

**Editor's note: Appealed -- aff'd, sub nom. Arnold v. Morton, Civ. No. A-157-72 (D. Alaska), reversed and remanded, No. 74-2218 (9th Cir. Jan. 23, 1976), 529 F.2d 1101; aff'd, after trial on remand, (D. Alaska 1979), aff'd, No. 79-4857 (9th Cir. June 29, 1981)**

STARLING BROKERS ET AL.

IBLA 70-569, etc.

Decided June 26, 1972

Appeals from decisions (listed in the Appendix hereof) by the Alaska state office, Bureau of Land Management, rejecting oil and gas lease offers for lands within Naval Petroleum Reserve No. 4.

Affirmed.

Oil and Gas Leases: Lands Subject to

Lands within the Naval Petroleum Reserves are not subject to oil and gas leasing under the Mineral Leasing Act of 1920.

Naval Petroleum Reserves: Petroleum Reserve No. 4

The Executive Order of 1923 creating Naval Petroleum Reserve No. 4 is a continuing withdrawal; it included all public domain lands within the exterior boundaries defined in the Executive Order and includes all lands which thereafter reverted to the unappropriated public domain within that area.

Administrative Procedure Act: Hearings -- Rules of Practice:

Appeals: Hearings

A request for a hearing in connection with an appeal will not be granted where undisputed facts are of record, and the determination rests on legal conclusions based on such facts.

Public Records -- Rules of Practice: Appeals: Generally

Interrogatories presented by an appellant will not be honored where the information requested is available to the general public from Departmental records in accordance with the Public Information Act, 5 U.S.C. § 552 (1970), and procedures in 43 CFR Part 2.

APPEARANCES: Stanley P. Cornelius, Esq., William B. Murray, Esq., for appellants, as indicated on Appendix.

OPINION BY MRS. LEWIS

Starling Brokers and others 1/ listed in the Appendix hereof, have appealed from decisions of the Alaska state office, Bureau of Land Management, 2/ which rejected their oil and gas lease applications filed pursuant to the Mineral Leasing Act, as amended, 30 U.S.C. § 181 *et seq.* (1970), because all the lands applied for are embraced within the exterior boundaries of Naval Petroleum Reserve No. 4 which was established by Executive Order No. 3797-A on February 27, 1923. 3/ The gravamen of the decisions was to the effect that the mineral deposits in the lands under application were vested in the Secretary of the Navy on August 10, 1956, by the Act of that date, 10 U.S.C. §§ 7421-7438 (1970), and that the lands are not subject to leasing by the Secretary of the Interior under the Mineral Leasing Act.

Executive Order No. 3797-A included all the then unappropriated public lands within a described area. It excluded all lands then covered by valid appropriation, i.e., existing entries, leases, or applications. The appellants assert that the lands embraced in their applications were covered by entries, leases or applications on February 27, 1923, and that when the then valid entries, leases, or applications expired, the lands immediately became available for leasing on a first come basis. They assert that the exclusion of the lands covered by the entries, leases or applications from the original order of withdrawal is a permanent exclusion of those lands from the withdrawal and that the lands are now part of the unappropriated public domain for which leases issue. For the reasons set forth below, we find that the lands sought by appellants are not available for leasing.

It is well established that a reservation of lands for a public purpose does not cover lands then embraced in a prior existing appropriation. Wilcox v. Jackson, 38 U.S. 264 (13 Pet. 498) (1839). And it is equally well established that when the prior appropriation

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1/ See the Appendix for a listing of the IBLA docket numbers, Bureau of Land Management serial numbers and the names of appellants for each offer.

2/ Effective July 1, 1970, the Board of Land Appeals, Office of Hearings and Appeals, assumed jurisdiction over all appeals pending before the Director, Bureau of Land Management, in the exercise of the supervisory jurisdiction of the Secretary of the Interior (Cir. 2273, 35 F.R. 10009, 10012, June 18, 1970).

3/ The Executive Order reserved the lands for only six years. However, the Order was made permanent by Public Land Order 289 of July 20, 1945, 10 F.R. 9479, July 31, 1945, by deleting the six-year period of limitation.

terminates and the land reverts to the public domain, such lands will be covered immediately by and blanketed into such withdrawal. James F. Rapp, 60 I.D. 217 (1948); Emma H. Pike, 32 L.D. 395 (1904).

Congress has directed that:

The Secretary of the Navy shall take possession of all properties inside the naval petroleum and oil shale reserves that are or may become subject to the control and use by the United States for naval purposes, except as otherwise provided in section 7438 hereof. (10 U.S.C. § 7421(a)).

This statute is a mandate that all lands within the exterior boundaries of the naval petroleum reserves "that are or may become subject to" governmental control shall immediately be appropriated and subject to the reserve under jurisdiction of the Navy. In the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, Congress recognized the continuing applicability of the Naval Petroleum Reserve No. 4 withdrawal. It directed that the oil and gas estate underlying all such lands shall remain in the exclusive jurisdiction of the Secretary of the Navy. We further note that a Memorandum of Agreement between the Navy and this Department provides that the Secretary of the Navy will have "exclusive jurisdiction over the oil and gas deposits in lands within the reserve." See Terza Hopson et al., 3 IBLA 134 (1971).

Some of the lands covered in the appeal IBLA 70-519 are outside Petroleum Reserve No. 4. Any application for the lands outside the Reserve are properly rejected because they are not open to leasing under the terms of Public Land Order 3521. See Carlson Oil Company, Inc., 2 IBLA 378 (1971). In this regard we also invite the attention of the parties to the regulation at 43 CFR 3101.1-1(a)(6), which states that:

Lands within one mile of Naval Petroleum or Helium Reserves. No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the authorized officer, after consultation with the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

As the record contains all information necessary for the legal conclusions made herein, no useful purpose would be served by a hearing. Accordingly, the request for a hearing made by some of

the appellants is denied. We also note that some of the appellants have presented certain interrogatories patterned after the Federal Rules of Civil Procedure. The purpose of the interrogatories was to gain possession or knowledge of leasing maps and other information available from Departmental records. All the requested information and records are available to these appellants, as well as the general public, in accordance with the Public Information Act, 5 U.S.C. § 552 (1970), and procedures in 43 CFR Part 2.

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 decisions below are affirmed.

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Anne Poindexter Lewis, Member

We concur:

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Douglas E. Henriques, Member

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Joan B. Thompson, Member

APPENDIX

The following are represented by Stanley P. Cornelius, Esq.:

IBLA <u>No.</u>	Serial <u>Appellants</u>	BLM Docket <u>No.</u>	
70-569	Starling Brokers, Ted B. Voss, and a third	F 12586	party whose signature is illegible
70-570	Starling Brokers, Gerald L. Brumley, and	F 12568	Ruth A. Brumley
70-571	Starling Brokers, Allen D. Fullerton, and	F 12569	Mrs. Hartwell B. Fullerton
70-575	"	F 12570	70-576 Starling Brokers, Gerald L. Brumley,
and	F 12571 Ruth A. Brumley		
70-577	"	F 12572	70-578 Starling Brokers, Ray Williams
	F 12573 70-579 Starling Brokers, Gerald L. Brumley,	F 12574	Allen D. Fullerton, and Hartwell B. Fullerton
70-580	"	F 12575	70-581 Starling Brokers, Gerald L. Brumley,
Betty	F 12576 Vrooman, and James R. Vrooman		
70-582	"	F 12577	70-583 Starling Brokers, Emery T. Gunter, and
	F 12578 Lucille Gunter		
70-584	"	F 12579	70-585 Starling Brokers, Gerald L. Brumley,
	F 12580 Margaret N. Simpson, and David C. Simpson		
70-586	"	F 12581	70-587 Stanley P. Cornelius, Hillin L. Arnold,
	F 12454 and George M. Adams		
70-588	"	F 12492	70-587A " F
12484			

IBLA Docket No.	<u>Appellants</u>	Docket No.	BLM
70-589	Stanley P. Cornelius, Hillin L. Arnold,	F 12491	and George M. Adams
70-590	"	F 12490 70-591	" F
12489 70-592	" "	F 12488 70-593	" "
F 12481 70-594	" "	F 12478 70-595	" "
F 12477 70-596	" "	F 12476 70-597	" "
F 12475 70-598	" "	F 12466 70-599	" "
F 12465 70-600	" "	F 12464 70-601	" "
F 12463 70-602	" "	F 12462 70-603	
"	F 12461 70-604	"	F 12460 70-605
"	F 12459 70-606	"	F 12458 70-607
"	F 12455 70-608	"	F 12456
70-609	"	F 12457	
70-610	"	F 12467	
70-611	"	F 12468	

IBLA Docket No. <u>          </u>	<u>Appellants</u>	Serial No. <u>          </u>	BLM
70-612	Stanley P. Cornelius, Hillin L. Arnold and George N. Adams	F 12469	
70-613	"	F 12470 70-614	" F
12471 70-615	"	F 12472 70-616	"
F 12473 70-617	"	F 12474 70-618	"
F 12479 70-619	"	F 12480 70-620	"
F 12485 70-621	"	F 12482 70-622	"
F 12483 70-623	"	F 12486 70-624	"
F 12487 70-625	Starling Brokers, Ted B. Voss, and a third whose signature is illegible	F 12587	party

The following are represented by William B. Murray, Esq.:

IBLA Docket <u>No.</u>	<u>Appellants</u>	<u>Serial No.</u>	BLM
70-385	Fairbanks Excavation and Trucking Co., and	F 12192	Chris Palzer
70-386	"	F 12193 70-395	Russell H. Williams, and Chris Palzer
	F 12186 70-396	"	F 12187 70-397
	F 12188 70-398	"	F 12189 70-399
	F 12190 70-400	"	F 12201 70-401
"	F 12202 70-402	"	F 12203 70-403
"	F 12204 70-404	"	F 12205 70-405
Copper, and Chris Palzer		F 12194 70-406	"
70-407	"	F 12199 70-409	William J. Thompson, and Chris Palzer
	F 12238 70-413	Paul N. Fiorito, J. M. Willis, and	F 12242
Palmerton			George
70-414	William R. Campbell, and Chris Palzer	F 12277 70-419	Lyle H. Anderson, and
Chris Palzer	F 12275 70-420	Ray S. Grundhauser, and William R. Campbell	F
12276 70-421	T. Gordon Campbell, and Chris Palzer	F 12288	

IBLA Docket <u>No</u>	<u>Serial Appellants</u>	BLM <u>No.</u>
70-424	Gilbert Copper, and Chris Palzer	F 12281 70-425
Chris Palzer	F 12304 70-426	William J. Thompson, and F 12310 70-427
"	F 12311 70-428	Gilbert Copper, and Gerald Claus
12312 70-429	George Stone, Johanna Stone, and Gilbert Copper	F 12313 70-430
Claus, and Gilbert Copper	F 12314 70-431	Frances Claus, and Gilbert
Copper	F 12315 70-432	"
"	F 12317 70-434	F 12316 70-433
Enterprises Oreg. Ltd., and Chris	F 12295	F 12318 70-502
70-503	Bertil A. Granberg	Palzer
	F 12297	F 12298 70-505
70-509	"	"
70-511	T. Gordon Campbell, and William R. Campbell	F 12361
70-519	"	F 12385
70-520	Lowell W. Palmerton	F 12387
70-573	J. M. Willis, Paul Fiorito, and George	F 12340
	Palmerton	F 12380
70-634	William R. Campbell, and T. Gordon Campbell	F 12386

