

DOME PETROLEUM CORP. ET AL.

IBLA 81-381, etc.

Decided August 31, 1981

Appeal from decisions of the Alaska State Office, Bureau of Land Management, rejecting various noncompetitive oil and gas lease offers.

Affirmed.

1. Alaska: Oil and Gas Leases -- Alaska National Interest Lands Conservation Act: Generally -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits -- Withdrawals and Reservations: Effect of

An offer to lease for oil and gas in the Arctic National Wildlife Refuge is properly rejected where the lands in the refuge have been withdrawn from the operation of the mineral leasing laws by either secs. 1002 or 1003 of the Alaska National Interest Lands Conservation Act. Standard offers to lease for oil and gas may not be construed as requests to undertake exploratory activities only. The only exploratory activities permitted in the Arctic National Wildlife Refuge are governed by sec. 1002 of the Act. Any requests to undertake exploratory activities are premature until the Secretary of the Interior has issued guidelines governing exploration in the refuge.

2. Alaska: Oil and Gas Leases -- Words and Phrases

"Leasing." The word "leasing" in the phrase "no leasing \* \* \* leading to production of oil and gas" in sec. 1003 of

the Alaska National Interest Lands Conservation Act includes leasing for the purpose of exploratory activities.

APPEARANCES: Richard M. Smith, Esq., and David I. Bloom, Esq., Washington, D.C., for Dome Petroleum Corp.; Robert H. Hume, Jr., Esq., for Cicilio S. Belarde, John C. Belarde, and Kenneth D. Parker.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeals have been taken from decisions of the Alaska State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offers because the lands sought are within the Arctic National Wildlife Refuge (ANWR). <sup>1/</sup> The decisions indicate that section 1003 of the Alaska National Interest Lands Conservation Act (ANILCA), P.L. 96-487 (Dec. 2, 1980), 94 Stat. 2371, 2452 (to be codified at 16 U.S.C. §§ 3101, 3143 (1976)), prohibits the development of oil and gas in the refuge and thus, by mandate of the Congress, the Secretary of the Interior has no authority to issue oil and gas leases for lands within the refuge.

Each of the appellants petitioned the Secretary of the Interior to take direct jurisdiction of the appeals. On August 18, 1981, the Board was informed that the Secretary had denied the petitions.

Because the identical situation is present in each appeal and because of the very great similarity in the statements of reasons submitted by the several appellants, we have, *sua sponte*, consolidated the appeals for consideration.

Appellants' statements of reasons are also substantially the same as those outlined and thoroughly examined in Robert H. Covington, 55 IBLA 232, 88 I.D. 601 (1981). In brief, appellants argue that BLM has misinterpreted section 1003 of ANILCA and urge that it does not interdict all leasing within ANWR but only prohibits leasing which will lead to production of oil or gas. They contend that the Secretary is empowered to issue leases limited to exploratory activities.

[1, 2] In Robert H. Covington, *supra*, the Board undertook a thorough review of the applicable provisions and legislative history of ANILCA and concluded that the appellants therein had selectively examined Title X and had ignored pertinent provisions of the title and that, therefore, their assessment of section 1003 and of the management scheme set out by the Congress for the ANWR was incorrect.

We held first that activities in the coastal plain of the refuge are governed by the more specific provisions of section 1002, which withdraws those lands from the operation of the mineral leasing laws

---

<sup>1/</sup> For a list of appellants and lease offers, *see* Appendix A.

except for the limited program of exploratory activities set out therein. 2/

Second, we found appellants' interpretation of the language of section 1003 unconvincing and held that the term "leasing" includes exploration activities. 3/ In that regard, we stated:

The phrase "leasing \* \* \* leading to production," in the context of the Department's mineral leasing program pursuant to the mineral leasing laws, must be given a broader interpretation. The ultimate goal in the leasing program is production. Leasing activities authorized upon the issuance of an oil and gas lease, not involving a known geologic structure of a producing oil and gas field, necessarily include prospecting or exploring activities (see section 4 of the lease terms, Offer to Lease and Lease for Oil and Gas, Form 3110-1). Thus we conclude that the term "leasing" generally includes exploration activities. Contrary to appellants' assertion, we believe that if Congress had meant to prohibit only physical development and production, it would not have specifically used the term "leasing." This interpretation is the only one which is consistent with the studies authorized by Congress to assess the wildlife resources and potential oil and gas resources of the refuge and the concern of the Congress that it be fully informed of the potential ramifications of oil and gas activities in the refuge." [Footnote omitted.]

Robert H. Covington, supra, at 241-42.

Appellants' oil and gas lease offers were filed on BLM Form 3110-1, styled "Offer to Lease and Lease for Oil and Gas (Sec. 17 Noncompetitive Public Domain Lease)." The lease terms set forth on the form recite these rights of the lessee:

Section 1. Rights of lessee. -- The lessee is granted the exclusive right and privilege to drill for, mine,

---

2/ Subsection 1002(i) states: "Until otherwise provided for in law enacted after [Dec. 2, 1980], all public lands within the coastal plain are withdrawn from all forms of entry or appropriation under the mining laws, and from operation of the mineral leasing laws, of the United States." (Emphasis added.) We are not aware of any law enacted by the Congress since Dec. 2, 1980, which provides for any abatement of the withdrawal effected by section 1002(i).

3/ Appellants relied almost exclusively on section 1003 to support their arguments that leasing for exploration purposes in the ANWR is not prohibited. It reads as follows: "Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress."

extract, remove, and dispose of all the oil and gas deposits, except helium gas, in the lands leased, together with the right to construct and maintain thereupon, all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment thereof, for a period of 10 years, and so long thereafter as oil or gas is produced in paying quantities; subject to any unit agreement heretofore or hereafter approved by the Secretary of the Interior, the provisions of said agreement to govern the lands subject thereto where inconsistent with the terms of this lease.

A lease issued on this form expressly conveys the right to produce oil or gas. Appellants' use of this form does not comport with their present arguments that they seek only a lease limited to exploratory activity, but with concomitant priority to a lease authorizing production of oil or gas if and when such activity may be authorized. If, at the time appellants submitted their offers, they were not seeking the right to produce oil and gas pursuant to section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976), they should not have used BLM Form 3110-1, a lease which provides such right.

Furthermore, under section 1002 of ANILCA, the Secretary has no authority to issue mineral leases, including oil and gas leases, within the coastal plain of the ANWR at this time and no authority to approve exploration plans for the area until 2 years after December 2, 1980. Section 1002(e) requires that any exploration plan submitted to the Secretary conform to guidelines established by the Secretary pursuant to this section. A necessary corollary, supported by the introductory language of subsection (e), 4/ is that no exploration plan may be submitted to the Secretary until after the Secretary has prescribed the regulatory guidelines for such exploratory activities. 5/

We conclude that appellants' offers were properly rejected because the Secretary has no present authority to lease for oil and gas in either the coastal plain or the wilderness area of the ANWR. We reject appellants' assertion that their offers can be construed as

---

4/ Section 1002(e) begins:

"Exploration Plans. -- (1) After the initial guidelines are prescribed under subsection (d), any person including the United States Geological Survey may submit one or more plans for exploratory activity \* \* \* to the Secretary for approval. An exploration plan must set forth such information as the Secretary may require in order to determine whether the plan is consistent with the guidelines.

5/ On July 14, 1981, a notice appeared in the Federal Register seeking public views and comments to assist in drafting regulations and in scoping the environmental impact statement on exploration activities within the coastal plain of ANWR. 46 FR 36212.

offers to lease for exploratory activities. The statutory scheme is clear as to the steps which must occur before exploratory activities in the coastal plain may be undertaken. Submissions seeking the right to explore the coastal plain are premature at this time.

In addition, we are not aware of any statute or regulation which would allow appellants' lease offers to remain pending until such time as it is determined that oil and gas leasing should be permitted on the subject lands. The longstanding rule of the Department is that applications may not be suspended to await possible availability of the land sought. Harold L. Anderson, 10 IBLA 293 (1973); William J. Colman, 3 IBLA 322 (1971). 43 CFR 2091.1.

Finally, appellants requested that a hearing be held on the issues raised by these appeals. These issues do not involve disputes as to facts but rather involve questions of law: the interpretation of provisions of ANILCA and their applicability to appellants' offers. Appellants have had ample opportunity to present appropriate legal argument in support of their appeals to this Board in their statements of reasons. The requests for a hearing are denied. 43 CFR 4.415. See John J. Schnabel, 50 IBLA 201 (1980); Dorothy Smith, 44 IBLA 25 (1979), and cases cited therein.

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 Alaska State Office are affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

## APPENDIX A

<u>IBLA No./Appellant</u>	<u>Lease Offer</u> (Umiat meridian)	<u>Lands Covered</u>
81-381 Dome Petroleum Corp.	F 72597	T. 7 N., R. 38 E. secs. 2-12 T. 8 N., R. 38 E. secs. 32-36
	F 72598	T. 7 N., R. 38 E. secs. 13-22
	F 72599	T. 7 N., R. 36 E. secs. 23-26, T. 7 N., R. 37 E. secs. 19-22, 27-34
	F 72600	T. 6 N., R. 36 E. secs. 1, 2, 11-14, 23 T. 6 N., R. 37 E. secs. 4-9, 18 T. 7 N., R. 36 E. secs. 35, 36
	F 72601	T. 6 N., R. 35 E. secs. 1, 12 T. 6 N., R. 36 E. secs. 3-10 T. 7 N., R. 36 E. secs. 27, 28, 31-34
	F 72602	T. 6 N., R. 35 E. secs. 13, 23-26 T. 6 N., R. 36 E. secs. 15-22, 29, 30
	F 72603	T. 6 N., R. 35 E. secs. 10, 11, 14-16 21, 22, 27, 28
	F 72604	T. 8 N., R. 35 E. secs. 13-28
	F 72605	T. 7 N., R. 34 E. secs. 1, 12 T. 7 N., R. 35 E. secs. 4-7
		T. 8 N., R. 34 E. secs. 25, 36

81-381  
 Dome Petroleum Corp.  
 (cont.)

T. 8 N., R. 35 E.  
 secs. 29-35

F 72606

T. 8 N., R. 34 E.  
 secs. 13-24, 26-29

F 72607      T. 7 N., R. 34 E.  
 secs. 2-11  
 T. 8 N., R. 34 E.  
 secs. 30-35

F 72608      T. 7 N., R. 33 E.  
 secs. 1-4, 9-12  
 T. 8 N., R. 33 E.  
 secs. 25, 26, 33-36

F 72609      T. 5 N., R. 33 E.  
 secs. 2-4, 10  
 T. 6 N., R. 33 E.  
 secs. 25-36,

F 72610      T. 5 N., R. 32 E.  
 secs. 1, 2, 11-14  
 T. 5 N., R. 33 E.  
 secs. 5-9, 16-18,  
 T. 6 N., R. 32 E.  
 sec. 36

F 72611      T. 6 N., R. 30 E.  
 sec. 1  
 T. 7 N., R. 30 E.  
 secs. 13, 14, 24,  
 25, 36  
 T. 7 N., R. 31 E.  
 secs. 16-21, 28-31

F 72612      T. 7 N., R. 30 E.  
 secs. 15-23, 26-30,  
 34, 35

F 72613      T. 6 N., R. 30 E.  
 secs. 2-11, 16-18  
 T. 7 N., R. 30 E.  
 secs. 31-33

81-381

Dome Petroleum Corp.

(cont.)

F 72614	T. 7 N., R. 29 E. secs. 13, 20-29, 32-36
F 72615	T. 6 N., R. 29 E. secs. 1-16
F 72616	T. 6 N., R. 28 E. secs. 17-24, 26-33
F 72617	T. 6 N., R. 28 E. secs. 1-5, 11, 12 T. 7 N., R. 28 E. secs. 25-27, 33-36 T. 7 N., R. 29 E. secs. 30, 31
F 72618	T. 6 N., R. 28 E. secs. 8-10, 13-17 20-26, 36
F 72619	T. 5 N., R. 27 E. sec. 1 T. 5 N., R. 28 E. secs. 5, 6 T. 6 N., R. 27 E. secs. 25, 36 T. 6 N., R. 28 E. secs. 18, 19, 27-35
F 72620	T. 7 N., R. 31 E. secs. 10-15, 22-27 T. 7 N., R. 32 E. secs. 7, 17-19
F 72621	T. 6 N., R. 25 E. secs. 1, 12, 13, 24 T. 6 N., R. 26 E. secs. 4-9, 16-21
F 72622	T. 6 N., R. 25 E. secs. 2-4, 7-11, 14-18, 21-23
F 72623	T. 5 N., R. 24 E. sec. 1 T. 5 N., R. 25 E. secs. 4-6 T. 6 N., R. 24 E. sec. 36 T. 6 N., R. 25 E. secs. 19, 20, 26-34



81-381

Dome Petroleum Corp.

(cont.)

F 72624            T. 5 N., R. 24 E.  
                              secs. 2-5  
                              T. 6 N., R. 24 E.  
                              secs. 13, 14, 22-28,  
                              33-35

F 72625            T. 5 N., R. 26 E.  
                              secs. 2-6, 10  
                              T. 6 N., R. 25 E.  
                              sec. 25  
                              T. 6 N., R. 26 E.  
                              secs. 27-35

F 72626            T. 5 N., R. 25 E.  
                              secs. 1-3, 10-14  
                              T. 5 N., R. 26 E.  
                              secs. 7-9, 16-18  
                              T. 6 N., R. 25 E.  
                              secs. 35, 36

81-500

Cicilio S. Belarde

F 72835            T. 9 N., R. 24 E.  
                              secs. 13, 14, 24

F 72836            T. 8 N., R. 33 E.  
                              secs. 15-17, 20, 29

F 72840            T. 7 N., R. 32 E.  
                              secs. 1, 2  
                              T. 8 N., R. 33 E.  
                              secs. 18, 19, 30

81-501

John C. Belarde

F 72839            T. 7 N., R. 33 E.  
                              secs. 5-8, 17

81-526

Kenneth D. Parker

F 72838            T. 8 N., R. 33 E.  
                              secs. 8-13, 31, 32

