

GEORGE E. UTERMOHLE, JR.

IBLA 71-236

Decided August 13, 1971

Rules of Practice: Protests--Oil and Gas Leases: Applications: Generally

A protest, charging failure of the Bureau of Land Management to reject an oil and gas lease offer because the land is not available, is properly rejected where the record shows that action on the lease offer is suspended pursuant to the terms set forth in Public Land Order 4582, as extended by PLO 4962 and PLO 5091.

Alaska: Oil and Gas Leases--Applications and Entries: Generally--Oil and Gas Leases: Applications: Generally

A noncompetitive oil and gas lease offer filed for unleased lands in Alaska before January 19, 1969, is properly suspended from further adjudication under the provisions of Public Land Order 4582, as extended by PLO 4962 and PLO 5091, and will not be rejected until determination of the availability of the land to such noncompetitive oil and gas lease offer is finally made after expiration of the Public Land Order, unless the offer is recalled previously by the offeror.

IBLA 71-236 :

F 2741

GEORGE E. UTERMOHLE, JR.

: Protest dismissed

: Affirmed

DECISION

George E. Utermohle, Jr., has appealed to the Board of Land Appeals from a decision dated February 18, 1971, in which the Alaska State Office, Bureau of Land Management, dismissed his protest against noncompetitive oil and gas lease offer F 2741 filed July 29, 1968, by Alan J. Antweil, for block 7, T. 3 S., R. 2 W., Umiat Mer., Alaska. The protest had alleged that the land on which the offer was filed is not available, and that the long established policy of the Department of the Interior is to reject applications for lands which are not available and not to hold them until such time as the land may become available for the purpose sought.

The decision appealed from recited that the lands described in offer F 2741 were embraced within the native protest, Fairbanks 035257, and although the native protest did not render the lands unavailable to filing of oil and gas lease offers, action on the subject offer would be suspended until the native protest was finally resolved. The decision further stated that lands described in offer F 2741 were not withdrawn from oil and gas leasing until Public Land Order (PLO) 4582, dated January 17, 1969, withdrew all unreserved public domain lands in Alaska from all forms of disposal or appropriation under the public land laws, except locations for metalliferous minerals, until December 31, 1970. The purpose of the withdrawal was for determination and protection of the rights of the native Aleuts, Eskimos and Indians of Alaska. The terminal date of the withdrawal was extended by PLO 4962 to June 30, 1971. 1/

1/ PLO 5081, published June 24, 1971, at 36 F. R. 12017, extended the expiration date of the withdrawal established by PLO 4582 to the date of official adjournment of the first session, 92d Congress, or the date legislation for determination and protection of the rights of native Aleuts, Eskimos and Indians of Alaska shall become law, whichever shall occur first.

The decision then set forth that the provisions of section 2, PLO 4582, specifically provide that unless otherwise required by law, all lease applications pending before the Department of the Interior on the effective date of the order will be given the same status and consideration beginning at 12 (noon) A.s.t., on April 2, 1971, as though there had been no intervening period, unless previously recalled by the applicant. The decision concluded that at the time offer F 2741 was filed, the land described therein was available to oil and gas filing, and that offer F 2741 is properly suspended under the provisions of PLO 4582 and 4962.

The appellant contends that offer F 2741 does not fall within the purview of PLO 4582, as the filing of an offer creates no vested right in the offeror, and that the principle enunciated in J. G. Hatheway et al., 68 I.D. 48 (1961), applies.

This case does not fall within the ambit of Hatheway. There, applications were filed for oil and gas leases on two islands under control and jurisdiction of the Secretary of the Navy for Naval purposes pursuant to Executive Order No. 6009, January 31, 1933. As the Navy Department reported that the military use of the islands prohibited their use for oil and gas exploration, the offers were rejected. Requests by the applicants that their offers be continued as pending until such time as the land might become available was denied by the Department under its long standing policy that applications for public lands or for mineral interests therein must be rejected if the land or mineral interest was not available for the requested disposition when the application was filed or considered.

In the present case, Antweil's offer was filed for an oil and gas lease on land open and available within the public domain, subject to resolution of a protest against disposition filed by Alaskan natives. Filing of the protest, while it did not withdraw the land from operation of the public land laws, including the Mineral Leasing Act, did create a cloud thereon requiring resolution before a lease application would be considered. PLO 4582 makes it clear that the Department had no intention of rejecting any pending applications for the lands or resources affected by the Order, unless otherwise required by law, but would continue to hold such applications in statu quo ante until the appointed opening date, "unless previously recalled by the applicant."

Section 2 of PLO 4962 continued the suspension of such applications to noon on the first business day following the 90th day after the expiration date of the withdrawal. The further extension of the expiration date by PLO 5081 (see note 1) continued all modifications and amendments of PLO 4582. This included the suspension of pending lease applications.

Oil and gas lease offers pending on the date of PLO 4582 were suspended not because they are "valid existing rights" as stated in section 1 of the order, but because they are "applications . . . which were pending before the Department of the Interior," as set forth in section 2. The state office correctly dismissed the protest of Utermohle.

Of course, retention of lease offer F 2741 in statu quo ante until expiration of the withdrawal first established by PLO 4582 is not an assurance that the offer will then be accepted and a noncompetitive lease for oil and gas issued to the offeror; it is, rather, only a retention of priority of filing date. Each offer now suspended under the provisions of PLO 4582 will be adjudicated finally in light of conditions prevailing at the time it is considered.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the appeal is dismissed.

Newton Frishberg, Chairman

We concur:

Joan B. Thompson, Member

Anne Poindexter Lewis, Member

