

IDAHO CATTLEMEN'S ASSOCIATION
BENNETT HILLS GRAZING ASSOCIATION

IBLA 81-918, IBLA 81-1036

Decided March 26, 1982

Appeal from a decision of Idaho State Office, Bureau of Land Management, denying protest against the identification of 36 units as wilderness study areas.

Affirmed.

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

An appellant seeking reversal of a decision to include or exclude land from a wilderness study area must show that the decision appealed was premised either on a clear error of law or a demonstrable error of fact.

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: W. Hugh O'Riordan, Esq., Boise, Idaho, for Idaho Cattlemen's Association; John V. Varin, Gooding, Idaho, for Bennett Hills Grazing Association; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Idaho Cattlemen's Association 1/ has appealed from a February 13, 1981, decision of the Idaho State Office, Bureau of Land Management (BLM), denying its protest against the identification of 36 units, containing 818,206 acres, as wilderness study areas (WSA's). The units had originally been identified in a decision announced in the Federal Register on November 14, 1980 (45 FR 75586). BLM's decision, published in the Federal Register on February 13, 1981 (46 FR 12338), made no changes in the units' boundaries or composition as a result of the protest; and BLM's final intensive inventory decision for Idaho remained in effect.

BLM's action designating these units as WSA's was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more that were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). After this review, the Secretary is to report to the President his recommendation as to the suitability or unsuitability of each area for preservation as wilderness.

The wilderness characteristics referred to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), as follows:

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 historical value.

1/ The Bennett Hills Grazing Association on Mar. 13, 1981, filed an appeal of BLM's final intensive inventory decision dated Feb. 13, 1981, disputing BLM's findings and alleging BLM's inability to carry out previous negotiating commitments because of its identification of unit 56-2, Lava, as a WSA. Units 54-6, 54-8a, 54-8b, 56-2, and 54-10 were also appealed. The appeal was not timely, since it should have been filed in connection with BLM's initial announcement of WSA's on Nov. 14, 1981 (45 FR 75586). In any event, however, the Association's filings would not have been sufficient to overcome the presumption of validity we accord to BLM's findings and final decision.

The wilderness review process undertaken by BLM State Office has been divided into three phases: inventory, study, and reporting. The announcement of final intensive inventory decision marks the end of the inventory phase of the review process and the beginning of the study phase.

Appellant makes four principal arguments on appeal. First, that the decision does not meet the criteria of the Act; second, that BLM's decision-making process was ad hoc, frustrating the ability of the public to comment intelligently upon its proposals; third, that the public was unaware of the procedures being implemented; and fourth, that BLM failed to make specific findings as required by law. In responding to the Solicitor's answer, appellant summarizes its arguments as follows: (1) BLM has failed to make any meaningful findings of fact, and (2) BLM redefined "wilderness" contrary to the intent of Congress by ignoring the first part of the statutory definition.

[1] This Board has already considered all but the last of appellant's general arguments at some length in Tri-County Cattlemen's Association, 60 IBLA 305 (1981), involving the same appellant, the same state, and the same procedures, and it has found them to be without merit. Here, appellant's statement of reasons is no more specific than it was in that case, and it clearly has not met the burden of proof enunciated in Union Oil Co. (On Reconsideration), 58 IBLA 166, 171 (citing Richard J. Leumont, 54 IBLA 242, 88 I.D. 490 (1981)), to the effect that great weight must be accorded to opinions of BLM officials based upon visual inspection as well as photographic review. As that decision went on to say:

It is not enough to show an arguable difference of opinion. * * * An appellant seeking reversal of a decision to include or exclude land from a WSA must show that the decision below was premised either on a clear error of law or a demonstrable error of fact. This was not done in the instant case.

Appellant's principal new contention is that BLM's application of the statutory definition of wilderness was improper. In essence, appellant maintains that the definition found at 16 U.S.C. § 1131(c) (1976), "is to be considered as a whole and to be read with common sense." Appellant argues that BLM's effort to "ignore the first part of the definition of wilderness while at the same time relying upon selected parts of the definition of wilderness is contrary to the legislative history of the Wilderness Act of 1964" (Response to Answer at 5).

However, as the Solicitor's answer indicates at page 5:

Appellant's argument * * * has a fatal flaw: the operative definition of "wilderness" is that contained in the second rather than the first sentence. The second sentence specifically states that "[a]n area of wilderness is further defined to mean in this chapter * * *" 16 U.S.C. 1311(c). Thus it is the second sentence that is to be used in the Wilderness Act. [Emphasis in original.]

The Solicitor's answer with respect to this point goes on to say:

Furthermore, to the extent that the section is ambiguous, it is proper to look to the legislative to resolve the ambiguities. See, e.g., Train v. Colorado Public Interest Research

Group, 426 U.S. 1, 10 (1976); Boston Sand Co. v. United States, 278 U.S. 41, 48 (1928). The legislative history of this section clearly states that Congress intended the second sentence to provide the operative definition:

Section 2(b) [now 2(c)] defines wilderness in two ways: First, in an ideal concept of wilderness areas where the natural community of life is untrammled by man, who visits but does not remain, and, second, as it is to be considered for the purposes of the act: areas where man's work is substantially unnoticeable, where there is outstanding opportunity for solitude or a primitive and unconfined type of recreation

S. Rep. No. 109, 88th Cong., 1st Sess. 7-8 (1963) (emphasis added). The Senate report echoes the testimony of Senator Anderson, Chairman of the Interior and Insular Affairs Committee and a principal sponsor of the bill:

Section 2(b) [now 2c] contains two definitions of wilderness. The first sentence is a definition of pure wilderness areas, where "the earth and its community of life are untrammled by man" It states the ideal.

The second sentence defines the meaning or nature of an area of wilderness as used in the proposed Act: A substantial area retaining its primeval character, without permanent improvements, which is to be protected and managed so man's works are "substantially unnoticeable."

The second of these definitions of the term, giving the meaning used in the Act, is somewhat less "severe" or "pure" than the first.

Hearings on S. 174 Before the Senate Comm. on the Interior and Insular Affairs, 87th Cong., 1st Sess. 2 (1961) (emphasis added).

Furthermore, and to the extent that the initial sentence is deemed to have operative legal effect, Appellant's argument fails to recognize that the specific criteria in the second sentence encompass the general prefatory statement of the first sentence. An area trammled by man would not be "natural"; an area where man was a permanent resident would be neither Federal land nor "natural." In short, Appellant's first stage adds nothing.

Appellant thus has failed to demonstrate that the position adopted in the BLM guidelines is premised on a clear error of law.

Answer at 6.

We agree. The same must be said in connection with appellant's argument that the practice of cherrystemming is contrary to the intent of Congress. As we said in National Outdoor Coalition, 59 IBLA 291, 297 (1981):

Although appellant's argument, based on a common sense reading of the terms of section 603(a), is initially attractive, we cannot say that BLM has acted contrary to law or to any established Department policy in recognizing nonwilderness corridors occupied by roads or other manmade intrusions. We agree with BLM and the intervenor that section 603(a) does not specify any particular shape for an area which may eventually be recommended by the Secretary and the President for inclusion in the National Wilderness Preservation System. What is important in the inventory stage is that there exist roadless areas of the public lands which meet the requirements of 16 U.S.C. § 1131(c) (1976) for naturalness and provide an outstanding opportunity for solitude or a primitive and unconfined type of recreation.

While we recognize the danger of placing undue weight on testimony at oversight hearings, we note that Congress has on several occasions included areas containing cherrystems in the National Wilderness Preservation System. * * *

[2] In summary, as was held in Tri-County Cattlemen's Association, *supra* at 310: "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." Appellant here has not met that test.

Therefore, 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:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

