

**Editor's note: Reconsideration granted en banc; decision vacated by 58 IBLA 166 (Sept. 28, 1981)
-- see that decision for litigation history**

UNION OIL CO.

IBLA 81-454

Decided July 22, 1981

Appeal from a final wilderness decision of the Arizona State Office of the Bureau of Land Management fixing the boundaries of a wilderness study area, unit AZ-020-059.

Decision set aside and case remanded.

1. Administrative Procedure: Adjudication -- Administrative Procedure: Administrative Review -- Appeals -- Federal Land Policy and Management Act of 1976: Inventory and Identification -- Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

While the Board of Land Appeals will give "considerable deference" to Bureau of Land Management designations of Wilderness Study Areas if thorough investigation underlies the Bureau's decision, where an appellant can specifically and convincingly show that there is sufficient reason to change the Bureau's decision, the Board must resolve the issue in favor of appellant. Such is the case where appellant has convinced the Board that the designated Wilderness Study Area is not "wilderness," as that term is described in 16 U.S.C. § 1131(c) (1976), by submitting detailed maps and photographs showing the adverse impact of appellant's open-pit mining operation on the area.

APPEARANCES: John C. Lacy, Esq., Tucson, Arizona, for appellant; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

This appeal is taken from a decision of the Arizona State Office of the Bureau of Land Management (BLM) declaring the final boundaries of a wilderness study area (WSA), unit AZ-020-059 (Arrastra Mountains).

The appellant is Union Oil Company of California whose wholly owned subsidiary, Minerals Exploration Company, owns the Anderson Mine located about 35 miles to the northwest of Wickenburg, Arizona. This open-pit uranium ore mine was originally discovered in 1955 and purchased by appellant in 1975. In 1976 appellant announced the discovery of a uranium orebody in secs. 9-16, T. 11 N., R. 10 W., Gila and Salt River meridian, Yavapai County, Arizona, which is to be developed from Anderson Mine. Appellant has completed most of the steps necessary for the permitting of the mining development, and has initiated the process leading to patent of this land.

On October 21, 1976, Congress passed the Federal Land Policy and Management Act (FLPMA) charging BLM with the responsibility of inventorying all BLM managed lands, their resources and other values. 1/ Under section 603(a) of FLPMA 2/ the Secretary of the Interior (through his delegate, BLM) is directed to identify tracts of public land, generally of 5,000 or more roadless acres, 3/ which may properly be characterized as wilderness; the term "wilderness" is to receive its meaning from the Wilderness Act of September 3, 1964. 4/ If there are sufficient indicia that an identified tract of land has wilderness characteristics, it is designated as a WSA and receives closer study by BLM to determine its suitability as a permanent wilderness area. These studies culminate in recommendations by the Secretary to the President as to whether or not such tracts should be preserved as wilderness. The President will then report his recommendations to Congress, which will make the final determinations.

Pursuant to this statutory authority, BLM designated unit AZ-020-059 as a WSA. 5/ Because of objections made by appellant, the boundary lines of this WSA have been changed by BLM twice, with each change still leaving appellant's concerns unresolved. Appellant argues that the WSA would include portions of waste dumps and tailings areas of the mine's proposed site plan. Appellant also contends that

1/ 43 U.S.C. § 1711(a) (1976).

2/ 43 U.S.C. § 1782(a) (1976).

3/ The Secretary is also required to review "roadless islands of the public lands" in the same manner as the 5,000-acre areas. 43 U.S.C. § 1782(a) (1976). BLM's Wilderness Inventory Handbook also calls for the inclusion of areas of less than 5,000 acres if the tracts are of sufficient size to make their preservation practicable.

4/ 16 U.S.C. § 1131(c) (1976).

5/ This decision was announced by the Arizona State Director by publication in 43 FR 67780 (Oct. 14, 1980).

there are several areas within the WSA from which the current mining activity is so "extremely imposing it cannot be ignored," and that this area is not suitable for a wilderness designation.

As noted above, the controlling factors in determining wilderness characteristics are found in the Wilderness Act, 16 U.S.C. § 1131(c) (1976), which states:

A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal Land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

BLM has instructed its personnel that "[i]mprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored * * *." Organic Act Directive No. 78-61, Change 3, at 4 (July 12, 1979). In support of its contention that its "imprints" "cannot be ignored," appellant has recited several necessary incidents of its mining operations which appellant asserts are sufficiently intrusive as to render the area nonwilderness. For example, appellant has established several monitoring stations throughout the area in order to prevent possible contamination of surface and ground waters, soil and vegetation, and air quality. In addition to these stations, many of which are within the subsequently designated WSA, the more centralized open-pit mining operations, located for the most part outside of the proposed WSA, assertedly constitute a constant source of visual and auditory intrusion that will preclude the possibility of any wilderness experience in the area.

In its statement of reasons for appeal, appellant requests this Board to require BLM to modify the boundaries of the WSA to exclude those portions of the unit where the Anderson Mine constitutes a visual impact. Appellant suggests that this be accomplished by eliminating (1) the area of unit AZ-020-059 to the east of the east boundary of sec. 5, T. 11 N., R. 10 W., and sec. 32, T. 12 N., R. 10 W., and (2) the area south of the Santa Maria River not otherwise eliminated by suggestion (1).

The Office of the Solicitor of the Department of the Interior, which is representing BLM in this matter, has made several plausible arguments in support of BLM's position, but the strongest and most fundamental of these arguments asserts that appellant has failed to meet its burden on appeal. The Solicitor notes that this Board has recently stated that "[c]onsiderable deference must be accorded the conclusions reached by such a process [of a thorough field investigation performed by BLM specialists] notwithstanding that such conclusions might reach a result over which reasonable men could differ." Richard J. Leaumont, 54 IBLA 242, 245 (1981). Also cited in this connection is Sierra Club, 53 IBLA 159 (1981).

[1] The Solicitor has correctly stated the appropriate standard of review for this case, but we emphasize that "considerable deference" is not tantamount to absolute deference. Where an appellant can specifically and convincingly "show that there is sufficient reason to change the result," Save the Glades Committee, 54 IBLA 215, 220 (1981), we must resolve the issue in his favor. Appellant has provided us with several detailed maps and photographs showing the areas affected by the open-pit mine and its incidental operations, and we are convinced that appellant's mining operations will invade, visually and aurally, the proposed WSA to such an extent as to disqualify it as "wilderness" as that term is described in the controlling Wilderness Act, 16 U.S.C. § 1131(c): It is not "an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." Moreover, the mining operation represents an "imprint of man's work" which is substantially noticeable. We note also that the present detractions from the wilderness quality of the area will be exacerbated as appellant pursues its plan to expand mining operations. We hold that the existing boundary of WSA unit AZ-020-059 (Arrastra Mountains) includes within it lands not suitable for designation as wilderness, and it will now be incumbent upon BLM to establish a boundary for this WSA which abates the defects of the existing proposal. In this regard, appellant's suggested modification of the boundaries might profitably be considered.

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 set aside and the case is remanded for action consistent with this opinion.

Douglas E. Henriques
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

CHIEF ADMINISTRATIVE JUDGE PARRETTE CONCURRING:

Both briefs in this case are excellent, and I recognize the merit in the Solicitor's arguments that (1) a determination whether the sights and sounds of appellant's mining operation are so extremely imposing that they cannot be ignored necessarily involves a judgment on which people may disagree, and that (2) the effect of the mine ordinarily ought to be left to the study phase.

In my view, however, in its obvious desire to include the Santa Maria River within the boundaries of the wilderness study area, BLM has failed to take sufficiently into consideration what effect upon the apparently primeval character of the river basin a full resumption of appellant's mining operations might entail. Appellant argues, for example, that Minerals Exploration Company also owns the Palmarita Ranch and that one means of access from the ranch to the mine is along the bed of the Santa Maria River. Further, it argues that the resources of the ranch, including water, may be used in conjunction with the ultimate mine operation. Thus, appellant's potential use of the river appears to exceed mere access to its "minor" monitoring devices.

Moreover, appellant's map No. 1, appended to its brief, indicates that BLM's proposed wilderness area boundary overlaps appellant's millsite claims boundary, as well as its proposed patent claims area, to a considerable extent. I find it questionable whether such an overlap is necessary where the proposed wilderness area consists of well over 100,000 acres, and the mining activity involved is not only substantial but goes back more than 25 years.

Bernard V. Parrette
Chief Administrative Judge