



BRANDON SIEGFRIED

194 IBLA 55

Decided December 13, 2018



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

703-235-3750

703-235-8349 (fax)

BRANDON SIEGFRIED

IBLA 2015-250, *ET AL.*

December 13, 2018

Appeal from route designations in the travel management plan of the Bureau of Land Management's Grand Junction (Colorado) Field Office. BLM/CO/PL-15-016.

Affirmed.

1. Appeals: Burden of Proof;
Federal Land Policy and Management Act of 1976:
Land Use Planning

In challenging a BLM management decision, an appellant has 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.

2. Federal Land Policy and Management Act of 1976:
Land Use Planning;
Federal Land Policy and Management Act of 1976:
Rights of Way;
Federal Land Policy and Management Act of 1976:
Valid Existing Rights

BLM may make "administrative determinations" of the validity of an R.S. 2477 right-of-way for its own purposes, such as for internal land-use planning purposes. However, BLM is not required to administratively determine the validity of an R.S. 2477 right-of-way before closing or otherwise managing roads.

APPEARANCES: Brandon Siegfried, Grand Junction, Colorado; Danielle DiMauro, Esq., U.S. Department of the Interior, Office of the Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HAUGRUD

Brandon Siegfried has appealed from an August 10, 2015, Record of Decision approving the Travel Management Plan (TMP) for the Bureau of Land Management's (BLM) Grand Junction (Colorado) Field Office.¹ Mr. Siegfried filed three separate appeals, which the Board consolidated.²

SUMMARY

BLM approved the TMP as part of its revised resource management plan (RMP) for the Grand Junction Field Office. The TMP designates the system of roads and trails that BLM will manage and maintain for various uses of the public lands. Mr. Siegfried argues that BLM has unlawfully closed or restricted the use of routes which must be left open because they are valid Revised Statute (R.S.) 2477 public rights-of-way preserved as valid existing rights under the Federal Land Policy and Management Act of 1976 (FLPMA). Mr. Siegfried asserts that BLM also acted arbitrarily and capriciously by failing to determine whether R.S. 2477 routes existed before issuing its TMP.

Contrary to Mr. Siegfried's contentions, BLM is not required to make administrative determinations of the validity of claimed R.S. 2477 rights-of-way before issuing a travel plan. Instead, BLM may presume that it has authority to regulate the routes absent a judicial determination confirming the validity of an R.S. 2477 right-of-way. Because Mr. Siegfried has shown no error by BLM in its decision-making process, BLM's decision is affirmed.

¹ Record of Decision (ROD) for Approved Resource Management Plan and Approved Travel Management Plan for the BLM Grand Junction Field Office (Aug. 10, 2015). The ROD, TMP, and Resource Management Plan, along with supporting documents including the draft and final Environmental Impact Statement (EIS), may be found under the "Documents & Reports" tab at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=74172> (last visited Dec. 12, 2018).

² Docketed as: IBLA 2015-250, IBLA 2015-251, and IBLA 2015-263; consolidated under lead file number IBLA 2015-250 by Order dated Oct. 16, 2015.

STATUTORY BACKGROUND

A. *FLPMA and Applicable BLM Regulations*

BLM revised the Grand Junction RMP to fulfill its duty under FLPMA to “develop, maintain, and, when appropriate, revise land use plans.”³ Under BLM’s implementing regulations, a RMP must address the use of off-highway vehicles by designating all land as either “open, limited, or closed” to off-highway vehicle use.⁴ Areas designated as limited have restrictions placed on the use of off-highway vehicles.⁵ The restrictions may include limitations on where vehicles may be used (e.g., only on identified roads and trails), the type of vehicle used, the season of use, or the purpose of the travel (e.g., limited to BLM administrative use).⁶

The TMP is an implementation decision that, as in this case, may be developed in conjunction with the RMP.⁷ Among other things, the TMP identifies, designates and maps routes (i.e., roads, primitive roads, and trails) that may be used within areas where the RMP limits vehicular travel to designated routes.⁸ The TMP specifies any restrictions on the use of each route.⁹ While the amendment of a RMP cannot be appealed to the Board,¹⁰ the approval of a TMP is an implementation decision that may be appealed.¹¹

B. *R.S. 2477*

At the heart of Mr. Siegfried’s appeal is the assertion that BLM failed to recognize and keep open public rights-of-way established under R.S. 2477. Enacted as part of the Mining Law of 1866, R.S. 2477 was an open-ended grant of “the right of way for the construction of highways over public lands, not reserved for public uses.”¹² It remained

³ 43 U.S.C. § 1712(a) (2012).

⁴ See 43 C.F.R. §§ 8342.1, 8342.2(b); *Gardner v. United States BLM*, 638 F.3d 1217, 1221 (9th Cir. 2011).

⁵ 43 C.F.R. § 8340.0-5(g) (definition of “limited area”).

⁶ *Id.*; see also BLM Handbook H-8342-1, Travel and Transportation Management Handbook (Mar. 16, 2012) at 12.

⁷ BLM Handbook H-8342-1 at 18.

⁸ *Id.* at 28-29.

⁹ *Id.* at 29.

¹⁰ *Randy L. Witham*, 187 IBLA 298, 301 (2016).

¹¹ See, e.g., *Rainer Huck*, 168 IBLA 365, 395-96 (2006), *aff’d sub nom. Williams v. Bankert*, 2007 U.S. Dist. LEXIS 77503, 2007 WL 3053293 (D. Utah 2007).

¹² Act of July 26, 1866, Ch. 262, § 8, 14 Stat. 251, 253, *formerly codified at* 43 U.S.C. § 932 (1970), *repealed by* FLPMA § 706(a), 90 Stat. 2743, 2793 (Oct. 21, 1976).

in effect until repealed by FLPMA in 1976. The establishment of R.S. 2477 rights-of-way required no administrative formalities – no notice or recordation was required.¹³ All that was required were acts on the part of the grantee sufficient to manifest an intent to accept the Congressional offer.¹⁴

When Congress repealed R.S. 2477 in FLPMA, it specifically protected existing rights-of-way, providing that “[n]othing in this Act . . . shall be construed as terminating any valid . . . right-of-way, or other land use right or authorization existing on the date of approval of this Act.”¹⁵ Therefore, while no more R.S. 2477 rights-of-way could be established after FLPMA, the rights-of-way that predate FLPMA remain valid.¹⁶ Consequently, valid R.S. 2477 rights-of-way are a type of valid existing right to which BLM actions are subject.¹⁷

FACTUAL AND PROCEDURAL BACKGROUND

In August 2015, BLM approved a revised RMP for the Grand Junction Field Office (GJFO) that included a comprehensive TMP.¹⁸ The RMP is the governing management document for approximately 1.06 million acres of land administered by BLM in western Colorado.¹⁹ The administrative boundaries of the GJFO encompass even more acreage, nearly 2.17 million acres, with the additional acreage being managed by other Federal agencies or being owned privately, by the State, or by local governments.²⁰

The TMP was developed as part of the RMP, included as Appendix M to it. As required by BLM’s planning regulations,²¹ areas within the GJFO are placed into one of three categories for purposes of mechanized or motorized travel: open, closed, or limited.²² BLM inventoried all routes within the GJFO planning area, and identified

¹³ *Southern Utah Wilderness Alliance (SUWA) v. BLM*, 425 F.3d 735, 741 (10th Cir. 2005).

¹⁴ *Id.* at 754.

¹⁵ FLPMA, § 701(a), 90 Stat. at 2786, codified at 43 U.S.C. § 1701 note.

¹⁶ *SUWA*, 425 F.3d at 741.

¹⁷ FLPMA § 701(h), 90 Stat. at 2786 (“All actions by [the Department of the Interior] under [FLPMA] shall be subject to valid existing rights.”).

¹⁸ ROD, *supra* note 1.

¹⁹ *Id.* at Table 1.1.

²⁰ *Id.*

²¹ 43 C.F.R. § 8342.1.

²² See TMP at 8-9. In this decision we cite the TMP page numbers without the “M-” prefix used in the document.

approximately 4,000 miles of roads, trails, or other transportation features.²³ Following the process set forth in its regulations,²⁴ which includes public review and comment, BLM evaluated each route to determine whether it should be open to all uses, closed, or have its use restricted in some way.²⁵ The restrictions may include mode of transportation (e.g., limited to non-motorized use), season of use, or type of user (e.g., limited to “administrative and permitted uses”).²⁶

To facilitate the evaluation of the routes, BLM divided the GJFO planning area into 19 zones designated by letters A-W.²⁷ Each route within a zone was then given a unique number (e.g., A10).²⁸ Each route was further subdivided into numbered segments, typically defined by intersections.²⁹ Each segment has its own designation as being open, closed, or restricted in use.

BLM’s final designation of each route segment appears in a report for the corresponding zone.³⁰ For each segment, the report designates the uses that can be made along with any restrictions.³¹ For example, a segment may be designated as “Administrative/Permitted Use Only” with no seasonal restrictions, meaning its use is limited to authorized individuals for some specified purpose such as maintenance of a pipeline or water development. Each report summarizes the resource issues that were considered for each segment, the rationale for the designation, and the public comments that were received.

²³ TMP at 6-7.

²⁴ 43 C.F.R. Subpart 8342.

²⁵ TMP at 9-13.

²⁶ *Id.* at 13; *see also id.* at 8 (“Limitations include modes of travel, seasons of use, and types of user.”).

²⁷ *Id.* at 5, 7.

²⁸ *Id.* at 7.

²⁹ *Id.*

³⁰ The route designation reports are available at: https://eplanning.blm.gov/epl-front-office/eplanning/docset_view.do?projectId=55944¤tPageId=74173&documentId=67735 (last visited Dec. 12, 2018). Maps of the routes are available at the same website and are available as .pdf files and as .kmz (Google Earth) files. The Google Earth files must be opened using Google Earth software and allow the user to click on a route and view the corresponding route designation report.

³¹ *See* 43 C.F.R. 8340.0-5(g) (defining “limited area” and listing examples of types of restrictions).

Each report also identifies whether a segment requires some type of “mitigation” to allow for long-term access and use of the route.³² This mitigation may involve an environmental or safety issue, such as the need to reroute or reconstruct a portion of a trail made impassable by a washout. But mitigation may also involve legal or administrative issues, such as the need for a long-term easement over private property to access an otherwise landlocked route. The report identifies the type of mitigation needed and whether the designation of the route segment will change once mitigation is achieved.³³ The after-mitigation designation is also listed. For example, the report may designate a route segment as “closed” but identify as mitigation the need to acquire public access from a private landowner. The segment’s designation, after accomplishing this mitigation by acquiring an easement or other access right, may then change to “Open (All modes of travel)” or some other listed designation.³⁴

On August 10, 2015, the BLM Colorado State Director signed the ROD for the RMP and TMP. Mr. Siegfried’s three separately filed appeals of the TMP followed, and the Board consolidated the appeals in October 2015.³⁵

DISCUSSION

Mr. Siegfried’s appeals raise overlapping issues. In his broadest challenge, Mr. Siegfried alleges that BLM has violated FLPMA and a 1997 Appropriations Act by closing or otherwise restricting the use of 400 “public highways” that are listed as R.S. 2477 rights-of-way in reports prepared for Garfield and Mesa Counties.³⁶ His other two appeals are more specific, challenging the use designations of specific routes in Zones G and O.³⁷ In both of these appeals, Mr. Siegfried recognizes that accessing the challenged routes requires passing across privately-held property, but he alleges that there are valid public easements across the private property by which the routes may be accessed.³⁸ Because public access is available, Mr. Siegfried asserts that BLM’s closure or restrictions on use of the routes is invalid because they are valid R.S. 2477 rights-of-way

³² See TMP at 10 (§ 4.2).

³³ *Id.*

³⁴ This precise scenario is identified in the Zone G report for segment 2295 of route G113. Zone G Report at 2, available at https://eplanning.blm.gov/epl-front-office/projects/lup/55944/67735/73718/Zone_G_Public_Route_Report_Approved_TMP.pdf (last visited Dec. 12, 2018).

³⁵ See *supra* note 2.

³⁶ IBLA 2015-263 SOR.

³⁷ IBLA 2015-250 SOR (challenging designation of G148 and G150); IBLA 2015-251 SOR (challenging designation of O813, 0825, 0833, and O2060).

³⁸ *Id.*

which must be left open for public use.³⁹ Mr. Siegfried also asserts in all three appeals that BLM acted arbitrarily and capriciously by failing to make an administrative determination as to the validity of the asserted R.S. 2477 rights-of-way, instead presuming they could be closed or restricted.⁴⁰

As discussed below, Mr. Siegfried has not shown any error in BLM's adoption of the TMP. BLM did not need to presume or determine the validity of alleged R.S. 2477 rights-of-way in issuing the travel plan. Because all three appeals are predicated on the R.S. 2477 claims, we first address those issues followed by the more specific allegations made by Mr. Siegfried in his Zone O and Zone G appeals.

A. *Standard of Review*

[1] A BLM decision implementing a land-use plan, such as a decision concerning off-highway vehicle use of the public lands, will be affirmed if the decision adequately considers all relevant factors, reflects a reasoned analysis, and is supported by the record.⁴¹ In challenging a BLM management decision, an appellant has 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.⁴² Mere conclusory allegations of error, without supporting evidence, or mere differences of opinion will not overcome a BLM management decision that is supported by a rational basis.⁴³

B. *BLM did not err by failing to recognize alleged R.S. 2477 rights-of-way.*

Mr. Siegfried alleges that reports prepared for Garfield and Mesa Counties show that 689 routes within the Grand Junction planning boundaries are valid R.S. 2477 rights-of-way, having been established before FLPMA's enactment in 1976 and meeting the State of Colorado's requirements for being a public highway.⁴⁴ By closing or restricting the use of 400 of these routes without making an administrative determination as to whether a valid R.S. 2477 right-of-way exists, Mr. Siegfried asserts that BLM has acted arbitrarily and capriciously, has violated FLPMA's directive to respect

³⁹ *Id.*

⁴⁰ See SORs in IBLA 2015-250, 251 and 263.

⁴¹ *American Motorcyclist Association*, 188 IBLA 177, 191 (2016) (citing *Rainer Huck*, 168 IBLA at 395).

⁴² *Id.* (citing *Utah Trail Machine Association*, 147 IBLA 142, 144 (1999)).

⁴³ *Id.*

⁴⁴ IBLA 2015-263 SOR.

valid existing rights, and has failed to abide by Congress' prohibition on issuing R.S. 2477 regulations.⁴⁵

[2] Mr. Siegfried's legal arguments are not new – similar arguments have been raised and rejected by both the Board and the courts.⁴⁶ It is now well established that in preparing a RMP or TMP, BLM is under no obligation to accept or adjudicate the validity of alleged R.S. 2477 rights-of-way. BLM has no authority to make binding determinations on the validity of claimed R.S. 2477 rights-of-way.⁴⁷ While BLM may consider the validity of asserted R.S. 2477 ROWs for its own purposes of planning and administration, “BLM is not required to do so in developing a travel management plan that designates routes as open or closed to use by motorized vehicles.”⁴⁸ “Put simply, BLM is not required to administratively determine the validity of an R.S. 2477 ROW before closing or otherwise managing roads.”⁴⁹

In support of his position, Mr. Siegfried cites the Tenth Circuit's acknowledgement in *SUWA* that BLM may “determin[e] the validity of R.S. 2477 rights of way for its own purposes.”⁵⁰ The court of appeals in that case held that BLM could not make binding determinations of R.S. 2477 validity and that only a court could do so.⁵¹ The court then added that BLM could still make non-binding determinations “for the agency's internal ‘land-use planning purposes.’”⁵² In a subsequent case, the court of appeals rejected the claim that BLM is required to make non-binding R.S. 2477 validity determinations in preparing a management

⁴⁵ *Id.*

⁴⁶ See, e.g., *American Motorcyclist Association*, 188 IBLA at 205; *Uintah County, Utah*, 182 IBLA 191, 195 (2012); *Rainer Huck*, 168 IBLA at 398-99; *Kane County Utah v. Salazar*, 562 F.3d 1077, 1086-87 (10th Cir. 2009).

⁴⁷ *Uintah County, Utah*, 182 IBLA at 195 (citing *SUWA v. BLM*, 425 F.3d at 750-57, 762-63).

⁴⁸ *Id.*

⁴⁹ *American Motorcyclist Association*, 188 IBLA at 205.

⁵⁰ *SUWA*, 425 F.3d at 757.

⁵¹ *Id.* (“In sum, nothing in the terms of R.S. 2477 gives the BLM authority to make binding determinations on the validity of the rights of way granted thereunder, and we decline to infer such authority from silence when the statute creates no executive role for the BLM.”). See also *Wilderness Soc’y v. Kane County*, 581 F.3d 1198, 1219 (10th Cir. 2009) (“the Quiet Title Act is the sole avenue by which Kane County can seek to prove the existence of its R.S. 2477 rights in court.”), *rev’d on other grounds*, 632 F.3d 1162 (10th Cir. 2011)(*en banc*).

⁵² *SUWA*, 425 F.3d at 757.

plan, stating that “nothing in federal law requires the BLM to do so.”⁵³ As explained in another case upholding a travel plan, BLM instead could properly presume that only judicially-adjudicated claims were valid:

In *SUWA v. BLM*, 425 F.3d 735 (10th Cir. 2005), the Tenth Circuit explained that, in determining whether a valid R.S. 2477 right-of-way has been created, “the presumption is in favor of the property owner; and the burden of establishing public use for the required period of time is on those claiming it.” *Id.* at 768. Thus, in developing the Travel Plan, the BLM was entitled to rely on this presumption and only recognize those R.S. 2477 rights-of-way for which claimants had previously carried their evidentiary burden.^[54]

In this instance, no court has made a judicial determination concerning the validity of asserted R.S. 2477 rights-of-way in the planning area,⁵⁵ so BLM had no adjudicated R.S. 2477 rights-of-way it needed to recognize in adopting the TMP. BLM followed its policy, in place at the time of the decision, not to make non-binding administrative determinations of R.S. 2477 validity,⁵⁶ and appropriately informed the public that adjudicating R.S. 2477 claims was outside the scope of its planning effort.⁵⁷

BLM also complied with its FLPMA obligations by explicitly making its decision subject to valid existing rights:

[A]ll BLM lands and Federal mineral estate within the GJFO remain subject to valid existing rights as well as subject to the stipulations and conditions of approval (COAs) associated with the given right at the time it was granted, including the right of reasonable access to surface and sub-surface parcels leased for the development of the mineral interest.^[58]

⁵³ *Kane County Utah v. Salazar*, 562 F.3d at 1087.

⁵⁴ *Williams v. Bankert*, 2007 U.S. Dist. LEXIS 77503 at *18.

⁵⁵ Answer at 13.

⁵⁶ *Id.* at 12 (citing BLM Instructional Memorandum (IM) 2010-016 (Nov. 16, 2009) (the IM provided guidance to implement an earlier memorandum that directed BLM “not to process or review any claims under RS 2477, including the use of the disclaimer rule.”). See also *County of San Bernardino*, 181 IBLA 1, 18 (2011) (describing the directive and IM).

⁵⁷ Draft EIS at 1-16; Final EIS at 1-16 and 6-343.

⁵⁸ ROD at 15.

Thus, the ROD is clear that BLM will respect all valid existing rights, which would include any route subsequently determined by a court to be a valid R.S. 2477 right-of-way.

Mr. Siegfried also asserts that BLM's adoption of the TMP violates "the 1997 Appropriations Act" by regulating R.S. 2477 rights-of-way.⁵⁹ Mr. Siegfried is referring to a provision in the Department of the Interior's appropriations act in 1997 that prohibits the Department from issuing final rules governing R.S. 2477: "No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act [Sept. 30, 1996]."⁶⁰

This prohibition has no application to BLM's action in approving the TMP. As both the Board and the Tenth Circuit have previously explained, this provision prohibits the Department from issuing regulations that would govern administrative adjudication of R.S. 2477 claims – regulations that had been proposed at the time the prohibition was enacted.⁶¹ Neither the RMP nor the TMP purports to promulgate such regulations, and BLM purposely did not adjudicate R.S. 2477 claims in developing its RMP and TMP. The prohibition thus has no applicability. The federal courts have rejected similar arguments that the Appropriations Act prohibition prevents BLM from implementing travel management plans.⁶²

In sum, BLM did not err by issuing its TMP without making administrative determinations of the validity of alleged R.S. 2477 rights-of-way. BLM followed proper procedures and was entitled to issue the TMP on the presumption that the routes were not R.S. 2477 rights-of-way.

C. *BLM did not err in designating routes O813, O825, O833, and O2060.*

Mr. Siegfried's appeal of the designation of four routes in Zone O is also premised on his assertion that each of the routes is an R.S. 2477 right-of-way. He requests that

⁵⁹ IBLA 2015-263 SOR.

⁶⁰ U.S. Department of the Interior and Related Agencies' Appropriations Act, 1997, § 108, enacted by the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

⁶¹ *County of San Bernardino*, 181 IBLA at 6-7; *SUWA*, 425 F.3d at 756.

⁶² See *Kane County v. Kempthorne*, 495 F. Supp. 2d 1143, 1154 n.11 (D. Utah 2007) (citing *SUWA*, 425 F.3d at 745-49), *aff'd sub nom. Kane County Utah v. Salazar*, 562 F.3d 1077 (10th Cir. 2009).

four routes, O813, O825, O833, and O2060, “be recognized administratively by the BLM as RS 2477 routes and left open to motorized use and non-motorized use.”⁶³ Except for two segments of route O825 (which were designated for closure after mitigation), BLM designated the routes as “open to all modes of travel, with winter closure.”⁶⁴

For the reasons discussed in the preceding subsection, BLM properly did not make an administrative determination as to whether these Zone O routes were R.S. 2477 rights-of-way and had no obligation to keep the routes open without restriction. While the Board has in the past required administrative validity determinations in limited circumstances involving individual disputes over a specific road,⁶⁵ it has held that no such obligation exists when making route designations in a travel management plan.⁶⁶ When BLM develops a TMP, it is entitled to rely on the presumption that the public lands have not been burdened with an R.S. 2477 right-of-way absent a contrary judicial determination.⁶⁷

The remaining issue raised by Mr. Siegfried regarding Zone O does not indicate any error by BLM. Recognizing that trail O813 (via which the remaining three trails can be reached) can be accessed from a public road by crossing private property, Mr. Siegfried asserts that public access across the private parcel is provided by virtue of a 1949 right-of-way granted to the U.S. Forest Service.⁶⁸ But that fact was known to BLM and has no bearing on whether BLM properly restricted the use of the trails. While BLM was aware of the easement (and a dispute over its continued validity),⁶⁹ BLM’s rationale

⁶³ IBLA 2015-251 SOR.

⁶⁴ Answer at 9-10; Zone O Route Designation Report at 757-60 (O2060), 1274-77 (O813), 1285-1290 (O825) and 1316-20 (O833), available at https://eplanning.blm.gov/epl-front-office/projects/lup/55944/67735/73733/Zone_O_Public_Route_Report_Approved_TMP.pdf (last visited Dec. 12, 2018).

⁶⁵ See, e.g., *Courtney Ayers*, 122 IBLA 275, 278 (1992) (trespass defense based on R.S. 2477 right-of-way). See also *Kane County v. Kempthorne*, 495 F. Supp. 2d at 1155-58 (summarizing IBLA caselaw).

⁶⁶ *Rainer Huck*, 168 IBLA at 398-99 (“BLM did not need to decide the validity of the R.S. 2477 assertions in order to make its route designations, especially since it did not intend its analysis to affect any R.S. 2477 validity determinations and indicated that the Plan would be adjusted to reflect any [judicial] R.S. 2477 decisions.”).

⁶⁷ See notes 46-49 and accompanying text.

⁶⁸ IBLA 2015-251 SOR, attachment (right-of-way deed dated Apr. 12, 1949).

⁶⁹ See Administrative Record, Comments Outreach Correspondence, 3.5A.a, FS Easement 10-15-15 folder of documents (correspondence between the Forest Service and BLM

for its route designations did not include concerns with access across private land.⁷⁰ Instead, BLM limited the use of the routes based on a variety of resource concerns.⁷¹ For example, BLM designated route O813 as open (to all modes of travel) but with winter closure, and provided for cultural mitigation.⁷² BLM's stated rationale was that this action will provide sufficient forage, cover, and protection from disturbance for large ungulates in order to maintain healthy viable populations during critical periods, and BLM took into account the minimization of harassment and impacts on resources, including cultural resources and wildlife elk winter range.⁷³ BLM's decision thus had a rational basis that was not premised on a lack of public access, and Mr. Siegfried has shown no error by BLM in making its designations.

D. *BLM did not err in designating routes G142, G148, and G150.*

Mr. Siegfried's Zone G appeal concerns routes G142, G148, and G150.⁷⁴ They are connected. Route G142 is the main trail of the three, and it is accessed from County Road 222 by travel across privately owned property.⁷⁵ Routes G148 and G150 are smaller spur trails from G142. The TMP restricts the use of the main trail to administrative uses pending the "mitigation" of ensuring a public access easement across the private property.⁷⁶ Required mitigation also includes adequate drainage crossings.⁷⁷ The TMP states that the designation of the main trail will change, once the mitigation measures are satisfied, to "open (all modes of travel)."⁷⁸ However, even after mitigation

discussing the 1949 right-of-way, as well as correspondence from landowners alleging, among other things, that the Forest Service abandoned the right-of-way).

⁷⁰ Answer at 9-10, citing Exh. 9 (the relevant portions of the Zone O Route Designation Report for routes at issue).

⁷¹ *Id.*

⁷² Zone O Route Designation Report at 1274; *see also* GJFO Approved Zone O Map, marking O813 as Open to all uses with Seasonal Limitation.

⁷³ Zone O Route Designation Report at 1274-1275.

⁷⁴ IBLA 201-250 SOR.

⁷⁵ *See* Answer at 8; GJFO Approved Zone G Map; GJFO .kmz (Google Earth) files for Zone G (showing that the main trail also includes route G154, which is a small loop that bypasses closed segment 2427 and connects segments 297 and 2453 of route G142).

⁷⁶ *See* Zone G Route Designation Report at 40-47 (G142) (the relevant portions of the Zone G Route Designation Report covering all three routes at issue are attached as Exh. 6 to the Answer). *See also* GJFO .kmz (Google Earth) files for Zone G (showing all segments of the main trail are restricted and bypassed segment 2427 is closed).

⁷⁷ Zone G Route Designation Report at 40-47.

⁷⁸ *Id.*

the TMP keeps closed route G148 and restricts to administrative use two of three segments of G150.⁷⁹

In his appeal, Mr. Siegfried challenges the designation of the spur trails, stating that BLM unlawfully closed G148 and restricted G150 to administrative use.⁸⁰ Although referencing G142, he does not specifically challenge its designation, but presumably he believes it too should be open immediately to all modes of travel without restriction. Mr. Siegfried believes BLM has erred because each of the routes is an R.S. 2477 right-of-way for which access is already assured across the private property by a 1966 “Right-of-Way Easement.” He has provided a copy of the 1966 right-of-way document, which was granted by private landowners to the State of Colorado “for access by the public during open hunting seasons to the public domain, upon and across the presently existing road located on [description of lands].”⁸¹ In its Answer, BLM states it was aware of the 1966 right-of-way but had not confirmed its validity when it issued the TMP.⁸²

Mr. Siegfried’s allegation concerning Zone G fails for the same reason as his other challenges to the TMP – it is predicated on the routes being R.S. 2477 rights-of-way. None of the three routes has been determined to be an R.S. 2477 right-of-way, so the agency was entitled to regulate the use of the routes in the TMP. Moreover, BLM did not ignore any relevant fact in making its decision. It was aware of the 1966 right-of-way and stated that the designation for the main trail would change to an “open” status, along with a portion of spur G150, once the validity of the easement was confirmed and the other mitigation measures were addressed. BLM identified resource concerns for those segments it would not open after mitigation.⁸³ Mr. Siegfried has shown no error in BLM’s decision-making for these trails.

⁷⁹ Answer at 7-8; Zone G Route Designation Report at 41 (segment 2427 of G142), 51-53 (G148) and 54-57 (G150).

⁸⁰ IBLA 2015-250 SOR.

⁸¹ *Id.* (attachment).

⁸² Answer at 8, citing Exh. 8 (Apr. 14, 2015, email referencing easement).

⁸³ Zone G Route Designation Report at 41-42 (G142-2427), 51-53 (G148), and 55-56 (G150-2387 and 2386).

CONCLUSION

For the foregoing reasons, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,⁸⁴ we affirm BLM's decision.

/s/

K. Jack Haugrud
Administrative Judge

I concur:

/s/

Silvia Riechel Idziorek
Acting Deputy Chief Administrative Judge

⁸⁴ 43 C.F.R. § 4.1.