

CITY OF COLORADO SPRINGS

IBLA 81-435

Decided January 15, 1982

Appeal from decision of Colorado State Office, Bureau of Land Management, dismissing protest of designation of wilderness study area CO-050-016.

Affirmed.

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

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal and such judgments may not be overcome by expressions of simple disagreement.

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

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

APPEARANCES: Gregory L. Johnson, Esq., Colorado Springs, Colorado, for appellant; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The City of Colorado Springs has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated January 22, 1981, dismissing its protest of the designation of inventory unit CO-050-016 (Beaver Creek) as a wilderness study area (WSA).

On November 14, 1980, the BLM State Office published its final intensive wilderness inventory decision in the Federal Register, in part designating 26,150 acres of land in unit CO-050-016 (Beaver Creek) as a WSA. 45 FR 75584 (Nov. 14, 1980). By letter dated December 4, 1980, the City protested designation of the unit as a WSA. In a January 22, 1981, decision the Acting State Director denied the protest responding specifically to each element of the protest. The City filed a timely appeal.

In its statement of reasons for appeal, appellant reiterates most of the arguments made in its letter of protest. Appellant alleges that the unit contains roads which were created and maintained by mechanical means. It states that some of the roads within the unit had "recently" been maintained, "including Trail Gulch Road where fallen timber was cleared," and that vehicular access on many of the roads is "possible." Appellant notes that "military helicopters patrol certain areas adjacent to the study area" and that the vista of the Arkansas River is available from more than 40 percent of the area, "including such significant impacts of man as mining activity, dust columns from vehicles on adjacent roads, as well as reservoirs and industrial activity." Appellant states that BLM had given no consideration "to possible future reductions in the quantity [or quality] of water" flowing through the unit. Appellant also states that BLM had failed to consider the impact of man in the form of stock ponds, dams, powerlines, mines and a "radioactive contaminated site" situated in sec. 7, T. 17 S., R. 68 W., sixth principal meridian, Colorado.

In addition, appellant contends that BLM should have compared unit CO-050-016 with those adjacent areas identified by the Forest Service as potential wilderness areas and subsequently dropped from the Forest Service's wilderness review, in order to judge its relative "superiority or inferiority." Finally, appellant argues that BLM did not consider the "manageability" of the area as a wilderness unit, especially in view of the area's limited access.

The BLM State Office decision was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section provides, in relevant part, that: "[T]he Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 [16 U.S.C. § 1131 (1976)]." 43 U.S.C. § 1782(a) (1976). From time to time thereafter, the Secretary is required to report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the BLM State Office pursuant to section 603(a) of FLPMA has been divided into three phases by BLM:

Inventory, study, and reporting. The BLM decision to designate the Beaver Creek unit as a WSA marks the end of the inventory phase and the beginning of the study phase.

The key wilderness characteristics described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), which are assessed during the wilderness review process are size, naturalness, and either an outstanding opportunity for solitude or a primitive and unconfined type of recreation. See "Wilderness Inventory Handbook" (WIH), dated September 27, 1978, at 6.

In addition, in order to qualify for further study pursuant to section 603(a) of FLPMA, an area must be "roadless." 43 U.S.C. § 1782(a) (1976). The term roadless is defined as "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" (WIH at 5). This definition was adopted by BLM from H.R. Rep. No. 1163, 94th Cong., 2nd Sess. 17 (1976).

Appellant alleges that unit CO-050-016 contains several "roads" which were originally constructed with heavy machinery, that such roads were constructed to provide access for mining, grazing, and motorized recreation, and that "some" roads had been recently maintained, the only specific reference being to "Trail Gulch Road." However, appellant has failed to provide any evidence in support of these allegations. The mere allegations are insufficient to require reversal of BLM's findings on this issue. In the absence of contrary information, we grant considerable deference to the findings of BLM in such matters. Conoco, Inc., 61 IBLA 23 (1982); National Outdoor Coalition, 59 IBLA 291, 299-300 (1981). <sup>1/</sup>

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<sup>1/</sup> In its protest appellant had stated:

"Two major and several minor roads totaling approximately 20 miles exist within the boundaries of the Beaver Creek proposed WSA. The roads identified are all the products of road building machinery, primarily bulldozers, as evidenced by cuts and fills. The primary reasons for road construction was [sic] determined to be access for mining, grazing, and motorized recreation."

In response to the protest, the Acting State Director stated in his Jan. 22, 1981, decision:

"The two major 'roads' mentioned in your letter have not been maintained since the late 1960's and are not passable by four-wheel drive vehicle. The total length of these two ways is approximately 6 miles. As previously discussed in the intensive inventory report for this unit, most of these ways are naturally revegetating. Wheel tracks, though visible, are grown over with grass and are considered minor imprints of man.

"Since the ways in this unit have not been improved and maintained by mechanical means to insure relatively regular and continuous use, they are not considered roads for the purposes of the BLM wilderness review."

[1] As stated by section 2(c) of the Wilderness Act, supra, for an area to qualify as wilderness, the imprint of man's work must be "substantially unnoticeable." (Emphasis added.) 16 U.S.C. § 1131(c) (1976). The Act does not require that the hand of man be completely unnoticeable. Accordingly, certain man-made structures and marks may be evident in an area without affecting its suitability for designation as wilderness. See WIH at 12-13. Furthermore, the imprint of man must be viewed in an overall sense in order to assess properly its impact. See WIH at 13. 2/ Assessing the naturalness of an area necessarily involves making highly subjective judgments. In Conoco, Inc., supra at 28, we stated that BLM's judgment in such matters is entitled to considerable deference. An appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome that deference. C & K Petroleum Co., 59 IBLA 301 (1981); National Outdoor Coalition, supra.

We have carefully reviewed BLM's inventory of the "[i]mprints of man" within unit CO-050-016 and it is apparent that BLM fully and adequately considered the imprints cited by appellant, with one major exception. Appellant alleges the existence of a radioactive contaminated site in sec. 7, T. 17 S., R. 68 W., sixth principal meridian, Colorado. The record contains no discussion of the existence of such a site. 3/ Appellant has raised this allegation for the first time on appeal. If present within unit CO-050-016, such a site would probably disqualify some portion of the unit from further consideration as a WSA. As stated by BLM in its WIH at 13: "Significant man-caused hazards, when considered unsafe for public use, such as the existence of unexploded bombs and shells from military activity and radioactive contaminated sites would probably disqualify an area from further consideration." (Emphasis added.) However, since this allegation is being made initially on appeal, and appellant has failed to provide any supporting information, and BLM has not had an opportunity to investigate, we will not set aside the decision on this basis. Rather, we

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2/ With regard to the presence of ways within the unit and the asserted lack of revegetation capability, we note that BLM may also assess the "possibility of an area returning to a natural condition as part of the inventory process." See WIH at 14. If it is "reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level, either by natural processes or by hand labor," an area may be further considered for designation as a WSA (WIH at 14). (Emphasis in original.) Appellant has not presented evidence that the identified ways would not revegetate to a "substantially unnoticeable level."

3/ BLM's intensive inventory maps and photo documentation for unit CO-050-016 reveal only the existence of a way and the remains of an old gold mine in section 7. See intensive inventory documentation at 7D and 8D, and slides B7, B8, and B9.

will permit unit CO-050-016 to receive further consideration as a WSA, with the proviso that BLM should determine whether there is, in fact, a radioactive contaminated site in the unit. If so, it should be eliminated from the WSA by an appropriate adjustment of the WSA boundaries.

Appellant has also challenged the WSA designation on the basis that the area lacks certain wilderness characteristics due to the aural and visual intrusion of outside "sights and sounds." In this regard, Organic Act Directive (OAD) 78-61, Change 3, July 12, 1979, states at 4:

Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints 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, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

Therefore, outside "sights and sounds" should be considered during the inventory process, where they might affect an area's wilderness characteristics. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981).

In an evaluation of public comments regarding its proposed WSA decision, including those of appellant, BLM considered the effect of outside "sights and sounds": "None of the imprints of man outside the unit are significant enough to disqualify the unit from being considered in a natural condition." Moreover, we can find no basis for concluding that the outside "sights and sounds," identified by appellant, significantly intrude on unit CO-050-016.

Appellant has failed to establish that the outside "sights and sounds" are either substantially noticeable, such as to affect the area's naturalness, or that they render the area devoid of outstanding opportunities for solitude. As we have previously stated in Tri-County Cattlemen's Association, 60 IBLA 305, 309 (1981), outstanding opportunities need not be available at all times and at all places in a unit.

Certain other concerns raised by appellant are not properly considered during the inventory phase of the wilderness review process. First, BLM need not indulge in a comparison of wilderness values with other resource values. These are land use management decisions which

are to be incorporated into the study phase. See WIH at 6-7. They will ultimately affect the area's suitability or unsuitability for designation as wilderness. The inventory process, on the other hand, is devoted solely to a determination whether areas have the requisite wilderness characteristics.

Second, during the inventory phase BLM is not required to assess outside human activity which may in the future affect the wilderness characteristics of an inventory unit. Union Oil Co. (On Reconsideration), supra at 170. Therefore, the BLM State Office was not required to assess potential future reductions in water quality or quantity due to upstream causes. This factor would be analyzed in the study phase.

Third, BLM is not required to consider the comparability of a particular unit with other units considered by or being considered by it or other Federal agencies (e.g., the Forest Service). A particular unit is to be assessed on its own merits. In fact, OAD 78-61, Change 3, July 12, 1979, at 2, states specifically:

Each inventory unit must be assessed on its own merits as to whether an outstanding opportunity exists; there must be no comparison among units. It is not permissible to use any type of rating system or scale--whether numerical, alphabetical, or qualitative (i.e., high-medium-low)--in making the assessment. The WIH indicates that good judgment must be used in determining that outstanding opportunities either do or do not exist in each unit. This is a subjective determination, and, should be made only after a careful assessment of a unit (WIH, pages 13-14). [Emphasis in original.]

[2] The decision to designate an area as a WSA will be affirmed in the absence of compelling reasons for modification or reversal. The burden of showing error is on one challenging the decision. Tri-County Cattleman's Association, supra at 310; Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). As we stated in Richard J. Leaumont, supra at 245, 88 I.D. at 491:

These [wilderness] evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

In the present case, appellant has failed to offer compelling reasons for disturbing BLM's assessment of the wilderness characteristics

of unit CO-050-016. Moreover, it has not shown that BLM did not adequately consider all of the factors involved. California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978). We must conclude that BLM properly dismissed appellant's protest. <sup>4/</sup>

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

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Bruce R. Harris  
Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge

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<sup>4/</sup> Given our disposition of the issues raised by appellant on appeal, its request for an evidentiary hearing is denied.

