

ANNA A. MADROS

IBLA 72-453

Decided September 26, 1972

Appeal from a determination of the Alaska State office, Bureau of Land Management, that the appellant's Alaska Native Allotment claim, F-13723, is impressed with an oil and gas reservation in favor of the United States.

Appeal dismissed and case remanded.

Rules of Practice: Appeals: Generally -- Rules of Practice: Appeals:
Standing to Appeal

Appeals from Bureau of Land Management decisions, which are not dispositive of the ultimate issues, will not be considered. They are properly dismissed as premature unless permission to appeal is first obtained from the Board of Land Appeals upon a showing that an immediate appeal may materially advance the final decision.

APPEARANCES: Richard Frank, Esq., Tanana Chiefs Conference.

OPINION BY MR. FRISHBERG

On March 29, 1971, the appellant filed application for an Alaskan Native Allotment pursuant to 43 U.S.C. § 270-1 (1970). She alleged settlement and occupancy of the two parcels applied for since September 6, 1946. The file fails to disclose that the Bureau took any action to determine the appellant's entitlement to an allotment. Nevertheless, on April 26, 1972, the Bureau's Alaska State Office rendered a decision advising her that the claim had been classified as valuable for oil and gas and would be impressed with a reservation to the United States for those minerals in accordance with 43 U.S.C. §§ 270-11, 270-12 (1970). She was afforded a 30-day period in which to disprove the mineral classification or to appeal. Ms. Madros appealed.

The primary question before the Bureau of Land Management is the appellant's entitlement to an allotment. Only if an allotment is approved will it be necessary to inquire whether it should be subject to a mineral reservation in favor of the United States. Any consideration of a mineral reservation requirement prior to the determination of the primary question is premature. In such case the appeal is properly dismissed without prejudice. See 43 CFR 4.28; United States v. The Dredge Corporation, 76 I.D. 23 (1969; Newell A. Johnson, et al., 70 I.D. 388 (1963). Although

this regulation and the cited cases deal with interlocutory appeals from hearing examiners' rulings, the principle applies with equal force to non-final decisions of Bureau officials.

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. The case record is returned for appropriate processing of the allotment application. If the applicant is entitled to an allotment she will then be informed relative to the mineral classification of the land and afforded an opportunity to disprove it or appeal.

Newton Frishberg
Chairman

We concur:

Martin Ritvo
Member

Frederick Fishman
Member

