

W. E. HALEY

IBLA 79-516

Decided March 19, 1980

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM 33101 through NM 33106.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the discretionary authority to refuse to lease public land for oil and gas where leasing would not be in the public interest, even though the land applied for is not withdrawn from operation of the Mineral Leasing Act. The refusal to lease must be supported by facts of record that the lease would not be in the public interest because it is incompatible with uses of the land which are worthy of preservation or would otherwise be undesirable.

APPEARANCES: Paul C. Lennartz, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

W. E. Haley appeals from the New Mexico State Office, Bureau of Land Management (BLM), decision dated July 3, 1979, which rejected his noncompetitive oil and gas lease offers NM 33101 through NM 33106. 1/ The stated reasons for the rejection are:

1/ The lands covered by the offers are in Hidalgo County, New Mexico in T. 32 and 33 S., R. 14 and 15 W., New Mexico principal meridian and encompass 11,925 acres.

The lands in your offers are within the Alamo Hueco, Dog Mountain Wildlife Area which provide habitat for a small populations [sic] 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 surrounding desert. Springs in the Alamo Hueco Mountains constitute the most important component to the bighorn habitat. Contamination of these springs would dangerously endanger the habitat. Also, the lands have archaeological value in that they contain Indian ruins.

BLM's decision was based on a memorandum by the Las Cruces District Manager recommending against the issuance of the leases. The memorandum incorporates four pages of the Environmental Analysis Record for Oil and Gas Leasing West of the Rio Grande. The memorandum, like the decision, states that the lands encompassed in the lease offers contain a small population of Desert Bighorn Sheep. The relevant portions of the Environmental Analysis Record provides:

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.

Haley asserts on appeal that there is no evidence in the record to support BLM's conclusion that oil and caustic substance contamination would endanger the habitat or contaminate the springs in the area. Haley further argues that even if the habitat would be endangered by the drilling, stipulations could be required to protect the habitat. Haley also maintains that stipulations would protect the archaeological value of the area.

Finally, Haley asserts that there are no maps in the State Office describing the wildlife area to enable either BLM or Haley to determine if all of the lands described in the lease applications are in the wildlife area. If portions of the land lie outside of the wildlife area, Haley maintains that BLM should issue leases to that land.

This Board recently issued a decision in Placid Oil Co., 44 IBLA 209 (1979), which was an appeal from the New Mexico State Office rejecting oil and gas lease offers for land located in Hidalgo County, New Mexico, in T. 30 and 31 S., R. 15 and 16 W., New Mexico principal meridian. BLM's decision recited nearly identical language and relied on the same recommendation by the Las Cruces District Manager.

[1] In Placid Oil Co., *supra* at 211, we said:

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.

This case requires the same result as Placid Oil and must be remanded for readjudication based on a fuller consideration of the competing interests involved.

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 vacated and remanded for further consideration consistent with the views expressed herein and with order No. 3049 of February 29, 1980.

Frederick Fishman
Administrative Judge

I concur:

Edward W. Stuebing
Acting Chief Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING SPECIALLY:

I concur in the remand. The record does not show the date of the Environmental Analysis, but at page 83 thereof, appears the statement: "The Las Cruces District is scheduled to receive a Surface Protection Specialist during F.Y. 1974 to handle environmental matters associated with all types of mineral activity." There is nothing as yet in the record to show that 1979-80 conditions were considered, and that the importance of wildlife protection has been weighed against current energy requirements. As to whether protective stipulations could be devised under which the sheep habitat would be protected, it might be possible for exploration and any initial development program to be phased to occur in one area at a time, leaving the remainder for the sheep.

Joseph W. Goss
Administrative Judge

