

CALIFORNIA WILDERNESS COALITION ET AL.

IBLA 80-273

Decided April 28, 1982

Appeal from decision of the California State Director, Bureau of Land Management, excluding inventory units from intensive inventory. CA-010-031, CA-010-033, CA-010-047, CA-010-069, CA-010-087, CA-010-101, CA-020-701, CA-020-901, CA-020-1001, CA-030-300, CA-030-400, and CA-030-500.

Affirmed.

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

Inventory units of the public lands under 5,000 acres in area are properly excluded from the intensive inventory phase of BLM's wilderness review process, because such lands clearly and obviously do not meet the criteria for designation as a wilderness study area.

APPEARANCES: Dennis Coules, Project Coordinator, Davis, California, for appellants; Nikki Ann Westra, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management; Wesley R. Higbie, Esq., San Francisco, California, for amicus curiae, Southwest Forest Industries.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The California Wilderness Coalition, et al., 1/ appeal from a decision dated September 24, 1979, of the California State Director, Bureau of Land Management (BLM), denying appellants' protest of the exclusion of the above designated inventory units from BLM's intensive inventory. 2/

BLM's wilderness inventory is carried out pursuant to section 603 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). This section directs the Secretary of the Interior to review all public land roadless areas in excess of 5,000 acres, or roadless islands,

1/ Other groups participating in the appeal are Wilderness Society and Friends of the Earth.

2/ The decision addressed other inventory units as well but the appeal is limited to the 12 units listed above.

which possess wilderness characteristics, to determine their suitability or unsuitability for wilderness designation, and to report these determinations to the President. This process consists of the inventory phase, the study phase, and the reporting phase. The inventory phase is ordinarily a two-step process: An initial inventory to eliminate those lands which clearly and obviously do not possess wilderness characteristics and an intensive inventory of the remaining lands to determine which should be designated as wilderness study areas (WSA). The appeal before us challenges BLM's determination to exclude the 12 units from the intensive inventory.

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 units on appeal each contain less than 5,000 acres and are adjacent to roadless area review and evaluation (RARE II) areas administered by the Forest Service. In the RARE II evaluation process, these adjacent RARE II areas were allocated to the "nonwilderness" category by the Forest Service. The State Director's decision of September 24, 1979, held that BLM inventory units under 5,000 acres in area and contiguous to RARE II areas allocated to nonwilderness did not qualify as wilderness study areas under BLM's inventory procedures.

[1] There appears to be no issue that each of the units on appeal does not meet the minimum acreage requirements of section 603(a) of FLPMA. Quite apart from the other issues raised in the pleadings of the parties, this deficiency in size is alone sufficient to support the State Director's refusal to conduct an intensive inventory of these units. Units that clearly and obviously do not meet the criteria for identification as a WSA are properly excluded from the intensive inventory (Wilderness Inventory Handbook at 11).

In Tri-County Cattlemen's Association, 60 IBLA 305, 310 (1981), this Board held that a unit under 5,000 acres in area could not be designated a wilderness study area pursuant to section 603, regardless of the fact that it was contiguous with a RARE II Further Planning Wilderness Unit. The units on

appeal, contiguous with lands allocated to the nonwilderness category by the Forest Service, are in a less advantageous position. Our holding in Tri-County is clearly applicable to the instant appeals. ^{3/} Because of each unit's deficiency in size, there is no possibility of a WSA designation under section 603(a). The State Director's decision refusing to conduct an intensive inventory of these units is correct.

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.

Anne Poindexter Lewis
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

^{3/} We acknowledge that Tri-County, unlike the present case, was an appeal of a WSA designation following BLM's intensive inventory of a unit less than 5,000 acres in size. Our holding in the instant case, while affirming the State Director's refusal to intensively inventory units less than 5,000 acres in size, is a natural extension of Tri-County.

ADMINISTRATIVE JUDGE BURSKI CONCURRING:

In Tri-County Cattlemen's Association, 60 IBLA 305 (1981), this Board held that, while it was not improper for BLM to intensively inventory a parcel of land of less than 5,000 acres to ascertain the presence or absence of wilderness characteristics, there was no authority in section 603 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2785, 43 U.S.C. § 1782 (1976), to designate such a parcel as a wilderness study area (WSA) nor to apply the Interim Management Guidelines thereto. Id. at 310-14. See also Save the Glades Committee, 54 IBLA 215 (1980). The instant appeal presents a different variant on the same theme. Here, the question is whether a decision of BLM refusing to order an intensive inventory of parcels of under 5,000 acres in size is reviewable by this Board. For reasons which I will set forth below, I believe that such a decision cannot be subject to appellate review by this Board since appellants cannot show that they are adversely affected by the decision not to intensively inventory these parcels within the meaning of 43 CFR 4.410.

First, I wish to make it clear, as the majority decision points out, that there is no argument presented that any of the 12 units contains 5,000 acres of public land, 1/ nor is there any allegation that any of the units lacks 5,000 acres because of improper boundary adjustments by BLM. As we have noted in numerous cases, the purpose behind the general inventory of land managed by BLM was to identify roadless areas of 5,000 acres or more possessing wilderness characteristics. See Union Oil Co. (On Reconsideration), 58 IBLA 166, 170 (1981). Inasmuch as all parties agree that no parcel involved aggregates 5,000 acres, there is no way that the statutory preconditions for studying the parcels could be met. It would seem that the purpose of the inventory process has been accomplished within the statutory contemplation, and that appellants merely seek to force BLM to take further action which cannot, in the end, ever establish any of these areas as a WSA under section 603.

We noted in Tri-County Cattlemen's Association, supra, that while BLM was free to manage identified areas of less than 5,000 acres in such a way as to maximize preservation of wilderness characteristics, such management

1/ "Public land" is defined, for the purpose of section 603, as "any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership * * *." 43 U.S.C. § 1702(e) (1976). See Tri-County Cattlemen's Association, supra at 311 n.8.

2/ In Save the Glades Committee, supra, we rejected an argument advanced by the Solicitor's Office that these decisions were not reviewable because there was "no law to apply," citing section 701 of the Administrative Procedures Act, 5 U.S.C. § 701 (1976) (54 IBLA at 219). I think that argument was correctly rejected. We did not examine, however, whether it was nonreviewable for the reasons set forth herein. I think, in retrospect, we should have dismissed that appeal for the reasons given above.

actions would be based not on section 603 of FLPMA, but rather on BLM's general authority to manage its land. See 43 U.S.C. §§ 1712 and 1732 (1976). General land use planning by BLM, however, absent specific use authorizations or denials of use, is simply not reviewable by this Board. See 43 CFR 4.410; 43 CFR Part 2400. 2/ No "interests" of the appellants are "adversely affected" by the action of the State Director herein appealed since, even if we ordered the State Office to conduct an intensive inventory, there is no way that these units could become WSA's. To the extent that appellants allege that actions might be taken in the future which could affect the land, it should be sufficient to note that, assuming appellants could evidence the requisite standing, review by this Board is more properly sought where specific actions are occurring in real factual circumstances. Cf. Tenneco oil Co., 36 IBLA 1 (1978). We should not entertain appeals where the only real gravamen of the complaint is potential injury because of some possible future action.

I believe that where the land involved is less than 5,000 acres, and thus statutorily ineligible for inclusion in a WSA, the nonavailability of relief requires that we reject appeals such as the one at bar. Therefore, for this reason, I concur with the result reached in the majority decision.

James L. Burski
Administrative Judge

