

TOM H. FORD

IBLA 81-608

Decided July 23, 1982

Appeal from a decision of the Montana State Director, Bureau of Land Management, designating inventory unit MT-068-246 a wilderness study area. 8500 (912)

Affirmed.

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

BLM's practice of designating lands occupied by roads or other intrusions as nonwilderness corridors (cherry systems), thereby excluding such lands from wilderness review and permitting adjacent lands, otherwise possessing wilderness characteristics, to be studied for their uses, values, and resources, is not an unlawful practice or contrary to any established Department policy.

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

Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

3. 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.

4. 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 judgment of the area's naturalness qualities is entitled to considerable deference.

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

The argument that a wilderness study area would be better utilized for oil and gas development is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or unsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

APPEARANCES: Tom H. Ford, *pro se*; Kenneth T. Jarvi, Esq., Great Falls, Montana, for appellant; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Tom H. Ford appeals from a decision of the Montana State Director, Bureau of Land Management (BLM), dated March 11, 1981, designating inventory unit MT-068-246 a wilderness study area (WSA). BLM's decision was issued following protests of an earlier decision, announced on November 14, 1980, dropping this unit from further wilderness review. 45 FR 75589. The lands at issue are located in Fergus County, Montana, and are bounded in part by the Missouri River.

The State Director's designation of this unit as a WSA 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 President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness.

The wilderness characteristics referred 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 announcement of designated WSA's marks the end of the inventory phase of the review process and the beginning of the study phase.

[1] Appellant presents a number of arguments in his statement of reasons, his first argument being the contention that inventory unit MT-068-246 (Woodhawk) contains roads that BLM has eliminated from the WSA by its practice of cherrystemming. ^{1/} If cherrystemming were forbidden, appellant maintains, the Woodhawk WSA would not meet the 5,000-acre size requirement of

^{1/} The Solicitor's Office, after requesting three extensions of time in which to file an answer to appellant's statement of reasons, has moved to dismiss the statement of reasons because it was not transmitted within 30 days of the notice of the appeal. Under 43 CFR 4.412, counsel argues, this failure to file timely is not waivable. The applicable regulation, 43 CFR 4.412, states that an appeal to the Board will be "subject to summary dismissal" for the late filing of the statement of reasons. The above quoted phrase has been construed in Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969), to require the exercise of discretion by this Board in applying this regulation. Appellant's notice of appeal was filed on Mar. 23, 1981, and his statement of reasons on May 11, 1981. There being no allegation of harm caused by this tardiness, counsel's motion to dismiss is denied.

section 603(a). The State Director's decision of March 11, 1981, states that the area of the Woodhawk WSA is 7,855 acres. The cherrystemming practice complained of refers to BLM's practice of designating as nonwilderness corridors (cherrystems) lands occupied by roads or other intrusions that would seemingly disqualify a parcel from wilderness consideration. The boundaries of an inventory unit containing a cherrystem are drawn around the intrusion by BLM so as to exclude it from the area being considered for wilderness values.

In National Outdoor Coalition, 59 IBLA 291, 296 (1981), we held that BLM did not act contrary to law or any established Department policy in recognizing nonwilderness corridors occupied by a road or other man-made intrusion. Though the boundaries of a WSA "containing" a nonwilderness corridor might be irregular as a result of such corridors, we agreed with BLM and intervenor Sierra Club that section 603(a) did not specify any particular shape for an area that may eventually be recommended for wilderness preservation. No additional arguments have been advanced on appeal by appellant. Our decision in National Outdoor Coalition must, therefore, dispose of this first argument.

[2] Naturalness is lacking in the Woodhawk WSA, appellant contends, because the unit is surrounded by roads maintained by BLM and is traversed by a cherrystemmed road and numerous other roads servicing reservoirs, homesteads, water savers, and fence lines. To the extent that intrusions exist on the boundary of the WSA and hence outside the WSA, appellant's contention is answered by Ruskin Lines, 61 IBLA 193 (1982). Therein at page 195, we said that BLM's practice is to assess the imprints of man outside unit boundaries during the inventory stage 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 considered, 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 of a unit. Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during the study phase. Organic Act Directive (OAD) 78-61, Change 3, July 12, 1979. Appellant has not alleged facts which would establish that boundary impacts are so extremely imposing that they cannot be ignored or that reasonable application of inventory guidelines would be questioned. A similar holding would be applicable to appellant's contention that such boundary impacts compromise outstanding opportunities for solitude. The study phase of the wilderness review program will address these concepts. Appellant's participation in the study phase is invited. 45 FR 75574, 75575 (Nov. 14, 1980).

[3] The charge that roads exist within the WSA is a proper inventory consideration and one deserving of discussion here on appeal. Appellant's statement of reasons includes several pictures of routes that he contends should have been recognized by BLM as roads. Nowhere, however, in the statement of reasons does appellant make sufficient allegations to compel a reversal of BLM's inventory findings. The definition of a "road" used by BLM in its field work is set forth in H.R. Rep. No. 1163, 94th Cong. 2d Sess. 17 (1976), and in the Wilderness Inventory Handbook (WIH) at page 5: "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."

As this Board held in National Outdoor Coalition, *supra*, and Conoco, Inc., 61 IBLA 23, 35 (1981), 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. Captions describing the photographs in appellant's statement of reasons consistently neglect at least one essential element in the "road" definition, as, *e.g.*, improvement by mechanical means or maintenance by mechanical means. Neither the allegations set forth in appellant's comments nor in his statement of reasons overcome this deference we accord to BLM in such matters.

[4] Although the presence of ways within a WSA may compromise a unit's naturalness characteristics, it does not follow that a WSA need be devoid of all intrusions. 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. Marvin Casey, 63 IBLA 208 (1982).

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, firebreaks, 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, wildlife enhancement facilities, radio repeater sites, air quality monitoring devices, fencing, and spring development (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. C & K Petroleum Co., 59 IBLA 301

(1981); National Outdoor Coalition, *supra*; Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). Appellant's submissions on appeal do not rise to this level.

[5] In his statement of reasons, appellant includes a map of the WSA showing that numerous oil and gas leases have issued within its boundaries. In his narrative, he explains that the unit possesses great potential for oil and gas development and that such development is being restricted by preventing Fuelco Gas Company from crossing the Missouri River.

The competing uses for land within the Woodhawk WSA are properly addressed during the study phase of the wilderness review process. As set forth in the WIH, the study phase involves the process of determining which areas will be recommended as suitable for wilderness designation and which will be recommended as nonsuitable. These determinations, made through BLM's land use planning system, consider all values, resources, and uses of the public lands. Appellant's comments are, accordingly, premature at this time but should prove valuable to BLM during the study phase.

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 State Office is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

