

MARVIN CASEY ET AL.

IBLA 81-691

Decided April 12, 1982

Appeal from a decision of the Oregon and Nevada State Directors, Bureau of Land Management, denying the protest of the designation of three wilderness study areas. 8500 (933)

Affirmed.

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

In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Section 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

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

"Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to 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.

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

In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

APPEARANCES: Wendell Gronso, Esq., Burns, Oregon, for appellants; Dale D. Goble, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Marvin Casey and 38 residents of the Fields, Oregon, area appeal from a decision of the Oregon and Nevada State Directors, Bureau of Land Management (BLM), dated March 20, 1981, denying their protest of the designation of inventory units 2-77B, 2-78F, and OR-3-153/NV-020-859/OR-2-78D as wilderness study areas (WSA's). Units 2-77B and 2-78F are located in Harney County, Oregon, and contain approximately 23,780 and 14,730 acres, respectively. Unit OR-3-153/NV-020-859/OR-2-78D, a so-called interstate unit, contains lands in Harney and Malheur Counties, Oregon, and Washoe County, Nevada. The area of this interstate unit is approximately 26,707 acres. ^{1/}

BLM's designation of wilderness study areas 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 and roadless islands of the public lands which 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). Following review of an area or island, the Secretary shall from time to time report to the

^{1/} This interstate unit, known as Disaster Peak, has been formed by joining three contiguous subunits of the public lands. Subunit 2-78D contains only 2,720 acres, an area insufficient by itself to receive a WSA designation. Since it is contiguous, however, with public lands of sufficient acreage to satisfy the size requirements of section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), this subunit may enter the study phase as part of unit OR-3-153/NV-020-859/OR-2-78D. See State of Nevada, IBLA (1982) and Tri-County Cattlemen's Ass'n, 60 IBLA 305 (1981).

President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics alluded to in section 603(a) are defined in section 2(c) of the Wilderness Act, 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 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.

The review process undertaken by the State Offices pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. BLM's announcement of WSA designations, published on November 6, 1980, at 45 FR 73802, marks the end of the inventory phase of the review process and the beginning of the study phase.

In their statement of reasons, appellants set forth a variety of arguments opposing the State Director's WSA designations. Counsel for appellants refers to manmade waterholes and fences in these WSA's and contends that roads are also evident. Such intrusions, counsel argues, are inconsistent with a primitive wilderness area. Because of the desert conditions existing in these units, appellants contend that the roads do not need gravel, grading, or culverts. These roads are said to provide access to state and private lands, and serve as salt roads and cattle gathering roads. In appellants' view, opportunities for solitude and recreation are lacking because of the dry, hot climate. "The only wildlife," counsel writes, "is an occasional rabbit, crow, or magpie looking for the remains of a rabbit who has died of thirst." Statement of reasons at 2.

[1] In the protest response, BLM acknowledged that the WSA's at issue do contain manmade range developments, but disagreed with appellants' conclusion that these developments deprive the areas of naturalness characteristics. We agree. Section 2(c) of the Wilderness Act, quoted above as 16 U.S.C. § 1131(c) (1976), requires that a wilderness area generally appear to have

been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable, inter alia. The underscored language, taken verbatim from section 2(c), is ample support for the proposition that a WSA need not be free of all intrusions.

H.R. Rep. No. 540, 95th Cong., 1st Sess. 6-7 (1977), provides some guidance for understanding the concept of naturalness. This report, prepared to accompany H.R. 3454, a bill later enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978), contains examples of impacts on naturalness that may be allowed in certain cases in a wilderness area. Among these are: trails, trail signs, bridges, fire towers, fire breaks, fire suppression facilities, pit toilets, fisheries enhancement facilities, fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, and other scientific devices. Based on this guidance, BLM published a list of intrusions on the public lands that, if found, could be allowed in a wilderness area. These include research monitoring markers and devices, air quality monitoring devices, fencing, and spring development. Wilderness Inventory Handbook at 12-13, September 27, 1978.

The Congressional purpose that a wilderness area generally appear to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable illustrates the highly subjective judgment which BLM must make in determining whether an area possesses the quality of naturalness. This judgment is entrusted to Bureau personnel whose reports evidence firsthand knowledge of the land. Assisting BLM are comments from numerous groups and individuals whose interests span a broad spectrum. BLM's judgment in such matters, we feel, is entitled to considerable deference. Such deference will not be overcome by an appellant expressing simple disagreement with subjective conclusions of BLM. This is not to suggest that we abdicate our review of subjective wilderness judgments. We do mean to suggest, however, that an appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome the deference we accord to BLM in such matters. C & K Petroleum Co., 59 IBLA 301 (1981); National Outdoor Coalition, 59 IBLA 291 (1981); Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). Appellants' submissions on appeal do not rise to this level.

[2] The allegation that the WSA's at issue contains roads was addressed by the State Directors' protest response. On appeal, appellants do not point to any specific errors in the protest response, but generally assert that "the roads speak for themselves in that they are well-travelled." Tempting as this solution may be, the definition of a road has been set out with care by Congress and involves other concepts besides use. In H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), the word "roadless" is defined to mean "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. Appellants do not allege the mechanical improvement and maintenance of any particular route

within the WSA's at issue. In the absence of such allegations, the State Directors' response is affirmed.

In their final argument on appeal, appellants maintain that the severity of climate and lack of natural sources of water preclude outstanding opportunities for solitude or a primitive and unconfined type of recreation. BLM's narrative describing units 2-77B (Mahogany Ridge) and 2-78F (Red Mountain) speaks of outstanding opportunities for hiking, hunting, backpacking, and sightseeing, inter alia. Outstanding opportunities for recreation in the interstate unit are said to result from the unit's challenging topography, availability of water, scenic values, and significant points of interest. The narrative finds outstanding opportunities for solitude to exist in each unit because of the topographic diversity there. Vegetative screening is also found in unit 2-77B and the interstate unit.

[3] Whether a unit possesses outstanding opportunities for solitude requires a highly subjective determination by BLM. In an effort to guide this determination, the Wilderness Inventory Handbook was published by the Department in September 1978. Therein at page 13, BLM is instructed to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Size, natural screening, and the ability of the user to find a secluded spot are set forth as factors influencing solitude.

While extremes of temperature may affect the number of users to an area, a unit's opportunities for solitude would generally exist independently of temperature extremes. Similarly, opportunities for solitude may exist in the absence of sufficient moisture to promote vegetative screening if topographic screening is present in the unit. Appellants' arguments with respect to the units' opportunities for solitude do not persuade us that BLM has erred in its determination.

A finding of outstanding opportunities for either solitude or primitive and unconfined type of recreation is sufficient to permit an inventory unit to enter the study phase, assuming size and naturalness requirements have been met. Churchill County Board of Commissioners, 61 IBLA 370 (1982). Having affirmed BLM's finding that outstanding opportunities for solitude exist in the WSA's, there is no need to discuss appellants' contentions as to recreation. We note in passing, however, that appellants' arguments on the subject amount to little more than simple disagreement with BLM's subjective findings. No specific errors are discussed. More than simple disagreement is required to reverse BLM's decision or place a factual matter at issue. Sierra Club, 53 IBLA 159 (1981). A decision of the State Director will not be disturbed on appeal where appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. Sierra Club, 54 IBLA 37 (1981). Appellants' request for a 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 of the Oregon and Nevada State Directors is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

