

JAMES STEWART CO.

IBLA 81-708

Decided February 24, 1983

Appeal from decision of Arizona State Office, Bureau of Land Management, denying protest of designation of wilderness study areas. AZ-020-126A, et al.

Affirmed.

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

The proper scope of the wilderness inventory conducted under secs. 201 and 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1711, 1782 (1976), involves a determination of whether the land inventoried is possessed of the wilderness characteristics defined by Congress so as to require designation as a wilderness study area. The question of the suitability of a tract of land within a wilderness study area for designation as wilderness, as contrasted with devotion of the land to other purposes, is properly considered during the subsequent study phase of the wilderness review process.

APPEARANCES: M. S. Horne, president, James Stewart Company, Phoenix, Arizona, for appellant; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The James Stewart Company has appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated March 12, 1981, denying

its protest of the designation of inventory units AZ-020-126A (Little Horn Mountains West), AZ-020-127 (Little Horn Mountains East), AZ-020-128 (Eagletail Mountains -- Cemetery Ridge), and AZ-020-129 (East Clanton Hills) as wilderness study areas (WSA's).

On November 7, 1980, the BLM State Office published its final intensive wilderness inventory decision in the Federal Register, in part designating 13,800 acres in unit AZ-020-126A (Little Horn Mountains West) as a WSA. 45 FR 74066 (Nov. 7, 1980). By decisions dated March 27, 1981, the BLM State Office designated 91,930 acres in unit AZ-020-127 (Little Horn Mountains East), 120,925 acres in unit AZ-020-128 (Eagletail Mountains -- Cemetery Ridge) and 36,600 acres in unit AZ-020-129 (East Clanton Hills) as WSA's. ^{1/}

By letter dated December 30, 1980, appellant protested the designation of the four units as WSA's, contending that designation would preclude it from exercising its rights for farming and grazing under various state and Federal leases and allotments. Appellant stated that it has held rights in the land included within the Palomas and Eagle Tail ranches for 25 years and has placed substantial improvements on the land in the form of "wells, pumps, windmills, fencing, maintenance of roads, etc." In particular, appellant argued that designation as a WSA would prevent "free access" to any part of its land by motor vehicles, which access is necessary in order to repair and maintain its range improvements and to engage in farming and grazing its land. Appellant concludes that "as we * * * have been actively putting this land to its highest and best use, we feel that we have a preferential right to request that this land be left out of the Wilderness [Study] Area."

In its March 1981 decision, BLM responded to appellant's protest. BLM stated that "existing" grazing rights are protected under law, including the use and maintenance of existing facilities. New facilities, however, must satisfy "non-impairment criteria." Access to state land "cannot be blocked" as a result of WSA designation. Motorized access may continue on "existing" routes. Cross-country motorized access, however, must satisfy "non-impairment criteria." In general, access over public lands may be regulated "to prevent undue disturbance of the surface resource." Finally, BLM provided a detailed discussion of the "roads" and range improvements identified by appellant in the protest. BLM explained that the "roads" were either outside the WSA or had been determined to be ways, in accordance with the

^{1/} These three units were inventoried separately under a Special Project Wilderness Inventory, in association with the Palo Verde-Devers 500 KV Transmission Line Environmental Impact Statement. The final decision in the record for these units on WSA designation was not signed by the State Director until Mar. 27, 1981, after the protest and decision appealed from herein. However, the decision of Mar. 12, 1981, constituted an appealable decision denying appellant's protest of the WSA's, and, thus, we will proceed to consider the merits of the appeal with respect to these three units.

definition of a "road" used by BLM in implementing the statutory mandate. See Bureau of Land Management, U.S. Department of the Interior, Wilderness Inventory Handbook (Sept. 27, 1978) at 5 (hereinafter cited as WIH). Further, BLM determined that the range improvements are "substantially unnoticeable" and are included within the WSA. See WIH at 12. 2/

In the statement of reasons for appeal appellant opposes designation of the lands as a WSA contending that the land is more suitable for grazing and farming and that it should be left unrestricted.

[1] With respect to appellant's allegation that the land is more suitable for farming or grazing purposes than wilderness designation, the distinction between the inventory and the study phase of the wilderness review process must be recognized. The inventory phase is designed solely to identify those areas of the public lands having the wilderness characteristics defined by Congress. Upon a finding that such characteristics exist, such lands are properly included in a WSA and are studied for "suitability" for designation as wilderness. As this Board explained in Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981), it is during the study phase rather than the inventory phase that the desirability of the wilderness designation as compared with all other uses of the land, both existing and potential, is considered:

During this study phase, BLM would endeavor to analyze each WSA's suitability for wilderness designation in conjunction with the whole range of other public land uses that Congress has authorized. Thus, the mineral potential of any tract would be examined in the study phase to determine the impact that a permanent wilderness designation might have on such values. Moreover, this analysis is not limited to only mineral values, but embraces the full range of public uses, including grazing and recreational use, with an aim to determining the relative merits of a specific parcel's inclusion in the wilderness system. Indeed, the entire purpose of the study phase is the generation of data sufficient to make informed choices between competing claims to the land.

58 IBLA at 170.

2/ Appellant has presented no evidence on appeal to rebut BLM's conclusions that the four units are "roadless" and satisfy the wilderness characteristic of naturalness, as required by section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), and section 2(c) of the Wilderness Act of 1964, 16 U.S.C. § 1131(c) (1976). In the absence of a showing of compelling reasons for modification or reversal of BLM's conclusions, the decision denying appellant's protest must be affirmed on this basis. City of Colorado Springs, 61 IBLA 124 (1982).

In its statement of reasons for appeal, appellant also reiterates that it has "grandfather rights," which might be curtailed by designation of the four units as WSA's. The mere existence of grazing leases and allotments or, even, the possibility that such interests may be limited is not an argument against designation of a WSA; rather, it is an argument regarding proper management of the WSA. Therefore, in the sense that appellant is arguing against designation, it has presented nothing which would militate against designation of the four units as WSA's.

There is no evidence that BLM has sought to limit appellant in the exercise of its rights for farming or grazing under the various State and Federal leases and allotments identified in its protest. Subsequent to designation of a unit as a WSA, but prior to the time Congress acts on the President's recommendation regarding the suitability or unsuitability of an area for preservation as wilderness, units designated as WSA's are to be managed under interim management guidelines, as enunciated in the Bureau of Land Management, U.S. Department of the Interior, Interim Management Policy and Guidelines for Lands Under Wilderness Review, 44 FR 72013 (Dec. 12, 1979) (hereinafter cited as IMP). These guidelines are based substantially on section 603(c) of FLPMA, 43 U.S.C. § 1782(c) (1976). That section provides, in relevant part, that the Secretary shall manage lands under wilderness review in a "manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of this Act." *Id.* (emphasis added). Thus, grazing may continue to the same extent that it was on ongoing activity on October 21, 1976, the date of enactment of FLPMA. See Rocky Mountain Oil & Gas Association v. Watt, No. 81-1040, slip op. at 34 (10th Cir. Nov. 30, 1982); State of Utah v. Andrus, 486 F. Supp. 995, 1006 (D. Utah 1979). The extent to which existing "grazing uses" may continue is more fully explained in the IMP at pages 12, 22-24. These guidelines cover in part the use and maintenance of pre-FLPMA range improvements and motorized access. ^{3/}

To the extent that grazing uses are determined not to be "grandfathered" under section 603(c) of FLPMA, they would then be subject to the nonimpairment criteria, as explained in the IMP at pages 10-11. Even where grazing uses are determined to be "grandfathered," in accordance with section 603(c) of FLPMA, supra, the Secretary may regulate such uses "to prevent

^{3/} With respect to pre-FLPMA range improvements, the IMP provides at page 23: "Range improvements existing or under construction on October 21, 1976, may continue to be used and maintained." With respect to motorized access, the IMP provides at page 23: "Motorized access on existing access routes may be permitted. Cross-country motorized access may be authorized along routes specified by the BLM if it satisfies the nonimpairment criteria, including reclamation requirements; no grading or blading will be permitted."

unnecessary and undue degradation of the lands and their resources." See Dale F. Gimblett, 60 IBLA 341 (1981). This approach was approved by the court in State of Utah v. Andrus, supra at 1004-05.

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:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

