

ARIZONA STATE ASSOCIATION OF 4 WHEEL DRIVE CLUBS

IBLA 81-799

Decided June 28, 1982

Appeal from decision of Arizona State Director, Bureau of Land Management, denying a protest of wilderness study area designations. 8500 (931)

Affirmed in part; dismissed in part.

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

"Roadless." H.R. Rep. No. 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.

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

Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgments of the area's naturalness qualities, opportunities for solitude, or primitive and unconfined recreation, are entitled to considerable deference.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Rules of Practice: Appeals: Dismissal -- Wilderness Act

Where, during the pendency of an appeal involving the protest of the designation of land units as WSA's, the Board issues

a decision in another case involving the same units in which it holds that BLM's designation of these units as WSA's is error, and thereby, achieves the result sought by the appellant whose appeal is pending, the issue is moot and the appeal is dismissed.

APPEARANCES: Stu Bengson, Land-Use Chairman, Arizona State Association of 4 Wheel Drive Clubs, for appellant; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Arizona State Association of 4 Wheel Drive Clubs appeals from a decision of the Arizona State Director, Bureau of Land Management (BLM), dated March 12, 1981, denying its protest of the designation of five wilderness study areas (WSA's). A list of those Arizona units designated as WSA's was published in the Federal Register on November 14, 1980. (See 45 FR 75580-81).

The State Director's designation of 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 and roadless islands of the public lands which were identified during the inventory required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131 (1976). Following review of an area or island, the Secretary shall from time to time report to the 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 Office pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. The State Director's publication of those units designated as WSA's marks the end of the inventory phase of the review process and the beginning of the study phase.

Appellant presents a number of arguments relating to specific units. To properly address these arguments, our decision is divided into sections corresponding to the units on appeal.

North Maricopa Mountains (AZ-020-157)

BLM proposed that a 75,485-acre portion of this unit undergo wilderness study because the size, diverse and rugged terrain, and the general wildness of the unit provide outstanding opportunities for solitude and unconfined recreation. Appellant contends that BLM in its inventory of this unit discounted "roads", including a wash linking two distinct four-wheel drive trails. Appellant explains that in the arid Southwest washes are recognized and used as roads.

[1] Appellant's claim that roads exist within the North Maricopa Mountain WSA is unaccompanied by allegations that mechanical improvements or mechanical maintenance has taken place on such routes. Such allegations, inter alia, are necessary to support a finding that a road exists in a WSA. For purposes of its inventory, BLM has relied upon the following definition of a "road," quoted verbatim from the legislative history of FLPMA, H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976): "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." Appellant's allegation that washes are recognized and used as "roads" in the arid Southwest is insufficient to reverse BLM's findings in this respect, as BLM's findings are in conformity with the specific definitions of "road" and "way" to be applied in such cases, rather than upon the general definition employed in common parlance. See Conoco, Inc., 61 IBLA 23 (1981).

Appellant alleges in its protest and again on appeal that intrusions inventoried and photographed by its members prove that there is a significant impact on the area's wilderness quality and that the evidence of these intrusions was not considered by the District Manager in making his determination. The intrusions listed by the Motorola 4-Wheelers, one of appellant's member clubs, include Game and Fish Department water catchments, an intersection of various "roads," road scars, man-made diversion dam, gates, fences, rubber pipelines, and an intrusion due to removal of quartz. In the protest response dated March 12, 1981, BLM stated that full consideration was given to all comments and that corrections were made in the inventory accordingly. BLM maintained that the imprints within the unit are not substantially noticeable over the 75,000 acres. In the narrative of its intensive inventory findings, BLM stated that the size and topographic complexity of the area create a feeling of wilderness and naturalness.

[2] While these items listed by appellant are undeniably intrusions, we note that Congress did not require that a wilderness area be totally free of the imprints of man. Indeed, the definition adopted by Congress specified that a wilderness be an area which "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable." 16 U.S.C. § 1131(c) (1976) (emphasis added).

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 (WIH) at 12-13 (Sept. 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. Conoco, Inc., *supra*; C & K Petroleum Co., 59 IBLA 301 (1981); Richard J. Leumont, 54 IBLA 242, 88 I.D. 490 (1981). Appellant has not met this burden.

Appellant asserts that the "cherrystemming" of "roads" and a 2-acre boundary adjustment to exclude some impacts does not improve the true wilderness quality of the area. In its narrative, BLM states that these routes were excluded because they met BLM's definition of a road, but presented only a limited impact to the surrounding apparent naturalness; that they lie on essentially level valley floors amidst scattered saguaro cactus and creosote bush; that their presence is unobtrusive to the hiker except in immediate encounter; and that some of them would be discernible from the surrounding mountains. BLM stated that other intrusions (reservoirs and landing strip) were excluded along with the roads in the cherrystem boundary modifications. For reasons previously stated, considerable deference must be accorded BLM's determination to make these boundary modifications.

Appellant argues that if grazing is to continue, these must be vehicular access in order to maintain range improvements. Consideration of the necessary trade-offs arising from multiple uses of an area has been committed to the study phase of the wilderness review process, which is prior to the final determination by the Secretary as to recommendations on the suitability or unsuitability of an area for preservation as wilderness. See WIH at 3. There will be ample opportunity for public involvement in the study phase. We note, however, that if livestock grazing was taking place on these lands at the time of the passage of FLPMA, it may continue in the same manner and degree as it was being conducted on October 21, 1976. See 43 U.S.C. § 1782(c) (1976). Tri-County Cattlemen's Association, 60 IBLA 305 (1981), n.6.

Sierra Estrella (AZ-020-160)

Initially, BLM proposed to drop this unit from further consideration, but reversed this proposal and established a WSA consisting of 14,190 acres. In its protest, appellant contended that BLM disregarded the information submitted by the Motorola group which allegedly shows that the area is totally unfit for wilderness consideration. The intrusions listed by the Motorola 4-Wheelers included extensive mining activity, remains of buildings, roads, and bench marks. In response, BLM acknowledged that the original intensive inventory did have a considerable number of intrusions and roads. BLM said that it did not disregard appellant's comments, but found that they confirmed BLM's findings. Accordingly, BLM dropped 8,550 acres from further consideration as unnatural. ^{1/} BLM said that it has been convinced by public comments and subsequent on-the-ground field work that the remainder of the unit did meet the wilderness criteria. On appeal, appellant again refers to significant "prospects, roads, and numerous other man-made intrusions" throughout the unit.

In its narrative, BLM determined that the 14,190 acres are in an apparently natural condition with only minor imprints of man which include five vehicle ways and two prospects. BLM explained that the imprints are generally inconspicuous in character and screened by vegetation. As previously stated, BLM's determination on whether or not a particular intrusion is a substantially noticeable imprint of man is entitled to deference. Appellant has offered no reason to reverse BLM's decision.

Appellant also alleges that this unit does not offer outstanding opportunities for solitude or primitive and unconfined type of recreation. Appellant points to the fact that in the Final Decision Report of November 1980 BLM stated that opportunities for solitude were "only good" and not outstanding due to impacts. Appellant contends that only a very small narrow ridge

^{1/} In its narrative, BLM determined that a portion of the unit was in a natural condition without substantial imprints of man. However, BLM found that a major portion of the valley between the Sierra Estrellas and Seven Mile Mountain was severely impacted by an accumulation of vehicle ways, prospects, and roads. Boundary modifications were made accordingly.

actually even comes close to consideration for the wilderness definition of outstanding quality for solitude and primitive recreation.

In the wilderness inventory of May 30, 1980, BLM proposed to drop the unit from further wilderness consideration because the area did not offer outstanding opportunities for solitude or a primitive and unconfined type of recreation. A considerable amount of public comment was received on this unit and nearly all disagreed with BLM's determination that the unit had neither outstanding opportunities for solitude nor primitive and unconfined recreation.

These comments necessitated a field review of the unit. As a result of this review, BLM determined in its Decision Report that within the natural part of the unit, the rugged terrain of the Sierra Estrella mountains did provide outstanding opportunities for primitive and unconfined recreation, especially along the ridgeline. Because of its finding that the unit does have outstanding opportunities for primitive and unconfined recreation, BLM reversed its earlier proposal to drop the unit and established the unit as a WSA consisting of 14,190 acres.

Section 2(c) of the Wilderness Act, requires that an area have "outstanding opportunities for solitude or a primitive and unconfined type of recreation" (emphasis added). 16 U.S.C. § 1131(c) (1976). An area may meet either criterion. See WIH at 13. Whether these opportunities for solitude or a primitive and unconfined type of recreation are outstanding as required by 16 U.S.C. § 1131(c) (1976), is an issue which obviously calls for a subjective judgment by those familiar with the land. In this respect, the issue is similar to the question discussed above whether the unit possesses the quality of naturalness. Our resolution of this issue follows similar lines. We have held that BLM's judgment as to whether a unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference. C & K Petroleum Co., supra. Nothing presented to us by appellant is sufficient to overcome this deference.

Butterfield Stage Memorial (AZ-020-164)

BLM proposed that this unit of 9,566 acres be established as a WSA because, although the area's small size precludes outstanding opportunities for primitive and unconfined recreation, it does offer opportunities for solitude. In protesting the designation of this unit as a WSA appellant again contends that BLM disregarded the July 1980 field report of the Motorola group which illustrates the numerous intrusions in this area. The "Intrusion Inventory" of the Motorola 4-Wheelers alleged the existence of a number of intrusions including historical markers, "road scars," fence and gate, campsites, survey markers, desert station, and disturbed quartz outcropping.

In answer to appellant's protest, BLM stated that all new information supplied during the comment period was field checked, and that none of the intrusions was considered to alter significantly the natural character of the unit, either singly or cumulatively.

On appeal, appellant disagrees with the Director's finding that the roads and other intrusions shown in the photographs of the Motorola

4-Wheelers are "insignificant." Appellant argues that just because a road is not continually and regularly maintained by equipment does not mean that it looks "natural." The record shows that BLM has carefully checked the imprints listed by appellant and has concluded that these imprints are insignificant. For reasons already set forth, we defer to BLM's judgment that this unit meets the naturalness criterion of a WSA.

Appellant believes that this area should remain open to traffic to allow visitation to historic sites. As we said in our discussion of AZ-020-157, consideration of other uses of the area is appropriate during the study phase of the wilderness review process.

Mohave Wash (AZ-050-007C/048 and 020-052)

BLM proposed that this 104,605-acre unit undergo wilderness study as it is in essentially natural condition and offers outstanding opportunities for solitude and a primitive and unconfined type of recreation.

In its protest of the designation of this unit as a WSA, appellant refers to the April 1980 report submitted to the Director by the Parker 4-Wheelers documenting intrusions including roads, mines and grazing facilities. The Parker 4-Wheelers alleged that improved, maintained roads lace the Bill Williams mountains in 5-048. They specified that the roads are cut and graded substantially, penetrate the mountainsides, and are obviously maintained by mechanical equipment. The group also noted the presence of roads, improved and maintained by mechanical means to insure regular and continuous use in 5-7C. ^{2/}

In response to appellant's protest, BLM acknowledged vehicle ways in the unit, but found that none of them significantly altered the natural character of the unit. While appellant alleges the presence of roads improved and maintained by mechanical means to insure regular and continuous use, this allegation is insufficient to establish the fact alleged. In National Outdoor Coalition, 59 IBLA 291 (1981), this Board held at 299-300: "In the absence of specific allegations setting forth who improved and maintains a vehicle route by mechanical means and when such activities occurred, we believe that BLM's determination that a vehicle route does or does not meet the definition of a road is entitled to great deference." Appellant has offered no such evidence.

BLM's narrative acknowledged the intrusions caused by mining activity. BLM stated that the mining activities are almost entirely confined to one drainage in the Bill Williams mountains. While they are noticeable from within the drainage, BLM found that their overall effect on the unit is negligible. BLM stated that the grazing facilities are largely confined to drainages in the northeastern portion of the unit and are scattered so widely that they are not substantially noticeable. BLM noted that while the imprint of man's work may appear to be widespread, its overall effect is dissipated

^{2/} The Parker 4-Wheelers refers to this area as 5-7B, but we assume they mean 5-7C.

by the unit's immense area and varied terrain. For reasons previously discussed, we find no reason to disturb BLM's determination that the imprints of man within this unit do not have a noticeable effect on the area's naturalness. ^{3/}

[4] Although this unit meets the wilderness criteria for a WSA, we find that this area cannot be designated a WSA for another reason. During the pendency of this appeal, the Board issued a decision in Santa Fe Pacific Railroad Co., 64 IBLA 27 (1982), involving a number of WSA's including AZ-050-007C/048 and 020-052. The Board decided that the designation of these units as WSA's was improper based on the fact that the entire estate underlying all or a portion of the units is owned in fee simple by a private corporation. Since the Board's decision in Santa Fe achieves the result sought by appellant, that is, a finding that inclusion of these lands in a WSA is error, the issue is moot, and the appeal dismissed as to these units. Cf. Gibbonsville Townsite, 30 IBLA 74 (1977); Duncan Miller, 22 IBLA 52 (1975).

Happy Camp Canyon (AZ 040-065)

BLM found that approximately 17,271 acres of this unit possessed wilderness characteristics and proposed this area as a WSA. In its protest and again on appeal, appellant contends that even though the roads have been cherrystemmed out of the unit, they are still in use. Appellant questions the impact of such use on the wilderness quality of the unit.

In its narrative, BLM stated that the 17,271 acres are in a natural condition with the imprint of man's work substantially unnoticeable. Again, we defer to BLM's judgment in this matter as appellant has presented no evidence to convince us to do otherwise. Appellant refers to "sight and sound" intrusions and specifically points to the "sound" of trains, mining activities, and the significant impacts of other activities on the quality of solitude. The fact that sights and sounds of activities allegedly intrudes into the unit does not preclude designation of the unit as a WSA. In this regard, Organic Act Directive (OAD) 78-61, Change 3 at 4 (July 12, 1979), states:

Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory

^{3/} Appellant comments that the separation of area 050-048 and 020-052 by a "cherrystem" road as a boundary does not show sensible resource management thinking. In its narrative, BLM explained that this route lies entirely within the wash and that there is no evidence of construction or maintenance to insure regular and continuous use. Therefore, BLM removed the boundaries created by this route and combined all three units.

of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

Therefore, outside "sights and sounds" ordinarily should be considered during the "study" process, where they might affect an area's wilderness characteristics. Don Coops, 61 IBLA 300, 304 (1982).

Appellant has failed to establish that the outside "sights and sounds" render the area devoid of outstanding opportunities for solitude. As we previously stated in Tri-County Cattlemen's Association, supra at 309, outstanding opportunities need not be available at all times and at all places in a unit. In its Decision Report, BLM acknowledged the outside "sights and sounds," but concluded they were of a minor nature and did not significantly affect the unit.

Regarding solitude, BLM stated in its narrative that the unit offers outstanding opportunities for solitude. BLM observed that the topography and vegetation are such that an outstanding feeling of isolation, and seclusion can be achieved. BLM said that the rugged mountains, canyons, and oak and pinyon/juniper forests provide a situation in which a person can find solitude and isolation from other persons in the area.

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. Richard J. Leumont, supra, 88 I.D. 490 (1981); Sierra Club, 54 IBLA 31 (1981). In the present case, appellant has failed to offer compelling reasons for disturbing the State Director's assessment of the wilderness characteristics of the five units. It has not shown that he failed to consider adequately all of the factors involved. Tri-County Cattlemen's Association, supra.

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 dismissed as to unit AZ-050-007C/048,020-052 and is affirmed as to all other units.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

