

CITY OF DELTA

IBLA 81-434

Decided August 19, 1982

Appeal from letter decision of Colorado State Office, Bureau of Land Management, dismissing protest of designation of wilderness study area. CO-030-388.

Affirmed.

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

Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal. Statements that the area is affected by outside sights and sounds and bears noticeable scars of man's intrusions will not suffice in the absence of evidence that the impact on the unit is so pervasive as to preclude a rational finding of wilderness characteristics.

APPEARANCES: Jim Robertson, Mayor, City of Delta, for appellant; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management; Thomas L. Strickland, Esq., and Theodore E. Worcester, Esq., Denver, Colorado, for intervenors, Sierra Club, the Colorado Open Space Council, and the Wilderness Society.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The City of Delta has appealed from a letter-decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 2, 1981, dismissing its protest of the designation of inventory unit CO-030-388 (Gunnison Gorge) as a wilderness study area (WSA).

On November 14, 1980, the BLM Colorado State Office published its final intensive wilderness inventory decision in the Federal Register, which in part designated 19,560 acres of land in unit CO-030-388 (Gunnison Gorge) as a WSA. 45 FR 75584 (Nov. 14, 1980). By letter

dated December 12, 1980, appellant protested designation of the unit as a WSA contending that BLM had given inadequate consideration to the "sights and sounds" from adjacent farms, jeep roads, a flight path, and Highway 92 which allegedly impinge on the outstanding opportunity for solitude and the naturalness of the area. In addition, appellant referred to the "noticeable scars of man's intrusions," namely, 13 known mines and associated four-wheel drive access roads and seven cabins. Finally, appellant argued that BLM had failed to consider "the potential value of the area for a hydroelectric project," and the substantial benefits to be derived therefrom. In its February 2, 1981, letter-decision, BLM responded to appellant's protest:

Boundary adjustments were made in the northern portion of the unit which excluded the Smith Fork Road and old mining scars. Other imprints of man found within the unit are not substantially noticeable. In addition, the Gunnison Gorge Wilderness Study Area (WSA) is contiguous to the existing Black Canyon of the Gunnison Wilderness Area.

During the study phase, potential resource conflicts and manageability will be analyzed. It is the study phase which will recommend if a WSA is suitable or not for wilderness designation.

In addition, after evaluating protests filed by other groups, I am adding approximately 680 acres of the main canyon north of the Smith Fork to the identified WSA. The WSA now contains 20,240 acres.

In its statement of reasons for appeal, appellant reiterates the arguments made in its letter of protest.

[1] The BLM decision was made pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section provides, in relevant part, that: "[T]he Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, 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 [16 U.S.C. § 1131 (1976)] \* \* \*." 43 U.S.C. § 1782(a) (1976). From time to time thereafter, the Secretary shall report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness review undertaken by the State Office pursuant to section 603(a) of FLPMA, supra, has been divided into three phases by

BLM: Inventory, study, and reporting. The BLM decision under review marks the end of the inventory phase of the review process and the beginning of the study phase.

The key wilderness characteristics described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), which are assessed during the wilderness review process are size, naturalness, and an outstanding opportunity for either solitude or a primitive and unconfined type of recreation. See Bureau of Land Management, U.S. Department of the Interior, Wilderness Inventory Handbook (Sept. 27, 1978) at 6 (hereinafter cited as WIH).

The "sights and sounds" associated with human activity outside an inventory unit are factors which must be assessed when considering the wilderness characteristics of naturalness and an outstanding opportunity for solitude to the extent that the outside activities impinge upon adjacent areas inside the unit so as to deprive them of wilderness characteristics. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981). One can envision certain circumstances where such activity would so intrude on an inventory unit that it would be unreasonable to consider the area "as having wilderness characteristics," as required by section 603(a) of FLPMA, supra.

However, it should be remembered that an area can be considered natural where the imprint of man's work is "substantially unnoticeable." 16 U.S.C. § 1131(c) (1976). (Emphasis added.) It is in this context that Organic Act Directive (OAD) No. 78-61, Change 3, states at 4:

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 \* \* \*.  
[Emphasis added.]

Included in the record is an intensive inventory summary sheet which refers to the concerns raised by appellant with respect to "sights and sounds" and states: "Outside sights and sounds are not evaluated during this phase of the wilderness review." As noted above, outside sights and sounds are properly considered during the inventory phase to the extent they significantly intrude on the wilderness character of an inventory unit and cannot be disregarded. Union Oil Co. (On Reconsideration), supra.

However, in view of the overall assessment of the wilderness character of unit CO-030-388 and appellant's failure to present any evidence that the intrusion of outside sights and sounds is so significant as to preclude findings of naturalness and an outstanding opportunity for solitude, we cannot find error in the failure to consider the aforementioned outside sights and sounds in the inventory stage. Appropriate consideration should be given to such factors during the study phase.

Appellant has also argued that unit CO-030-388 bears the "noticeable scars of man's intrusions." <sup>1/</sup> In contrast, the BLM intensive inventory report, dated December 3, 1979, states, in regard to the characteristic of naturalness:

Unit CO-030-388 consists primarily of the rugged double canyon system known as the Gunnison Gorge. The steep, narrow inner canyon is carved into dark Precambrian rock while the wider upper canyon is made up of lighter colored sedimentary strata. About 11 miles of the Gunnison River are contained within the unit. Pinyon and juniper trees are the dominant vegetation with a riparian zone along the river. With the exception of two ways which need rehabilitation, those imprints of man which are found within the unit are isolated and minor in the context of the large canyon dominated by the forces of nature. They consist primarily of ways and some past mineral exploration activity in the form of shallow pits and adits. Most are screened from view by topography and vegetation except in their immediate vicinity. The area as a whole is primarily natural in character.

As a result of field evaluation of public comments, two access routes were subsequently dropped from the unit because they were considered to be substantially noticeable.

The decision to designate an area as a WSA is committed to the discretion of the BLM State Office and 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. Leaumont, 54 IBLA 242 (1981); Sierra Club, 54 IBLA 31 (1981). As we stated in Richard J. Leaumont, *supra* at 245:

These [wilderness] evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

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<sup>1/</sup> Appellant has not argued that the unit fails to meet the criteria of roadlessness as set out in section 603(a) of FLPMA, *supra*. There is no evidence that any of the routes identified detract from the character of the area as "roadless." See WIH at 5.

In the present case, appellant has failed to offer compelling reasons for disturbing BLM's assessment of the wilderness characteristics of unit CO-030-388. Moreover, it has not shown that BLM did not adequately consider all of the factors involved. California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978). We must conclude that BLM properly dismissed appellant's protest.

Finally, appellant has argued that BLM did not consider the potential value of the area for a hydroelectric project. Consideration, however, of the necessary trade-off between multiple uses of an area has been committed to the study phase of the wilderness review process, that is, prior to the final determination by the Secretary as to recommendations on the suitability or unsuitability of an area for preservation as wilderness. Union Oil Co. (On Reconsideration), supra at 170; see WIH at 3. As the court stated in Utah v. Andrus, 486 F. Supp. 995, 1003 (D. Utah 1979), with regard to competing mineral values:

BLM is not required to immediately balance the mineral values against the wilderness values of a particular piece of land prior to designating the land a WSA. BLM may, consistent with FLPMA, look first at potential wilderness characteristics and then proceed to study the area for all its potential uses prior to formulating its final recommendations to the Executive.

Accordingly, BLM may properly consider the subject area's potential for hydroelectric development 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 appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Bruce R. Harris  
Administrative Judge

