

JACA BROS., INC.

IBLA 82-894

Decided May 26, 1983

Appeal from decision of the Oregon State Office, Bureau of Land Management, denying protest against final inventory decision designating the Owyhee River Canyon unit (OR-3-195/ID-16-48b) in part as a wilderness study area.

Affirmed.

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

An appellant requesting this Board to reverse a Bureau of Land Management decision including lands in a wilderness study area must show that the decision was based either on a clear error of law or a demonstrable error of fact, or the decision will be affirmed.

APPEARANCES: Felix Jaca, Director, Jaca Bros., Inc.; Paul B. Smyth, Esq., Office of the Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jaca Bros., Inc. (Jaca Bros.), has appealed the May 19, 1982, decision of the Oregon State Office, Bureau of Land Management (BLM), denying its protest against the designation of a portion of the Owyhee River Canyon unit OR-3-195/ ID-16-486) as a wilderness study area. We affirm.

BLM published notice of its final inventory decision in the Stateline area (where Oregon joins with Idaho and Nevada) on December 17, 1981, at 46 FR 61514. This decision noted that 229,100 acres in the Owyhee River Canyon unit, covering an area straddling the Oregon-Idaho border, had been proposed as a wilderness study area (WSA). It also noted that 21,280 acres in this unit had been deleted from the unit and were not being proposed as WSA.

Jaca Bros. subsequently filed its protest in January 1982, asserting that the unit was unsuitable for designation as a WSA, because it contains two manmade water holes and a livestock salt road running to them. The protest also alleged that there was no opportunity for solitude and unconfined recreation on the north part of the area because it "is open to view from the loop road to Three Forks."

BLM responded as follows in its May 19, 1982, decision, which dismissed the protest:

Short Canyon Reservoir and Paus Reservoir are the only two man-made water holes in the general area of your concern. Short Canyon Reservoir and the road leading to it have been eliminated from further wilderness review. They are included in the area without wilderness characteristics, along the east side of the canyon from Three Forks north to Indian Canyon, shown on the map on page 36 of the November 1981 report on the final inventory decisions.

Paus Reservoir and its access way are the only imprints within the remainder of the area under protest. They are minor imprints which are screened from the boundary road by high ground and remain substantially unnoticeable.

The specific area covered by your protest may not possess outstanding opportunities for solitude or primitive recreation if examined by itself. However, the area you protested still qualifies as part of the wilderness study area (WSA) because the WSA, taken as a whole, does have outstanding opportunities. According to BLM's wilderness inventory procedures, every acre identified as a WSA does not have to possess the outstanding opportunities. There is no basis for separating the area you protested from the remainder of the unit; therefore, the protested area has been reviewed as a part of the entire WSA.

The state and Vale District Office staffs have thoroughly re-examined their previous efforts in carrying out the wilderness inventory of the Owyhee River Canyon Inventory Unit. They have assured me that we have retained in the wilderness study area only those areas which do, without question, possess wilderness characteristics. Therefore, your protest of the decision to include a small area on the east side of the canyon in the Owyhee River Canyon WSA must be and is hereby denied. Since the public lands in that area are an integral part of a larger area which clearly meets the requirements of being wilderness in character, they must be identified as part of the Wilderness study area. [Emphasis added.]

Jaca Bros. (appellant) advised BLM by letter dated May 25, 1982, that it wished to appeal insofar as BLM included in the WSA the Paus Reservoir and

manmade road leading to it with its grazing area. Appellant's only supporting reason is that these manmade features are "visible from anywhere around."

[1] An appellant seeking reversal of a decision to include land from a WSA must show that the decision appealed from was based either on a clear error of law or a demonstrable error of fact. Owyhee Cattlemen's Association, 71 IBLA 9 (1983); John W. Black, 63 IBLA 165 (1982); Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981) (en banc). BLM has fully evaluated the effects of the Paus Reservoir and its access way and concluded that they are not so great as to disqualify the area for designation as a WSA. On appeal, appellant has done nothing more than offer a differing opinion and has provided nothing showing specific errors of fact or law in BLM's decision. Mere disagreement with BLM's conclusion is insufficient to justify a different result. Merrill G. Hastings, 60 IBLA 54, 56 (1981). Accordingly, since appellant has not met its burden of showing error, BLM's decision is affirmed.

Accordingly, 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.

Douglas E. Henriques  
Administrative Judge

We concur:

James L. Burski  
Administrative Judge

Gail M. Frazier  
Administrative Judge

