

Editor's note: Reconsideration denied by order dated Oct. 27, 1980; Appealed - dismissed,
Civ.No. CV-LV-80-412 RDF (D.Nev. June 14, 1983)

CAROL LEE HATCH

IBLA 79-335

Decided September 17, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offers N-20322 and N-20323.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas upon a determination, supported by facts of record, that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for endangered animals, is a natural scenic asset, and has potential recreational value, and where BLM determines that oil and gas operations would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed in the absence of countervailing compelling reasons.

APPEARANCES: Hugh C. Garner, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

By its decision dated March 14, 1979, the Nevada State Office of the Bureau of Land Management (BLM) rejected oil and gas lease offers N-20322 and N-20323 filed "over the counter" by Carol Lee Hatch, from which decision Hatch has appealed.

The basis for BLM's decision is that the lands applied for embrace a combination of resource attributes, including wildlife, scenic and recreational values, which would be incompatible with oil and gas activities.

Appellant argues, among other things, that there is insufficient evidence of record to support BLM's decision that leasing would be contrary to the public interest; that BLM is creating a de facto wilderness area on these lands without compliance with the required procedures; that BLM's decision not to lease is inconsistent with the national energy policy "and is completely irrational in light of current worldwide oil and gas supply problems;" that BLM has not struck the proper "balance" in weighing the "negative impacts" of leasing against the "positive impacts;" and that the decision is arbitrary, capricious and an abuse of discretionary authority.

Strangely, the lands described in the subject offers are, with one additional section, exactly the same as were considered by this Board in the appeal of Dell K. Hatch, 34 IBLA 274 (1978). ^{1/} Dell K. Hatch's two over-the-counter oil and gas lease offers for these lands were rejected by BLM's Nevada State Office for the same reasons on which it based its rejection of the subject offers. On appeal to this Board, Dell K. Hatch advanced the arguments that BLM had failed to properly balance the public interest in preserving the status quo against those which would derive through the development "of the energy source," and that BLM's decision was arbitrary and capricious. In affirming BLM's decision, we expressly found that BLM had weighed and balanced the conflicting interests, and its decision, being based on a record ^{2/} which included reports compiled from both the Federal and Nevada State Governments which showed the special resource values of this land, was not arbitrary or capricious.

We pointed out in Dell K. Hatch, supra, that the Secretary of the Interior has full discretion to refuse to issue an oil and gas lease on a tract of land, and that those who are delegated with the Secretary's authority are justified in the exercise of such discretion to preserve endangered species, other wildlife, fish or aesthetic or scenic values, citing, inter alia, Udall v. Tallman, 380 U.S. 1 (1963); United States v. Wilbur, 283 U.S. 414 (1930); Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966). See also Carol Lee Hatch, 45 IBLA 4 (1980).

^{1/} Appellant Carol Lee Hatch asserts that she is not related to Dell K. Hatch.

^{2/} The record which the Board reviewed in Dell K. Hatch was not included with the record of the subject appeal. However, there has been an environmental assessment of the land involved, which is the subject of a report by BLM's Environmental Coordinator, Las Vegas, which we find sufficient. Having already reviewed the record in Dell K. Hatch, we find it unnecessary to do so again.

We adhere to our findings and conclusions in Dell K. Hatch, supra, for the reasons stated therein.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

The record shows that on April 14, 1977, the District Manager, Las Vegas, recommended in a memorandum to the State Director: "We will be updating our MFP for this area during the next two fiscal years and recommend the decision on the [Dell Hatch applications] be delayed until this work is finished." Although the updated MFP remains to be completed, I am unconvinced the listed resource values cannot be preserved with protective stipulations. It is in no way probable that any oil or gas production will ever occur. Exploration therefore should be permitted if adequate controls are practicable.

The BLM decision does contemplate a degree of multiple use, balancing recreation development, big horn sheep hunting, and wildlife protection. I would refer the application to the Assistant Secretary, Land and Water Resources, in order that there may be a more adequate administrative review of energy, wildlife, and other policy requirements than is possible with limited Board of Land Appeals resources. 43 U.S.C. § 1701 (a)(5), (8), and (12) (1976).

Joseph W. Goss
Administrative Judge

