

FRANK VAUGHN

IBLA 81-555

Decided February 18, 1982

Appeal from decision of the Oregon State Office, Bureau of Land Management, denying protest against designation of Abert Rim (OR 1-101) as a wilderness study area.

Affirmed.

1. 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: Frank Vaughn, pro se; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management. 1/

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On November 6 and 14, 1980, the Oregon State Office, Bureau of Land Management (BLM), announced its decision to designate, inter alia, the unit known as Abert Rim (OR 1-101) as a wilderness study area (WSA). 45 FR 73802 and 75597 (Nov. 6 and 14, 1981). Some time after December 2, 1980, Frank Vaughn protested BLM's decision, and on March 19, 1981, BLM denied this protest. Vaughn appealed.

1/ Oregon Wilderness Coalition (OWC) has petitioned to intervene in this appeal. Since our decision is not to disturb the designation of Abert Rim as a wilderness study area, which OWC supported before BLM, it is not necessary to delay our consideration of this matter in order to receive additional arguments in support of designation. The request for intervention is therefore moot.

BLM's designation of Abert Rim and other parcels in Oregon as WSA's marked the end of the first step of the discharge of its responsibilities under section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). This first step, known as the "inventory phase" of the review process, will be followed by a "study phase," after which the Secretary will report to the President on the areas found to be suitable for formal designation as wilderness.

On March 27, 1980, BLM announced in the Federal Register, 45 FR 20167, a 90-day period for public review and comment on the proposed final intensive inventory decisions involving a number of units, including Abert Rim. The proposed decision was to eliminate Abert Rim from further wilderness review. Numerous comments were received during the comment period, and in November 1980 BLM concluded in its final intensive inventory decision, after further evaluation in response to public comment, that Abert Rim should be designated a WSA.

Appellant protested that decision, and BLM denied the protest in its March 19, 1981, decision.

The basis of BLM's final intensive inventory decision, which designates Abert Rim as a WSA, is set out in a document entitled "Wilderness Inventory[,] Oregon and Washington[,] Final Intensive Inventory Decision," dated November 1980. This decision concluded as follows:

(1) While the Abert Rim unit contains scattered manmade structures, "[t]he majority of the unit is in a generally natural appearance."

(2) The unit does not generally offer an outstanding opportunity for solitude.

(3) "The trail to the top of the rim along Poison Creek and views along the top of the rim offer high quality scenic opportunities [, and t]he unit offers hunting and wildlife observation opportunities for upland game birds and game mammals as well as raptorial birds and other species." Thus, "the 2,000-foot high Abert Rim offers outstanding opportunities for recreation."

(4) "The Abert Rim is the largest fault scarp in North America, [and] also contains archeological sites and the stand of ponderosa [pine] at Colvin Timbers."

The decision eliminated a 640-acre portion from the southeast corner of the unit, where a manmade drainage ditch is "substantially noticeable," and designated the remaining 22,240 acres as a WSA, in a decision announced in the Federal Register on November 6 and 14, 1980.

[1] The pertinent characteristics which a wilderness must display are set out in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976):

(c) 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.

Where BLM, by designating a parcel as a WSA, decides that the parcel conforms with these characteristics, its decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Tri-County Cattlemen's Association, 60 IBLA 305 (1981).

The public commentary in the record and reports by BLM staff amply support BLM's decision to designate Abert Rim as a WSA, and appellant has not met his burden of showing compelling reasons that it is erroneous. Richard J. Leumont, 54 IBLA 242, 88 I.D. 490 (1981). Accordingly, we affirm BLM's decision.

Appellant notes correctly that BLM's decision found that the unit does not generally offer an outstanding opportunity for solitude. However, section 2(c) of the Wilderness Act, supra, requires that an area have "outstanding opportunities for solitude or a primitive and unconfined type of recreation" (emphasis added), and an area may meet either criterion. Tri-County Cattlemen's Association, supra at 309. The record adequately supports BLM's finding that Abert Rim meets the latter criterion.

Appellant stresses that BLM's proposed intensive inventory decision recommended that the unit not be designated as a WSA, since, at that time, the unit was not regarded as being of a generally natural appearance or as having outstanding opportunities either for solitude or for a "primitive and unconfined type of recreation." This proposed decision against inclusion was not final and did not estop BLM from modifying its opinion or adding new supporting rationale when public commentary, which was strongly against the proposed decision, provided it with more complete information about these questions. The present record amply supports BLM's ultimate conclusion that the criteria were met.

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.

Bernard V. Parrette
Chief Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

