. EA at 12, 92.

*DISCUSSION*

The County contends BLM’s approval of the TMP violated the Omnibus Act, disregarded County authority over roads within the SRMA, was inconsistent with the County Trail Plan, and demonstrated a failure to engage in coordination required by FLPMA. For ease of analysis, these issues are discussed separately below.

*I. BLM’s Approval of the TMP did not Violate the Omnibus Act.*

[1] The County claims BLM failed to comply with the Omnibus Act by approving the TMP rather than a single plan for the Owyhee Front.<sup>8</sup> It is undisputed that BLM complied with the Act’s inventory mandate by identifying 15,000+ miles of existing roads and trails on the Owyhee Front, an area managed by both its Owyhee and Bruneau (Idaho) Field Offices. It is also uncontroverted that TMPs for the Murphy and Wilson Subregions and the Hemingway Butte Play Area cover the entire Owyhee Front SRMA (262,000 acres) and are consistent with the Omnibus Act’s mandate to prepare “1 or more travel management plans” for public lands managed by BLM in Owyhee County. Pub. L. No. 111-11, § 1507(b), 123 Stat. 1040 (2009). The County contends BLM’s failure to prepare a single TMP for the 767,000-acre Owyhee Front violated the Omnibus Act wherein it states: “It is the intent of

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<sup>8</sup> Subtitle F (Owyhee Public Land Management) of the Omnibus Act states:  
Sec. 1507. Recreational Travel Management Plans.

(a) IN GENERAL.—In accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701 *et seq.*), the Secretary shall, in coordination with the Tribes, State, and County, prepare 1 or more travel management plans for motorized and mechanized off-highway vehicle recreation for the land managed by the Bureau of Land Management in [Owyhee] County.

(b) Inventory.—Before preparing the plan under subsection (a), the Secretary shall conduct resource and route inventories of the area covered by the plan.

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(e)(1) OWYHEE FRONT.—It is the intent of Congress that, not later than 1 year after the date of enactment of the Act, the Secretary shall complete a transportation plan for the Owyhee Front.

123 Stat. 1040. This subtitle defines the Owyhee Front as “the area of the County from Jump Creek on the west to Mud Flat road on the east and draining north from the crest of the Silver City Range to the Snake River.” Pub. L. No. 111-11, § 1501(3), 123 Stat. 1032 (2009). As such, the Owyhee Front contains 767,000 acres of public and private land, including the 262,000-acre Owyhee Front Special Recreation Management Area (SRMA) administered by BLM.

Congress that, not later than [March 30, 2010], the Secretary shall complete a transportation plan for the Owyhee Front.” SOR at 5-7, quoting Pub. L. No. 111-11, § 1507(e)(1).

Section 1507(e)(1) expresses Congress’s intent with respect to completing “a transportation plan” for the Owyhee Front by a date certain, but where time remains to comply with a deadline, a charge that BLM failed to comply with the statute is properly rejected as premature. To the extent the County construes the phrase “a transportation plan” as requiring a single TMP for the Owyhee Front, we reject that interpretation because it would negate the language of section 1507(a), which unambiguously authorizes BLM to prepare one or more TMPs for all the land it manages in Owyhee County. Moreover, we must consider whether this provision constitutes a mandate or is simply directory and permissive, recognizing that noncompliance with a mandate “is fatal to any proceeding to execute the statute or to obtain the benefit of it.” *Sutherland Statutory Construction*, § 57:1 (7th ed. 2007); *see id.* § 57:2 (“To determine whether a statute is mandatory or directory, effect must be given the entire statute, its nature and object, and the consequences that would follow from each construction.”). Where Congress expressed only an intent that “a transportation plan” for the Owyhee Front portion of Owyhee County be completed by March 30, 2010, we find section 1507(e)(1) to be directory only and will not infer a mandate to complete a single TMP for the entire Owyhee Front. If dissatisfied with BLM’s actions (or inaction), Congress may act through oversight, amend the Omnibus Act, or enact additional legislation, but until it so acts, we decline to find that BLM violated the Act by issuing the Murphy Subregion TMP.

*II. R.S. 2477 Assertions do not Preclude BLM from Including and Designating Affected Roads as “open” for OHV Use in the TMP.*

It is uncontroverted that the County’s right-of-way assertions under R.S. 2477 were “acknowledged” pursuant to state law and that the County adopted Ordinance No. 08-03 to limit OHV use on these “County roads” in the SRMA, most of which were paved and maintained with state funding. *See* Answer at 13-14; Second Answer at 11; *see also* Idaho Code § 40-204A (2000); County Resolution No. 94-13. Since designating 90 miles of roads as “open” under the TMP conflicts with its R.S. 2477 assertions and ordinance closing certain of them to OHV use (45 miles), the County claims they should be excluded from the TMP. SOR at 8-9. BLM counters that these R.S. 2477 assertions are yet to be perfected and avers it has the authority to designate and manage roads in the SRMA unless and until the County’s assertions are validated by an appropriate court. Answer at 11-13. As a matter of jurisdiction and authority over roads and travel management on Federal lands, we are persuaded BLM has both.

[2] A County right-of-way over roads on Federal lands exists and attaches after its R.S. 2477 assertions are validated under the Quiet Title Act.<sup>9</sup> *See Wilderness Society v. Kane County*, 581 F.3d 1198, 1218-19 (10th Cir. 2009); *SUWA v. BLM*, 425 F.3d at 755-58. Until validated, it has inchoate rights; thereafter, they will be recognized by BLM. BLM is not compelled by law or precedent to concede management authority over these roads to the County prior to a judicial validation of its assertions. *See Kane County v. Salazar*, 562 F.3d 1077, 1087-88 (10th Cir. 2009); EA at 17 (“Where court rulings validate RS-2477 assertions, the TMP route designations would be modified to incorporate these findings”). We find no error in BLM so addressing the County’s assertions or including their affected roads in the TMP.

The County adds in reply that its ordinance closing 45 miles of roads in the SRMA was an exercise of its police power to protect public safety and is inconsistent with the TMP designating them as “open.” Second Reply at 9-10. While the County may be able to exercise some police powers on public lands (e.g., to enforce ordinances by issuing citations to third parties), its authority vis-a-vis BLM is preempted by Federal law. *See Wilderness Society v. Kane County*, 581 F.3d at 1219-24 (ordinance permitting OHV use on roads subject to R.S. 2477 assertions preempted by Department plans prohibiting such use). Thus, BLM’s discretionary authority to designate roads as “open” was unaffected by the County ordinance closing them to OHV use because that ordinance was preempted by the TMP. Whether that authority was properly exercised in this case is a separate question which we discuss further below.

### *III. FLPMA Does not Require TMPs to be Consistent with Local Government Plans.*

The County claims section 202(c)(9) of FLPMA, 43 U.S.C. § 1712(c)(9) (2006), requires the TMP to be consistent with plans reflected in its resolutions and ordinances. SOR at 15-18; Reply at 14-18. We disagree.

[3] FLPMA requires land use plans for managing Federal lands and resources and directs BLM to “coordinate” its development and revision of these plans with State and local plans and management programs:

In the development and revision of land use plans, the Secretary shall —

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<sup>9</sup> Other approaches to resolving R.S. 2477 assertions may also exist. *See* Memorandum of the Secretary, “Departmental Implementation of *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735 (10th Cir. 2005)” (Mar. 22, 2006).

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(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located . . . . In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. . . . Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

43 U.S.C. § 1712(c)(9) (2006); *see generally* 43 C.F.R. Subparts 1601 (Planning), 1610 (Resource Management Planning).

RMPs are defined by rule as land use plans under FLPMA, 43 C.F.R. § 1601.0-5(n), and must be “consistent” with applicable local plans; subsequent, more detailed and/or specific BLM plans must “conform” to an approved RMP. *See* 43 C.F.R. §§ 1610.3-1 (Coordination of planning efforts), 1610.3-2 (Consistency requirements), 1610.5-3 (Conformity and implementation). As stated in *Biodiversity Conservation Alliance (BCA)*, 174 IBLA 174, 183-84 (2008):

While it is true that under FLPMA BLM must coordinate with and confer with States, Indian tribes, and local governments in order to ensure consistency with State and local plans at the land use planning phase, to the maximum extent consistent with Federal law, [43 U.S.C.] at § 1712(c)(9) [(2006)], this provision does not require such policy coordination with respect to individual decisions implementing actions authorized under an existing management plan.

*Id.* (footnote omitted); *see Town of Crestone*, 178 IBLA 79, 86-87 (2009). Neither FLPMA, its implementing rules, nor our precedent require plans or decisions implementing an approved RMP to be consistent with State and local government

plans or programs. We will not engraft such a requirement on BLM's approval of a TMP in this case.

*IV. BLM Adequately Coordinated with the County under FLPMA by Acting Consistent with their Coordination Protocol.*

BLM and the County entered into a revised protocol that “sets forth the process by which the [Owyhee County] Commissioners and the BLM expect to coordinate on issues of mutual interest and concern” and fulfill government-to-government coordination requirements under FLPMA, other Federal laws, Executive Orders, and applicable regulations. Protocol for Coordination Between BLM-Boise District and Owyhee County, Feb. 14, 2006 (Coordination Protocol, County Ex. C) at 1. Identified participants in this process include the BLM Owyhee Field Office Manager and each of the Owyhee County Commissioners; the BLM Boise District Manager (or his designee) and the Chairman of the Board of County Commissioners are the protocol's “decisionmakers.” *Id.* at 2. Coordination under the protocol includes monthly meetings at which participants will “strive for consensus on issue resolution,” *id.* at 3-4, but expressly addresses “unresolved issues” by the following:

In the event participants cannot articulate a clear consensus or agreement on a given topic, the County Commissioner and the BLM District Manager or [their] designees will prepare a *one-page white paper* outlining the issue, any potential areas of agreement and the reasons for the lack of resolution in a manner that is equitable (in tone and space) to both entities. Both entities will confirm that the document reflects its perspectives.

*Id.* at 5. Nonetheless, the County here contends the “intent of coordination . . . is to achieve consistency” and that BLM violated FLPMA because “numerous unjustified and unexplained inconsistencies between County plans and policies and the [TMP] demonstrate[] a significant lack of meaningful involvement and coordination.” SOR at 10.

Similar claims were raised and rejected in *Wyoming Outdoor Council*, 171 IBLA 108 (2007). The Council contended that FLPMA coordination requires BLM to “attempt to reconcile any inconsistencies between State and Federal management policies and programs to the extent consistent with Federal policy,” and in support, relied on a memorandum of understanding (MOU) for “cooperative wildlife management” by and between BLM and the Wyoming Game and Fish Department (WGFD). *Id.* at 111-12, 113. Because BLM considered WGFD's concerns and proceeded in accordance with the MOU, we held it complied with its coordination obligations under FLPMA. *Id.* at 120-21. We addressed similar claims under that

MOU but reached a different result in *BCA*, 174 IBLA at 185-86, because the record failed to demonstrate MOU compliance or that BLM even considered WGFD's views, as expressly required by the MOU. We therefore set aside and remanded that decision "to ensure that the record verifies compliance with the MOU." *Id.* at 186.

[4] It is clear from our review of the record that BLM met, consulted, and communicated with the County on numerous occasions under their Coordination Protocol and that they never reached consensus on which and how best to designate roads and trails for OHV use in the SRMA. *See* BLM Exs. B (List of Meetings with Owyhee County), E (Correspondence between BLM and the County); County Ex. K (White Paper for coordination meeting on March 13, 2009); *see also* County Comments; BLM Response. We find from this extensive record that BLM complied with the Coordination Protocol<sup>10</sup> and therefore conclude it did not violate its coordination obligations under FLPMA (or the Omnibus Act) by approving the TMP on April 17, 2009.<sup>11</sup>

The County continues to pursue its earlier claims that the TMP should designate hundreds of miles of roads and trails in the SRMA as closed to recreational OHVs (but open for any legitimate management purpose) and that seasonal closures should have been imposed to protect grazing interests. *See* SOR at 11-14, 24-25; Reply at 16-17. The County claims its resolutions, ordinances, comments, and White Paper should have been accepted for designating and managing OHV routes and travel because they would better avoid conflict, limit trespasses, minimize damage to private property/range improvements, and reduce opportunities for illegal route extensions within the SRMA. *Id.* at 16-17, 22-23. BLM addressed these claims by representing it may designate administrative routes in the future and will take action on a case-by-case basis to address conflicts, trespasses, damages, and route

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<sup>10</sup> Although BLM did not "confirm" the County's White Paper, the record shows the parties effectively agreed to disagree while also continuing to seek consensus on unresolved issues. *See* Coordination Protocol at 4 (the parties will "strive for consensus on issue resolution"), 5 (each party to confirm that "a one-page white paper" on an unresolved issue "accurately reflects its perspectives"). BLM complied fully with the spirit and intent of the protocol, just as the County did by preparing a multi-page "white paper" for discussion at and after their March 13 meeting.

<sup>11</sup> The County also contends the Final EA's description of Alternative C, identified in the Draft EA as the "County Alternative," is inaccurate and misleading, and therefore demonstrates BLM failed adequately to coordinate with the County. *See* SOR at 17-23. While BLM could have provided a more complete description of the County's preferred alternative, we do not find the Final EA so deficient or misleading as to give rise to a conclusion that BLM failed to coordinate under and as required by FLPMA (or the Omnibus Act).

extensions if and when appropriate. It is possible the County's approach might better achieve mutually shared goals and objectives, but its disagreement with the TMP does not suffice to demonstrate reversible error. As stated in *Rainer Huck*, 168 IBLA 365, 395 (2006), *aff'd sub nom., Williams v. Bankert*, No. 2:05CV503DAK (D. Utah Oct. 18, 2007):

BLM has the authority pursuant to FLPMA, 43 U.S.C. § 1701 (2000), and other acts and executive orders, to regulate the use and operation of [OHV]s on the public lands. See 43 C.F.R. Part 8340; *Rocky Mountain Trials Association*, 156 IBLA 64, 70 (2001); *Robert P. Muckle*, 143 IBLA 328, 332-33 and n.1 (1998). Consistent with the general precedent governing challenges to BLM decisions implementing land use management plans, a BLM activity plan implementing the [OHV] decisions in an RMP or other [OHV] management plan will be affirmed if the decision adequately considers all relevant factors including environmental impacts, reflects a reasoned analysis, and is supported by the record, absent a showing of compelling reasons for modification or reversal. *Rocky Mountain Trials Association*, 156 IBLA [64,] 70 [(2001)], citing *James R. Sebastian*, 146 IBLA 138, 142 (1998); *High Desert Multiple-Use Coalition*, 124 IBLA 125, 128 (1992); see also *Daniel T. Cooper*, 154 IBLA 81, 84-85 (2000); *Stan Rachesky*, 124 IBLA 67, 70 (1992).

Appellants have the burden of demonstrating by a preponderance of the evidence that BLM committed a material error in its factual analysis, that BLM failed to give due consideration to all relevant factors, or that no rational connection exists between the facts found and the choices made. *Utah Trail Machine Association*, 147 IBLA 142, 144 (1999). Mere differences of opinion regarding proper management of public lands will not overcome an amply supported BLM management decision. *Southern Utah Wilderness Alliance*, 128 IBLA 382, 389 (1994); *High Desert Multiple-Use Coalition*, 124 IBLA at 128; *Oregon Shores Conservation Coalition*, 83 IBLA 1, 6 (1984); *Magic Valley Trail Machine Association, Inc.*, 57 IBLA 284, 287 (1981).

The County simply has not met its burden to show these aspects of the TMP should be reversed. We have fully considered the County's other assertions of error and, to the extent not expressly addressed, reject them as lacking merit in law or fact.

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 April 17, 2009, decision by the Owyhee Field Office is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
James K. Jackson  
Administrative Judge

I concur:

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