

PLACID OIL CO. ET AL.

IBLA 81-246, 81-317,  
81-428, 81-469,  
81-479

Decided October 14, 1981

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offers. NM 38784, et al.

Affirmed.

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

The Secretary of the Interior may, in his discretion, reject any offer to lease public lands for oil and gas deposits upon a proper determination that leasing would not be in the public interest, even though the land applied for is not withdrawn from leasing under the operation of the mineral leasing laws. The refusal to lease should be supported by facts of record demonstrating that leasing would not be in the public interest, e.g., where leasing might adversely affect the Mexican desert bighorn sheep or its habitat, that animal being a State of New Mexico endangered species and the subject of a cooperative agreement between the State and BLM made pursuant to sec. 2 of the Act of Oct. 18, 1974, 16 U.S.C. § 670g (1976).

APPEARANCES: Ronald T. Luke, Esq., Austin, Texas, for appellants Carol Lee Hatch and Ida Lee Anderson; James C. Hoskins II, Esq., Dallas, Texas, for appellant Placid Oil Co.; Samuel L. McClaren, Esq., Denver, Colorado, for appellant W. E. Haley; John H. Harrington, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Placid Oil Company, W. E. Haley, Ida Lee Anderson, and Carol Lee Hatch have appealed from various decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting their noncompetitive oil and gas lease offers for land situated in the Big Hatchet-Alamo Hueco Mountain area in Hidalgo County, New Mexico. 1/ See Appendix A. The stated rationale for the decisions was that the lands in question were within wildlife habitat areas and that "[i]t is considered to be in the best interests of the Government not to lease at this time." 2/ The basis for this conclusion was a final environmental

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1/ BLM moved to consolidate these cases. The motion was opposed only by appellant W. E. Haley. We have reviewed the reasons offered by appellant Haley in opposing the motion to consolidate, but feel that under the circumstances, in the interest of expediting consideration of the cases and the substantial similarity of the legal and factual issues, consolidation is justified. BLM also moved to dismiss the appeals in the cases of appellants Ida Lee Anderson (IBLA 81-469) and Carol Lee Hatch (IBLA 81-479) because they were not represented by someone entitled to do so under 43 CFR 4.3. See 43 CFR 1.3. Any defect in this regard, however, was cured when appellants substituted Ronald T. Luke, Esq., as counsel. See 43 CFR 1.3(b)(2).

2/ In addition, BLM stated that the following land was not available for leasing "under 43 CFR 3111 [Regular Offers]" and that leasing must proceed "under the provisions of 43 CFR 3112 [Simultaneous Offers]," because the land was included in terminated leases:

<u>Lease Offer</u>	<u>Affected Land</u>	<u>Terminated Lease</u>	<u>Termination Date</u>
NM 34832	E 1/2 E 1/2 sec. 23; W 1/2 E 1/2, W 1/2 sec. 25; E 1/2 E 1/2 sec. 26, T. 31 S., R. 14 W., New Mexico principal meridian, New Mexico	NM 14703	Feb. 3, 1975
NM 34841	Lot 4, sec 18; lots, 1, 3-6, N 1/2 NE 1/4, SE 1/4 NE 1/4 sec. 19; Lots 1-4, S 1/2 NE 1/4, NW 1/4 sec. 20; lots 1-4, NE 1/4, S 1/2 NW 1/4 sec. 21, T. 34 S. R. 15 W., New Mexico principal meridian, New Mexico	NM 16978	Dec. 1, 1976
NM 34842	SW 1/4 NE 1/4, SE 1/4 sec 18, T. 34 S., R. 15 W., New Mexico principal meridian, New Mexico	NM 16978	Dec. 1, 1976

On appeal, the respective appellants, Ida Lee Anderson and Carol Lee Hatch, did not dispute this conclusion by BLM. Accordingly, as to this part of the decisions, they are final. See John W. Foderick, 53 IBLA 258 (1981).

assessment (FEA) entitled "Oil and Gas Leasing Big Hatchets Alamo Hueco Mountains," dated September 1980, prepared by the Las Cruces District Office, BLM, which essentially adopted, with minor modifications, a draft environmental assessment (DEA), dated May 1980, and a recommendation of no leasing by the District Manager, BLM. <sup>3/</sup> The DEA and FEA were prepared in response to the Board's decision in Placid Oil Co., 44 IBLA 209 (1979), which held that the record in that case did not support the decision to reject oil and gas lease offers in this area. The purpose of the assessments was to determine the oil and gas policy in the Big Hatchet-Alamo Hueco area. The old policy was to deny leases in the entire area (FEA, Summary).

The Big Hatchet-Alamo Hueco Mountain area, containing 111,500 acres, is considered to have "good oil and gas potential" (FEA, Summary). The area also supports "one of the few free roaming herds of desert bighorn sheep [Ovis canadensis mexicana] in New Mexico." *Id.* The desert bighorn sheep are listed as a State endangered species. *Id.* The aim of the FEA was to balance the need for oil and gas development and the potential impact of oil and gas leasing on the desert bighorn sheep, and, thereby, determine oil and gas leasing policy. *Id.* In this regard, four alternatives were assessed, namely, (1) no action (limiting leasing to a few existing leases), (2) leasing the entire area, (3) opening a portion of the area to leasing, and (4) moving the sheep to another location.

BLM adopted alternative 3, that of opening a portion of the area to leasing (29,909 acres). The remainder of the area was either to have no leasing (74,508 acres) or leasing with a no surface occupancy stipulation (10,183 acres) (FEA at 65-71). BLM stated that section 2 of the Act of October 18, 1974, 16 U.S.C. § 670g (1976), and the Endangered Species Act of 1973, 16 U.S.C. § 1531 (1976), "requires BLM to protect State listed endangered species" (FEA, Finding of No Significant Impact). BLM further stated that "leasing should be consistent with our present knowledge of protecting desert bighorn sheep," and that as more information is developed "appropriate boundary adjustments can be made (mitigation measure 1 provides for monitoring the sheep and reviewing boundaries annually)." *Id.*

Desert bighorn sheep were originally "abundant" in the Big Hatchet-Alamo Hueco Mountain area in the early 1900's (DEA at 31). Thereafter, the population suffered a decline. This decline has generally been attributed in New Mexico to "increasing encroachment and the corresponding loss of habitat, disturbance by the human element during

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<sup>3/</sup> The FEA mentions that there is a proposal to designate the Big Hatchets and Alamo Huecos as wilderness study areas pursuant to section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976) (FEA at 4). However, the decision not to lease the land was "based primarily on the desert bighorn sheep situation" (FEA at 5).

the settlement of these areas, diseases introduced by domestic livestock and excessive and illegal hunting" (Memorandum from Andrew Sandoval and Bob Bavin to Bob Welch and Walt Snyder, dated February 6, 1980, at 1 (attached to DEA)). By July 1980 the population had declined to 29 "in the Big Hatchets" (FEA at 63). There is also evidence that sheep may be present in the Alamo Hueco Mountains. Lanny Wilson, a former BLM wildlife biologist, reported tracking a ewe and lamb into these mountains and that it was apparent to him that "she had travelled this route before." Letter to District Manager, BLM, dated February 19, 1980 (attached to DEA). He concluded that "it is my opinion this is an important travel route for the bighorn and will be in the future." Id. Shorty Lyon, a local trapper, also reported tracking five to six sheep "from the Big Hatchets to the Alamo Huecos" (DEA at 32). Also, fecal samples collected in the Alamo Hueco Mountains were reported as having a "99% chance of \* \* \* being desert bighorn pellets." Id. at 32. BLM concluded that "[t]here is a strong indication that some sheep do use the northern Alamo-Hueco Mountains, but not conclusively." Id. at 32. There are fewer than 3,200 Mexican desert bighorn sheep in North America and no more than 2,100 remaining in the United States. Id. at 37.

In early 1979 the New Mexico Department of Game and Fish (NMG&F) and BLM initiated a program to reintroduce desert bighorn sheep "into areas on the Big Hachet Mountains where records show historical use existed." Id. at 34. Observations of the movement of the reintroduced sheep "indicate that they have expanded the total amount of habitat utilized within the Big Hachet Mountains." Id. at 36. However, "it will be extremely difficult, if not impossible, to predict what areas will be utilized by these sheep within the next few years." Id. at 36.

With regard to the Alamo Hueco Mountains, the DEA states at 36:

The Alamo Huecos were identified in Preliminary Survey Report Evaluation of Historic Desert Bighorn Sheep Ranges (Sandoval 1979) as having the best potential habitat areas. The Alamo Huecos have been identified as a herd reintroduction area. The remote character of the Alamo Huecos must be preserved for successful reintroduction efforts.

The desert bighorn sheep are described as "a species that has great difficulty adjusting to encroachment of many man-related activities." Id. at 37. The DEA states at 37-38:

Disturbances, whether directed toward bighorn or not, have been observed to cause reactions adverse to population welfare. The point at which harm results is not clear, but bighorn have been found to abandon the use of historic ranges when human activity increased suddenly over a few years' time (Simmons 1970).

Light and Weaver (1973) studied bighorn behavior responses to man in numerous environmental situations in addressing the development of a ski resort in the San Bernardino National Forest, California. This investigation found that human visitation created a spatial displacement effect on the bighorn habitat. Bighorn and their sign were absent in a line-of-sight pattern from the center of the human influence. Bighorn adapted to this human influence by utilizing available habitat out of sight of the influence. In the vicinity of a popular clubhouse, the uppermost water source and entire basin of suitable habitat remained void of bighorn use during the summer season when human use at the cabin was intense (Light and Weaver 1973). The conclusions from this study were:

- a. Bighorn maintain their area of distribution as a living tradition and rarely depart from it.
- b. Bighorn fail to extend their range despite ample opportunity.
- c. Bighorn use of historic range begins to diminish where human use is over 500 visitor-days per year (recreational use).
- d. Between 500 and 900 visitor-days per year caused bighorn to avoid their historic range.
- e. Final results may be a reduction in numbers by crowding of the sheep population resulting in insufficient forage, increased predation, increased disease and external harassment.
- f. Any curtailment of bighorn movements will result in reduced gene flow and gene pool size, which may ultimately affect the future existence of the bighorn population.

Man's activities and presence may be harmful to both the bighorn population and the range. The direct factor or contact disturbance may reach a point where it is nothing more or less than harassment. Harassment can cause bighorn to become run down physically, perhaps from an improper diet due to nervous tensions (Hansen 1970). Therefore, it is conceivable that bighorn sheep could be caused to vacate their area of preferred use due to a level of human harassment, which for other species such as mule deer would be only minor harassment. [Emphasis in original.]

Sandoval and Bavin concluded that: "[W]e oppose the risk associated with intensified human disturbance and possible disruption of behavior patterns, which has the potential of further reducing the sheep population. This could also be the difference between success or failure of the reintroduction efforts." (Memorandum from Andrew Sandoval and Bob Bavin to Bob Welch and Walt Snyder, dated February 6, 1980, at 6 (attached to DEA)).

With regard to geophysical exploration, the DEA states at page 40 that movement of the sheep "may be associated with seismic activities" and that "[w]hether this movement is detrimental is unknown." Furthermore, "[a]ny exploration activity at any time within ewe range could result in habitat abandonment and indirect mortality" and that such range is not "definite." Id. at 40. With regard to drilling exploration, the DEA states at page 40: "Desert bighorn sheep could abandon the Big Hatchet Mountains and be lost completely due to predation, stress, nonrecruitment or other factors if any drilling occurs within the desert bighorn sheep range." Finally, with regard to production, the DEA states at page 41:

The Light and Weaver study (1973) determined 500-900 visitor days caused bighorn to avoid their historic range. If scattered oil and gas wells were visited every 2-3 days, in addition to other visits such as rancher operations, bighorn managers, student[s], and recreationists, the 500 visitor day level would be quickly surpassed. As stated before the Desert Bighorn Sheep could be eliminated from the Big Hatchets.

It is reported in the DEA that at a June 1974 symposium of the "most knowledgeable experts of bighorn sheep in North America" the following habitat management recommendations were made:

New roads should not be developed in any occupied desert bighorn habitat area or areas designated for transplant, and such bighorn habitat areas should be closed to off-road vehicle use.

Mineral withdrawals should be implemented on all desert bighorn habitats.

Mineral exploration must be rigidly regulated to minimize habitat destruction and ensure rehabilitation.

The Big Hatchets were declared a game refuge by the State of New Mexico on October 25, 1926, for the purpose of protecting the desert bighorn sheep. Id. at 16. In October 1978, BLM and the NMG&F entered into a "Supplemental Cooperative Agreement" pursuant to the Act of October 18, 1974, supra, in order to establish "the working relationship for implementation of the Desert Bighorn Sheep Restoration and Habitat Management Program on public lands in New Mexico" (FEA at A-1).

The agreement provided for the evaluation of various mountain ranges, including the Big Hatchets and the Alamo Huecos, for their "potential for reestablishment of desert bighorn sheep." *Id.* at A-2. NMG&F was to select areas for reestablishment of sheep and BLM was to "manage" such areas. *Id.* at A-2. BLM states that "[b]ecause the Alamo Hueco Mountains are identified as a reintroduction area, BLM must cooperate with NMG&F in protecting the area." *Id.* at 4.

In their statements of reasons for appeal, appellants make a number of arguments, namely: (1) it is in the best interests of the Government to permit oil and gas exploration and development, considering the nation's critical energy need; (2) the decision to close the subject land to oil and gas leasing is not adequately supported by the environmental assessment undertaken by BLM; (3) the prohibition of oil and gas leasing is not required by the Endangered Species Act of 1973, *supra*, section 2 of the Act of October 18, 1974, *supra*, or the cooperative agreement between BLM and the New Mexico Department of Game and Fish; and (4) BLM has not considered whether leasing may take place with appropriate protective stipulations. Appellants point out that the area is not a designated Federal wildlife refuge, has not been determined to be a critical habitat for a federally listed endangered species, and is not subject to a withdrawal made pursuant to FLPMA, 43 U.S.C. § 1701 (1976). Appellants have requested a hearing.

Appellants also argue that there is no evidence that oil and gas leasing will have an adverse effect on the population of desert bighorn sheep and that "bighorn sheep are behaviorally reluctant to abandon traditional ranges and can adapt to human intervention, short of harassment" (Statement of Reasons, appellant Ida Lee Anderson, at 5). They contend that there is no evidence that a decline in the population would be associated with limitations on available habitat in view of the fact that "the herd is naturally declining irrespective of habitat limitations," due to "predation, scabies infestation and other causes not related to human activities." *Id.* at 7-8. Appellants question whether human activity would rise to the level of 500-visitor days as noted in the Light and Weaver study.

Appellants W. E. Haley and Carol Lee Hatch argue that the area covered by their lease offers is solely within the Alamo Hueco Mountains, where they contend there are no sheep and that the area is only a speculative reintroduction area. Appellants point out that the captive population at the Red Rock Wildlife Experimental Area, used in the reintroduction effort, has lost three sheep to a virus and that the virus will hamper future reintroduction efforts. *See* FEA at 63. Moreover, appellants contend that BLM may lack sufficient funds to support the reintroduction program. Appellants point out that this reason was cited as the basis for rejecting the alternative of moving the present population of sheep in the Big Hatchet Mountains (FEA, Summary). Appellants allege that the State leases almost all of its land in the Alamo Hueco area, that State and private land totals approximately 45 percent of the area, and that the sheep could be reintroduced in one of six other "best potential habitat areas" listed on page 7 of the DEA.

[1] Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-25 (D.C. Cir. 1960). Accordingly, the Secretary has the authority to refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the mineral leasing laws. Id. However, a decision to refuse to lease land must be supported by facts of record that the refusal is required in the public interest. Tucker and Snyder Exploration Co., Inc., 51 IBLA 35 (1980). Such a decision will be affirmed in the absence of compelling reasons for modification or reversal. Esdras K. Hartley, 57 IBLA 319 (1981); Dell K. Hatch, 34 IBLA 274 (1978), and cases cited therein.

There is no question that protection of the habitat of a species of animal, especially one listed as endangered by either the state or Federal Government, is in the public interest. Carol Lee Hatch, 50 IBLA 80 (1980); Jack E. Griffen, 7 IBLA 155 (1972); see James O. Breene, Jr., 38 IBLA 281 (1978), rev'd on other grounds, 42 IBLA 395 (1979); Dell K. Hatch, supra.

Section 2 of the Act of October 18, 1974, supra, requires the Secretary of the Interior to "develop, in consultation with the State agencies [responsible for the administration of fish and game laws], a comprehensive plan for conservation and rehabilitation programs" with regard to wildlife, fish, and game. 16 U.S.C. § 670h(a)(1) (1976). In addition, a state agency "may enter into a cooperative agreement" with the Secretary with respect to such a program. The agreement "shall \* \* \* provide adequate protection for fish and wildlife \* \* \* considered to be threatened, rare, or endangered by the State agency." 16 U.S.C. § 670h(c)(1)(A) and (c)(3)(D) (1976). However, the Act also provides that: "Nothing in this subchapter shall be construed as limiting the authority of the Secretary of the Interior \* \* \* to manage \* \* \* public lands for wildlife and fish and other purposes in accordance with the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. § 528 (1976) (applicable to national forests)] or other applicable authority." (Emphasis added.) 16 U.S.C. § 670h(c)(1) (1976). Accordingly, BLM was required, pursuant to the supplemental cooperative agreement entered into with the NMG&F, to provide "adequate protection" for the desert bighorn sheep. Neither the Act nor the agreement, however, require the complete prohibition of oil and gas leasing under the mineral leasing laws, as is evident from the terms of section 2 of the Act of October 18, 1974, supra. Nor do we believe that such a prohibition is required under the Endangered Species Act of 1973, supra. Esdras K. Hartley, supra.

Nevertheless, we believe that BLM has adequately supported its decision not to lease for oil and gas in the Big Hatchet Mountains. BLM has provided ample evidence that the desert bighorn sheep (*Ovis canadensis mexicana*) are extremely sensitive to human activity and that such activity at any time in any part of their range may cause them to abandon that area, perhaps permanently. Appellants have offered nothing to suggest that such is not the case. In view of such circumstances, we cannot discern how oil and gas exploration and development might proceed under any protective stipulations. Compare with Tucker and Snyder Exploration Co., Inc., supra.

We note that the areas sought to be leased by appellants are within integral parts of the present range of the sheep. See DEA at 33-34; FEA at 63. The resulting displacement of sheep from such areas would only put additional pressure on the population and increase the likelihood that it will not become viable and self-sustaining. In so saying, we believe that BLM has demonstrated that a further loss of available habitat may have an adverse effect on the viability of the present population of sheep. Again, appellants have offered no evidence to the contrary.

Also, the decision not to lease does not forever preclude leasing. BLM has stated that, as more information is developed, appropriate boundary adjustments will be made in the no-leasing area. It is hoped that as more information is developed, especially with regard to areas of use by the sheep, that BLM will then be able to open up certain restricted areas to oil and gas leasing. At the present time, however, for the areas in the Big Hachets covered by the lease offers in question a blanket protection seems appropriate, pending further studies.

Likewise, we believe that the record provides adequate support for BLM's decision not to lease for oil and gas in the Alamo Hueco Mountains. While there is little evidence that there is a resident population of desert bighorn sheep in these mountains, the area definitely provides desert bighorn sheep habitat. In responding to comments on its DEA concerning the Alamo Hueco area, BLM indicated that this area should not be leased principally because it had been identified as a reintroduction area and that BLM intended to cooperate with NMG&F in protecting the area. Appellants Haley and Hatch contend that the Alamo Hueco area contains much State and private land that is under lease and that Federal leasing should also take place. Review of the map accompanying the FEA, however, reveals that most of the Federal land in the Alamo-Hueco area lies in the higher elevations of the mountains which presumably would be good habitat for the desert bighorn. BLM has weighed the competing interests of oil and gas leasing versus protection of the desert bighorn sheep and its habitat and determined at this time that the public interest requires only limited oil and gas leasing in the Big Hatchet-Alamo Hueco area. BLM has indicated that further studies will be undertaken concerning the desert bighorn sheep and that the boundaries established

will be subject to review on an annual basis. <sup>4/</sup> We cannot find that appellants have supplied compelling reasons for modifying or reversing the BLM decisions concerning this area.

Appellant's request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris

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Administrative Judge

We concur:

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C. Randall Grant, Jr.  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

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<sup>4/</sup> In this respect BLM appears to have acted on the basis of a recommendation from Bruce King, Governor of New Mexico (FEA at 52-53). In a letter to the BLM District Manager, Las Cruces, dated June 27, 1980, commenting on the DEA, Governor King indicated that New Mexico was committed to preservation of the sheep and to continued development of its energy resources; that he was aware of the "fundamental disagreement as to the impact of energy exploration on the continued existence of the Desert Bighorn sheep in New Mexico"; and that it was also "a fact that extensive oil and gas leases already exist on state lands within the region of which this environmental assessment is being made." He concluded, however, that "in considering all of these various factors and especially in view of the precarious status of the Desert Bighorn sheep in New Mexico, we feel that priority consideration must be given to them. I would suggest that a careful review of this situation be made on an annual basis."

APPENDIX A

<u>Appeal Docket No.</u>	<u>Name of Appellant</u>	<u>BLM Serial No.</u>
81-246	Placid Oil Company	NM 38784
81-317	Placid Oil Company	NM 33779 NM 33780
81-428	W. E. Haley	NM 33101 through NM 33106
81-469	Ida Lee Anderson	NM 34832 through NM 34839
81-479	Carol Lee Hatch	NM 34841  NM 34842

