

JOSEPH C. MANGA  
AZEL L. CRANDALL

IBLA 72-201

Decided February 13, 1973

Appeal from decision AA-5815 of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offer.

Affirmed, in part, remanded in part.

Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Lands Subject to

Land included within an outstanding oil and gas lease, whether the lease is void, voidable, or valid, is not available for leasing and an application filed for such land must be rejected.

Oil and Gas Leases: Lands Subject to--Withdrawals and Reservations: Effect of

Unless a withdrawal or reservation of public domain land specifically provides otherwise, the withdrawn or reserved land is presumed to be available for oil and gas leasing under the Mineral Leasing Act. However, issuance of any oil and gas lease under the Mineral Leasing Act is discretionary with the Secretary of the Interior, so no oil and gas lease will be issued where such action will be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved.

APPEARANCES: Stephen S. DeLisio, Esq., of Merdes, Schaible, Staley and DeLisio, Anchorage, Alaska, for the appellants.

OPINION BY MR. HENRIQUES

Joseph C. Manga and Azel L. Crandell have appealed from a decision, dated November 11, 1971, of the Alaska State Office, Bureau of Land Management, which rejected their oil and gas lease offer AA-5815 for the reason that the lands sought are within outstanding oil and lease Anch. 060835.

Offer AA-5815 sought to lease Fractional Sec. 7, Fractional Sec. 8, within PLO 4721, but excluding Air Navigation Site [ANS] 191, Fractional Sec. 17 within PLO 4721, and Fractional Sec. 18 within PLO 4721 but excluding Tract X, all in protracted T. 28 S. R. 6 W., C.R.M., on Middleton Island, Alaska. Lease Anch. 060835 was originally issued effective September 1, 1964, for some 2205 acres on Middleton Island. By subsequent office decisions dated May 18, 1966, and June 9, 1966, the area leased was reduced to encompass all Fractional Secs. 5, 6, 7, 8, and 17, and Fractional Sec. 18 outside PLO 640, in T. 28 S., R. 6 W. Amoco Production Company is the lessee of record.

It is obvious that most of the land sought by AA-5815 is within the land leased under Anch. 060835. It is well established that land included in an outstanding oil and gas lease is not available for leasing, whether the outstanding lease was properly issued or not. Bertil A. Granberg, 7 IBLA 162 (1972); George E. Conley, 1 IBLA 227 (1971); Joyce A. Cabot, et al., 63 I.D. 122 (1956). Therefore, appellant's offer was correctly rejected as to all land in conflict with existing lease Anch. 060835.

Appellants question whether lease Anch. 060835 is a valid lease. As above stated, the validity of a lease is not determinative; notation on the land office records that a lease exists is what determines that the land is not available for leasing. See State of Alaska, Kenneth D. Makepeace, 6 IBLA 58, 79 I.D. 391, 395 (1972).

In any event, our examination of the records before us does not disclose error by the Bureau of Land Management in the issuance of lease Anch. 060835. Upon its inquiry to ascertain if the Department of the Air Force desired any special stipulations to protect its interest in the Middleton Island facility, the Bureau was notified in March 1964 that the subject area was excess to Air Force needs, so the Air Force had no requirement for any special stipulations, but that as negotiations were in progress with the Federal Aviation Administration to take over the subject area, that agency should be contacted for required special stipulations prior to issuance of oil and gas lease Anch. 060835. The order establishing ANS 222 did not preclude the issuance of oil and gas leases thereon. We must conclude therefore that lease Anch. 060835 is a valid lease.

Unless a withdrawal or reservation of public domain land specifically provides otherwise, the withdrawn or reserved land is presumed to be available for oil and gas leasing under the Mineral Leasing Act. However, issuance of any oil and gas lease under the Mineral Leasing Act is discretionary with the Secretary of the Interior, so no oil and gas lease will be issued where such action will be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved. See Udall v. Tallman, 380 U.S. 1 (1964), rehearing den., 380 U.S. 989.

Appellants also contend that all of the lands described in their offer are not included within lease Anch. 060835; specifically that tract of approximately 20 acres in fractional section 18 bounded on the north by the northern boundary of PLO 640, on the west by the eastern boundary of Tract X, the MIDICO property, on the east by the Gulf of Alaska and on the south by the protracted section line between secs. 18 and 19. Superficial support for this contention is observed on the schematic oil and gas plat in the case, but it must be recognized that this plat is not an accurate portrayal of an actual survey. The case will be remanded to the State Director to determine if in fact there is an unleased area as above described, if it is available for oil and gas leasing, and if so, if the public interest demands issuance of an oil and gas lease thereon.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed in part, and the case is remanded to the Bureau of Land Management for appropriate action consistent herewith.

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Douglas E. Henriques, Member

We concur.

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Joan B. Thompson, Member

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Frederick Fishman, Member

