

STATE OF ALASKA

IBLA 75-418

Decided October 16, 1975

Appeal from decision of Alaska State Office, Bureau of Land Management, rejecting State selection application AA-5380 in part.

Affirmed.

1. Alaska: Land Grants and Selections: Applications -- Applications and Entries: Generally -- Rules of Practice: Appeals: Failure to Appeal -- Withdrawals and Reservations: Effect of

In the absence of a timely appeal from a decision rejecting the State of Alaska's selection application for certain lands, the lands are no longer segregated from other disposition and a withdrawal of those lands may attach, precluding subsequent selection by the State.

APPEARANCES: Michael C. T. Smith, Director, Division of Lands, Department of Natural Resources, State of Alaska, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

The Department of Natural Resources, State of Alaska, has appealed from the March 6, 1975, decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting State selection AA-5380 of lands in T. 50 S., R. 82 W., Seward Meridian, Alaska.

The State filed selection AA-5380 on December 24, 1968, for all of protracted T. 50 S., R. 81 W., S.M., pursuant to section 6(b) of the Alaska Statehood Act, 72 Stat. 339, 48 U.S.C. notes prec. § 21 (1970). After the State filed an amended application reasserting its selection of T. 50 S., R. 81 W., on June 16, 1972, the Department of Defense, pursuant to sections 6(b) and 10(a) of the

Statehood Act, and Executive Order 10950, 26 F.R. 5787 (1961), indicated it had no objection to the selection. On August 22, 1973, the BLM directed publication of notice by the State for selections AA-5380, AA-8239 and others.

On November 17, 1972, the State filed selection AA-8239 for lands in fractional T. 50 S., R. 82 W., S.M. The Aleut Native Regional Corporation objected, but the Department of Defense indicated it had no objection to the selection. By letter dated January 17, 1974, the State requested that selection AA-8239 be combined with selection AA-5380, in order to meet minimum acreage requirements. The BLM took no action on the January 17 letter.

The State of Alaska submitted, as requested, an Affidavit of Publication on April 4, 1974, which showed publication of notice on AA-5380 and AA-8239. On July 23, 1974, the BLM rejected selection AA-8239 in its entirety on the ground that T. 50 S., R. 82 W., was entirely within outstanding oil and gas leases at the time of the State's November 17, 1972, application, and was thus not subject to selection by the terms of section 6(h) of the Statehood Act, 72 Stat. 339, 342, as amended, 48 U.S.C. notes prec. § 21 (1970). The State inquired of BLM why AA-8239 had been rejected without mention of the January 17 letter in the rejection decision, but it received no answer, nor did it file an appeal from the decision.

Instead, on August 29, 1974, the State filed an amendment to AA-5380 adding the lands in T. 50 S., R. 82 W., that had been applied for in AA-8239. The amendment was duly noted on the master title plat for the townships involved.

In the decision appealed from, the BLM rejected AA-5380 for the lands in T. 50 S., R. 82 W., added by the amendment of August 29, 1974, (and formerly included in AA-8239), on the ground that the lands were, at the time of the August amended application, not subject to state selection because they were withdrawn from such disposition on March 28, 1974, by Public Land Order (P.L.O.) 5418, 39 F.R. 11547 (1974). The BLM had previously issued a decision granting tentative approval to the portion of selection AA-5380 covering T. 50 S., R. 81 W.

On appeal, the State argues that the BLM erroneously rejected AA-5380 for the lands in T. 50 S., R. 82 W. (originally in AA-8239), since the lands were open and subject to selection on January 17, 1974, when the State filed its letter requesting that AA-8239 and AA-5380 be combined.

[1] It is unnecessary to determine whether the January 17, 1974, letter was a valid reassertion or amendment of the selections which

was erroneously not treated as such by BLM. 1/ When the 30-day appeal period on the rejection of AA-8239 ran out August 28, 1974, those lands (T. 50 S., R. 82 W.) were no longer included in any subsisting selection. The State was on notice that the BLM had not treated the January 17 letter as a reassertion, as the decision was premised on the existence of only one selection application covering those lands, and on only the original selection application date, November 17, 1972, on which the lands were not available for State selection. On the State's failure to appeal, 2/ the BLM's treatment of the letter and the lands in the selection became final. 43 CFR 4.411. The decision rejecting AA-8239 in effect rejected the January 17 combination request as well. The propriety of that treatment is not at issue, since the rejection of the State's application for those lands was not appealed.

The lands in T. 50 S., R. 82 W., were thus not under State selection application until the amendment of AA-5380 was filed on August 29, 1974. The State in its appeal does not dispute that on August 29, 1974, as the BLM found, the lands in T. 50 S., R. 82 W., were withdrawn from disposition (including State Selection) by P.L.O. 5418. It argues only that P.L.O. 5418, which withdrew the land "subject to valid existing rights," did not attach to these lands because they were included in the State's letter amendment of January 17, 1974. As we have seen, even if the letter amendment was a valid reassertion, the withdrawal attached upon the expiration of the appeal period following the decision of July 23, 1974, rejecting the State's application for the lands at issue. 3/

The State argues that the July 23, 1974, decision rejecting application AA-8239 was at the same time (1) proper for the lands in existing oil and gas leases, but (2) did not cover the lands in the January 17 reassertion letter:

1/ We note that State of Alaska, 73 I.D. 1, 11-13 (1966), aff'd, Udall v. Kalerak, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969), emphasized the importance of the State's assertion of interest, rather than any formality in the reassertion. The record supports the assertion that the lands were available for State selection at that time.

2/ Although the State made inquiry during the appeal period, it did not appeal and the decision of July 23, 1974, became final.

3/ The amendment to AA-5380 was filed 31 days after receipt of the decision rejecting the application (AA-8239) for T. 50 S., R. 82 W. The decision was thus final and the P.L.O. 5418 withdrawal attached prior to the filing of the amended AA-5380 application.

* * * Therefore, even if the lands selected by AA-8239 were properly rejected at that time because of Federal oil and gas leases, the oil and gas leases terminated and the combination of AA-8239 and AA-5380 fell in place as being under selection as of January 17, 1974.

Contrary to the State's assertion, the BLM, in its decision of July 23, 1974, was adjudicating all right or interest the State might have had in the lands in T. 50 S., R. 82 W., not just its rights as of the November 17, 1972, filing date of application AA-8239. The adjudication decided finally the State's right to T. 50 S., R. 82 W., up to the date of decision. In other words, had the BLM known of and timely reassertion or amendment to AA-8239 or covering lands in T. 50 S., R. 82 W., it would have adjudicated such rights under the amendment doctrine of Udall v. Kalerak, 396 F.2d 746 (9th Cir. 1968), cert. denied, 393 U.S. 1118 (1969), just as it adjudicated the State's rights under the August 29, 1974, amended selection application in the decision appealed from here. E.g., Harold J. Hansen, A-30955 (April 8, 1969); Charles H. Sells, 75 I.D. 297 (1968).

The State notes that it responded to the July 23, 1974, decision by a letter calling BLM's attention to the January 17 combination request, and requesting a reply prior to expiration of the 30-day appeal period. It got no reply, and filed its amendment to AA-5380 after the appeal period ended. The BLM's failure to respond to the State's inquiry is not grounds for any waiver or suspension of the appeal period or its consequences. 43 CFR 1810.3.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting the State's amended application AA-5380 for lands in T. 50 S., R. 82 W., S.M., is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

