

CONOCO, INC., ET AL.

IBLA 80-723, 80-821,
80-969, 81-89

Decided December 29, 1981

Appeals from decisions of the Montana State Director, Bureau of Land Management, denying protests of the designation of certain inventory units as wilderness study areas. MT-076-026, etc.

Affirmed.

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

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities are entitled to considerable deference.

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

Where the record evidences BLM's first-hand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

3. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act--Words and Phrases

"Roadless." H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976), provides a definition "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory

Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

APPEARANCES: John A. Smart, Senior Landman, Denver, Colorado, for Conoco, Inc.; Max A. Hansen, Esq., Dillon, Montana, for the Beaverhead Chamber of Commerce; Bill Cunningham, Regional Representative, Helena, Montana, for the Wilderness Society and the Montana Wilderness Association, Burns & Dwyer, Attorneys at Law, Dillon, Montana, for Joseph R. Wellborn, et al.; Dale D. Goble, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Conoco, Inc. (Conoco), appeals from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 13, 1980, denying its protest of the designation of inventory unit MT-076-026 as a wilderness study area (WSA). This identical WSA, known as the Bell/Limekiln Canyon WSA, is also the subject of appeals by the Beaverhead Chamber of Commerce (IBLA 80-821), the Wilderness Society/Montana Wilderness Association (IBLA 80-969), and by Joseph Wellborn et al. (IBLA 81-89). The appeals filed by the Beaverhead Chamber of Commerce and by the Wilderness Society/Montana Wilderness Association (hereafter the Wilderness Society) also involve other WSA designations. These designations will be addressed in separate sections of this opinion.

On February 22, 1980, the Montana State Director published a notice in the Federal Register, 45 FR 11920, stating that the Bell/Limekiln Canyon inventory unit had been designated a WSA. The size of the WSA was 6,629 acres. Conoco protested this decision and its protest was denied on May 13, 1980. A timely notice of appeal was filed by Conoco, and a statement of reasons was received by BLM shortly thereafter. On August 7, 1980, the Acting State Director, acting in response to protests by the Wilderness Society published a notice stating that the acreage of the Bell/Limekiln Canyon WSA had been increased by 2,959 acres. 45 FR 52462. Conoco protested this action by the Acting State Director and states on appeal that BLM acknowledged this protest and advised Conoco to amend its pleadings before this Board. Although partially successful in its protest of April 25, 1980, the Wilderness Society appealed BLM's action increasing the size of the WSA, arguing that the increase should have been greater.

The Beaverhead Chamber of Commerce filed a timely protest on April 28, 1980, objecting to the designation of the Bell/Limekiln Canyon unit as a WSA. This protest was denied by a decision dated June 25, 1980; a timely notice of appeal and statement of reasons were

subsequently filed. 1/ On the basis of the record before us, it does not appear that Joseph Wellborn et al. ever protested BLM actions in these matters. The file reveals, however, that a notice of appeal and statement of reasons have been filed by this group of appellants. 2/

The lands at issue in the Bell/Limekiln Canyon WSA are located within the overthrust belt in T. 11 S., R. 11 W., Principal meridian. The wilderness inventory for this unit was accelerated ahead of the statewide schedule because of potential conflicts with energy exploration and development. 45 FR 68761 (Oct. 16, 1980). Conoco alleges that it owns oil and gas leases in the WSA and has carried out seismic operations there in October 1979.

In its statement of reasons on appeal, Conoco maintains that the WSA provides a bleacher seat for viewing trains, trucks, and motorboats operating outside WSA boundaries. While acknowledging that Limekiln Canyon and Bell Canyon possess naturalness and outstanding opportunities for solitude or a primitive and unconfined type of recreation, it maintains that these canyon areas by themselves do not meet the minimum acreage requirement as set forth by section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). This section directs the Secretary to review those roadless areas of 5,000 acres or more of the public lands, identified

1/ In pleadings filed Aug. 6, 1980, and Oct. 6, 1980, appellant sought to amend its notice of appeal to include as appellants the Beaverhead County Board of Commissioners, Beaverhead County Planning Board, and the Madison County Commissioners. Of this number, only the Beaverhead County Planning Board had protested BLM's decision to include as WSA's the eight units under appeal by appellant Chamber of Commerce. The Planning Board did not file a notice of appeal to the denial of its protest so far as the record discloses. The protest denial is dated June 9, 1980. To allow it to join an ongoing appeal as co-appellant is to allow it to ignore the 30-day period set forth at 43 CFR 4.411 for the timely filing of appeals. The Board of Commissioners and the Madison County Commissioners, having never protested BLM's decision, are not parties to the case. Elaine Mikels, 41 IBLA 305 (1979). The right of appeal is limited to a party to a case who is adversely affected by a decision of BLM. 43 CFR 4.410. Accordingly, leave to amend the notice of appeal to include the Beaverhead County Board of Commissioners, Beaverhead County Planning Board, and the Madison County Commissioners is denied. See also C & K Petroleum Co., 59 IBLA 301 (1981) at n.1. We point out that our action here is distinguishable from that taken in the appeal of Joseph Wellborn, discussed infra, by the fact that Wellborn's notice of appeal was filed during the protest period set up by BLM.

Our discussion, infra, of the arguments of the Chamber on appeal may be construed as a denial of its request for a hearing.

2/ A notice published in the Federal Register on Oct. 16, 1980, appears to authorize Wellborn's appeal without the need for his filing a protest. 45 FR 68761.

during the inventory required by section 201(a) of the Act as having wilderness characteristics, and from time to time report to the President his recommendations as to the suitability or unsuitability of each such area for preservation as wilderness.

Appellant's references above to naturalness and outstanding opportunities for solitude and a primitive and unconfined type of recreation are appropriate, because these concepts form part of the definition of wilderness found in section 2(c) of the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Therein, Congress prescribed:

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 [sic] 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.

Naturalness, Conoco contends, is not present throughout the Bell/Limekiln Canyon WSA, because there exist roads, blade-cut mining prospect ditches, fences, and other rangeland improvements within its boundaries. Outstanding opportunities for solitude are nonexistent beyond the Bell or Limekiln Canyon walls, appellant continues, because the area is largely unwooded. Significant detractor further exists by reason of the unit's location in an area well situated for hydrocarbon reserves.

In response, counsel for BLM correctly points out that an intrusion visible from the WSA but located outside the WSA is properly considered during the study phase of the wilderness review process unless its imprint is adjacent to the unit and its impact so extremely imposing that it cannot be ignored. Organic Act Directive (OAD) 78-61, Change 3, July 12, 1979. Conoco makes no allegations which would bring this issue, commonly known as the "sights and sounds" issue, into the inventory phase of the review process. The study phase begins upon completion by BLM of its inventory duties. While Conoco's argument may ultimately cause BLM to recommend the Bell/Limekiln Canyon WSA as unsuitable, this argument, absent the allegations set forth above, is

premature at this time. See Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981).

[1] Conoco's contention that the quality of naturalness is lacking in parts of the WSA is supported by statements alleging the existence of blade-cut mining prospect ditches, fences, roads, and rangeland improvements. While these items are undeniably intrusions, we note that Congress did not require that a wilderness area be totally free of the imprints of man. Indeed, the definition adopted by Congress specified that a wilderness be an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." 16 U.S.C. § 1131(c) (1976) (emphasis added).

H.R. Rep. No. 540, 95th Cong., 1st Sess. 6-7 (1977), provides some guidance for understanding the concept of naturalness. This report, prepared to accompany H.R. 3454, a bill later enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978), contains examples of impacts on naturalness that may be allowed in certain cases in a wilderness area. Among these are: trails, trail signs, bridges, fire towers, fire breaks, fire suppression facilities, pit toilets, fisheries enhancement facilities, fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, and other scientific devices. Based on this guidance, BLM published a list of intrusions on the public lands that, it found, could be allowed in a wilderness area. These include research monitoring markers and devices, air quality monitoring devices, fencing, and spring development. Wilderness Inventory Handbook at 12-13, September 27, 1978.

The Congressional purpose that a wilderness area generally appear to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable illustrates the highly subjective judgment which BLM must make in determining whether an area possesses the quality of naturalness. This judgment is entrusted to Bureau personnel whose reports evidence firsthand knowledge of the land. Assisting BLM are comments from numerous groups and individuals whose interests span a broad spectrum. BLM's judgment in such matters, we feel, is entitled to considerable deference. Such deference will not be overcome by an appellant expressing simple disagreement with subjective conclusions of BLM. This is not to suggest that we abdicate our review of subjective wilderness judgments. We do mean to suggest, however, that an appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome the deference we accord to BLM in such matters. C & K Petroleum Co., 59 IBLA 301 (1981); National Outdoor Coalition, 59 IBLA 291 (1981); Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). Conoco's submissions on appeal do not rise to this level.

[2] Whether the Bell/Limekiln Canyon WSA possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation calls once again for a highly subjective judgment by BLM. BLM's narrative describing inventory unit MT-076-026 mentions steep and rugged canyon-like walls varying in height from 300 feet in the North

Fork of Deer Canyon to 700 feet in Bell Canyon. Lesser drainages dissect the unit in all directions, allowing a visitor to avoid the sights and sounds of others within the unit. This variety of topography, the narrative continues, offers outstanding opportunities for hiking, backpacking, and horseback riding. The subjective nature of the judgment required of BLM is similar to that posed above by the naturalness issue. Our resolution of this question will follow similar lines.

We believe that BLM's judgment as to whether a unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference. By this statement, we do not mean to imply that BLM's determination will be immune from review. To the contrary, BLM's documentation for its judgment will be carefully studied, as will the documentation of an appellant. An appellant will, however, have a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that Conoco has met this burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation.

[3] Conoco's claim that roads exist within the Bell/Limekiln Canyon WSA is unaccompanied by allegations that mechanical improvements or mechanical maintenance has taken place on such routes. Such allegations, inter alia, are necessary to support a finding that a road exists in a WSA. For purposes of its inventory, BLM has relied upon the following definition of a "road," quoted verbatim from the legislative history of FLPMA, H.R. Rep. No. 1163, 94th Cong., 2d Sess 17 (1976): "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." Conoco's allegations of roads which are "well-travelled" and of "sufficient stability that surfacing or grading is not necessary" are insufficient to reverse BLM's findings in this respect, as BLM's findings are in conformity with the specific definitions of "road" and "way" to be applied in such cases, rather than upon the general definitions employed in common parlance. See California State Lands Commission, 58 IBLA 213 (1981).

Conoco's final argument on appeal, viz., that the location of the Bell/Limekiln Canyon WSA in an area well situated for hydrocarbons detracts from its suitability for wilderness preservation, is ably answered by counsel for BLM. During the study phase, counsel states, BLM will consider the competing values, uses, and resources of the lands within a WSA. Such considerations are premature, however, during the inventory stage of the wilderness review process. While consideration of the oil and gas potential of this area may cause BLM to find the Bell/Limekiln Canyon WSA unsuitable for wilderness preservation, BLM has properly omitted consideration of this issue during the inventory phase.

Arguments by the Beaverhead Chamber of Commerce concerning the unsuitability of the Bell/Limekiln Canyon Unit as a WSA are generally

similar to those voiced by Conoco. Like Conoco, the Chamber focuses upon certain intrusions within the WSA which, it argues, prevent a finding of naturalness within the WSA. Among these are logging debris, claim stakes, and prospect holes. The Chamber points also to ranching operations beyond the unit's western boundary and to the highway, stockyards, houses, and railroads visible beyond unit boundaries from the unit's central ridge ("sights and sounds"). Roads constructed by horse teams and fresnos are alleged to exist in Bell and Limekiln Canyons. These roads, appellant contends, are in use by ranchers, hunters, and other recreationists.

Our resolution, above, of similar issues posed by Conoco is applicable also to these arguments of the Chamber. In brief, we restate our position that BLM's judgments as to an area's naturalness will be given considerable deference by this Board. Nothing urged upon us by the Chamber is sufficient to overcome this deference. Allegations of sights and sounds beyond the boundaries of the WSA are more properly considered during the study phase of the review process, not, as maintained by appellant, during the inventory phase, unless they are so apparent as to be obviously disqualifying. In the absence of allegations of mechanical improvement and mechanical maintenance, inter alia, appellant has not alleged sufficient facts to reverse BLM's characterization of a vehicle route as a way. A way maintained solely by the passage of vehicles does not constitute a road.

The Chamber points also to a 160-acre private inholding as evidence of a substantially noticeable imprint of man. This land, BLM notes, while wholly enclosed within WSA boundaries, is not part of the area undergoing wilderness review. Further, its area is not included in calculating the acreage of the Bell/Limekiln Canyon WSA (9,588 acres). Wilderness Inventory Handbook at 12. While the presence of an inholding may cause BLM to find an area to be unsuitable for wilderness preservation, its presence does not preclude the Bell/Limekiln Canyon inventory unit from being designated a WSA. See also OAD 78-61, Change 2, June 28, 1979, at 3.

An appeal by Joseph Wellborn et al. is taken from the State Director's decision increasing the acreage of the Bell/Limekiln Canyon WSA. 45 FR 52462 (Aug. 7, 1980). Although the Federal Register notice announcing this decision specified that individuals disagreeing with this increase should file a protest by September 15, 1980, counsel for appellants filed no such pleading, but instead filed a notice of appeal on September 12, 1980. Thus, this Board does not have before it a decision by BLM specifically addressing appellants' arguments. Indeed, the Board is unsure of the names of some of the nine appellants joining Joseph Wellborn in this appeal.

The problem caused by premature appeals has been addressed at some length in California Association of Four Wheel Drive Clubs, 30 IBLA 383 (1977). Therein, at 385, we noted that such appeals could be treated as protests by the State Office involved. See also Texas Oil and Gas Co., 58 IBLA 175, 185 (1981); Elaine Mikels, 41 IBLA 305 (1979); Duncan

Miller (On Reconsideration), 39 IBLA 312 (1979). If, however, the State Office transmits a premature appeal to this Board and subsequently makes known its views adverse to an appellant's position on appeal, this Board has acted on the appeal without remanding the case for a State Office decision. Julie Adams, 45 IBLA 252 (1980); California Association of Four Wheel Drive Clubs, supra. Although no such communication has been received from the State Office in the instant appeal, the record does contain BLM's response to a protest raising the identical issue posed by Wellborn et al. on appeal. See the State Director's response, dated September 24, 1980, to the protest of Leonard Hansen. Wilderness Inventory case file MT-076-026. Accordingly, we proceed to the merits of the appeal.

The issue raised by Wellborn et al. is whether the north-south "ridge road" in secs. 15 and 22, T. 11 S., R. 11 W., is a road or a way. BLM concluded that this route was in fact a way, and this finding caused it to alter part of the unit's western boundary, thereby increasing the WSA's acreage by 2,959 acres. 3/ Appellant Wellborn alleges that the portion of the ridge road in N 1/2 sec. 15 and S 1/2 sec. 10, T. 11 S., R. 11 W., has received construction and maintenance, and, moreover, that he has worked the road with a blade. This allegation is followed by the somewhat inconsistent statement that the ridge road does not need actual construction and maintenance in secs. 16 and 22. BLM's finding that the ridge route is a way was based upon a field tour and a review of its final inventory findings. 4/ Wellborn's allegations are insufficient to reverse BLM's boundary modification, because there is lacking in them specific information as to who constructed and maintains the ridge route by mechanical means and when such activities occurred. In the absence of such information, we grant considerable deference to BLM's findings in such matters. National Outdoor Coalition, supra at 299-300.

The boundaries of a WSA, although the product of considerable field work by BLM, may yet be modified by BLM. During the study phase of the wilderness review program, BLM may adjust WSA boundaries which are found to be inappropriate because of the imprints of man ("sights and sounds") outside a WSA. In addition, boundaries may be modified to reflect considerations based upon the manageability of a unit and the competing land uses and resources therein. Public comment during the study phase is invited and may cause a modification of those boundaries to which appellants object, supra. See 45 FR 75574, 75575 (Nov. 14, 1980).

The appeal by the Wilderness Society and the Montana Wilderness Association is taken from the State Director's decision of July 24, 1980,

3/ Letter to Bill Cunningham, regional representative of the Wilderness Society, dated July 24, 1980, from the State Director (attached as exhibit 1 to appellants' statement of reasons).

4/ Id.

increasing the size of the Bell/Limekiln Canyon WSA by 2,959 acres. This decision was issued in response to a joint protest by these groups seeking to increase the size of the WSA by approximately 15,000 acres. After additional field work, appellants have reduced the area in controversy to approximately 1,300 acres in secs. 17-20, T. 11 S., R. 10 W. 5/ Appellants contend that the State Director erred in holding that neither naturalness nor outstanding opportunities for solitude exist in the area under appeal. The State Director rejected these lands, inter alia, from further wilderness review, finding that the impacts of man are obvious throughout these segments and that the lands no longer appear to be natural. The Director identified these impacts as vehicle ways with several visible bench cuts on the mountain slopes and a very visible pipeline right-of-way scar across an open mountain meadow.

Appellants' contentions on appeal thus reduce to a disagreement over the subjective issues of whether an area possesses naturalness or outstanding opportunities for solitude. Our discussion above of similar issues is appropriate here. BLM's judgment in these subjective areas is, we believe, entitled to considerable deference. The allegations of appellants are insufficient to overcome this deference. Accordingly, BLM's decision of July 24, 1980, is affirmed as to the Bell/Limekiln Canyon WSA.

The notice of appeal filed by the Wilderness Society and the Montana Wilderness Association on August 22, 1980, also seeks review of the State Director's decision to drop from further wilderness consideration units MT-076-025 and MT-076-059. These areas, known as the McCartney Mountain/Sandy Hollow unit and the Block Mountain unit, respectively, present similar issues on appeal and will be discussed jointly. 6/ On February 22, 1980, the State Director announced in the Federal Register his decision to drop the McCartney Mountain/ Sandy Hollow unit and the Block Mountain unit from further wilderness consideration. 45 FR 11920. Appellants timely protested this decision, arguing that these units possessed the required wilderness characteristics. Appellants also urged that a heavily impacted mining area southeast of McCartney Mountain be excluded from the unit and further wilderness consideration.

In a decision of July 24, 1980, the State Director informed appellants that the McCartney Mountain/Sandy Hollow unit was dropped from

5/ This description of lands is set forth in the statement of reasons filed by the Wilderness Society on behalf of itself and the Montana Wilderness Association. Comments received from the Montana Wilderness Association place the area in dispute in secs. 19-21, 28, 33, T. 11 S., R. 10 W.

6/ The McCartney Mountain/Sandy Hollow unit was initially recommended for WSA status, 44 FR 55439 (Sept. 26, 1979), and later dropped from wilderness consideration after evaluation of inventory data and public comments. 45 FR 11920 (Feb. 22, 1980). The Block Mountain unit was at all times determined not to possess wilderness characteristics. Id.

further wilderness review because man-made "impacts" existed on the lands in significant numbers. These impacts, consisting of a road, vehicle ways, mining effects, spring developments, and other man-made features, were found by the State Director to deprive the area of naturalness. The Block Mountain unit was dropped from further wilderness review, because it lacked outstanding opportunities for either solitude or for a primitive and unconfined type of recreation. In a letter to the State Director prior to this decision, but after the protest period had ended, appellants sought a major revision of the McCartney Mountain/Sandy Hollow unit boundaries. The State Director's decision did not address the revision proffered by appellants.

On appeal, appellants reiterate their protest arguments and contend that the State Director's failure to address the major boundary revision was error. This revision would have divided the area at issue into two units: a 6,000-acre unit to the west of Chokecherry Gulch and a 14,000-acre unit to the east of Chokecherry Gulch including the 6,700-acre Block Mountain parcel.

Assuming, arguendo, that error could be found in the State Director's failure to address an untimely argument, we note that appellants' proposed boundary revisions are unaccompanied by any explanation as to why BLM's boundaries are in error. Furthermore, appellants' proposed revisions are lacking any explanation for their own selection. Appellants are in effect asking the State Director to scrap the boundaries in place at the time of his February 22, 1980, announcement and substitute others without justification for this substitution. The purpose of the protest period is not to encourage protestants to submit their personal inventory unit boundaries to BLM and require BLM to explain why it does not adopt these boundaries. Any protest deserving of consideration by BLM must state its objection to a proposed decision of BLM and provide a solid basis for such objection. BLM should not be required to address boundary revisions without explanation as to why such boundaries are where they are and why BLM's boundaries are in error.

We note yet a further flaw with appellants' arguments. As proposed by the Wilderness Society, the Block Mountain inventory unit is to be joined to the area east of Chokecherry Gulch to form a unit of approximately 14,000 acres. BLM dropped the Block Mountain unit from further wilderness review because it did not possess outstanding opportunities for either solitude or a primitive and unconfined type of recreation. The merger proposed by appellants is designed to remedy this deficiency by allowing the Block Mountain unit to share the outstanding opportunities acknowledged by BLM to exist in the McCartney Mountain/Sandy Hollow unit.

The flaw in this proposal is apparent upon inspection: the Block Mountain unit is not contiguous with those lands to which it is to be joined. The western boundary of the Block Mountain unit is private land. Although we acknowledge that this unit does corner those lands to which appellants would join it, the resulting merger

does not result in a parcel of contiguous land. As set forth in the Wilderness Inventory Handbook at 6, a unit fulfills the size requirements of section 603(a) if it is at least 5,000 contiguous roadless acres of public land. The term "contiguous" is defined therein as "lands or legal subdivisions having a common boundary; lands having only a common corner are not contiguous." Id. at 15. The boundary revision sought by appellants does not result in a contiguous unit. BLM's failure to address such flawed revisions will not support a reversal of its July 24, 1980, decision. BLM's determination that the Block Mountain Unit possesses outstanding opportunities for neither solitude nor a primitive and unconfined type of recreation is entitled to considerable deference by this Board. Nothing offered by appellants overcomes this deference.

The narrative summary describing the McCartney Mountain/Sandy Hollow unit points to a fatal shortcoming in this unit:

A great number of impacts are located both on the unit and the inholdings within the unit. Human impacts in the area include: mining activities, vehicle ways, fences, spring developments, junk automobiles, refuse sites, several abandoned cabins, a 200 foot long water diversion ditch and a 1/4 mile long transmission line.

The spatial distribution of these impacts is such that man's work is evident in most of the area. Due to the cumulative effect of these human imprints the overall naturalness of the unit is significantly impacted.

At 1.

This distribution of impacts over most of the McCartney Mountain/Sandy Hollow unit is adequate support for BLM's finding that naturalness is absent from this unit. As we have said above, BLM's finding that naturalness is absent from a unit is a subjective determination to which this Board gives considerable deference. Appellants' arguments on appeal amount to little more than simple disagreement with this conclusion and do not overcome the deference we accord to BLM in this matter.

The remaining units at issue are the subject of an appeal by the Beaverhead Chamber of Commerce. At issue are the WSA designations for the following units: Ruby Mountains, MT-076-001; Blacktail Mountains, MT-076-002, East Fork Blacktail Deer Creek, MT-076-007; Hidden Pasture Creek, MT-076-022; Hennebery Ridge, MT-076-028; Farlin Creek, ^{7/} MT-076-034; and Axolotl Lakes, MT-076-069.

^{7/} We note that the acreage of the Farlin Creek WSA is 1,260 acres, far below the 5,000 acre minimum set forth in section 603(a) of FLPMA. In the Board's decision in Tri-County Cattleman's Assoc., 60 IBLA (1981), we indicated that the authority to study such an area is derived from BLM's general management authority of the public land, not from section 603(a) of FLPMA.

In each of these units, appellant points to man's impact on the land and argues that naturalness is lacking in such unit. Impacts cited by appellant include fencing, mining exploration, spring improvements, corrals, stock driveways, old cabins, logging, contour furrowing, defoliation, and vehicle ways. BLM's response to such arguments is the contention that such impacts are not substantially noticeable because of the topography of the area and the spatial distribution of such impacts. There is thus present the recurrent disagreement between BLM and appellants over the subjective question of whether an area possesses naturalness. A similar disagreement is present over the question whether an area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation. Our resolution above of these issues makes extended discussion here unnecessary. Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective determinations as to whether an area possesses naturalness or outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to great deference. Appellant's arguments have not overcome this deference accorded to BLM.

In each of the units on appeal by the Chamber, appellant alleges the existence of roads. As set forth above, H.R. Rep. No. 1163 defined the term "roadless" to refer to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. The allegations by the Chamber typically refer to some form of mechanical improvement but become vague in alleging performance of maintenance by mechanical means. In the Blacktail Mountains WSA, for example, appellant alleges that a road on both forks of Jake Canyon was constructed "initially by horsedrawn machinery for logging purposes and has been maintained and used since then for logging, mineral exploration and mining, hunting and other recreation." Statement of reasons at 13. In the Hidden Pasture WSA, appellant refers to four roads therein, all of which were "graded and maintained by the Briggs Ranch, a permittee, through the late 1950's and the 1960's * * * [and] are still used by the present permittees and hunters." *Id.* at 18. Roads in the Farlin Creek and Axolotl Lakes WSA's are alleged to have been constructed approximately 100 years ago and "with a minimum amount of maintenance * * * have been in constant use since the time of initial construction." *Id.* at 26.

Statements such as those quoted above are insufficient to compel a redrawing of WSA boundaries because there is lacking in each an allegation that maintenance has been carried out by mechanical means at any time within even the last decade. While we acknowledge the statement set forth in the Wilderness Inventory Handbook that maintenance does not necessarily mean annual maintenance (at 5), we are not free to overlook the requirement that a road be mechanically maintained. As set forth in H.R. Rep. No. 1163 at 17, quoted supra, "[a] way maintained solely by the passage of vehicles does not constitute a road."

Allegations by appellant of the existence of roads in the Henneberry Ridge unit are stronger. Appellant's protest of April 25, 1980, alluded to roads which "have been constructed by tractor and maintained by dozer or heavy equipment." Among these is a route in secs. 27, 34, and 35, T. 8 S., R. 11 W., identified as "Road E" on appellant's exhibit G. This exhibit notes that road E "has been maintained by dozer in yr. past." Appellant's statement of reasons, while not specifically addressing road E, notes that "[d]uring the past 20 years, bulldozer work has been sufficient to allow regular use by the grazing permittee" (at 23-24).

BLM's response to appellant's protest was an acknowledgement of "vehicle ways in Sections 27, 28, 34, and 35, T 9 S, R 11 W [sic]." While appellant's allegation of a road in the Henneberry Ridge unit is stronger than its similar allegations in other units, it too is insufficient to cause BLM to redraw WSA boundaries. In National Outdoor Coalition, supra, this Board held:

In the absence of specific allegations setting forth who improved and maintains a vehicle route by mechanical means and when such activities occurred, we believe that BLM's determination that a vehicle route does or does not meet the definition of a road is entitled to great deference.

Appellant's allegations fall short of the mark and do not overcome the deference we accord to BLM in such matters.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the Montana State Office are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

