

ANIMAL PROTECTION INSTITUTE OF AMERICA

IBLA 81-473

Decided January 28, 1982

Appeal from a decision of the Nevada State Office, Bureau of Land Management, denying a protest of the Associate State Director's failure to designate units NV-030-525, NV-040-015, and NV-040-123 as wilderness study areas. 8500 (N-932).

Affirmed.

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

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 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.

APPEARANCES: Craig C. Downer, Research Services, Animal Protection Institute of America, Sacramento, California, for appellant; Dale D. Goble, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Animal Protection Institute of America (API) appeals from an undated decision of the Nevada State Office, Bureau of Land Management (BLM), denying appellant's protest of BLM's failure to designate units NV-030-525, NV-040-015, and NV-040-123 as wilderness study areas (WSA's). The announcement of those inventory units designated as WSA's and those units dropped from further wilderness review appeared in the Federal Register on November 14, 1980. 45 FR 75594.

BLM's action reviewing the aforementioned units for wilderness characteristics was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). This section directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more which were identified

during the inventory required by section 201(a) of the Act as having wilderness characteristics. The wilderness characteristics alluded to are set forth in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976):

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.

Inventory unit NV-030-525, also known as the East Pine Nuts unit, was dropped from wilderness consideration by the Associate State Director, BLM, after undergoing an intensive inventory. Appellant API, acting in accordance with the protest provisions set forth in BLM's notice of November 14, 1980, supra, protested this action in a timely manner. BLM responded to this protest by an undated decision affirming the rejection of the East Pine Nuts unit. This decision held that the East Pine Nuts unit lacked outstanding opportunities for solitude because the unit had a severely indented configuration which "degraded" opportunities for solitude. In addition, BLM's decision held that the unit contained no outstanding opportunities for a primitive and unconfined type of recreation, although acknowledging that opportunities for hiking, horseback riding, hunting, camping, and cross-country skiing did exist.

In appellant's statement of reasons for appeal, API goes into some detail pointing out the primitive recreational values of the East Pine Nuts unit. Photography and hiking are judged to be excellent by appellant because of the "breath-taking" views available within the unit and the presence of animals, contrasting landscapes, geological or volcanic exposures, Indian artifacts, and small lakes. Opportunities for solitude are described as outstanding by reason of the thick pinyon juniper forest within the unit and the scenic views available from high elevations.

[1] On the basis of the record before us, it is apparent that the gist of the disagreement between appellant and BLM is not whether there exist opportunities for solitude or a primitive and unconfined type of recreation within the unit, but whether such opportunities are outstanding. The requirement that outstanding opportunities be

present in a wilderness area is one found in 16 U.S.C. § 1131(c) (1976), quoted above. Whether or not outstanding opportunities exist in an inventory unit requires a highly subjective determination by BLM.

A similar disagreement over whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation was addressed in Conoco, Inc., 61 IBLA 23 (1981). Therein at 28, we stated:

We believe that BLM's judgement 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.

These conclusions are entrusted to BLM personnel whose reports evidence firsthand knowledge of the land. Assisting BLM are comments from numerous groups and individuals whose interests span a broad spectrum. On the basis of appellant's submissions in the record, we cannot say that API has met its burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation.

The issues posed by appellant with respect to inventory units NV-040-015 (Goshute Canyon) and NV-040-123 (Martin Spring) reduce to a similar disagreement between appellant and BLM as to whether the units possess outstanding opportunities for solitude or a primitive and unconfined type of recreation. The Goshute Canyon area which appellant argues was wrongly dropped from further wilderness review is properly designated NV-040-015B. This area is a subunit of unit NV-040-015 and consists of approximately 64,000 acres. BLM dropped this area from further wilderness review because it found that the area lacked outstanding opportunities for solitude or a primitive and unconfined type of recreation.

API argues that BLM erred in dropping subunit 015B because the subunit contains scenic mountains and provides a variety of animal habitats. The areas's nature study value is therefore "quite significant" in appellant's view. Opportunities for nature study are alleged to include photography, rock climbing, hiking, winter sports, and spelunking. Opportunities for primitive and unconfined recreation are outstanding, appellant maintains, because of the diversity and quality of activities available. In addition, the ruggedness of the terrain provides opportunities for "tranquil solitude," an element which appellant regards as prime justification for designating subunit 015B a wilderness area.

The Martin Spring unit (NV-040-123) contains approximately 19,700 acres of land which BLM describes as sparsely vegetated by

pinyon and juniper. This "mediocre" vegetative screening and the narrow configuration of the unit caused BLM to conclude that outstanding opportunities for solitude were lacking within the unit. BLM acknowledges that opportunities for hiking, camping, photography, hunting, and nature study exist in the unit, but concludes that neither the diversity of these opportunities nor their quality may be described as outstanding.

On appeal, API expresses its simple disagreement with BLM's conclusion regarding the unit's opportunities for solitude. No factual or legal errors are demonstrated by appellant. With respect to BLM's conclusion as to the unit's opportunities for a primitive and unconfined type of recreation, API finds fault with BLM's statement that backpacking and camping opportunities are limited by the difficult terrain, the absence of potable water, and the small number of campsites.

Our discussion above of the deference we give to BLM's subjective conclusions is again appropriate to answer appellant's contentions as to the Goshute Canyon and Martin Spring units. This policy, although newly applied to wilderness cases, has been addressed by this Board in other contexts. In Rosita Trujillo, 21 IBLA 289, 291 (1975), and Richard J. Leaumont, 54 IBLA, 242, 245, 88 I.D. 490, 491 (1981), the rationale for this policy was discussed:

Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

We do not find that the instant case presents sufficiently compelling reasons to warrant alteration of the decision below.

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

Edward W. Stuebing
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

