

JERRY D. REYNOLDS

IBLA 80-882

Decided April 29, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, designating wilderness inventory units. I.U. 35-3, 35-4, and 35-5.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness

Sec. 603 of the Federal Land Policy and Management Act directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

2. Federal Land Policy and Management Act of 1976: Wilderness--Rules of Practice: Appeals

Where, after initial wilderness inventory, the Bureau of Land Management decides that an area might possess wilderness characteristics, an appellant who objects to such a determination must show that there is no realistic possibility that these lands may be suitable for wilderness designation.

APPEARANCES: Jerry D. Reynolds, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Jerry D. Reynolds has appealed from a decision of the Idaho State Director, Bureau of Land Management (BLM), determining that BLM should conduct an intensive wilderness inventory for three units, I.U. 35-3, 35-4, and 35-5, situated in Fremont County, Idaho.

Appellant raised several constitutional arguments and requested a fact finding hearing before an Administrative Law Judge to determine whether the disputed areas have the wilderness characteristics outlined in the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1782 (1976), the Wilderness Act, 16 U.S.C. § 1131 (1976), and the relevant BLM guidelines.

[1] Section 603 of FLPMA directs the Secretary of the Interior to review all public land roadless areas in excess of 5,000 acres, or roadless islands, which possess wilderness characteristics, and to determine their suitability or unsuitability for wilderness designation and report these determinations to the President. This process consists of the inventory phase, the study phase, and the reporting phase.

The decision at issue relates to the inventory phase. The purpose of this phase is the identification and elimination from further wilderness review and management of those areas which fail to meet three basic statutory criteria: (1) Roadless; (2) at least 5,000 acres (with two exceptions not relevant herein); and (3) possessing wilderness characteristics. ^{1/} The inventory phase has itself been bifurcated into two parts: An initial and an intensive inventory. The initial inventory is to screen out units which clearly and obviously do not meet the three elements, noted above, based on readily available existing information. Those units which may possibly meet the criteria are subject to an intensive inventory which involves a thorough examination and the gathering of field data, with full documentation of the character of the unit. Public involvement and input are critical to all phases.

[2] While this decision was only the initial inventory determination, it is evident from appellant's statement of reasons that many of the deficiencies which he perceives in the State Director's decision result from the application of the standards and requirements of the intensive inventory portion of the inventory phase. All that the State Director was required to show in the initial inventory phase was that the possibility existed that the units might possess the requisite wilderness characteristics. Appellant's burden is thus to affirmatively show that there is no realistic possibility that these lands may be suitable for wilderness designation. His submissions fall far short of such a showing.

^{1/} The statute also refers to roadless islands of whatever size. See 43 U.S.C. § 1782(a) (1976). BLM's Wilderness Inventory Handbook also covers areas of less than 5,000 acres but of a sufficient size to make practicable their preservation.

Appellant has requested a fact finding hearing before an Administrative Law Judge. While we recognize that wilderness designations are essentially factual questions, we would point out that the intensive inventory phase is expressly designed to develop these facts. It would thus be counterproductive to order a fact finding hearing on the question of the possibility of inclusion into a wilderness study area prior to the completion of an intensive inventory. An individual who challenges an initial inventory decision bears the burden of showing on the record established that the State Office decision is in error. This the appellant has not done here.

Appellant raises various alleged constitutional defects in FLPMA and BLM's implementation of it. The Board of Land Appeals, as a component of the Department of the Interior, is not the proper forum to determine whether a statute enacted by Congress is constitutional. Alaska District Council of the Assemblies of God, 8 IBLA 153 (1972); Masonic Homes of California, 4 IBLA 23, 78 I.D. 312 (1971). The judicial branch, not the executive branch, has the authority to declare an enactment of Congress to be in conflict with the Constitution. Al Sherman, 38 IBLA 300 (1978). The decision of the State Director must be affirmed.

We would emphasize, however, that this decision involves only the initial inventory. As pointed out, supra, the concerns which appellant raises are more properly dealt with in the intensive inventory. Should appellant object to any decision which results from this inventory, he is, of course, free to appeal that decision to this Board, pursuant to the procedures set forth in the applicable regulations.

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

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

