

SAN JUAN COUNTY COMMISSION

IBLA 90-273

Decided May 11, 1992

Appeal from a decision of the San Juan Resource Area Manager, Bureau of Land Management, approving the Mancos Mesa road restoration project within the Mancos Mesa Wilderness Study Area.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness--Rules of Practice: Appeals: Failure to Appeal--Wilderness Act

Failure to appeal a decision designating an area as a WSA renders it final and precludes a party from later challenging it on appeal of a subsequent BLM decision approving a road restoration project within the WSA.

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

A BLM decision approving a road restoration project in a WSA will be sustained on appeal notwithstanding the fact that it may not be possible to restore all roads within the WSA to a substantially unnoticeable condition, as to hold otherwise would defeat legislative intent demonstrated in FLPMA and the Wilderness Act.

APPEARANCES: Craig C. Halls, Esq., Monticello, Utah, for San Juan County Commission; David K. Grayson, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The San Juan County Commission (appellant) has appealed from the January 24, 1990, Record of Decision and Finding of No Significant Impact of the San Juan Resource Area Office, Bureau of Land Management (BLM), approving BLM's restoration project for roads within the Mancos Mesa Wilderness Study Area (WSA).

Prior to October 21, 1976, the date of the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701-1784

(1988), access to Mancos Mesa was limited to several rough, steep, and nearly impassable stock trails, and there was little or no recreational use of the area. It appears that, as a result, the area was at that time suitable for consideration for designation as a wilderness, and this fact has not been disputed. ^{1/}

On September 29, 1976, Gulf Minerals (Gulf) advised BLM that it intended to start exploration for uranium on Mancos Mesa. ^{2/} On October 26, 1976, 5 days after passage of FLPMA, Gulf notified BLM that it had started exploration. At that time, no interpretations of FLPMA had been made, and Federal regulations and policy were just being formulated to protect areas with potential for wilderness designation. As a result, BLM allowed the work to proceed without taking into account preservation of the wilderness values of Mancos Mesa. Upon completion of the first phase of Gulf's exploration project, the drill pads were rehabilitated, but the roads were left intact because Gulf planned to do more work.

In February 1978 Gulf notified BLM that it wanted to do additional exploration. However, BLM did not allow expansion of the road system, but allowed activity to occur using only the established road system. In October 1979 Gulf again notified BLM of planned activity on Mancos Mesa. BLM prepared an EA that resulted in a decision to restrict activity to roads that were previously constructed, but permitted construction of new drill pads. Following that activity, Gulf reclaimed all drill pads, but roads again were left for future use.

Gulf did not express any further interest in development or exploration of Mancos Mesa, and the mining claims on Mancos Mesa were declared invalid in 1983 for failure to perform required assessment work. Between October 26, 1976, and 1980, Gulf completed 30 miles of roads on Mancos Mesa. In spring 1980 BLM and San Juan County jointly constructed a gate to control access onto Mancos Mesa. Since 1976, recreational use of Mancos Mesa (mainly in the form of all terrain vehicles, three wheelers, mountain bikes, and motorcycles) has steadily increased. Backpacking and outdoor adventure group use has also increased.

On November 14, 1980, BLM published its final inventory decision in the Federal Register, with respect to the designation of areas of public lands in Utah as WSAs (45 FR 75602). That decision removed Mancos Mesa from further wilderness study, and it was not identified as a WSA. Protests to that decision were filed, and BLM issued a final decision denying those protests on March 5, 1981 (46 FR 15332). Appeals to this Board ensued, and on April 18, 1983, we set aside BLM's decision and remanded the matter to BLM for "reassessment of the outstanding opportunities

^{1/} This statement of the history of the WSA is based on BLM's Jan. 24, 1990, environmental assessment (EA), which was prepared to address the environmental effects of the restoration work.

^{2/} An archaeological survey was conducted by Brigham Young University prior to road building and drilling operations. No archaeological sites were found (EA at 1).

criterion" to the Mancos Mesa unit. Utah Wilderness Association, 72 IBLA 125, 184 (1983). Upon further study, BLM determined that Mancos Mesa met the requirements for a WSA, and on October 14, 1983, BLM granted it WSA status (48 FR 46859).

The objective of the proposed Mancos Mesa road restoration project is to restore the area disturbed by construction of Gulf's exploratory road system to a more natural appearance. The Mancos Mesa WSA contains 51,440 acres of public land and approximately 57 acres have been directly disturbed as a result of Gulf's exploration activities. The presence of the road system creates an impairing status to about 5,320 acres of the WSA. BLM notes that reclamation by Gulf would have been required if BLM's Wilderness Interim Management Policy (IMP) had been available to guide decisionmaking at the time of initial construction. ^{3/} BLM recognizes that in some areas, its proposal may not result in disturbed areas becoming substantially unnoticeable in the area as a whole, i.e., bedrock and black brush areas. Id. BLM explains that its failure to fully reclaim the WSA is due to lack of availability of sufficient funding (EA at 4).

BLM proposes to close and restore portions of the existing road system on Mancos Mesa to allow the area to more closely resemble its pre-FLPMA condition. On approximately 17 miles of road, the berm will be pulled and the road restored to its approximate original contour. Due to lack of funding, no reclamation work will be performed on one 8-mile segment, described as running from the "Crack" to the "Gap." This segment, BLM states, follows a historically used trail and will be left as a trail for livestock and hikers in the WSA. BLM proposes to construct a gate in the "Crack," just up from Moki Canyon, that will restrict the passage of motorized vehicles but allow foot traffic. BLM also proposes to move the lower existing gate slightly north. During the winter and early spring when cattle are grazing on Mancos Mesa, BLM proposes to leave the "Crack" gate open and lock the lower gate to allow cattle to access a natural spring that is just below the mesa between the two gates.

[1] The principal focus of appellant's arguments on appeal is not BLM's proposed Mancos Mesa road restoration project, but rather BLM's 1983 decision designating Mancos Mesa a WSA. Thus, appellant maintains:

The BLM (on remand) did a 180 degree turn concluding on remand that the area should be included as a wilderness study area and then ancillary to this determination that it was incumbent upon them to perform a restoration project within the wilderness study area, to make the wilderness study area more compatible with the requirements of wilderness status. It is our contention that under the Federal Land Policy and Management Act, the current Management Framework Plan and the Wilderness Act of Sept. 3rd, 1964, these decisions are contrary and in arbitration to [sic] the requirements of those acts.

^{3/} The IMP was originally published at 44 FR 72014 (Dec. 12, 1979) and was thereafter amended at 48 FR 31854 (July 12, 1983).

(Statement of Reasons at 3). Appellant thereafter undertakes a point-by-point analysis challenging BLM's decision designating Mancos Mesa as a WSA.

BLM asserts that because appellant did not appeal that decision when made on remand in 1983, appellant is now time barred from challenging the designation of Mancos Mesa as a WSA in connection with the proposed Mancos Mesa road restoration project (BLM's Answer at 2). We agree.

BLM's final decision identifying Mancos Mesa as a WSA was published in the Federal Register on October 14, 1983 (48 FR 46859). That Federal Register notice, which was captioned "Utah; Final Wilderness Inventory Decisions on the Reassessment of Units Set Aside and Remanded by IBLA," contained information regarding the 30-day appeal period following publication and noted that an appeal could be taken to this Board by following administrative appeal procedures applicable to formal appeals contained in 43 CFR Part 4. That advice was consistent with the provisions of that Part, which provide that any party to a case who is adversely affected by a decision by BLM has the right to appeal that decision to the Board of Land Appeals (43 CFR 4.410(a)), if a notice of appeal is filed with BLM within 30 days of the publication of the notice in the Federal Register. 43 CFR 4.411(a).

The record does not reflect that appellant filed an appeal from BLM's October 14, 1983, decision designating Mancos Mesa a WSA, and the time for filing an appeal has long passed. The law is well settled that failure to timely appeal a decision renders it final, and that the doctrine of administrative finality precludes appellant from later challenging that decision. Melvin Helit, 110 IBLA 144, 150 (1989); George A. Haddad, 109 IBLA 394, 397 (1989); and U. A. Small, 108 IBLA 102, 105 (1989). Consequently, we hold that appellant is barred from asserting that the WSA designation was in error. 4/

[2] As appellant points out, BLM recognizes that reclamation will not render the impacts of the roads substantially unnoticeable throughout the WSA by the reporting date (Statement of Reasons at 9-10). The "substantially unnoticeable" standard is identified in the IMP and has its origin in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1988). Appellant urges that BLM's decision to proceed with the project is frivolous, arbitrary, and capricious, because the reclamation project admittedly cannot fully restore the area (Statement of Reasons at 10).

Section 603(c) of FLPMA, 43 U.S.C. § 1782 (1988), requires that the Secretary manage lands identified as having wilderness characteristics

4/ In a somewhat related argument, appellant argues that BLM should have focused on whether Mancos Mesa meets the criteria for a WSA rather than the environmental impacts of the Mancos Mesa road restoration project (Statement of Reasons at 8). As BLM identified Mancos Mesa as a WSA in a final decision, BLM is not required to revisit that issue in its effort to meet the statutory mandate governing management of WSA's pending wilderness review.

described in the Wilderness Act so as to not impair their suitability for inclusion in the wilderness system. There is no substantial doubt that the lands known as Mancos Mesa met the criteria for inclusion in October 1976, when the requirements of section 603(c) of FLPMA went into effect.

What BLM is attempting to do is to restore Mancos Mesa to its condition as of the passage of FLPMA, consistent with the IMP. Under section 603(c) of FLPMA, BLM is required to do that, and must follow the guidelines established by the IMP as far as possible. See Oregon Natural Resources Council, 114 IBLA 163, 167 (1990); The Wilderness Society, 106 IBLA 46 (1988); L. C. Artman, 98 IBLA 164 (1987). The present case is distinguishable from other disputes involving application of the IMP guidelines in that BLM did not require compliance by the entity responsible for creating the impairments. However, we see no significance in that distinction, as the statute requires restoration, whether at the expense of a private party or the Government.

Nor do we find it significant that BLM may be unable to completely render the roads unnoticeable throughout the WSA. In interpreting a statute, it is necessary to ascertain the intent of Congress and to give effect to legislative will. Moorhead v. United States, 774 F.2d 936, 940-41 (9th Cir. 1985); Philbrook v. Glodgett, 421 U.S. 707, 713-14 (1974); Trailer Train Co. v. State Board of Equalization, 697 F.2d 860, 865 (9th Cir. 1983), cert. denied, 464 U.S. 846 (1983). As stated by the Tenth Circuit in Rocky Mountain Oil & Gas Association v. Watt, 696 F.2d 734, 745 (10th Cir. 1982):

A statute must be interpreted to effect its evident purpose. Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 608, 99 S.Ct. 1905, 1911, 60 L.Ed.2d 508 (1979), and to be consistent with "evidenced congressional intent," Symons v. Chrysler Corp. Loan Guarantee Board, 670 F.2d 238, 242 (D.C. Cir. 1981). Although our analysis "must begin with the language of the statute itself," Touche Ross & Co. v. Redington, 442 U.S. 560, 568, 99 S. Ct. 2479, 2485, 61 L.Ed.2d 82 (1979), congressional purpose and intent are best divined by examining the statute's legislative history and background.

Interpretations that defeat legislative intent or otherwise lead to absurd, futile, or unreasonable results are not sustainable. Colorado Health Care Association v. Colorado Department of Social Services, 842 F.2d 1158, 1171 (10th Cir. 1988); Church of Scientology v. United States Department of Justice, 612 F.2d 417, 421 (9th Cir. 1979); The Atchinson, Topeka & Santa Fe Railway Co. v. United States, 628 F. Supp. 1431 (D. Kan. 1986); LaBauve v. Louisiana Wildlife & Fisheries Commission, 444 F. Supp. 1370, 1381 (E.D. La. 1978).

The legislative history and background of FLPMA and section 603 in particular reveal that, with the qualified exception for mining and grazing uses, "Congress intended that no activity on the public lands following the Act's passage be allowed to degrade lands containing wilderness values on the date of enactment, precluding their consideration for wilderness

suitability before the review process was concluded." Rocky Mountain Oil & Gas Association v. Watt, supra at 747. The legislative history states: "Both the nonimpairment standard and the grandfather clause originated in a predecessor bill to the FLPMA H.R. 5441. They were added to insure that the Secretary would preserve the wilderness character of the lands under review, and 'to keep the Secretary from changing anything' during the review period." Hearings on H.R. 5441 Before the Subcomm. On Public Lands of the House Comm. on Interior and Insular Affairs, 93rd Cong., 2d Sess. 1324 (1975), quoted in Rocky Mountain Oil & Gas Association v. Watt, supra at 747-48. Moreover, the court in Rocky Mountain recognized that one of the prime concerns of Congress in enacting FLPMA was that "BLM lands suitable for wilderness preservation at the date of the Act's passage be given a chance for consideration as wilderness." Id. at 750.

BLM's Mancos Mesa road restoration project, even though it may not fully restore the area to its condition on the date of enactment of FLPMA in October 1976, is undeniably designed to preserve or renew the chance afforded Mancos Mesa to be considered as wilderness. Accordingly, the Mancos Mesa road restoration project effects the statute's "evident purpose" and is therefore sustainable. See Rocky Mountain Oil & Gas Association v. Watt, supra at 745. 5/

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.

David L. Hughes
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge

5/ BLM should bear in mind that we have held that no variance from the IMP may be authorized absent express justification in the record for such action. Oregon Natural Resources Council, supra; The Wilderness Society, supra at 55. BLM has cited lack of available funding as the reason for its decision not to reclaim the entire WSA.

