

PLACID OIL CO.

IBLA 80-21

Decided December 11, 1979

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. NM 33778-33780, 33782, 33785, and 33786.

Vacated and remanded.

1. Oil and Gas Leases: Discretion to Lease

The Department, may, in its discretion, reject offers to lease public lands for oil and gas, but such rejections must be based on facts of record and background data indicating that leasing would be contrary to the public interest.

APPEARANCES: James C. Hoskins II, Esq., for appellant

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated September 14, 1979, by the New Mexico State Office, Bureau of Land Management (BLM), rejecting the above identified oil and gas lease offers for the following reasons:

All of the lands in your offers are within the Alamo Hueco, Dog Mountain Wildlife Area which provide habitat for a small population of Desert Bighorn Sheep. The loss of such habitat through contamination of oil and caustic substances would constitute a significant loss of habitat over large areas of the surrounding desert. Springs in the Alamo Hueco Mountains constitute the most important component to the bighorn habitat. Contamination of these springs would seriously endanger the habitat. Also, the lands have archaeological value in that they contain Indian ruins.

The lands covered by the offers are in Hidalgo County, New Mexico, in Ts. 30 and 31 S., Rs. 15 and 16 W., New Mexico principal meridian and encompass 12,123.61 acres.

BLM's decision was based on a memorandum by the District Manager, Las Cruces, recommending against leasing the lands encompassed in the subject offers on the ground that the area contained a population of desert bighorn sheep. The memo refers to an Environmental Analysis Record, excerpts of which are contained in the file. the relevant portions of these excerpts follow:

Alamo Hueco Mountains

These mountains are located immediately south of the Big Hatchets and likewise, provide habitat for desert bighorn sheep. This area also contains some very interesting Indian ruins and, therefore, is archaeologically important.

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The areas surrounding the Alamo Hueco Mountains and the area between these and the Big Hatchet Mountains are favorable for oil and gas discovery. As indicated, these mountains are the only places within the subject area where the desert bighorn sheep is known to occur. This species is easily displaced by man's activities as substantiated by the great number of former ranges which no longer contain this animal. Oil and gas discovery and production in this area would likely have a significant impact upon this species. The bighorn would probably leave the area and re-establish itself in adjacent mountain ranges of old Mexico where competition with other herds may likely occur. Springs in the Alamo Hueco Mountains perhaps constitute the most important component to the bighorn habitat. Contamination or interference in production of these springs would seriously endanger the habitat.

During all phases of oil and gas activity, the possibility of poaching game species in remote areas is evident. Former roadless areas would be easily accessible to poachers, (i.e., oil and gas crews, ranchers, and townspeople).

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Recommendations

A. The area manager should describe (by legal subdivision) those lands which are important to exclude from

oil and gas leasing to protect the natural and historic values represented in the following areas:

San Simon Cienega Wildlife Habitat Area
Florida Mountains Habitat Area
Big Hatchet Habitat Area
Alamo Hueco Habitat Area
Middle & Lower Box of the Gila River
Guadalupe Canyon Habitat Area
Butterfield Trail Cooks Trail
Mormon Battalion Trail
It is recommended that all future oil and gas
leasing be restricted from these lands.

Appellant challenges BLM's rejection of the offers as vague and arbitrary. He alleges that the herd of Bighorn sheep numbers 57 animals which cannot possibly inhabit the entire 12,123.61 acres in question. Appellant concedes that oil and gas leasing operations result in damage to small areas, but suggests that a more precise determination be made of the actual range of the herd, and that such lands could be excluded from lease areas.

Appellant also states that it would welcome further communication with BLM regarding its oil and gas exploration program and how such a program might be accomplished without negative effects on the area wildlife and ecosystem.

Appellant further points out that BLM has not indicated the location of the Indian ruins within the proposed lease area, and suggests that such sites could also be excluded from leasing.

Finally, appellant contends that BLM's refusal to lease is not in conformance with Federal statutes and requests that the Board remand the case to BLM for further action.

[1] While it is true that the Secretary of the Interior, through BLM, has the authority to refuse to lease lands for oil and gas exploration, a refusal to lease must be supported by background data and facts of record indicating that the refusal is in the public interest. Robert P. Kunkel, 41 IBLA 77 (1979). Neither the decision appealed from, nor the file indicates such a basis for rejecting the offers in their entirety, nor is any Federal statute or regulation cited in support of the action. It is not evident whether leasing of parts of the area, with protective stipulations was even considered. The EAR excerpts (quoted above) are general and vague and provide no specifics as to whether selective leasing would be incompatible with the stated objectives: protection of bighorn sheep and preservation of the Indian ruins. We conclude, therefore, that BLM has not provided the necessary background data and reasons to support in rejection of appellant's offers.

We therefore remand the case for readjudication based on a fuller consideration of the competing interests involved. 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 vacated and remanded for further consideration consistent with the views expressed herein.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

