

Appeal from decision of Oregon State Office, Bureau of Land Management, denying protest of elimination of inventory units and subunits from further consideration as wilderness study areas. 2-43A, et al.

Affirmed.

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

The subjective judgment of BLM as to whether an inventory unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference where the record discloses BLM's first-hand knowledge of the land within the unit.

APPEARANCES: Richard J. Leaumont, pro se; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Bureau of Land Management; Andy Kerr, Oregon Wilderness Coalition. 1/

OPINION BY ADMINISTRATIVE JUDGE GRANT

Richard J. Leaumont has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 19, 1981, denying his protest of the elimination of 16 inventory units and subunits from further consideration as wilderness study areas (WSA's), pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976).

On November 14, 1980, the BLM State Office published its final intensive wilderness inventory decision in the Federal Register, in part eliminating 250,815 acres in 10 units from further consideration as WSA's.

1/ Although Oregon Wilderness Coalition filed a petition to intervene in this case which was granted by order of Dec. 22, 1981, allowing intervenor 30 days to file a brief, no brief has been filed by intervenor.

45 FR 75597 (Nov. 14, 1980). ^{2/} By letter dated December 9, 1980, appellant protested the elimination of the 16 units and subunits from further consideration as WSA's, contending that BLM had improperly assessed the opportunities for solitude or a primitive and unconfined type of recreation. Appellant argued that, despite the fact that the areas are "arid and primarily treeless," the fact that they are "remote" makes "the chance of simultaneous visitations by numerous parties within sight of one another * * * less likely." In addition, appellant argued that BLM should have considered contiguous units and subunits, separated only by an infrequently used road, "as one," for purposes of assessing opportunities for solitude. Finally, appellant stated that the size, naturalness, and opportunities for solitude of the areas "can provide nothing short of" outstanding opportunities for a primitive and unconfined type of recreation.

In its March 1981 decision, BLM responded to appellant's protest. BLM stated that it had determined that the areas lack outstanding opportunities for solitude, based on a consideration of "size, natural screening, and the ability of the user to find a secluded spot," as required by the Wilderness Inventory Handbook. ^{3/} BLM concluded that "remoteness" alone was "not sufficient reason to judge each area as possessing outstanding opportunities for solitude." BLM also stated that it could not ignore roads, by combining units and subunits for purposes of assessing opportunities for solitude, because "it would be tantamount to ignoring the clear Congressional mandate to use roadless areas as the basis for the wilderness inventory." Finally, BLM held that the fact that a unit which meets the criteria of size and naturalness is quite remote does not itself establish the presence of outstanding opportunities for recreation.

In his statement of reasons for appeal, appellant reiterates the arguments made in his protest. Appellant continues to assert that opportunities for solitude are outstanding, despite the possibility of the "chance encounter" of visitors. In addition, appellant argues that contiguous units and subunits should be considered together as a conceptual matter, because surrounding areas "affect the degree of solitude one experiences in each separate unit." Appellant also states that opportunities for a primitive and unconfined type of recreation are outstanding in the sense that the areas provide an "out of the way natural area."

[1] The BLM State Office decision was made pursuant to section 603(a) of 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

^{2/} These 10 units are: 2-43 (Wagontire Mountain), 2-57 (Jackass Creek), 2-61 (Foster Flat), 2-64 (Buzzard Creek), 2-65 (Deep Canyon), 2-68 (Smokey Hollow), 2-69 (Devils Canyon), 2-70 (Wilson Butte), 2-71 (Goose Egg), and 2-75 (Black Point). Appellant's protest/appeal pertains to three subunits of unit 2-43 (2-43A, 2-43B, and 2-43F); unit 2-57; four subunits of unit 2-61 (2-61A, 2-61D, 2-61E, and 2-61F); two subunits of unit 2-64 (2-64A and 2-64B); units 2-65, 2-68, 2-69, 2-70 and 2-71; one subunit of unit 2-75 (2-75C).

^{3/} Bureau of Land Management, U.S. Department of the Interior, Wilderness Inventory Handbook (Sept. 27, 1978) at 13 (hereinafter cited as WIH).

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 is required to report to the President his recommendation as to the suitability or unsuitability 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 BLM State Office pursuant to section 603(a) of FLPMA has been divided into three phases by BLM: Inventory, study, and reporting. The BLM decision marks the end of the inventory phase 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 inventory process are size, naturalness, and either an outstanding opportunity for solitude or a primitive and unconfined type of recreation. See WIH at 6.

Appellant's principal argument regarding opportunities for solitude is that BLM gave inadequate consideration to the "remote" nature of the areas. However, the fact that an area is remote is not dispositive of the question of whether the area possesses an outstanding opportunity for solitude. It merely establishes that the area already affords solitude. The "state of being * * * remote from others" is, after all, the definition of "solitude." WIH at 13. The question, however, is whether there is an outstanding opportunity for solitude. An opportunity for solitude is defined as the "opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit." Id. The question, then, is whether the area will afford solitude, given the presence of others. The factors which are to be considered in assessing this opportunity are size, natural screening, configuration, and "other factors that influence solitude." Organic Act Directive (OAD) 78-61, Change 3, dated July 12, 1979, at 4. Adequate consideration of opportunities for solitude must address all of these factors. The record indicates that BLM considered all the necessary factors.

Appellant is also mistaken in his contention that BLM should conceptually view contiguous units and subunits "as one," for purposes of assessing opportunities for solitude. Appellant is in essence asking BLM to ignore the roads which divide these units. Clearly, BLM cannot do this. BLM is required to assess the wilderness characteristics of "roadless" areas of the public lands. BLM has properly divided these units and subunits. If each lacks outstanding opportunities for solitude, the mere aggregation of such areas does not guarantee that the areas will then contain outstanding opportunities. Size is merely one of the factors to be considered in assessing solitude. Appellant implies that increasing the size of a unit will lead to a different result. There is no basis in this record for such a conclusion. Even assuming BLM could consolidate these units for purposes of assessment, appellant has provided nothing to indicate that the result for the solitude criterion would be different. Appellant's contention must be rejected.

Appellant also argues that outstanding recreation opportunities are available in these areas. However, appellant has pointed out no errors in

BLM's assessment. He merely offers a difference of opinion. BLM's determination that these areas lack outstanding opportunities for recreation may not be overcome by expressions of simple disagreement. See Conoco, Inc., 65 IBLA 84 (1982). The assessment of the outstanding opportunity criterion is necessarily highly subjective, and, accordingly, BLM's judgment in such matters is entitled to considerable deference. Ruskin Lines, 61 IBLA 193 (1982). An appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome that deference. In the absence of a showing of compelling reasons for modification or reversal, a BLM decision to eliminate a unit from further consideration as a WSA on that basis will be affirmed. Sierra Club, 62 IBLA 367 (1982); Animal Protection Institute of America, 61 IBLA 222 (1982). Appellant has failed to offer compelling reasons for disturbing BLM's assessment of the wilderness characteristics of the 16 units and subunits.

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

