

C. BURGLIN et al.

IBLA 75-488

Decided August 11, 1975

Appeal from the rejection of eleven noncompetitive oil and gas lease offers for lands in Alaska.

Affirmed.

1. Oil and Gas Leases: Applications: Generally

The mere filing of a noncompetitive oil and gas lease offer does not invest the offeror with any right to receive a lease. The only right created thereby is the right to an appropriate priority of consideration if, at the discretion of the Department, an oil and gas lease is to be issued for the land which is the subject of the offer.

2. State Selections

The allowance of a state selection application furthers the discharge of the federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

3. Oil and Gas leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to -- Oil and Gas Leases: Noncompetitive Leases -- Oil and Gas Leases: Patented or Entered Lands

It is proper to reject an oil and gas lease offer to the extent of conflict with an Alaska state selection application after the application has been tentatively approved even though the offer was filed before the selection application.

APPEARANCES: C. Burglin, Evelyn Franich, Howard Bowen, A. E. Greig, Wallace F. Burnett, Jr., Owen Jennings, Dora A. Carter, Ernest G. Carter, Alexander Miller, Charles Stack, each pro se; James N. Reeves, Assistant Attorney for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

C. Burglin et al. have appealed from the several decisions of the Alaska State Office of the Bureau of Land Management rejecting eleven noncompetitive oil and gas lease offers, as shown in the appendix. The lease offers were all filed in the Bureau's Fairbanks Land Office in 1967 and 1968 and were pending when the adjudication of such offers was temporarily discontinued due to protests by Alaska Native groups. Action on the adjudication of applications by the State of Alaska to select these lands was also stayed at the same time.

Subsequently, all public lands in Alaska were withdrawn from mineral leasing by Public Land Order No. 4582. However, the order as modified, provided that all applications then pending would be held in suspense, and upon enactment of the Alaska Native Claims Settlement Act, such applications would be considered as though there had been no intervening period. Included in this group were both the subject oil and gas lease offers and the conflicting state selection applications. Following the enactment of the Alaska Native Claims Settlement Act the lands were again withdrawn from mineral leasing by PLO 5186.

On March 27, 1974, all of the lands embraced by the subject lease offers were tentatively approved to the State of Alaska. The lease offers were then rejected for the following reason, as quoted from the decisions:

Departmental regulation 43 CFR 2627.3(b)(2) provides for the rejection of conflicting applications and offers for mineral leases, except for preference right applicants, whether filed prior to, simultaneously with, or after the filing of a State selection, when and if the selection is tentatively approved. Section 6(i) of the Statehood Act further provided that:

"Mineral deposits in such lands shall be subject to lease by the State .  
.. (Emphasis added.)

Accordingly, since the Federal government no longer has jurisdiction over these lands, nor the authority to lease thereon, the subject offer[s] must be, and is, (sic) hereby rejected.

Appellants' statement of reasons for appeal (identical in each case) attacks the decisions on the ground that the Alaska Native Claims Settlement Act provides "that any prior rights will be protected and honored." (Quote from appellants' statement). Moreover, appellants assert that the policies and practices of the Department of the Interior with respect to the leasing of federal lands for oil and gas in Alaska are arbitrary, capricious, discriminatory, and contrary to public interest, in that such policies are frustrating to appellants, that such policies and practices are not applied in other States, that the State of Alaska is permitted to "usurp private rights" not for the good of all people, but so the State can gain monetarily, that the Department is fostering monopoly and consequently raising the cost of living and inhibiting exploration and development of critical resources, and that the Department and the State of Alaska" \* \* \* intend to stamp out any individual participation in the development of Alaska's oil and gas resources and insure monopolistic control by a few powerful companies."

In support of these contentions appellants have submitted copies of a newspaper article by Ralph Nader, excerpts from published statistics showing the potential volume of oil reserves in Alaska and a list of companies with the largest total assets (not referable to Alaska).

Most of appellants' arguments do not raise any justiciable issue relating to the propriety of the rejection of these specific lease offers, and therefore will not be considered. We will address the remaining allegations.

[1] It is apparent that appellants believe that by the mere act of filing these offers they invested themselves with a "private right" to receive a lease in each instance. This is simply not so. As we said in Lloyd W. Levi, 19 IBLA 201, 202 (1975):

The law is well-settled that if an oil and gas lease is to be issued for a particular tract, it must be issued to the qualified person who first applied. The Department, however, has plenary discretion to refuse to issue any lease at all for such tract. Udall v. Tallman, 380 U.S. 1 (1965), rehearing denied, 380 U.S. 989 (1965). The filing of a noncompetitive oil and gas lease offer does not generate any legal interest, Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966), other than the preference right accorded to the first qualified applicant. Even where an applicant is the first-qualified applicant the Department retains its discretion to reject his application. Haley v. Seaton,

281 F.2d 620 (D.C. Cir. 1960). An applicant has no right to compel a lease under the Mineral Leasing Act, Pease v. Udall, 332 F.2d 62 (9th Cir. 1964).

[2] Appellants also seem to imagine that their applications to lease should be given preference over the State's right to select. Again they are in error. As stated in Mountaineering Club of Alaska, Inc., 19 IBLA 198 (1975):

The allowance of a state selection application furthers the discharge of the federal obligation to fulfill the State's statutory entitlement and, generally, it will be preferred in the public interest over the discretionary application of one who does not have an entitlement of equal dignity.

[3] Finally, we have held repeatedly that it is proper to reject an oil and gas lease offer in conflict with a state selection application after the selection application has been tentatively approved, even though the offer was filed before the selection application. Aliena Rucker, 19 IBLA 204 (1975); Lloyd W. Levi, *supra*; and cases cited therein. Moreover, the rejection of the lease offers is required under these circumstances by regulation. 43 CFR 2627.3(b)(2).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing  
Administrative Judge

We concur:

Frederick Fishman  
Administrative Judge

Martin Ritvo  
Administrative Judge

## APPENDIX

<u>Name</u>	<u>Serial Number</u>	<u>Date of Decision</u>
C. Burglin) A. E. Greig)	F-635	3/28/75
C. Burglin Owen Jennings	F-636 F-639	3/28/75 3/28/75
Wallace F. Burnett, Jr.	F-686	3/27/75
Wallace F. Burnett, Jr.	F-687	3/27/75
Wallace F. Burnett, Jr.	F-688	3/27/75
Alexander Miller	F-692	3/28/75
Charles Stack	F-693	3/28/75
Dora Alice Carter) Earnest G. Carter)	F-1000	4/9/75
Howard Bowen) Evelyn Franich) C. Burglin)	F-1009	3/28/75
Howard Bowen) Evelyn Franich) C. Burglin)	F-1010	3/28/75

