

VANCE W. PHILLIPS  
AND  
AELISA A. BURNHAM

IBLA 75-91

Decided March 21, 1975

Appeals from decisions of July 1, 1974, and July 11, 1974, rendered by the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offers F-5159 and F-5181.

Affirmed.

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

Under the policy of the Secretary of the Interior of maintaining on file oil and gas lease offers for lands in Alaska filed prior to the issuance of Public Land Order 4582 on January 17, 1969, an offer which would ultimately require rejection because of the unavailability of the land at the time the offer was filed, will not be retained on file, but may be properly rejected at any time when the case is reached for adjudication.

2. Oil and Gas Leases: Lands Subject to

An oil and gas offer, for lands in a terminated or relinquished lease, must be filed in compliance with the simultaneous filing procedure in 43 CFR 3112. If such an offer is not so filed, it is properly rejected.

Vance W. Phillips, 14 IBLA 79 (1973), is modified.

APPEARANCE: Eugene F. Wiles, Esq., of Delaney, Wiles, Moore, Hayes and Reitman, Inc., Anchorage, Alaska, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Vance W. Phillips and Aelisa A. Burnham have appealed from decisions dated July 1, 1974, and July 11, 1974, rendered by the Alaska State Office, Bureau of Land Management (BLM), rejecting their offers to lease for oil and gas filed on August 28, 1968, for the reason that all the lands in offer F-5181 of Burnham and some of the lands in offer F-5159 of Phillips, were unavailable for leasing since those lands had been embraced in leases terminated by operation of law and have not been posted as available for the filing of new offers in accordance with 43 CFR 3112.1-1.

These cases have had earlier consideration by this Board. On March 13, 1973, 10 IBLA 125, we affirmed, as modified, decisions of April 5, 1971, and April 9, 1971, rendered by BLM. BLM had rejected the offers in part because the lands were formerly in leases which had been relinquished or terminated by operation of law and the lands had not yet been posted as available for the filing of new offers in accordance with 43 CFR 3112.1-1. The basis of our March 13, 1973, decision was that the lands in issue were withdrawn by Public Land Order (PLO) 5173, 37 F.R. 5575 (1972).

Pursuant to a request for reconsideration, the Board on December 11, 1973, 14 IBLA 79, issued a decision, based upon our then view of the Secretary's policy, setting aside the earlier decision and remanding the cases to be held in suspense.

Despite the unambiguous language embodied in our decision of December 11, 1973, BLM proceeded to act on the offers in issue and rejected them to the extent that the lands were unavailable for leasing.

Appellants contend that the Secretary of the Interior, since the enactment of the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-1624 (Supp. III, 1973), and the issuance of PLO 5173, has made clear his intent to continue the policy of maintaining on file those lease applications submitted prior to PLO 4582 of January 17, 1969.

[1] We find that the Secretary's continuing policy of maintaining on file Alaska oil and gas lease offers filed prior to PLO 4582 is not applicable to the instant cases. That policy is manifested in the following:

## ALASKA OIL AND GAS LEASING POSITION PAPER

In 1966, the first suspension of oil and gas lease offers was announced by former Secretary of the Interior, Stewart Udall, as a part of the Federal

Government's commitment to settlement of the Native land claims in Alaska. Through the issuance of Public Land Order 4582 on January 19, 1969, provision was made to protect all pending oil and gas lease offers and to hold them status quo until the claims issue was resolved. My predecessor, Secretary Hickel, subsequently confirmed, through extension of this order, that the lease offers would be honored until such time as they could be properly considered. I have continued this policy. Congress, through enactment of the Alaska Native Claims Settlement Act, set the framework for the selection and transfer of lands to the Native people of Alaska.

This granting act, coupled with the grants previously made to the State of Alaska, presents a somewhat complex status pattern over the entire State. Timetables have been set which we must work within. To accomplish the goals in a priority order, a series of public land orders was published, at my direction, on March 16, 1972. In these orders, we set forth the system we will follow and have identified the lands which are affected. These orders are visually reflected in a comprehensive status map available to the public. The Bureau of Land Management offices in Alaska are plotting the orders, the 9,000 individual Native allotment filings, and the State selections to the official land records. This record must be complete before further contracts may be entered into. As the lands are designated for selection by the Native people and the State of Alaska, certain of the lands which the oil and gas applicants are seeking to lease will be removed from the public domain and will not be available for leasing under the Mineral Leasing Act of 1920, as amended. As this occurs, our offices will reject these offers as promptly as possible so the applicants may pursue their requests with the new landowner.

By the same processes, not all of the lands held for satisfaction of the grants will be selected and these lands will then be reviewed for the purpose of classification or reclassification. We will be conducting our studies throughout the initial phases of the Alaska Native Claims Settlement Act so that a minimum of delay will attend the classification of the lands.

Pending offers will be considered and lands previously held under lease will again be offered to the public, consistent with the classification. Resumption of oil

and gas activity and the orderly and timely development of this resource in Alaska is high on the list of tasks we have set for the Department; however, this development must be consistent with environmental concerns. We believe the approach I have outlined will accomplish this.

There are 15 million acres in Alaska not otherwise withdrawn and these lands are now subject to the operation of the Mineral Leasing Act. Pending and new offers filed on these lands will be reviewed under the environmental analysis procedures and the recommendation or stipulations resulting from the analysis will dictate the adjudication of the offers. (Emphasis supplied.)

In essence, it is our current view that the Secretary's statement was designed to protect those oil and gas offers which, barring an adverse disposition of the land or resources, could reasonably be expected to mature into leases. The offers for the rejected lands in issue here have no such expectancy. No useful purpose would be served by inaction on offers fatally defective.

[2] Since the lands applied for were in terminated or relinquished leases, they were not subject to filing of offers to lease until they had been posted as available for simultaneous offers. 43 CFR 3112.1-1; Carl C. Robinson, 14 IBLA 338 (1974). The offers were properly rejected as to the lands in terminated or relinquished leases. That action of rejection, however, leaves a portion of the lands in Phillips' offer suspended in accordance with the Secretary's policy statement set forth above.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed, and the Board's decision in Vance W. Phillips, 14 IBLA 79 (1973), is modified in accordance with the views expressed herein.

Frederick Fishman  
Administrative Judge

We concur

Joseph W. Goss  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

