

INYO COUNTY BOARD OF SUPERVISORS

IBLA 80-851

Decided April 27, 1982

Appeal from decision of the California State Director, Bureau of Land Management, denying protest of the designation of inventory units as wilderness study areas. CA-010-060, CA-010-063, CA-010-065, and CA-010-068.

Affirmed in part; reversed in part.

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

Sec. 603 of the Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to review those roadless areas of 5,000 acres or more and roadless islands of the public lands, identified during the inventory as having wilderness characteristics, and report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

2. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

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

In assessing the presence or absence of wilderness characteristics in an inventory unit, the Bureau of Land Management necessarily makes subjective judgments which are entitled to considerable deference when challenged on appeal, and such judgments may not be overcome by expressions of simple disagreement.

APPEARANCES: V. E. Johnson, Chairman, Inyo County Board of Supervisors, Independence, California, for appellant; Dale Goble, Esq., and William E. McGee, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Inyo County Board of Supervisors appeals from the June 25, 1980, letter decision of the State Director, California State Office, Bureau of Land Management (BLM), denying its protest of the designation of four inventory units as wilderness study areas (WSA's). ^{1/} The four WSA's are CA-010-060 (Paiute), CA-010-063 (Coyote Southeast), CA-010-065 (Black Canyon), and CA-010-068 (Wheeler). Appellant's protest followed the designation of these units and others as WSA's, see Final Intensive Inventory Public Lands Administered by BLM California Outside the California Desert Conservation Area, and was filed pursuant to a notice published in the Federal Register. See 45 FR 1457 (January 7, 1980).

[1] Section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), directs the Secretary to review roadless areas of 5,000 acres or more of public land and roadless islands of any size which are identified during the inventory required by section 201(a) of FLPMA as having the wilderness characteristics described in the Wilderness Act of 1964, 16 U.S.C. § 1131 (1976), for possible inclusion in the wilderness system. The Secretary is then directed to report to the President his recommendations as to the suitability or nonsuitability of each such area for preservation as wilderness. After recommendations by the President, Congress will make the final wilderness area designation decisions. 43 U.S.C. § 1782(b) (1976).

BLM divided the wilderness identification and review process into three phases: Inventory, study, and reporting. The State Director's decision designating these four units as WSA's marks the end of the inventory phase of the review process and the beginning of the study phase.

[2] Appellant's primary objection is directed to the designation of WSA's made up of noncontiguous subareas ^{1/} of less than 5,000 acres of roadless public land each, although each WSA is comprised of a total of over

^{1/} Although appellant refers to the subareas as "roadless islands," they are not islands but discrete parcels of public land.

5,000 acres. The record indicates that each subarea is contiguous with national forest lands which are designated for further planning by the U.S. Forest Service. ^{2/} With the exception of one subarea in CA-010-060, no single subarea meets the 5,000-acre size requirement. BLM excepted these other subareas from the size requirements pursuant to the size exceptions outlined in the Wilderness Inventory Handbook (WIH), and designated noncontiguous parcels as part of the same WSA.

In Tri-County Cattlemen's Association, 60 IBLA 305 (1981), this Board examined the question whether BLM has the authority to designate an area of less than 5,000 acres as a WSA pursuant to section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976). Section 603(a) requires the Secretary to "review those roadless areas of five thousand acres or more * * * of the public lands [i.e., lands administered by BLM; see 43 U.S.C. § 1702(e) (1976)], identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 * * *." In the WIH, BLM identified the wilderness characteristics, including size, to be assessed in the inventory phase and then listed three situations in which areas of less than 5,000 contiguous roadless acres may be considered for WSA designation. See WIH at 6. ^{3/} These considerations apply to assessment of size during the intensive inventory stage. See WIH at 12. It is clear that the WIH contemplates that if all other considerations are present in an area under 5,000 acres, BLM may designate units of less than 5,000 acres as WSA's.

We noted in Tri-County Cattlemen's Association, supra at 311-12:

BLM's approach is based on the definition of wilderness in section 2(c) of the Wilderness Act of 1964, which states that "[a]n area of wilderness is further defined to mean in this

^{2/} While appellant argues that the Forest Service has not identified any adjacent areas as suitable for wilderness under its RARE II program, appellant admits that many of the adjacent lands have been classified as needing "Further Study."

^{3/} With respect to parcels of less than 5,000 acres, the WIH provided:

"3. Either:

"For an area of public land of less than 5,000 contiguous roadless acres to be considered for Wilderness Study Area identification, it must, in addition to possessing * * * [both naturalness and either an outstanding opportunity for solitude or for primitive and unconfined type of recreation], be either:

"1. Contiguous with land managed by another agency which has been formally determined to have wilderness or potential wilderness values, or

"2. Contiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with authority to study and preserve wilderness lands, and the combined total is 5,000 acres or more, or

"3. Subject to strong public support for such identification and it is clearly and obviously of sufficient size as to make practicable its preservation and use in an unimpaired condition, and of a size suitable for wilderness management."

chapter an area * * * which * * * (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; * * *." 16 U.S.C. § 1131(c) (1976).

While we believe BLM was entirely correct in adopting the "less than 5,000 acre" policy for identification of wilderness areas during the inventory phase, we can find no authority, statutory or otherwise, for designating an area of less than 5,000 acres as a WSA under section 603(a) of FLPMA.

After discussing the specific language of section 603(a), as modified by the Wilderness Act, we stated:

This language indicates that during the inventory process required by section 201(a), 43 U.S.C. § 1171(a) (1976), BLM was to identify areas of the public lands which exhibited wilderness characteristics, including the wilderness characteristic of size. However, once the inventory stage is completed, the authority for designation of areas of the public lands as WSA's is derived from section 603(a) of FLPMA. That section directs the Secretary to review only those areas of 5,000 acres or more. Thus, it appears that section 603(a) of FLPMA established a minimum acreage requirement for WSA's. [Emphasis in original.]

As we noted in Tri-County, the legislative history of the Act supported this conclusion. The Senate version of FLPMA, section 507, 94th Cong. 2nd Sess., 122 Cong. Rec. 4423 (1976), provided in section 102(a) for an inventory of "all national resource lands." The House version, H.R. 13777, 94th Cong. 2nd Sess., 122 Cong. Rec. 23442 (1976), in section 311 limited the Secretary's review to roadless areas of the public lands containing 5,000 acres or more and provided for nonimpairment of such areas during review. The House Conference Report, H.R. Rep. No. 1724, 94th Cong. 2nd Sess. 65, reprinted in (1976) U.S. Code Cong. & Ad. News 6175, 6237, noted that the House version provided for "specific detail for the conduct of [wilderness] studies." Adoption of the House language in section 603 of FLPMA, rather than the Senate language providing for study of all lands, indicates that Congress chose to exclude areas of less than 5,000 acres from designation as WSA's under section 603(a). Therefore, section 603(a) of FLPMA does not authorize the designation as WSA's of non-island areas of roadless public land of less than 5,000 contiguous acres. Tri-County Cattlemen's Association, supra; see Save the Glades Committee, 54 IBLA 215 (1981). 4/

We recognize that other authority exists to allow BLM to review such areas for wilderness characteristics: sections 202 and 302 of FLPMA,

4/ Appellant implicitly challenges the lack of contiguity within each individual WSA. Internal contiguity is essential to roadless areas. Contiguity is specified in the Wilderness Act at 16 U.S.C. § 1132(c) (1976).

BLM has lumped several small areas together for study designation but each subarea must be considered on its own merits.

43 U.S.C. §§ 1712 and 1732 (1976). Section 603(a) would not preclude management or recommendation of areas of less than 5,000 contiguous acres as wilderness, even though such areas would not qualify as WSA's. Such management, however, is premised on BLM's general management authority and not on section 603(a). Moreover, since such areas are not capable of designation as WSA's, the Interior Management Guidelines (44 FR 72013 (Dec. 12, 1979)) are inapplicable to these areas.

We hold, therefore, that only the central subarea of CA-010-060 qualified as a section 603(a) WSA. CA-010-063, CA-010-065, CA-010-068, and the subareas making up the remainder of CA-010-060 are not section 603(a) WSA's, since none of the specific subareas individually aggregated 5,000 acres or more.

[3] Appellant also challenges the WSA designation of the single subarea in the Paiute WSA which contains over 5,000 acres as too awkward to manage due to its long and narrow configuration. Section 603(a) requires no particular shape for a WSA. Ruskin Lines, 61 IBLA 193 (1982); National Outdoor Coalition, 59 IBLA 291, 297 (1981). Congress has designated wilderness areas with irregular boundaries in the past. Moreover, to the extent that an irregular shape might create difficulties in managing the WSA, we note that this seems more properly the subject of the study phase. Cf. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981).

Assessing such areas necessarily involves subjective judgments. BLM's judgment in such matters is entitled to considerable deference. Conoco Inc., 61 IBLA 23 (1982). Expressions of simple disagreement are insufficient to overcome that deference. City of Colorado Springs, 61 IBLA 124 (1982). The record before us, including staff evaluations and public comments, provides ample support for BLM's designation of this parcel.

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 California State Office is affirmed as to the central subarea of CA-010-060 and reversed as to the remainder of CA-010-060 and to CA-010-063, CA-010-065, and CA-010-068, in their entirety.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

