

CATLOW STEENS CORP.
THE VICTORIO CO.

IBLA 81-766

Decided March 31, 1982

Appeal from decision of Oregon State Office, Bureau of Land Management, denying protest of designation of wilderness study areas. 2-85 F, et al.

Affirmed.

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

When 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. F. Schroeder, Esq., Vale, Oregon, for appellants; Andy Kerr, Associate Director for Conservation, Oregon Wilderness Coalition, Eugene, Oregon, for the intervenor; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

The Catlow Steens Corporation and The Victorio Company have appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 19, 1981, denying their protest of the designation of inventory units 2-85 F (South Steens), 2-85 G (South Steens), 2-85 H (South Steens), and 2-86 F (Blitzen River) as wilderness study areas (WSA's).

On November 14, 1980, the BLM State Office published its final intensive wilderness inventory decision in the Federal Register, 45 FR 75597, in part designating 65,940 acres in unit 2-85 F (South Steens), 35,850 acres in unit 2-85 G (South Steens), 24,990 acres in unit 2-85 H (South Steens), and 9,380 acres in unit 2-86 F (Blitzen River) as WSA's. By letter dated December 11, 1980, appellants protested designation of

the four units as WSA's, contending that the land was not roadless and that it did not possess the requisite wilderness characteristics. Furthermore, appellants charged that the inventory was fatally flawed because: (1) It employed an "erroneous" standard; (2) it was not supported by "accurate and complete documentation"; (3) it was based on factors "other than wilderness"; and (4) it did not conform to section 201(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1711(a) (1976), because it relied on "subjective evaluations."

In its March 19, 1981, decision, BLM responded to appellants' protest. BLM stated that the wilderness inventory had complied with all of the applicable laws and regulations and that, after a reexamination of all of the inventory data regarding the four units, it had concluded that the land was roadless and that it possessed the requisite wilderness characteristics. In response to the charge that the inventory relied on "subjective evaluations," BLM stated:

Nothing in the language of either FLPMA or the Wilderness Act requires "an objective identification" of wilderness characteristics, as your statement implies. Since early in 1978, when the Bureau's wilderness inventory procedures were initially drafted and released for public review, it has been clear in the Bureau and to the public that the wilderness inventory process would, by necessity, require subjective evaluations of wilderness characteristics. That the evaluations must be and have been subjective does not mean that they are uninformed, inappropriate or inadequate. Rather, it is the case that some resources and values, in particular those mentioned in Section 201(a) of FLPMA, do not lend themselves to "objective" evaluations. In those cases, subjective methods are used.

In their statement of reasons for appeal, appellants expand on the arguments made in their protest, contending: (1) The wilderness inventory was not a part of an inventory of "all public lands and their resource and other values," as mandated by section 201(a) of FLPMA; (2) BLM failed to compare the four units with other areas, especially those already designated as wilderness, which comparison was necessary for a proper assessment of the requisite wilderness characteristics 1/;

1/ Appellants provide an expanded list of the requisite wilderness characteristics, drawing in part on the entire language of the definition of wilderness included in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976). The operative language of section 2(c), however, refers to the following characteristics: Size, naturalness, an outstanding opportunity for solitude, or a primitive and unconfined type of recreation and supplemental values. See S. Rep. No. 109, 88th Cong., 1st Sess. 7 (1963). These characteristics were those to be assessed during the wilderness inventory. See Wilderness Inventory Handbook (WIH), dated Sept. 27, 1978, at 12. We can find no basis for either expanding or contracting that list.

(3) BLM failed to consider "protectability and manageability" as wilderness characteristics for the four units; (4) human activity associated with domestic livestock grazing, especially the construction of ways, fences, reservoir developments, and other imprints of man's work, preclude a determination that the four units possess the requisite wilderness characteristics; and (5) there was no meaningful opportunity for public review due to the lack of "standards." 2/ Appellants request a hearing. 3/

[1] The BLM decision was made pursuant to section 603(a) of 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

2/ Appellants also take issue with the standard by which the wilderness characteristic of naturalness is to be judged, *i.e.*, as it appears to the "average visitor." That standard is set forth in Organic Act Directive (OAD) 78-61, Change 2, dated June 28, 1979, at page 4:

"There is an important difference between an area's natural integrity and its apparent naturalness. Natural integrity refers to the presence or absence of ecosystems that are relatively unaffected by man's activities. Apparent naturalness refers to whether or not an area looks natural to the average visitor who is not familiar with the biological composition of natural ecosystems versus man-affected ecosystems in a given area. As reflected in the handbook, the presence or absence of apparent naturalness (*i.e.*, do the works of man appear to be substantially unnoticeable to the average visitor) is the question that the inventory must assess."

(Emphasis in original.) Appellants contend that the standard is not authorized by section 2(c) of the Wilderness Act, *supra*. We disagree. The characteristic of naturalness is present in an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." (Emphasis added.) 16 U.S.C. § 1131(c) (1976). BLM has adopted a reasonable interpretation of that language. Reference to the apparent nature of an area, rather than its actual nature, implies that naturalness should be judged by the standard of an average observer possessed of common knowledge of natural processes, rather than of a trained observer with detailed knowledge. 3/ Appellants also filed, on Oct. 2, 1981, a motion to disregard the "answers" filed by the Solicitor's office and the intervenor, the Oregon Wilderness Coalition, because they were not filed timely, in accordance with 43 CFR 4.414. The applicable regulation, 43 CFR 4.414, provides that the Board has the discretionary authority to disregard an untimely answer, *i.e.*, "it may be disregarded." Appellants have offered no substantive reason for disregarding the answers. They state only that they were untimely. Appellants have failed to show that any prejudice has resulted from the late filing, and we can discern none. The motion is denied.

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 areas 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 sections 201(a) and 603(a) of FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. The BLM decision marks the end of the inventory phase of the review process and the beginning of the study phase.

We turn first to appellants' contention that the wilderness inventory was required to be part of a larger inventory of "all public lands and their resource and other values." Section 201(a) of FLPMA, supra, indeed, directs the Secretary to "prepare and maintain on a continuing basis" such a comprehensive inventory. However, no time limit is placed on such an inventory. In contrast, the wilderness review is required by section 603(a) of FLPMA, supra, to be conducted "[w]ithin fifteen years after October 21, 1976." In view of such a time constraint, we believe that BLM properly gave priority to the identification of the wilderness characteristics of areas of the public lands. We have previously held that the undertaking of wilderness review by BLM prior to an inventory of all public lands does not violate the terms of section 603(a) of FLPMA. Petroleum, Inc., 61 IBLA 139 (1982).

Next, appellants contend that BLM failed to use a comparative basis of analysis in assessing the wilderness characteristics of the four units. Appellants believe that the units in question should have been compared with lands which have previously been designated as wilderness areas by Congress, so as to preserve the high quality of the wilderness system and consider "for addition only those lands of equal or higher value." Clearly, BLM's position is that "there must be no comparison among units." See OAD 78-61, Change 3, dated July 12, 1979, at 2. As we have stated previously, a unit is to be assessed on its own merits. City of Colorado Springs, 61 IBLA 124, 129 (1982). Assessment of wilderness characteristics, however, necessarily involves indulging in a comparative process because of the relative nature of the terms, e.g., outstanding opportunities. Nevertheless, as pointed out in Sierra Club, 62 IBLA 329, 334 (1982):

What is prohibited is the cross-comparison of two outstanding opportunities in order to ascertain which is superior. Once it is determined that the opportunities for solitude or a primitive and unconfined type of recreation is "outstanding," it is irrelevant, for the purpose of determining suitability for designation as a WSA, that neighboring units have superior opportunities.

Appellants' attack on BLM's methodology must be rejected. Even if we were to consider that BLM had erred in its manner of assessment, appellants have failed to prove error in the result. See Sierra Club, supra.

Appellants' contention that "protectability and manageability" are wilderness characteristics is apparently drawn from language in the definition of wilderness in section 2(c) of the Wilderness Act, supra, to the effect that: "An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land * * * which is protected and managed so as to preserve its natural condition * * *." (Emphasis added.) However, we cannot construe this language as setting forth a necessary characteristic of the land itself. The considerations of "protectability and manageability" are appropriately taken up in the context of the land use management decisions, which are incorporated into the study phase of the wilderness review. See City of Colorado Springs, supra at 128-29; see also WIH at 6-7. Those considerations will ultimately affect the area's suitability or unsuitability for designation as wilderness.

After a careful review of the record, we must conclude that BLM gave consideration to all of the relevant factors required to be assessed during the intensive inventory process. See Final Intensive Inventory Decisions (November 1980) at 182-190. Moreover, appellants have failed to provide any evidence that the four units involved herein contain roads or are lacking in any of the requisite wilderness characteristics. It is apparent that BLM considered all of the imprints of man's work, cited on appeal by appellants.

Finally, we can find no basis to conclude that BLM did not afford a meaningful opportunity for public review. Public comments were solicited and provided at every stage of the inventory process. The record, which formed the basis for BLM's initial and intensive inventory decisions, was available for inspection and was sufficient to inform the public of the basis for BLM's actions.

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. City of Colorado Springs, supra at 129; Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981).

In the present case, appellants have failed to offer compelling reasons for disturbing BLM's assessment of the wilderness characteristics of the four units. They have not shown that BLM did not adequately consider all of the factors involved. See California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978). BLM properly denied appellants' protest. Given our disposition of the issues raised on appeal, appellants' request for an evidentiary hearing is denied.

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.

Bruce R. Harris
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

