

THOMAS CONNELLY ET AL.

IBLA 81-344

Decided August 17, 1982

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting in part oil and gas lease offer N-30806.

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.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Thomas H. Connelly and Robert W. David appeal from a January 15, 1981, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting in part their oil and gas lease offer N-30806. BLM rejected the offer insofar as it concerned land in sec. 6: lots 8 and 9, S 1/2 NE 1/4, SE 1/4; sec. 7: E 1/2; sec. 18: E 1/2; and accepted the offer only as to sec. 28, all in T. 27 S., R. 63 E., Mount Diablo meridian, Clark County, Nevada. ^{1/} BLM listed the following reason for partial rejection:

According to Stateline EAR of the Las Vegas District Office, these lands have been designated as part of the 'Highland Range Crucial Bighorn Habitat Area' (CFR 2071-1). Because these lands have been identified as crucial to the survival of a bighorn herd, they have been closed to oil, gas and geothermal exploration and leasing.

^{1/} By a second decision, issued the same day, BLM imposed upon the accepted portion of this lease offer special stipulations protecting archeological features and specifying provisions of the Department of Energy Organization Act, 42 U.S.C. § 7152 (Supp. I 1977).

Appellants argue that neither the Environmental Analysis Record (EAR), nor the Habitat Management Plan (HMP) for the Highland Range, Las Vegas District (N-5-WHA-T4) justify rejection of their oil and gas lease offer for these lands. They contend that these documents do not address the benefits of oil and gas leasing generally, nor do they address the possible use of special stipulations to protect nearby bighorn sheep. They argue that under the HMP, designation was designed to delineate an area for the limitation of livestock grazing and associated use of scarce water. Above all, they claim that because the lands in their offer lie in the Eldorado Valley, not in the nearby Highland Range, they are not bighorn sheep habitat at all.

[1] The Secretary of the Interior has full discretion to refuse to issue an oil and gas lease on a tract of land; 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. 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); Carol Lee Hatch, 50 IBLA 80 (1980).

BLM may refuse to issue a lease in the proper circumstances. Where BLM outlines the reasons for refusal and provides a record and background data supporting the conclusion that the public interest would be served by rejection, the BLM decision will be affirmed. Robert P. Kunkel, 41 IBLA 77 (1979); Cartridge Syndicate, 25 IBLA 57 (1976). Where the record describes a devotion of land to a public purpose which is worthy of preservation and indicates that the development of an oil and gas field would be incompatible with this public purpose and would be less in the public interest than preserving the status quo, BLM's decision not to issue a lease will be affirmed unless an appellant shows reasons for modification or reversal. L. A. Idler (Supp.), 28 IBLA 8 (1976); Rosita Trujillo, 21 IBLA 289 (1975). A refusal to lease must be supported by facts of record. Placid Oil Co., 58 IBLA 294 (1981).

In its decision, BLM referred to the 1975 Stateline EAR, N-7640, which was prepared to examine the prospective impacts of oil and gas and geothermal leasing in the Stateline Planning Unit in Clark and Nye Counties, Nevada. The EAR states generally that in "all areas close to expanding population centers, people are encroaching on animal habitats and damaging or destroying them. Bighorn sheep inhabit the mountains in the area, including the Highland Range." The EAR notes competition between bighorn and wild burros and livestock for water and forage. "Water resources are considered to be critical areas for bighorn sheep during July-September for a radius of two miles around each source" (EAR at 21). Heavy human visitation to water sources and the building of corrals and cabins appear to inhibit the animals' use of traditional habitat and threatens their continued well being (EAR at 22). In Appendix I, the EAR refers to the designation of the lands involved in this appeal as part of the "Highland Range Crucial Habitat Area" in paragraph 8 of N-1575-A (35 FR 14950 (Sept. 25, 1970)). This designation document states: "This area supports an unusual concentration of Nelson's bighorn sheep. It has been identified in an approved HMP as crucial to survival of a bighorn herd, and in need of special management for protection and maintenance of the vegetation and wildlife habitat."

Both BLM and appellant refer to the 1969 HMP. Maps included with the HMP indicate that Las Vegas is approximately 30 miles from the north end of the Highland Range. The document states:

The Highland Range is situated about five miles west of highway 95 between Nelson, and Searchlight, Nevada. The range is oriented north-south, and extends from the valley floor at 3,000 feet to elevations slightly less than 5,000 feet. It is an extremely rough rocky range of volcanic origin. The Highland Range supports a rather high density bighorn population (about 10 per square mile in summer habitat) in comparison to other habitat areas in southern Nevada. It also comprises a rather unique, small, intact bighorn herd unit area.

(HMP at 2). The HMP goes on to outline its management objectives. By reducing competition with livestock, and by adding permanent water sources in the northeastern portion of the range in order to extend bighorn crucial summer habitat, BLM hopes to increase bighorn numbers from 40-65 to 70-105 animals (HMP at 2-4). A map included with the appeal illustrates the limited summer habitat immediately surrounding springs superimposed upon the much greater "critical fall-winter-spring habitat" and overall bighorn sheep habitat, both of which terminate approximately 1 mile from the edge of the rejected lease area. Summer range is the primary limiting factor. BLM and members of the community have expended considerable effort to increase summer water supply for the bighorn. Additional water developments are planned.

Appellant has marked on a map a 2-mile radius from each present and proposed water source to show that the requested lease area is not within that distance. However, the animals may range closer at other times of year. The EAR states at page 35:

Any human activity in bighorn critical habitat areas is a major deterrent to their survival. Suitable habitat is known to be very limited and violation of these areas could jeopardize their existence.

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Reduction of the water supply in the area might occur as a result of well development and production. If the field is large enough to cause significant water reduction, the result might reduce the amount of available water for cultivation, culinary, livestock and wildlife use. The impact might displace families, livestock and wildlife.

Surface occupancy restrictions in crucial wildlife areas were mentioned as a possible mitigating measure during oil and gas exploration, but loss of suitable wildlife habitat would be unavoidable if permanent development and production occur. (EAR at 38, 41). A decision to lease or not to lease must be made on the presumption that drilling would be successful. Thus, even though the record indicates that exploration would not unduly impact other values, where it is determined that development would necessarily harm these values, an oil and gas lease offer may properly be rejected.

The record shows a series of decisions to devote these lands to the preservation of values which are worthy of preservation. The EAR indicates that oil and gas leasing would be incompatible with this purpose. Appellant has failed to show that the decision rejecting part of this offer did not have a reasonable basis in fact.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Nevada State Office is affirmed.

James L. Burski
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Bruce R. Harris
Administrative Judge

