

IDAHO TRAIL MACHINE ASSOCIATION ET AL.

IBLA 82-548, et al.

Decided August 26, 1983

Appeals from decisions of the Idaho State Office, Bureau of Land Management, denying protests of designation of wilderness study area ID 35-3.

Affirmed.

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

The mere assertion that an area is subject to outside sights and sounds, without evidence that they are both adjacent and so extremely imposing that they cannot be ignored, will not preclude a finding by BLM that the area is natural and offers outstanding opportunities for solitude.

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

The desirability of managing an area for competing multiple uses, including off-road vehicle use, is properly considered during the study phase of the wilderness review process.

APPEARANCES: Jeffrey F. Cook, President, Idaho Trail Machine Association, for appellant Idaho Trail Machine Association; M. Duane Handy, pro se; Lynn Hossner, Esq., St. Anthony, Idaho, for appellant Fremont County Planning and Zoning Commission; Kathy Schwalm, Executive Director, Sawtelle Chapter, Outdoors Unlimited, for appellant Sawtelle Chapter, Outdoors Unlimited; Clark L. Collins, President, Pocatello Trail Machine Association, for appellant Pocatello Trail Machine Association; Jerry D. Reynolds, pro se; Barbara I. Berschler, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., for the Bureau of Land Management.

## OPINION BY ADMINISTRATIVE JUDGE BURSKI

The Idaho Trail Machine Association and others <sup>1/</sup> have appealed from decisions of the Idaho State Office, Bureau of Land Management (BLM), dated January 8, 1982, denying their protests of the designation of inventory unit ID 35-3 (Sand Mountain) as a wilderness study area (WSA).

On October 8, 1981, the BLM State Office published its final intensive wilderness inventory decision in the Federal Register, in part designating 21,000 acres in unit ID 35-3 (Sand Mountain) as a WSA. 46 FR 49950 (Oct. 8, 1981). In various letters, appellants protested designation of the unit as a WSA, contending for the most part that the unit lacks the requisite wilderness characteristics. BLM responded to each statement made in the individual protest letters. In their statements of reasons for appeal, appellants reiterate many of the arguments made in their protest letters. We will summarize those arguments and deal with them seriatim.

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), which 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)]." 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 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 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 either an outstanding opportunity for solitude or a primitive and unconfined type of recreation. See Wilderness Inventory Handbook (WIH), dated September 27, 1978, at 6.

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<sup>1/</sup> The appellants are: Idaho Trail Machine Association (IBLA 82-548); M. Duane Handy (IBLA 82-549); Fremont County Planning and Zoning Commission (IBLA 82-550 and 82-557); Sawtelle Chapter, Outdoors Unlimited (IBLA 82-551); Jerry D. Reynolds (IBLA 82-553); and Pocatello Trail Machine Association (IBLA 82-554). These appeals have been consolidated because of the similar legal and factual issues. In the case of IBLA 82-554, the Board, by order dated Apr. 20, 1982, dismissed the appeal because appellant's statement of reasons had not been timely filed. By memorandum dated Apr. 30, 1982, BLM supplied a copy of appellant's statement of reasons, timely filed. Accordingly, we will reconsider this appeal.

Appellants first argue that the unit cannot be considered "roadless," as required by section 603(a) of FLPMA, supra. For purposes of the wilderness inventory, BLM has adopted the definition of a "road" suggested by the legislative history of FLPMA at H.R. Rep. No. 1163, 94th Cong., 2d Sess. 17 (1976): "The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road." See WIH at 5. Appellants have not identified any roads or established that any identified intrusion meets the definition of a "road." We, therefore, must agree with BLM's conclusion that the unit is "roadless." See C & K Petroleum, 59 IBLA 301 (1981).

[1] Appellants next argue that the unit does not satisfy the wilderness criterion of naturalness. That criterion is satisfied where an area "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable," as set forth in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976). The Act does not require that the hand of man be completely unnoticeable, or that the area be totally free of human imprints. Appellants contend that the imprint of man's work is substantially noticeable; however, they have not identified any imprint of man's work or established that the imprint of man's work is substantially noticeable. BLM's conclusion that the unit is natural is entitled to considerable deference. Conoco, Inc., 61 IBLA 23 (1961). Rather, appellants' argument appears to be primarily directed at the adverse impact within the unit of outside sights and sounds emanating from agricultural activity and the nearby town of St. Anthony, on naturalness, as well as opportunities for solitude. We have dealt with this question on a number of occasions. Consideration of "outside sights and sounds," generally, is properly deferred until the study phase of wilderness review, in accordance with Organic Act Directive (OAD) 78-61, Change 3, which states at page 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, and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However, even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit. [Emphasis in original.]

See Union Oil Co. (On Reconsideration), 58 IBLA 166, 190 (1981). Where BLM has applied the policy of the OAD, we have concurred therein. See, e.g., Walter R. Benoit, 62 IBLA 99 (1982). It is apparent from the record that BLM did apply that policy. In its final intensive inventory decision, at page 18, BLM stated:

The external sights and sounds of human activity have their greatest effect on the southeastern slopes of the unit where

agricultural lands are adjacent to the unit. St. Anthony is about five miles from the unit's southeastern border and 14 miles from the unit's highest point, Sand Mountain. Human activities become less of an influence once a person travels into the unit a mile or so, and they are easily avoided in the western portion. The western portion is roughly five miles square and has the greatest topographic relief. Many areas exist where visitors could screen themselves from one another and from outside influences. The prevailing winds effectively obliterate many of the human caused noises.

BLM concluded that outside sights and sounds were not so extremely imposing that they could not be ignored (Final Intensive Inventory Decision at 12). This conclusion is entitled to considerable deference. Ruskin Lines, 61 IBLA 193 (1982). Appellants have not established that outside sights and sounds are both adjacent and so extremely imposing that they cannot be ignored. We therefore, must concur with BLM's assessment. See City of Delta, 66 IBLA 282 (1982).

Appellants also argue that the unit does not have outstanding opportunities for solitude because most of the unit is relatively flat, with little or no vegetation. It must be noted, however, that outstanding opportunities for solitude need not be available at all times and at all places in a unit. We have concurred with the statement in the 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. Each individual acre of land does not have to meet the outstanding opportunity criterion. Obviously, there must be an outstanding opportunity somewhere in the unit." (Emphasis in original.) Tri-County Cattlemen's Association, 60 IBLA 305 (1981). Moreover, a unit is not to be disqualified on the basis that it is flat or unvegetated. OAD 78-61, Change 3, also states at page 4: "Consideration must be given to the interrelationship between size, screening, configuration, and other factors that influence solitude." The record indicates that BLM recognized this interrelationship, relying primarily on size, configuration, and topographic screening. Appellants have not established that BLM failed to give appropriate consideration to the various factors or that its overall assessment was erroneous.

Appellants next argue that the unit does not offer outstanding opportunities for a primitive and unconfined type of recreation because of the harsh conditions, including blowing sands and lack of water. The absence of water, however, "is not a valid basis for concluding that an outstanding primitive recreation opportunity does not exist" (OAD 78-61, Change 3, at 4). Moreover, the "[c]hallenge" presented by an area is an appropriate consideration. Id. Overall, the record reflects that BLM adequately considered opportunities for a primitive and unconfined type of recreation and supports a conclusion that they are outstanding. See Carl W. Clark, 65 IBLA 153 (1982).

[2] The principal thrust of appellants' argument regarding recreational opportunities is that the area is more desirable for use by off-road vehicles, which would be foreclosed by wilderness designation. Consideration, however, of the necessary trade-off between competing multiple uses

has been committed to the study phase of the wilderness review process, prior to a final determination by the Secretary as to a recommendation on the suitability or unsuitability of an area for preservation as wilderness. Union Oil Co. (On Reconsideration), supra; see WIH at 3. Use of unit ID 35-3 by off-road vehicles is properly addressed during the study phase. 2/

Appellants have also raised a number of other issues, which can be briefly dealt with. Appellants argue that the comment period following publication of the proposed final intensive inventory decision, 46 FR 29770 (June 3, 1981), was improperly shortened to 30 days, instead of the 90 days required by the WIH at page 8, and that they have been prejudiced thereby. In its answer, the Office of the Solicitor, on behalf of BLM, explains that the State Office requested and obtained permission from the Director, BLM, to shorten the public comment period. In requesting the exception, the State Director, BLM, Idaho, noted that "extensive" public comment had already been provided and that it anticipated "very few new issues" (Memorandum to Director, BLM, dated May 12, 1981). The Solicitor also points out that the unit was subject to the inventory phase of the wilderness review process for a long time. The final initial inventory decision had been published in the Federal Register on August 10, 1979. 44 FR 47165 (Aug. 10, 1979). In addition, appellant Jerry D. Reynolds, a principal opponent to WSA designation, was accorded an additional 18 days to submit comments. Finally, BLM stated in its protest response to Reynolds, at page 4, that "comments received late in inventory comment periods have always been used up until the actual writing of the decision. In this case, it was mid-September before the decision was written--a date some 3 1/2 months after the proposed decision was released." (Emphasis in original.) Compare In Re Lick Gulch Timber Sale, 72 IBLA 261, 307-08 (1983). In view of the amount of time in which appellants could have gathered information in support of their contentions, including the protest and appeal periods involved herein, we can discern no prejudice to appellants by virtue of the shortened public comment period following publication of the proposed final intensive inventory decision. Appellants also argue that BLM did not give adequate consideration to public input in the inventory process. See WIH at 5. The record belies this assertion. It is replete with BLM's analysis of public comments. 3/ A BLM decision regarding designation of a WSA is not subject to the will of the majority or the minority, but is intended to reflect a careful assessment of wilderness characteristics, taking into account all information, however developed. Appellants present no evidence that BLM did not do this.

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2/ Appellant Jerry D. Reynolds also argues that to the extent section 603(a) of FLPMA, supra, may ultimately be used to close land to motorized recreational use, without a showing of harm to the land from such use, it is unconstitutionally discriminatory. The Board, however, is not the proper forum to determine the constitutionality of a statutory provision. Jerry D. Reynolds, 54 IBLA 300 (1981).

3/ Several of the appellants assert that the Board should order a fact-finding hearing. Appellants, however, have not presented any evidence that there are disputed questions of fact, which need to be resolved in a hearing. Rather, appellants' arguments are primarily directed toward the legal conclusions which should be drawn from admitted facts. In such circumstances, where no useful purpose would be served, a hearing will not be ordered. John J. Schnabel, 50 IBLA 201 (1980), and cases cited therein. Appellants' requests are hereby denied.

Where an appellant establishes that BLM failed to follow its guidelines, and the appellant also affirmatively shows that such failure caused BLM to reach an incorrect conclusion, reversal of the BLM decision is required. Utah Wilderness Association, 72 IBLA 125, 129 (1983). If on the other hand, an appellant establishes that BLM failed to follow its guidelines or otherwise creates doubt concerning the adequacy of BLM's assessment and the record does not adequately support BLM's conclusions, the BLM decision must be set aside and remanded. Id. Appellants have failed to establish any errors in BLM's assessment of this unit. At best, appellant's arguments may be characterized as expressions of disagreement with BLM's analysis. As such, they are insufficient to merit disturbing the BLM decisions. Koch Industries, Inc., 62 IBLA 45, 53 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Bruce R. Harris  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

