

Editor's note: Reconsideration denied by Order dated Oct. 9, 1985

SIERRA CLUB - ROCKY MOUNTAIN CHAPTER ET AL.

IBLA 80-301; IBLA 81-544

Decided August 23, 1983

Appeals from decisions of State Director, Colorado State Office, Bureau of Land Management, denying in part protest of exclusion of certain land from inventory unit and denying in part protests of elimination of certain inventory units from further consideration as wilderness study areas. CO-070-031, et al.

Vacated and remanded in part; affirmed as modified in part; set aside and remanded in part; affirmed in part.

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

BLM may properly eliminate areas of the public lands of less than 5,000 acres from further consideration as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands.

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

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §1782(a) (1976), BLM may not compare a unit with other units but may compare it with other areas in a particular region, on the basis of topographic, vegetative, and other features.

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

In deciding whether to designate an inventory unit as a wilderness study area under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §1782(a) (1976), BLM may properly consider the configuration of the unit in assessing opportunities for solitude or primitive, unconfined recreation.

APPEARANCES: William S. Curtiss, Esq., Denver, Colorado, for appellants, Sierra Club - Rocky Mountain Chapter, Colorado Open Space Council, Colorado Mountain Club, and University of Colorado Wilderness Study Group; Luke J. Danielson, Esq., and Frances M. Green, Esq., Boulder, Colorado, for appellants, Sierra Club - Rocky Mountain Chapter, Colorado Open Space Council, Colorado Mountain Club, University of Colorado Wilderness Study Group, and Public Lands Institute; Nikki Ann Westra, Esq., and 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 FRAZIER

These cases involve joint appeals by the Sierra Club - Rocky Mountain Chapter, Colorado Open Space Council, Colorado Mountain Club, University of Colorado Wilderness Study Group, and the Public Lands Institute from two decisions of the State Director, Colorado State Office, Bureau of Land Management (BLM). The first decision (IBLA 80-301), dated December 6, 1979, denied in part a protest to the exclusion of certain land from inventory unit CO-070-031 (South Shale Ridge). 1/ The second decision (IBLA 81-544), dated February 2, 1981, denied in part protests to the elimination of the following inventory units from further consideration as wilderness study areas (WSA's): CO-010-00N4B (Hell's Canyon), CO-070-031 (South Shale Ridge), CO-070-130 (Bangs Canyon), and CO-070-150A (Gunnison River). 2/ We will first proceed to consider the appeal from the December 1979 BLM decision.

1/ The Public Land Institute is not an appellant with respect to the December 1979 BLM decision (IBLA 80-301).

2/ On May 1, 1981, the Colorado Wildlife Federation (CWF) filed a petition for leave to intervene in the appeal as a party appellant with respect to the February 1981 BLM decision (IBLA 81-544). CWF admits that it was "neither a party to the original Protest nor to the filing of the Notices of Appeal" (Petition at 2). However, CWF states that its members use the areas under appeal and that this interest may be adversely affected by elimination of the four inventory units from further consideration as WSA's. We do not doubt that the interest of CWF may be adversely affected by elimination of the four units. However, intervention as a party affords the intervenor all the attributes of an appellant. United States v. United States Pumice Co., 37 IBLA 153 (1978), dismissed sub nom. The Wilderness Society v. Andrus,

On August 31, 1979, BLM published its final initial wilderness inventory decision, in the Federal Register, in part excluding 11,600 acres from inventory unit CO-070-031 (South Shale Ridge). 44 FR 51339 (Aug. 31, 1979). BLM stated that the area clearly and obviously lacks wilderness characteristics and would not be intensively inventoried. By letter dated October 11, 1979, appellants protested the exclusion of two areas in the western and southeastern portions of the unit. Appellants asserted that fieldwork had shown that "no intrusions exist within these additions." As a result of the protest, the State Director, Colorado State Office, BLM, instructed the district manager to reassess the areas. In its December 1979 decision, BLM added 5,162 acres in the southeastern portion of the unit, but reaffirmed its decision with respect to 5,040 acres in the western portion of the unit. 44 FR 72236 (Dec. 13, 1979). This decision was apparently based on the following analysis, included in "Wilderness Inventory History of South Shale Ridge (CO-070-031)," at pages 2-3:

Wilderness specialists and managers re-examined the inventory unit, using a helicopter and hiking a portion of the area. This field review indicated that the southeastern portion of the unit might, in fact, be substantially natural in character, thus some doubt remained as to whether or not wilderness characteristics were present. The western end was not considered natural due to Spear Hunter Access Road (which cuts off the northern 1/3 of the west end of the unit), four reservoirs and their associated ways, two miles (plus) of fence, and a ten-acre water saver and enclosure. The fence is a 3-strand barbed-wire with bright-orange posts. The fence right-of-way has had some clearing work which accentuates horizontal lines on the landscape. In sum, the field check revealed that the western portion of the unit contained too many imprints of man and, therefore, clearly and obviously lacked wilderness characteristics.

In their statement of reasons for appeal, appellants state that their appeal is limited to a 3,200-acre area in the western portion of unit CO-070-031, excluding land within and north of the "Spear Hunter Access Road"

fn. 2 (continued)

Civ. No. 79-0296 (D.D.C. May 30, 1979). In order to be accorded the status of intervenor an individual must be in a position such that he could "independently maintain the action in which he seeks to participate." Id. at 157. In the present case, Departmental regulations limit the right of action to a "party to the case" who is adversely affected by a BLM decision. 43 CFR 4.410. Where a BLM decision does not adjudicate the rights of particular parties, an individual will be considered a party to the case when he has filed a protest objecting to the decision and this protest has been adjudicated. California Ass'n of Four Wheel Drive Clubs, 30 IBLA 383 (1977). CWF, however, never filed a protest of the original BLM decision eliminating the four units from WSA consideration. It, therefore, cannot be considered a "party to the case." In Re Pacific Coast Molybdenum Co., 68 IBLA 325 (1982); Conoco, Inc., 61 IBLA 23, 25 n.1 (1981). Accordingly, we conclude that CWF could not independently maintain this action and will not be granted intervention as a party. We will, however, recognize petitioner as an amicus.

and within the 10-acre water saver and enclosure. They assert that this 3,200-acre area should be intensively inventoried because it does not clearly and obviously lack the wilderness characteristic of naturalness, defined as "whether or not the average visitor would perceive the imprint of man as substantially unnoticeable over the entire area as a whole" (Statement of Reasons at 9).

Appellants assert that the imprints of man identified by BLM, i.e., the three stockponds, the two unimproved off-road vehicle tracks, and a fence, are substantially unnoticeable in view of the size of the 3,200-acre area and the limited impact of the imprints. With respect to size, appellants state:

The stockponds in question lie in the southeastern portion of the 3200 acre area; the closest of them is more than 3 miles away from the western edge of the Addition. The furthest pond is an additional 1-1/4 miles distant. The fence at issue comes no closer than 1-1/2 miles to the Addition's western boundary; almost 1 mile separates the fence from the nearest pond.

Id. at 11.

With respect to the limited impact of the imprints, appellants state:

The ways consist of parallel tracks which wind north through the sagebrush from the boundary road toward the ponds among the hills. While the ways are apparent to visitors standing on them, the sagebrush and undulating terrain combine to hide them from hikers as little as 100 feet off to either side; see Mullen affidavit at 3. [3/] The ponds consist of shallow depressions scooped out of the ground, with the dug-out earth used to create a low, rough dam behind which water is stored. The ponds lie in gentle bowls for ease of construction. The pinyon-juniper vegetation, hilly countryside, and location of these ponds serve to restrict their visual impact to a few hundred yards; see Mullen affidavit at 2-4. While Appellants concede that these features detract from an otherwise untrammelled area, the effects of such ponds and ways is limited to a radius of several hundred yards at most. * * *

The fence at issue here is of ordinary, three-strand barbedwire construction, strung between metal posts. It is not really a single fence, but rather a series of broken segments which extend in a meandering line northwest through thick brush from the southern boundary road up onto the plateau above Pine Gulch and then on toward the slopes of Corcoran Peak. Gaps in the fence occur in areas of particularly difficult terrain. Vegetation serves to conceal almost all of the fence from an observer more than 50 yards away; see Mullen affidavit at 4-5. BLM's own photographs of the fence confirm that it is an undetectable element of

^{3/} Appellants submit the affidavit of Norman J. Mullen, dated Mar. 4, 1980, in which he describes his on-the-ground inspection of the western portion of unit CO-070-031 and the various imprints of man identified by BLM.

the Addition panorama; see Mullen affidavit at 5. As with the ways and ponds, the fence constitutes an undeniable stamp of the human presence within a limited zone of influence, but creates no significant impression beyond.

Id. at 12-13.

Section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976), directs the Secretary of the Interior to review roadless areas of 5,000 acres or more, which are identified as having wilderness characteristics described in the Wilderness Act of 1964, 16 U.S.C. § 1131 (1976), for possible inclusion in the wilderness system. The Secretary is then directed to report to the President his recommendations as to the suitability or unsuitability of each such area for preservation as wilderness. After recommendations by the President, Congress will make the final wilderness designations. 43 U.S.C. § 1782(b) (1976).

BLM has divided the wilderness identification and review process into three phases: Inventory, study, and reporting. The identification of wilderness characteristics has been relegated to the inventory phase. In addition, the inventory phase has been divided into two parts--initial and intensive. The August 1979 BLM decision, protested by appellants, marked the end of the initial inventory phase.

The key wilderness characteristics described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), are naturalness and an outstanding opportunity either for solitude or a primitive and unconfined type of recreation. Naturalness is considered to be present where an area "generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable." Id.

As set forth in the Wilderness Inventory Handbook (WIH), dated September 27, 1978, which BLM adopted as its guide for conducting the wilderness inventory, BLM states that the initial inventory is intended to distinguish between units which clearly and obviously do not meet wilderness criteria and those units which may possibly meet the criteria and which will be intensively inventoried. See Jerry D. Reynolds, 54 IBLA 300 (1981). This intent is further explained in a supplemental directive, Organic Act Directive (OAD) 78-61, Change 2, dated June 28, 1979, at page 2:

The intent of the inventory handbook * * * is that if valid doubt or question is raised by the public or by BLM, then it is not clear and obvious that characteristics are lacking. If any valid doubt exists, an inventory unit goes into intensive inventory. * * *

* * * * *

* * * In the initial inventory, responsibility rests with the State Director to demonstrate that areas do indeed fit the standard of "clearly and obviously" lacking characteristics. In cases where the public disagrees with a proposed decision that an area lacks characteristics, it is not their responsibility to

prove that characteristics are present. Rather, it is their responsibility to demonstrate that there is reasonable question about absence of characteristics in the inventory unit. [Emphasis in original.]

We believe that appellants have raised a "reasonable question" as to the absence of the wilderness characteristic of naturalness and that the 3,200-acre area should be intensively inventoried. The WIH, at pages 12-13, lists a number of specific manmade intrusions which will not adversely affect naturalness and which may be allowed within an inventory unit. The list is based in large part on the House report which accompanied H.R. 3454, enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978). See H.R. Rep. No. 95-540, 94th Cong., 2d Sess. 6 (1977). Included in the list is fencing. In the present case, BLM relies particularly on "the existence of a bladed area upon which is situated more than two miles of fence (consisting of bright orange posts and barbed wire)" in concluding that the 3,200-acre area clearly and obviously lacks naturalness (Answer at 9). We must conclude, however, that fencing is a permissible intrusion. Square Butte Grazing Association, 67 IBLA 25 (1982).

The BLM map referred to in the narrative (history of the unit) shows that the remaining intrusions are located in the extreme eastern portion of the 3,200-acre area. Imprints of man are to be judged in terms of their individual and cumulative effect on the "overall unit" (OAD 78-61, Change 2, at 5). This requirement is apparently based on the definition of naturalness as applying to an area which "generally appears to have been affected primarily by the forces of nature." (Emphasis added.) 16 U.S.C. § 1131(c) (1976). In view of appellants' uncontroverted statements that the impact of the two ways and three stockpounds is limited at most to a few hundred yards, we fail to see how these manmade intrusions, which are not closely grouped together, can adversely affect the overall naturalness of a 3,200-acre area. While the size of the tract involved is under the mandatory cutoff of 5,000 acres under section 603(a) of FLPMA (see Tri-County Cattlemen's Association, 60 IBLA 305 (1981)), had it been included, as it should have been, in the intensive inventory of unit CO-070-031, size would no longer be a controlling factor. The December 1979 decision denying appellants' protest must be vacated.

We next turn to the appeal from the February 1981 decision. On November 14, 1980, BLM published its final intensive wilderness inventory decision in the Federal Register, eliminating 4,100 acres in inventory unit CO-010-004/ B (Hell's Canyon), 28,860 acres in inventory unit CO-070-031 (South Shale Ridge), 21,500 acres in inventory unit CO-070-130 (Bangs Canyon), and 11,600 acres in inventory unit CO-070-150A (Gunnison River) from further consideration as WSA's. 45 FR 75584 (Nov. 14, 1980). By letter dated December 15, 1980, appellants protested the elimination of these and other units from further consideration as WSA's. In its February 1981 decision, BLM responded to appellants' protest. We will deal with each unit separately.

Hell's Canyon (CO-010-00N4 B)

Inventory unit CO-010-00N4B was eliminated from further consideration as a WSA because it was determined to lack an outstanding opportunity either

for solitude or a primitive and unconfined type of recreation. In their protest, appellants stated that the unit is contiguous to and a physiographic continuation of the proposed wilderness area in the Dinosaur National Monument (DNM) and that, when viewed in conjunction with this area, the unit "with its steep canyon walls and open sagebrush," offers outstanding opportunities for solitude or primitive, unconfined recreation. In its February 1981 decision, BLM denied the protest, stating at pages 1-2:

[T]he DNM boundary as presently drawn includes the outstanding values of Hell's Canyon within DNM. The canyon is very rugged where it cuts through Blue Mountain inside DNM. As it leaves DNM, the canyon becomes more open and the slopes less steep. The two peaks, within DNM, one of which is Martha's Peak, both visually and physically separate the unit from DNM. In essence the portion of Hell's Canyon which continues into this unit constitutes a narrow finger of public land where the opportunities for solitude and primitive, unconfined recreation are limited.

[1] In their statement of reasons for appeal, appellants challenge BLM's conclusions regarding the outstanding opportunity criterion. However, there is a threshold question of size. The WIH, at page 12, states that the criterion of size will be satisfied where an area of less than 5,000 acres is "contiguous with lands managed by another agency which have been formally determined to have wilderness or potential wilderness values." In the present case, unit CO-010-00N4B is contiguous with land in the DNM proposed by the National Park Service (NPS) as a wilderness area. However, as we pointed out in Tri-County Cattlemen's Association, *supra*, an area of less than 5,000 contiguous acres of public land cannot qualify as a WSA under section 603(a) of FLPMA, *supra*.^{4/} That section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. The fact that the unit adjoins an NPS proposed wilderness area does not alter this limitation. The Wilderness Society, 66 IBLA 287 (1982). Accordingly, BLM properly eliminated unit CO-010-004B from further consideration as a WSA. The February 1981 decision denying appellants' protest is affirmed as modified.

South Shale Ridge (CO-070-031)

Inventory unit CO-070-031 was eliminated from further consideration as a WSA because it was determined to lack an outstanding opportunity either for solitude or a primitive and unconfined type of recreation. Considering our conclusions above that the 3,200-acre area of unit CO-070-031, which was originally dropped from the intensive inventory, should be intensively inventoried, we must set aside this decision because it will be necessary to reinventory the unit, including the eliminated portion, as that area is not of sufficient size to be independently supported as a WSA. Tri-County Cattlemen's Association, *supra*.

^{4/} By decision dated Dec. 22, 1982, the Secretary in part implemented the Board's ruling in Tri-County Cattlemen's Ass'n, *supra*, deleting already-designated wilderness study areas from WSA status because they contained less than 5,000 acres. 47 FR 58372 (Dec. 30, 1982).

Bangs Canyon (CO-070-130)

Inventory unit CO-070-130 was eliminated from further consideration as a WSA because it was determined to lack an outstanding opportunity either for solitude or a primitive and unconfined type of recreation. The unit, consisting of 21,500 acres, includes two major canyon systems, the Bangs and West Bangs Canyons, which originate in the easternmost bench of Pinos Mesa and drain in a northeasterly direction. The assessment of opportunities for solitude is summarized in the Supplemental Information to Intensive Inventory Report at page 7:

Opportunities for solitude exist in the Bangs Canyon unit, but these are not considered outstanding when compared with other mesa and canyon systems in the region. The two main forks of Bangs Canyon are relatively straight, narrow and shallow. They provide limited screening in the lower portions. Many other small drainages exist in the unit, some with depths up to 200 feet. Although these drainages allow people to disburse, generally they have limited screening potential.

The pinyon-juniper woodland which occurs in about three-fourths of the unit provides good screening but it is not considered outstanding because of the general openness of the stands. Gambel's oak, aspen and pine grow in the higher elevation but their screening potential is limited because these stands are limited in the area. Much of the lower area is very open and screening is limited. An intimate type of solitude where the topography and vegetation creates an enclosed feeling of isolation is present in the Bangs Canyon area but not at the outstanding level. Opportunities for a spatially oriented type of solitude exist in the unit where views within the area as well as vistas of distant landforms can also be found. However, such opportunities for spatial solitude are common in the region. [Emphasis added.]

The assessment of opportunities for primitive, unconfined recreation is summarized in the Wilderness Intensive Inventory at pages 10-11:

Outstanding opportunities for primitive and unconfined recreation do not exist within the unit when such opportunities are compared to other mesa and canyon systems in the region. Opportunities for hiking, backpacking, scenic viewing, and horseback riding exist within the Bangs Canyon unit, but none of these are considered outstanding. The diverse topography of the unit is one of the primary landscape features contributing to primitive recreation opportunities but such landscapes are common. East Creek and the other drainages within the unit add more diversity to the landscape for these types of recreation as do the small mesas located between the drainages, but such landscapes are common in the region. Opportunities for scenic viewing are not considered outstanding because the unit's scenery as well as distant views of areas outside of the unit are common in the Uncompahgre Plateau. The relatively large size of this area does

enhance opportunities for primitive recreation. Ample space is available for the backpacker to spend several days in the area without travelling the same route. The rectangular shape of the area further enhances the primitive recreation experience since the recreationist can move in an unconfined manner through a broad area. [Emphasis added.]

In their protest, appellants contended that the unit does offer outstanding opportunities for solitude and primitive, unconfined recreation. Further, they argued that BLM engaged in "illegal comparisons," in violation of OAD 78-61, Change 3, and ignored public comment which largely supported WSA designation. In its February 1981 decision, BLM in part reiterates the statements made in its wilderness inventory summary. In addition, BLM states that "intensive inventory units were not compared but rather the physical characteristics of topographic features (canyons, etc.) and vegetative types in the region" (Decision at 7). BLM further notes that all public comments were "carefully considered." Id.

[2] In their statement of reasons for appeal, appellants contend principally that BLM violated OAD 78-61, Change 3, which specifically forbids disqualifying units on the basis of "comparison to other areas" (Statement of Reasons at 3). Appellants state that BLM, by comparing the unit to other areas, has engaged in a determination of which areas are best suited for wilderness designation. Appellants contend that the inventory phase of the review process is limited to an identification of units with the qualifying wilderness characteristics and that a judgment as to which areas are best suited for wilderness designation is delegated to the study phase and beyond. Moreover, appellants state that BLM has not identified the "other areas," making objective review impossible.

OAD 78-61, Change 3, provides at page 2:

Each inventory unit must be assessed on its own merits as to whether an outstanding opportunity exists; there must be no comparison among units. It is not permissible to use any type of rating system or scale--whether numerical, alphabetical, or qualitative (i.e., high-medium-low)--in making the assessment. The WIH indicates that good judgment must be used in determining that outstanding opportunities either do or do not exist in each unit. This is a subjective determination, and, should be made only after a careful assessment of a unit (WIH, pages 13-14). [Emphasis in original.]

We find no violation of this provision in the wilderness inventory of unit CO-070-130. The determination of whether an opportunity for solitude is "outstanding" is inherently a comparative process. Moreover, we believe that such a process is "mandated" by the relevant statutes. Sierra Club, 61 IBLA 329, 334 (1982). The definition of "outstanding" adopted in the WIH at page 13 is: "Standing out among others of its kind." Accordingly, it is not improper for BLM to compare opportunities for solitude or primitive, unconfined recreation, on the basis of topographic and vegetative features, with opportunities available in other areas in a particular region. What is prohibited is a comparison "among units," with a resulting qualitative ranking

of such units (OAD 78-61, Change 3, at 2). As we said in Sierra Club, *supra* at 334: "Once it is determined that the opportunity for solitude or a primitive and unconfined type of recreation is 'outstanding,' it is irrelevant, for the purpose of determining suitability for designation as a WSA, that neighboring units have superior opportunities." There is no evidence that BLM engaged in such a comparison.

Appellants also argue that the unit offers outstanding opportunities for solitude and primitive, unconfined recreation, relying on evidence in the record and a personal affidavit. At best, appellants express mere disagreement with BLM's assessment. This is not sufficient to establish an error of either fact or law in the wilderness inventory of unit CO-070-130. Accordingly, BLM properly denied appellants' protest. Animal Protection Institute of America, 62 IBLA 222 (1982).

As a final matter, appellants contend that BLM violated the provision in OAD 78-61, Change 3 at page 3, that: "A unit is not to be disqualified on the basis that an outstanding opportunity exists only in a portion of the unit." We can find no support in the record for this contention. Rather, BLM has clearly assessed opportunities for solitude and primitive, unconfined recreation available in portions of the unit and concluded that, in view of the fact that none are outstanding, the unit as a whole is thereby disqualified. In response to appellants' contention, the Solicitor, on behalf of BLM, states: "Appellant's second argument is predicated upon the argument advanced in regard to unit CO-070-131: if solitude exists anywhere in the unit, the entire unit must be designated as WSA. As noted, the question is whether the unit as a whole offers the requisite outstanding opportunity, not whether small portions of the unit do." (Emphasis in original.) The Solicitor has plainly misinterpreted the Organic Act directive. OAD 78-61, Change 3 at page 3, provides that there need only be an outstanding opportunity "somewhere in the unit." (Emphasis in original.)

Gunnison River (CO-070-150A)

Inventory unit CO-070-150A was eliminated from further consideration as a WSA because it was determined to lack an outstanding opportunity either for solitude or a primitive and unconfined type of recreation. The unit, consisting of 11,600 acres, forms the northeast aspect of the Uncompaghre Plateau. The assessment of opportunities for solitude is summarized in the Wilderness Intensive Inventory at page 14:

A lack of vegetative and topographic screening limits opportunities to experience outstanding solitude in the eastern and western portions of the unit. Although some solitude can be found in the canyons, it is not considered to be outstanding. Their short, straight nature plus a lack of headward branching or bench development tends to minimize disbursement of people. In addition, the narrow configuration of the unit tends to concentrate people and lessen opportunities for solitude.

The assessment of opportunities for primitive, unconfined recreation is summarized in the Wilderness Intensive Inventory at page 15:

The unit's narrow configuration and steep topography restrict unconfined movement. A lack of landscape diversity in the western part likewise limits recreation opportunities. The unit does provide some focal features for hiking, nature observation and photography but these are relatively common in the region and not considered to provide outstanding opportunities.

In their protest, appellants contended that the unit offers outstanding opportunities for solitude and primitive, unconfined recreation:

[V]alleys, canyons, and thick pinyon-juniper growth in much of the western portion, the presence of a wide, long terrace below the rim, and the numerous slick rock side canyons near the Gunnison River all contribute to provide outstanding opportunities for primitive recreation and solitude. Archeological remains, magnificent views, uninterrupted silence, and lack of roads in an area so close to Grand Junction also contribute to the quality of this area.

In its February 1981 decision, BLM reiterates the statements made in its wilderness inventory summary.

[3] In their statement of reasons for appeal, appellants contend that BLM improperly considered the configuration of the unit. Thus, appellants take exception to BLM's reliance on the configuration of a unit in concluding that opportunities for either solitude or primitive, unconfined recreation are not outstanding. Appellants contend that there is no statutory support for using configuration as an independent criterion by which to judge the quality of solitude or recreational opportunities.

Section 2(c) of the Wilderness Act, supra, merely states that a wilderness area has, as a prerequisite, "outstanding opportunities for solitude or a primitive and unconfined type of recreation." BLM adopted the WIH and subsequent organic act directives in order to give substance to the definition of such opportunities. BLM derived its definition of opportunities for solitude from the dictionary definition for solitude, i.e., the state of being alone, and defined such an opportunity as "a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit" (WIH at 13). BLM subsequently states that factors such as "size, screening, [and] configuration" could influence opportunities for solitude (OAD 78-61, Change 3, at 4). Further, BLM stated that "configuration" could generally affect opportunities for solitude and primitive, unconfined recreation to the extent that boundary adjustments would be appropriate. Id. at 3. We agree that opportunities for solitude and for primitive, unconfined recreation are affected by the configuration of all or a portion of a unit. While configuration of a unit, per se, could not serve as a basis for rejection, where the configuration alters a person's ability to avoid the sights, sounds, and evidence of other people and limits a person's ability to engage in unconfined recreation, the effect of the configuration is properly taken into account. Accordingly, it is properly given consideration by BLM in the wilderness inventory.

Appellants also contend that BLM may have improperly compared this unit with other units, in violation of OAD 78-61, Change 3. See discussion, supra (unit CO-070-130). There is no evidence that BLM engaged in such a comparison.

Finally, appellants argue that the unit does offer outstanding opportunities for solitude and primitive, unconfined recreation. They contend that the unit does not lack topographic and vegetative screening, as asserted by BLM in connection with opportunities for solitude. Further, they contend that the topography does not confine movement and that there is not a lack of diversity of landscape, as asserted by BLM in connection with opportunities for primitive, unconfined recreation. Appellants rely on evidence in the record and personal affidavit.

There is no question that the unit offers opportunities for solitude and primitive, unconfined recreation. The critical question, again, is whether those opportunities are outstanding. On this question, appellants express mere disagreement with BLM's assessment. There is no evidence that BLM overlooked significant topographic, vegetative or other features affecting opportunities for solitude or primitive, unconfined recreation. Appellants merely disagree with the weight to be given these features. This is not sufficient to establish an error of either fact or law in the wilderness inventory of unit CO-070-150A. Accordingly, BLM properly denied appellants' protest. Animal Protection Institute of America, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the December 1979 decision is vacated and remanded and the February 1981 decision affirmed as modified as to unit CO-010-00N4 B, set aside and remanded as to unit CO-070-031, and affirmed as to units CO-070-130 and CO-070-150A.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

