

INTERIOR BOARD OF LAND APPEALS

High Plains Petroleum Corp.

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HIGH PLAINS PETROLEUM CORP.

IBLA 90-504 Decided December 29, 1992

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, cancelling oil and gas lease NM NM 78075.

Decision affirmed; appeal dismissed in part.

1. Practice Before the Department: Persons Qualified to Practice--Rules of Practice: Appeals: Dismissal

Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. To the extent it is brought by a person who does not fall within any of the categories of persons authorized to practice by 43 CFR 1.3, an appeal is subject to dismissal.

2. Oil and Gas Leases: Cancellation

An oil and gas lease is properly cancelled where it was inadvertently issued in violation of the regulatory requirement to conform use authorizations to the approved RMP for lands officially designated as an area of critical environmental concern, with a prescription for no leasing because the area contains several Federally listed endangered and threatened plant species.

APPEARANCES: John B. Sommers II, President, High Plains Petroleum Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

High Plains Petroleum Corporation has appealed a July 9, 1990, decision by the New Mexico State Office, Bureau of Land Management (BLM), cancelling oil and gas lease NM NM 78075. 1/

Public domain lease NM NM 78075 was offered on October 19, 1988, and was issued to appellant with an effective date of December 1, 1988. Effective January 1, 1989, BLM approved an assignment of record title of the lease to J. Michael Donahoe. Appellant retained a 6.25 percent interest in the lease. Donahoe did not participate in this appeal.

1/ BLM's July 9 decision also cancelled oil and gas lease NM NM 76873, but appellant did not appeal this cancellation.

BLM's decision explains that at the time the lease was offered, BLM's records had not been updated to reflect that it embraced lands within the Hogback Area of Critical Environmental Concern (ACEC), an area closed to oil and gas leasing in July 1988. BLM's decision cites its July 1988 Farmington Resource Management Plan (FRMP) decision, and explains the basis of the ACEC designation as follows:

The main objective of this ACEC is to meet BLM responsibilities under the Endangered Species Act [as amended, 16 U.S.C. § 1536 (1988)] to protect the habitat for threatened or endangered plants and animals. The ACEC designation is also designed to assist the U.S. Fish and Wildlife Service in their recovery efforts for the federally endangered Mancos milk-vetch and the federally threatened Mesa Verde Cactus (USFWS. 1984 and 1989. Recovery Plans for the Mesa Verde Cactus and Mancos milk-vetch. USFWS, Albuquerque, NM). It may also serve to help prevent the future listing of candidate species by protecting their habitat from undue or unnecessary degradation.

(Decision at 1). BLM's July 1988 FRMP describes the Hogback ACEC as encompassing 9,480 acres in the western corner of the resource area. In addition to the Federally listed endangered Mancos milk-vetch, the area contains "other plant species which are rare or endemic to New Mexico" (FRMP at 5-56). Among these other plant species are

the only known populations of several species including Cottam's milkvetch (Astragalus monumentalis var. cottamii), Cryptantha paradoxa and Cryptantha recurvata, and Eriogonum scabrellum.

It is also one of the few known sites of Phacelia splendens in New Mexico.

Succulent dwarf saltbush (Atriplex pleiantha), a federal candidate species and state-listed endangered species,

may occur in the eastern half of the area. The ACEC also contains the southernmost range extension of several species including small-leaf mahogany (Cercocarpus intricatus) and singleleaf ash (Fraxinus anomala). As such it is of significant scientific value for studying ecotonal relationships. The New Mexico Resources Survey Program considers the area to be one of two top places in the state for groupings of rare plants (P. Knight personal communication 1986). The Nature Conservancy feels this portion of the Resource Area is of both regional and national significance for conservation and study of rare plants (W. Dunmire personal communication 1986).

Id. One of the management prescriptions for the Hogback ACEC is to "withdraw [the area] from future mineral entry and close to mineral material disposal and oil and gas leasing." Id.

Appellant asserts in its statement of reasons (SOR) that cancellation of the lease prevents recovery of proven oil reserves at a time of great national need, and argues that it could operate without adversely affecting either of the listed species. Appellant maintains that no factual basis

for cancelling the lease exists because no inventory was made to determine if the listed species were present in the lease area, and the U.S. Fish and Wildlife Service was not consulted prior to cancellation. Appellant asserts that it wishes to "redevelop" NM NM 78075 which has been drilled, and contains a well pad and concrete pumping unit base.

[1] Initially, we address the procedural matter of the scope of the appeal filed by appellant. Appellant's president filed the notice of appeal and the SOR on behalf of the corporation and J. Michael Donahoe, owner of 93.75 percent of the record title in the lease. Practice before the Interior Board of Land Appeals is controlled by 43 CFR 1.3. That regulation provides that in addition to representation by an attorney, an individual may practice before the Department in regard to a matter in which he represents, inter alia, himself, a family member, a partnership of which he is a member, and a corporation of which he is an officer or full time employee. 43 CFR 1.3(b)(3). An appeal brought by a person who does not fall within any of the categories of persons authorized to practice before the Department is subject to dismissal. Leonard J. Olheiser, 106 IBLA 214 (1988), and cases cited. An individual or business (other than an attorney) performing a service for a client is not qualified to appear before the Board on behalf of that client. Robert G. Young, 87 IBLA 249, 250 (1985). A person filing an appeal is responsible for showing he or she is qualified to practice. Robert A. Perkins, 119 IBLA 375, 382 (1991). If a person (other than an attorney) intends to represent more than one party, there must be an affirmative showing that the representative of one appellant is qualified and authorized to represent other appellants. The Wilderness Society, 109 IBLA 175, 176-77 (1989). The record before us does not indicate the relationship between appellant and Donahoe, and therefore does not demonstrate that appellant falls within any of the categories of 43 CFR 1.3 authorizing him to appear on behalf of Donahoe. Thus, to the extent that the appeal purports to represent Donahoe's interest, we conclude it should be dismissed.

[2] It is well settled that the Secretary has the authority to cancel any oil and gas lease issued contrary to law or regulation because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Clayton W. Williams, Jr., 103 IBLA 192, 202, 95 I.D. 102, 107 (1988). Here, the lease was issued in contravention of BLM's FRMP prescription against leasing. This violates the regulatory mandate to conform resource management authorizations to the approved plan. 43 CFR 1610.5-3(a). As the Board has held, where an officer of BLM acts beyond the scope of his authority in issuing an oil and gas lease, such action is incapable of binding the Department and any lease so issued is "voidable." Beverly M. Harris, 78 IBLA 251 (1984). United States v. Alexander, 41 IBLA 1 (1979), aff'd, Alexander v. Andrus, No. 79-603-B (D.N.M. July 7, 1980); Nola Grace Ptasynski (On Court Remand), 28 IBLA 256 (1976), aff'd, Ptasynski v. Hathaway, Civil No. 75-282-M (D.N.M. May 5, 1977).

In addition, Department regulations specifically provide that the United States is not bound by the acts of its employees when they "cause to be done what the law does not sanction or permit." 43 CFR 1810.3(b). Further, reliance on records maintained by BLM "cannot operate to vest any right not authorized by law." 43 CFR 1810.3(c).

BLM determined in its resource management planning process and decision that oil and gas leasing would not be in the public interest within the Hogback ACEC. That determination appears to have been diligently made based on a consideration of all relevant factors, including the Endangered Species Act. Appellant has advanced arguments disputing the adequacy of BLM's planning and its judgment not to permit leasing in the area. However, the propriety of BLM's FRMP decision is not at issue in this appeal. Rather, the issue is whether BLM properly cancelled a lease erroneously issued in contravention of the FRMP. It did. BLM resource management actions must conform to the approved resource management plan. 43 CFR 1610.5-3(a).

In accordance with the above authorities, we hold that the lease was properly cancelled. A holding to the contrary would be to hold that the unauthorized act of a subordinate official may bind the Department to follow a course inconsistent with its published policy and law. Such a result would be contrary to 43 CFR 1810.3 and the Board's precedents.

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 affirmed, and the appeal is dismissed in part.

John H. Kelly
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge