

COMMITTEE FOR IDAHO'S HIGH DESERT
THE WILDERNESS SOCIETY

IBLA 84-3

Decided February 14, 1985

Appeal from decision of Idaho State Office, Bureau of Land Management, eliminating inventory unit from further consideration as wilderness study area. ID-111-5.

Affirmed.

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

Evaluations made by BLM personnel in the wilderness inventory process are necessarily subjective and judgmental. The conclusions reached must be accorded considerable deference notwithstanding the result might be one over which reasonable men could differ. An appellant seeking reversal must ordinarily show either a clear error of law or a demonstrable error of fact.

APPEARANCES: Bruce R. Bocard, executive director, Committee for Idaho's High Desert, for appellants.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Committee for Idaho's High Desert and the Wilderness Society have appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated August 16, 1983, eliminating inventory unit ID-111-5 (Poison Gulch) from further consideration as a wilderness study area (WSA), pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1982). See 48 FR 38691 (Aug. 25, 1983).

Inventory unit ID-111-5 was originally eliminated from further consideration as a WSA in November 1980 when BLM issued its final intensive wilderness inventory decision. See 45 FR 75586 (Nov. 14, 1980). BLM had subdivided the unit into three subunits, concluding that a combination of roads and State land nearly bisected the unit in two places. The distance between these intrusions and the opposite unit boundary was roughly 1 mile in one instance and a quarter mile in the other instance. BLM then concluded that each of the subunits lacked outstanding opportunities either for solitude or a primitive and unconfined type of recreation, one of the prerequisites for designation of the unit as a WSA. This BLM decision was appealed to the Board, which, in Timothy O. Kesinger, 72 IBLA 100 (1983), concluded

that the record did not support BLM's decision to subdivide the unit on the basis of either imprints of man or the outstanding opportunity criteria set forth in Organic Act Directive (OAD) 78-61, Change 3, at 3 (July 12, 1979). We set aside the BLM decision and remanded the case to BLM "for consideration, with supporting documentation, of whether the unit is properly subdivided consistent with the criteria outlined in the OAD." Timothy O. Kesinger, supra at 103. We also reviewed BLM's determination that the unit lacks outstanding opportunities either for solitude or a primitive and unconfined type of recreation. We concluded that BLM had properly determined that the unit lacks outstanding opportunities for primitive, unconfined recreation, but we also concluded that the "opportunity for solitude should be further evaluated if it is determined that the facts do not support subdivision of the unit into three subunits in light of variations in size and topographic screening which would result from consolidation of the subunits." Id. at 104.

The August 1983 BLM decision which is under appeal herein is the result of BLM's reevaluation of unit ID-111-5. BLM concluded, upon reexamination of the question of subdivision, that the unit was not properly subdivided into three subunits pursuant to the OAD criteria. However, after considering the unit as a whole, comprised of 30,742 acres, and the interrelationship among size, topographic and vegetative screening, and configuration, BLM concluded that the unit still lacked outstanding opportunities for solitude. BLM stated that such opportunities were "preclude[d]" because of the unit's topographic features, minimal vegetative screening, and configuration, despite its relatively large size:

This unit is dominated by low shrubs and grass vegetation. Vegetative screening is minimal. The western end of the unit has fair to good topographic screening in the draws perpendicular to Birch Creek. However, topographic layout would draw visitors into a narrow corridor of use along Birch Creek, increasing the potential for visitor contacts. The relatively straight open character of the canyon magnifies this corridor effect. The central portion of the unit is characterized by parallel ridges and short draws. These draws and ridges provide some opportunities for solitude in isolated locations. This ability to hide, however, does not equate with an outstanding opportunity for solitude. In the eastern end of the unit, the shallow open character of the terrain reduces the capacity of the topography to provide adequate screening.

Opportunities for solitude in the unit are severely compromised by the 10+ miles of cherry-stem roads that penetrate the central portion of the unit. These roads lie in the Birch Creek and Poison Gulch drainages. Their relationship to the surrounding terrain indicates recreationists seeking solitude in these areas would frequently encounter these nonwilderness corridors. Many of the small draws where a person might find temporary refuge lie perpendicular to these roads.

The relatively large size of this unit (30,742 acres) does not insure outstanding opportunities for solitude. The unit's

size must be evaluated in conjunction with configuration. The unit has a very irregular configuration. This irregular configuration negates much of the value that size contributes to opportunities for solitude. There is no place in the unit where a recreationist would be more than 1-1/2 miles from a boundary. This is indicative of much smaller inventory units and shows the importance of configuration in conjunction with size.

48 FR 38692 (Aug. 25, 1983).

In their statement of reasons for appeal, appellants challenge BLM's determination that the unit lacks outstanding opportunities for solitude. Appellants contend that BLM failed to adequately consider topographic screening in the unit, which alone is sufficient to provide outstanding opportunities for solitude. Appellants note the "steep" topography in the southwestern portion of the unit and the general diversity of the topography as depicted on a slope analysis overlay (Exh. C) for the topographic map of the unit (Exh. B). ^{1/} Appellants also contend that BLM failed to recognize areas within the unit which offer outstanding opportunities for solitude based on vegetative screening, specifically high-elevation draws in the Rough Mountains and the riparian zones of Birch Creek and other streams. Appellants also contend that BLM focused unduly on the anticipated concentration of visitor use in the Birch Creek drainage, *i.e.*, 7 miles of Birch Creek and 10 miles of tributaries, and the Poison Gulch drainage and failed to consider visitor use in other areas of the unit, particularly ridge lines in the Rough Mountains. Appellants also argue that the Birch Creek drainage could adequately absorb anticipated visitor use and still provide outstanding opportunities for solitude. In any case, appellants argue that the carrying capacity of the land for visitor use should not be considered during the inventory phase of the wilderness review process. Finally, appellants contend that BLM improperly considered the configuration of the unit in assessing opportunities for solitude and that, in any case, the configuration is compact and manageable; cherrystemmed roads could be managed so as not to impair opportunities for solitude (including closure of the roads); and the topography of the unit compensates for the presence of such roads. ^{2/}

[1] In assessing opportunities for solitude, BLM is instructed in the Wilderness Inventory Handbook, at 13, to consider "factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit." These factors include "size, screening, [and] configuration" (OAD 78-61, Change 3, at 4).

^{1/} Certain photographs which were to accompany the statement of reasons for appeal (Exhs. E through P) have not been located. Appellants' representative has been contacted regarding the missing exhibits. Although replacement photographs have not been received, we find that we are able to decide the issues raised by appellants' brief on the existing record.

^{2/} Appellants also contend that the unit offers outstanding opportunities for a primitive and unconfined type of recreation. This question was conclusively addressed by the Board in Kesinger and appellants have not demonstrated any reason to depart from our conclusion therein.

Configuration is especially relevant given the fact that a narrow configuration will significantly decrease the ability of people to avoid each other. See Sierra Club-Rocky Mountain Chapter, 75 IBLA 220, 230 (1983). Moreover, BLM must consider the "interrelationship" among these factors. Timothy O. Kesinger, supra at 104. The record as a whole supports the conclusion that BLM considered the interrelationship among the factors. Indeed, in its August 1983 decision, BLM briefly notes the interrelationship among size, topographic and vegetative screening, and configuration. It is evident that the decision itself is not an exhaustive analysis of the opportunities for solitude. Nevertheless, in light of the whole record, the decision indicates that BLM considered the relevant factors. Appellants have failed to demonstrate that BLM ignored a relevant factor or overlooked any portion of the unit.

Moreover, we conclude that BLM properly considered the extent to which portions of the unit would attract a higher amount of visitor use than other parts. Opportunities for solitude cannot be assessed except in the context of visitor use and such use must be that which can be realistically anticipated given the nature of the area. It is beyond peradventure that a trout-fishing stream will draw more people than an arid desert. See Sierra Club, 62 IBLA 367, 371 (1982).

Finally, it is irrelevant in assessing opportunities for solitude how the cherrystemmed roads are managed, i.e., whether they will receive little or no use or eventually be closed in the future. Aside from the fact that opportunities for solitude must be assessed as of the time of the inventory, 3/ it is the mere presence of the nonwilderness corridor and not the extent of its use which affects the configuration of areas within a unit and, thus, the ability of people in those areas to avoid each other.

At best, appellants express mere disagreement with BLM's analysis of opportunities for solitude, including the manner of weighing the various factors affecting such opportunities. It is undoubted that unit ID-111-5 possesses such opportunities. See Affidavit of Randall E. Morris, dated December 20, 1983. However, appellants have not demonstrated that such opportunities are outstanding, or that BLM's analysis was improper.

As noted in Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981):

These [wilderness] evaluations are necessarily subjective and judgmental. BLM's efforts are guided by established procedures and criteria, and are conducted by teams of experienced personnel who are often specialists in their respective areas of

3/ In his affidavit, dated Dec. 20, 1983, submitted by appellants, at 3, Randall E. Morris states that the vegetative screening in the unit is deficient due to previous BLM grazing management practices and that different practices would reverse the "injuries." However, the wilderness inventory was designed to identify which units have wilderness characteristics, not which units, given future management, might develop such characteristics. See 43 U.S.C. § 1782(a) (1982).

inquiry. Their findings are subjected to higher-level review before they are approved and adopted. Considerable deference must be accorded the conclusions reached by such a process, notwithstanding that such conclusions might reach a result over which reasonable men could differ.

The deference which the Board accords to BLM wilderness evaluations does not mean that such determinations are immune from administrative review. However, it does mean that an appellant seeking reversal of a decision to include or exclude land from a WSA must show that the decision below was premised either on a clear error of law or a demonstrable error of fact. Union Oil Co. (On Reconsideration), 58 IBLA 166 (1981), appeal filed, Union Oil Company of California v. Watt, Civ. No. 82-427 PHX (D. Ariz. Mar. 23, 1982). After a review of the statement of reasons filed by appellants and the record, we conclude that appellants have not done so. Accordingly, we find that there was a proper basis for the BLM determination that unit ID-111-5 should be eliminated from further consideration as a WSA. Animal Protection Institute of America, 61 IBLA 222 (1982).

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:

Will A. Irwin
Administrative Judge

Edward W. Stuebing
Administrative Judge

