

ASAMERA OIL, INC.
KENNETH J. GAIN

IBLA 82-1175
IBLA 82-1178
IBLA 82-1236

Decided November 18, 1983

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

Affirmed.

1. Alaska Native Claims Settlement Act: Withdrawals and Reservations:
Generally--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases:
Noncompetitive Leases--Withdrawals and Reservations: Effect of

Where oil and gas leasing in Alaska was suspended by Secretarial policy at the time noncompetitive lease offers were pending and the land identified in those offers was thereafter formally withdrawn from mineral leasing for the protection of Alaskan Natives' selection rights, the Secretary of the Interior has not abused his discretion in delaying adjudication of the offers until after the status of the land is settled.

2. Alaska: Oil and Gas Leases--Alaska National Interest Lands Conservation Act:
Oil and Gas Leases: Favorable Petroleum Geological Provinces--Oil and Gas
Leases: Favorable Petroleum Geological Provinces

Under sec. 1008 of the Alaska National Interest Lands Conservation Act, the identification of areas in Alaska for possible designation as favorable petroleum geological provinces may be reasonably based on the known geologic provinces or sedimentary basins notwithstanding the large areas of land encompassed by such provinces or basins.

3. Alaska: Oil and Gas Leases--Alaska National Interest Lands Conservation Act:
Oil and Gas Leases: Favorable Petroleum Geological Provinces--Oil and Gas
Leases: Favorable Petroleum Geological Provinces

Where the designation of the Cape Lisburne Favorable Petroleum Geological Province (FPGP) is attacked as not

being supported by the direct evidence criteria announced in the December 4, 1981, Federal Register notice, that designation will be upheld where, on appeal, the rationale for that designation is supplied indicating that direct evidence supports the designation of the entire Arctic Slope Province as an FPGP and that the Cape Lisburne area is the only part of that larger area available for leasing, since both the other parts of the Arctic Slope Province -- the National Petroleum Reserve -- Alaska and the area north of 68 degrees N. latitude and east of the western boundary of the National Petroleum Reserve -- Alaska -- are excluded from leasing under section 1008 of the Alaska National Interest Lands Conservation Act.

APPEARANCES: Ray D. Gardner, Esq., and John K. Norman, Esq., Anchorage, Alaska, for Asamera Oil Inc.; H. Craig Schmidt, Esq., Anchorage, Alaska, for Kenneth J. Gain; and David B. Thomas, Esq., Office of the Solicitor, Department of the Interior, Washington, D.C., for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

By various decisions dated June 24, 1982, the Alaska State Office, Bureau of Land Management (BLM), rejected pending noncompetitive oil and gas lease offers for lands within what has been designated the Cape Lisburne Favorable Petroleum Geological Province (FPGP) pursuant to section 1008 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3148 (Supp. IV 1980). Section 1008 directs the Secretary of the Interior to establish an oil and gas leasing program on Federal lands in Alaska including the identification of areas favorable for the discovery of oil and gas which will be known as FPGP's and which may be leased only by competitive bidding. BLM concluded it had no authority under ANILCA to issue noncompetitive leases in an FPGP. Asamera Oil Inc. (Asamera), and Kenneth J. Gain have appealed the BLM decisions. ^{1/} We have consolidated their appeals, sua sponte, because of the similarity of issues.

Each appellant challenges the designation of the Cape Lisburne province as an FPGP as inconsistent with section 1008 of ANILCA and the criteria for such designations outlined by the Geological Survey (Survey) in a notice published in the Federal Register on December 4, 1981. 46 FR 59316. Gain also

^{1/} In July 1968, Earl M. Cranston filed 19 noncompetitive offers for lands within Ts. 7 & 8 S., Rs. 49 to 52 W., Umiat meridian, Alaska. He assigned his interest in the offers to Flank Oil Company in 1972. Also in July 1968, John T. Rowlett filed 71 noncompetitive offers for land within T. 8 S., Rs. 43-46, 49-53 W., and T. 9 S., Rs. 44-46, 48-55 W., Umiat meridian, Alaska. These offers were eventually assigned to Flank Oil Company as well. Asamera Oil, Inc. is successor-in-interest to Flank Oil Company.

Kenneth J. Gain submitted five noncompetitive lease offers to BLM on Aug. 18, 1982, for lands in T. 10 S., Rs. 53 and 54 W., Umiat meridian.

A complete list of the lease offers is found in Appendix A.

argues that BLM delayed an impermissible amount of time between his submission of the offers in 1968 and their rejection in 1982.

In order to provide the background leading up to the special oil and gas leasing program directed by section 1008 of ANILCA, we will address first Gain's contention that BLM delayed impermissibly before adjudicating his offers.

Gain argues that BLM should have accepted or rejected his offers either before the 1971 enactment of the Alaska Native Claims Settlement Act (ANCSA), P.L. 92-203, 85 Stat. 688 (codified at 43 U.S.C. §§ 1601-1628), which resulted in the withdrawal of the lands in his offers for an extended period of time in the 1970's or between the expiration of ANCSA withdrawals in 1978 and the 1980 enactment of ANILCA, P.L. 96-487, 94 Stat. 2371. He suggests that the failure to adjudicate his offers during these times constitutes an impermissible withdrawal of the lands from leasing such as the district court found in Mountain States Legal Foundation v. Andrus, 499 F. Supp. 383 (D. Wyo. 1980).

In response BLM recites the history of oil and gas leasing on the North Slope of Alaska and argues that from 1966, when the Secretary of the Interior suspended issuance of leases because of Alaska Natives' protests, until the implementation of ANILCA, the Cape Lisburne area has been layered with overlapping public land withdrawals and statutory disposals. As a result, the lands encompassed by Gain's offers have not been available for leasing. BLM asserts that, contrary to Gain's contention, the land was not open to leasing from 1978 to 1980 as it was included in a withdrawal authorized by section 17(d)(1) of ANCSA, which did not expire in 1978, not a withdrawal under section 17(d)(2) which did expire at that time.

BLM urges that, rather than reject lease offers in this area at the outset, the Secretary chose to suspend action, thus preserving Gain's first-qualified offeror status, until the status of the land for leasing was clear. BLM argues that the fact that the offers were not rejected until July 1982 was not arbitrary or capricious but in keeping with the Secretary's discretion to lease under section 17 of the Mineral Leasing Act, 30 U.S.C. § 226 (1976 and Supp. V 1981).

[1] Under the provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 181-263 (1976 and Supp. V 1981), public lands are available for leasing at the discretion of the Secretary of the Interior. It is clear from an examination of the history of oil and gas leasing in northern Alaska and the status of the lands included in Gain's offers that the charge that BLM abused its discretion in rejecting Gain's offers after so long a time is unfounded. The status of the lands and leasing at the time Gain submitted his offers and thereafter has previously been set out in Secretarial decision, James W. Canon, 84 I.D. 176 (1977), and bears repeating:

During and after World War II, all public lands in northern Alaska were withdrawn from all forms of entry and disposal. Public Land Order No. 82, 8 FR 1599 (Jan. 23, 1943). As the military demands for the land diminished and the private sector's requests for

permission to explore the area for oil and gas increased, P.L.O. No. 82 was revoked and a system for opening the land to leasing under the Mineral Leasing Act established. P.L.O. No. 1621, 23 FR 2637 (Apr. 18, 1958), P.L.O. No. 3521, 30 FR 2171 (Jan. 5, 1965).

These orders opened the land to the filing of noncompetitive oil and gas lease offers upon the completion of protraction map-leasing diagrams and opening orders notifying the public that leasing blocks had been established and that offers would be received on those blocks. These openings commenced in Jan. 1965, beginning with the north-central portion of the North Slope, and continued through the Notice that offers could be filed for land in the western Arctic embraced in these offers. (31 FR 12575 (Sept. 23, 1966)). [2/]

The opening orders provided that offers filed before a certain date would be regarded as having been simultaneously filed. * * * Those tracts for which no offers were filed during the period specified in the opening order then were subject to over-the-counter offer filings. * * *

During this period various Native groups filed protests against lease issuance * * *. In response to the protests, the Department issued a press release Nov. 28, 1966, manifesting its intention to hold the drawing noticed by the opening order of Sept. 23, 1966, but not to issue any leases on the first-drawn offers until the Native protests were resolved. * * * On Dec. 1, 1966, the Secretary signed a Federal Register notice confirming this policy. 31 FR 15494 (Dec. 8, 1966). * * *

Over-the-counter offers continued to be filed for lands on which no offers were received in the drawings. In mid-1968, Atlantic Richfield Co. announced its discovery of oil at Prudhoe Bay on lands leased by the State of Alaska. The announcement generated immense interest; in the next half year over 20,000 noncompetitive oil and gas lease offers were filed in Alaskan BLM offices, including offers which covered practically all potentially available land on the North Slope.

The Department responded by issuing protective withdrawals, including P.L.O. No. 4582, 34 FR 1025 (1969), [3/] which were

2/ The referenced Federal Register notice identified T. 10 S., Rs. 53 and 54 W., Umiat meridian, among others.

3/ Public Land Order (PLO) No. 4582, issued Jan. 17, 1969, stated in part that "all public lands in Alaska which are unreserved or which would otherwise become unreserved prior to the expiration of this order, are hereby withdrawn from all forms of appropriation and disposition under the public land laws * * * including * * * from leasing under the Mineral Leasing Act."

designed to maintain the public land status pending legislation for the resolution of Alaska Natives' land claims. * * *

In response to the intense interest of the offerors in maintaining their first qualified status in case the lands were not conveyed under ANCSA, the Department did not reject all such pending applications wholesale. Rather it suspended action on them until the land selection rights granted the Natives by ANCSA were exercised, and it could be determined what land was still public land subject to leasing.

84 I.D. at 177-79. See also Secretarial decision, In re Arctic Slope/Western, ANCAB No. RLS 76-11 (A)-(MM) (Nov. 24, 1976). 4/

PLO 4582 remained in effect until it was revoked by section 17(d)(1) of ANCSA, 43 U.S.C. § 1616(d)(1) (1976). Section 17(d)(1) also provided that "all unreserved public lands in Alaska * * * [were] withdrawn from all forms of appropriation under the public land laws, including * * * the mineral leasing laws" for 90 days after enactment, or until March 18, 1972, during which time the Secretary was to review the public lands and take appropriate action "to insure that the public interest in these lands [was] properly protected." Further withdrawals required "an affirmative act by the Secretary under his existing authority." The Secretary was also authorized "to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classification."

On March 9, 1972, the Secretary issued PLO 5169 which, among other actions, withdrew the lands in Gain's offers from mineral leasing. 5/ 37 FR 3572 (Mar. 16, 1972). Unlike other withdrawal authority granted the Secretary, ANCSA did not specify any expiration date for section 17(d)(1)

4/ Both Secretarial decisions rejected numerous noncompetitive oil and gas lease offers because they conflicted with lands identified for conveyance to the Arctic Slope Regional Corporation. Appellant Gain should be well aware of these circumstances since he was a named appellant in both decisions.

5/ The operative paragraph states:

"5. By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), and by virtue of the authority vested in the Secretary of the Interior in section 17(d)(1) of said Act, it is ordered as follows:

"Subject to valid existing rights, the lands described in paragraph 1 and paragraph 2 of this order are hereby withdrawn from all forms of appropriation under the public land laws, including selections by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181-287 (1970), but not from selection pursuant to section 12 of said Act by corporations formed pursuant to section 7 or section 8 of said Act, and are hereby reserved for study and review by the Secretary of the Interior for the purpose of classification or reclassification of any lands not conveyed pursuant to section 14 of said Act."

withdrawal actions. The 1978 expiration date asserted by Gain applied to the Secretary's authority under section 17(d)(2), 43 U.S.C. § 1616(d)(2) (1976), to withdraw from all forms of appropriation unreserved public lands in Alaska considered suitable for addition to or creation as units of the National Park, National Forest, Wildlife Refuge, and Wild and Scenic Rivers systems. 43 U.S.C. § 1616(d)(2)(C) and (D) (1976). See State of Alaska v. Carter, 462 F. Supp. 1155, 1157 (D. Alaska 1978).

Consequently, the lands at issue in Gain's offers have been continuously withdrawn from appropriation under the mineral leasing laws since issuance of PLO 4582 on January 17, 1969, until, by section 1008 of ANILCA, Congress directed the establishment of an oil and gas leasing program for Federal lands in Alaska available for leasing.

The circumstances in this case are not the same as those addressed in Mountain States Legal Foundation v. Andrus, *supra*, from which Gain has extensively quoted to support his argument that rejection of his offers is wrongful. In that case, the district court ruled that actions taken by the Departments of the Interior and Agriculture, which operated effectively to remove large areas of Federal land from oil and gas leasing in order to preserve wilderness values in the land, amounted to a de facto withdrawal of public land without prior approval of Congress, in violation of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701-1784 (1976). Unlike that case, here there is an express withdrawal authorized by ANCSA which was in effect at the time of passage of FLPMA and continues in effect until the land is open to leasing under section 1008. Section 204 of FLPMA, 43 U.S.C. § 1714 (1976), dealing with withdrawals, directed review of existing withdrawals "having a specific period" (paragraph (f)) or affecting 11 western states but not Alaska (paragraph (1)). Furthermore, section 701 of FLPMA, 43 U.S.C. § 1701 note (1976), held that "[a]ll withdrawals * * * in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of the Act or other applicable law" (section 701(c)) and that "[n]othing in this Act shall be construed as modifying, revoking or changing any provision of the Alaska Native Claims Settlement Act" (section 701(e)).

ANCSA and ANILCA reflect Congress special concern for the people and public lands of Alaska. The delay in adjudicating noncompetitive lease offers in Alaska is not an improper withdrawal such as the court found in Mountain States Legal Foundation v. Andrus, *supra*.

By notice in the Federal Register on December 4, 1981, Survey announced that the Department had determined that sufficient interest had been indicated in exploring areas for oil and gas under section 1008 of ANILCA to begin the leasing process. It outlined the criteria and procedures for designating FPGP's, and designated three provinces, including the Cape Lisburne Province, as initial FPGP's. See 46 FR 59316-18. The notice described the criteria and procedures as follows:

Criteria: While the FPGP nomenclature is new, the purpose of the FPGP classification is similar to that of the Known Geologic Structures (KGS's) classification under the Mineral Leasing Act, i.e., the purpose of these classifications is to identify

which lands are to be leased competitively. However, the criteria to be applied in making these two classification actions are different. The KGS classification applies to the immediate structure of a known producing or producible oil and gas field. The FPGP classification applies to a total province encompassing many possible specific structures or traps, and does not necessarily require the past or present existence of a producing or producible well.

Designations will be made on the basis of direct or indirect evidence. Direct evidence is the actual discovery of oil and gas. In classifying lands on the basis of indirect evidence, the Director of USGS must be convinced, based on a technical evaluation of available geologic, geophysical, and/or drilling data that there is a high probability that oil or gas will be discovered within the province.

Procedures: The Director of the USGS shall be responsible for classifying and designating lands as favorable petroleum geologic province. Designation shall be affected through publication of a Notice in the Federal Register.

The designations set forth in this Notice serve as initial designations. Whenever an oil and/or gas discovery is made hereafter within an undesignated province or available data indicate a high probability for such a discovery in that province and the appropriate classification action taken. [sic] Newly available geological and geophysical data, as well as the information contributed by unsuccessful oil and gas tests, will be evaluated periodically to ensure timely classification actions on the basis of indirect evidence.

Survey then stated that it had divided the onshore sedimentary basins in Alaska into 14 provinces on the basis of currently available geologic and geophysical data and in light of the purposes of section 1008 of ANILCA. These section 1008 provinces "differ, however, from provinces used by [Survey] for resource assessment purposes because the objectives and purposes of classification and assessment are not synonymous, i.e., identification of * * * Federal lands, subject to competitive leasing as opposed to estimating the overall oil and gas leasing resources potential of a particular region." Survey noted that the list of provinces might be revised or the boundaries of established provinces adjusted as new information becomes available. 46 FR 59317 (Dec. 4, 1981).

In assessing each province for initial FPGP designations, Survey evaluated the exploration history, available geologic, geophysical and drilling data, and other indirect evidence. The Director then concluded

based on a geologic evaluation, that there is a less than high probability for the discovery of oil and gas in those provinces where actual discoveries have not been made. Until more conclusive evidence is developed, we are limiting the initial designations to those areas in which actual discoveries have been made.

46 FR 59317 (Dec. 4, 1981).

Cape Lisburne Province is described as one of three provinces where discoveries have been made and is designated as an FPGP. The notice explains that "[t]he Cape Lisburne Province is that portion of the North Slope west of the National Petroleum Reserve -- Alaska. The eastward extension of this province contains the giant Prudhoe Bay oil field, the Kuparuk oil field, the Barrow gas fields, and an oil field at Umiat." 46 FR 59317-18 (Dec. 4, 1981).

Both appellants challenge Survey's interpretation of the FPGP classification and the application of the identified criteria in designating Cape Lisburne Province as an FPGP in particular.

Asamera points out that the legislative history of ANILCA mandates certain prerequisites for FPGP designation and that Survey adopted this criteria for its FPGP designations in the December 4, 1981, Federal Register notice, but challenges Survey's application of it in the case of Cape Lisburne Province. Asamera contends that there has not been a discovery of oil and gas within the province, as the discoveries relied on by Survey are outside the province and each of three exploratory wells drilled in the province have been dry holes (see Asamera Exh. F, Affidavit of Thomas Marshall). Furthermore, Asamera urges that there is insufficient indirect exploratory data to support the Cape Lisburne FPGP designation (see Asamera Exh. 6, Affidavit of Rolland Shippy), a fact which Survey itself acknowledged in the Federal Register notice.

Asamera points out that the sole justification for the Cape Lisburne FPGP designation is that there have been significant discoveries of oil and gas several hundred miles to the east, outside of the designated area. Asamera argues that, although Congress sought to expand on the known geologic structure (KGS) classification, it did not grant "unbridled discretion" to classify tremendous amounts of Federal land as FPGP's. Asamera urges that the FPGP designation was intended to be similar to the KGS designation, except that it did not necessarily require the existence of a producing well and it could encompass a greater area.

Gain argues that Survey failed to follow the mandate of section 1008 of ANILCA in establishing FPGP's because it created provinces according to geologically configured sedimentary basins. He asserts that classification of an entire sedimentary basin as an FPGP "over extends the amount of land that should be included within an FPGP and runs contrary to all accepted petroleum engineering practices." Appellant suggests that the language of paragraph 1008(e) illustrates that Congress did not intend that so large an area, 8,000 square miles in the case of the Cape Lisburne Province, be included within one FPGP. Paragraph (e) states in part:

(e) At such time as paying quantities of oil and gas are discovered under a noncompetitive lease pursuant to the Mineral Leasing Act of 1920, the Secretary shall suspend all further noncompetitive leasing in the area and shall determine the favorable petroleum geological province in proximity to such discovery. All further leasing in such area shall be in accordance with the requirements of subsection (d) of this section. [Emphasis added.]

16 U.S.C. § 3148(e) (Supp. V 1981).

Gain argues that the emphasized language contemplates a narrower definition of an FPGP. He also contends that to establish an FPGP, accurate and persuasive geophysical data must exist indicating the likelihood of success in discovering oil or gas and cites to various authorities for the proposition that "[t]he mere existence of a sedimentary basin does not create any meaningful likelihood or probability of discovery." He adds that even the existence of a proven well does not support a finding that the discovery of oil or gas is favorable in an entire basin, but rather only in the immediate geological configuration of the proven well. Gain also points out that the discoveries at Prudhoe Bay and Kuparuk relied on by Survey in designating the Cape Lisburne Province as an FPGP did not occur in that province as defined by Survey.

In response to appellants' challenge to the designation of Cape Lisburne Province as an FPGP, BLM argues that ANILCA vested in the Secretary broad authority to designate areas favorable for the discovery of oil and gas and the extent to which those areas should be subject only to competitive leasing. BLM directs attention to paragraph 1008(c) of ANILCA requiring identification of FPGP's 6/ and paragraph 1008(d) requiring competitive leasing and notes that there is no indication in the statute as to any limitations on the size of a "province" or the meaning of "favorable." Nevertheless, BLM contends that Survey did draw on and follow the legislative history of section 1008 in formulating its criteria.

BLM asserts that Congress intended to create a new designation covering a substantially larger area than the KGS designation under the Mineral Leasing Act. Unlike the KGS designation, an FPGP is to apply to a full geologic province encompassing many known structures or traps. BLM adds that the use of the phrase "geological province" itself is indicative of Congress intention as it has a clear, well-accepted meaning 7/ and that Congress was familiar with the studies that had been done in defining Alaska's sedimentary basins as distinct geologic provinces. 8/ In response to Gain, BLM argues that the

6/ Paragraph 1008(c) reads:

"(c) At such time as the studies requested in subsection (b)(4) of this section are completed by the Secretary, or at such time as the Secretary determines that sufficient interest has been indicated in exploring an area for oil or gas, and leasing should be commenced, he shall identify those areas which he determines to be favorable for the discovery of oil or gas (hereinafter referred to as "favorable petroleum geological provinces"). In making such determination, the Secretary shall utilize all information obtained in studies conducted under subsection (b) of this section as well as any other information he may develop or require by regulation to be transmitted."

16 U.S.C. § 3148(c) (Supp. V 1981).

7/ BLM reports that "geologic province" means "[a]ny large area or region considered as a whole, all parts of which are characterized by similar features or by a history differing significantly from that of adjacent areas" according to the Glossary of Geology (2nd ed.), American Geologic Institute.

8/ BLM notes that the Senate Committee on Energy and Natural Resources evaluated the possibly productive sedimentary basins identified by the Federal State Land Use Planning Commission. See S. Rep. No. 413, 96th Cong.,

language of paragraph 1008(e) must be read in light of the essential geologic unit under consideration, the province.

BLM reports that the Cape Lisburne Province, as identified for section 1008 purposes, is, in fact, part of the well-recognized geologic province known as the Arctic Slope Province or the Northern Alaska Petroleum Province which includes the National Petroleum Reserve -- Alaska (NPR -- A) and the region identified for study in section 1001 of ANILCA, as well as the Cape Lisburne area. BLM contends that, since section 1008 precludes leasing in the NPR -- A and the section 1001 study area, Survey limited its designation of the province for section 1008 purposes to the Cape Lisburne area, even though it is not a separate geologic province and the entire Arctic Slope Province is the appropriate geologic province in this region.

BLM urges that Survey's criteria for the term "favorable," which requires actual discovery of oil and gas, reflect a highly conservative approach to FPGP designation. BLM suggests that appellants' argument that the Cape Lisburne FPGP designation was not based on discoveries within the province reflects a misunderstanding of the concept of geologic province and a failure to recognize that the Cape Lisburne area has specific geological features that encompass the lands in appellants' lease offers and the areas of proven production in the Arctic Slope Province.

In summary, BLM asserts that the initial FPGP designations are based on two elements: (1) a geologic province and (2) an actual discovery of oil and gas within that province. BLM concludes that the Arctic Slope Province meets the requirements of FPGP designation and, since the Cape Lisburne area is the only part of the Arctic Slope Province subject to leasing under section 1008, it was properly designated the Cape Lisburne FPGP.

[2] Section 1008 requires the Secretary of the Interior to identify "favorable petroleum geological provinces" which are defined only as "areas which [the Secretary] determines to be favorable for the discovery of oil and gas." The statute directs the Secretary to consider all information obtained in studies mandated by section 1008 as well as "other information he may develop or require by regulation to be transmitted." The extent and characteristics of areas to be considered for FPGP designation are left to the discretion of the Secretary. As both Asamera and BLM have pointed out, the legislative history for section 1008 provides some guidance for the exercise of that discretion and we find that Survey clearly followed that guidance in formulating its criteria for FPGP designation. ^{9/}

fn. 8 (continued)

1st Sess. 242, reprinted in 1980 U.S. Code Cong. & Ad. News 5186. In addition, BLM points out that a great deal of work has been done defining Alaska's sedimentary basins as distinct geologic provinces. See excerpts from Future Petroleum Provinces of the United States - Their Geology and Potential, American Association of Petroleum Geologists (1971), BLM Exh. 3 (Asamera), Exh. 6 (Gain).

^{9/} The Senate report stated:

"The Committee considered and adopted a change in the Mineral Leasing Act procedures as they apply to Alaskan lands. Under the Mineral Leasing

Nevertheless, appellants seemingly argue that where an FPGP designation is to be based on an actual discovery of oil and gas, the determination as to the extent of the FPGP should be made in much the same fashion as KGS determinations, that is, identification of the discovery and then definition of the area that should be considered the "geologic province" encompassing the discovery. They argue that while an FPGP can encompass more area than a KGS, it should not be that much more. It is not clear how appellants would propose to define the extent of FPGP's based on indirect evidence.

Survey took a different approach. First, it identified those areas of Alaska to be considered geologic provinces for the purposes of section 1008 and then examined how to determine whether any of those provinces are "favorable" for the discovery of oil and gas.

Review of the legislative history for section 1008 indicates that Congressional use of the term "province" was not incidental and further that Survey's use of sedimentary basins to define section 1008 provinces is supported. The Senate report explains that

[t]here are 23 possible sedimentary basins in Alaska and its Continental Shelf according to information supplied to the Committee by the Federal State Land Use Planning Commissions. Exploratory drilling has occurred in at least eight of the basins. Government conducted seismic exploration and test drilling will continue on the National Petroleum Reserve -- Alaska (NPR -- A) under the authority granted the Secretary of the Interior under the NPR -- A Production Act of 1976 (P.L. 94-258).

Almost 1,000 wells have been drilled in Alaska and 19 proven oil and gas fields have been discovered. Major oil corporations have entered into contracts with several regional Native corporations for exploration on private lands. Outer Continental Shelf (OCS) leases in the Gulf of Alaska province have been let and other lease sales in the lower Cook inlet province may be scheduled in the near future. * * *

fn. 9 (continued)

Act, competitive leasing is allowed only for lands on a known geological structure of a producing oil and gas field. The Committee was concerned that this was too limited a definition and adopted a modification of this concept.

"Under this modification, the Secretary is required to identify what would be termed favorable petroleum geological provinces. These are areas which the Secretary determines are favorable for the discovery of oil or gas. The Committee intends that the Secretary, in designating such areas, be convinced that from the available evidence, obtained either by the presence of an oil or gas bearing structure which has already been discovered, or by other indirect evidence, such as seismic or other geological or geophysical activities, that such area is more likely to contain oil or gas than surrounding areas."

S. Rep. No. 413, 96th Cong., 1st Sess. 296, reprinted in 1980 U.S. Code Cong. & Ad. News 5240. See also H. Rep. No. 97, Part I, 96th Cong., 1st Sess. 320 (1979). Compare "Criteria" quoted at 11, supra.

Alaska has approximately 65 million acres of land having good potential for oil and gas based on rock structure data and possible reservoir size.

S. Rep. No. 413, 96th Cong., 1st Sess. 242, reprinted in 1980 U.S. Code Cong. & Ad. News 5186. The House Committee on Merchant Marine and Fisheries begins its discussion of Alaskan oil and gas resources as follows: "There are at least 23 petroleum provinces or basins in Alaska which have been identified as having oil and gas potential according to testimony presented the committee by the Department of Energy." H. Rep. No. 97, Part II, 96th Cong., 1st Sess. 103 (1979). Furthermore, the long time use of geologic provinces and sedimentary basins in evaluating oil and gas potential in Alaska is well illustrated by the reports excerpted from the American Association of Petroleum Geologists publication Future Petroleum Provinces of the United States and submitted by BLM in these appeals. See BLM Exh. 3 (Asamera); BLM Exh. 6 (Gain). It is reasonable to conclude, therefore, that given the body of information available to Congress identifying areas of oil and gas potential in Alaska in terms of provinces and basins, the use of the term geologic province in paragraph 1008(c) was intended to be consistent with its generally accepted use. We also find it reasonable for Survey, in establishing the section 1008 oil and gas leasing program for Alaska, to draw upon the same body of information to focus on those areas where the probability of oil and gas discovery is known to be high as the initial step in identifying areas to be considered "favorable" for discovery under section 1008. See Affidavit of Gary W. Horton, BLM Exh. 6 (Asamera).

We do not agree with Gain's argument that the use of the phrases "in the area" and "in proximity to" in paragraph 1008(e) necessarily limits the size of an FPGP to something smaller than the provinces Survey has identified. In the first place, we note that the Senate Report uses the word "area" both in a broad sense to describe the entire Arctic Region of Alaska and in the narrower sense of the "current producing area surrounding Prudhoe Bay." 10/ More importantly, we believe proper statutory construction requires a reading of those phrases in relation to the generally accepted meaning and use of the term "geologic province" as BLM has suggested. Furthermore, Survey has stated that the boundaries of its established provinces may be adjusted "as new information becomes available." Thus, we conclude that Survey does not intend automatically to designate its identified provinces as FPGP's but will

10/ The report states:

"The Arctic Region of Alaska, north of the Brooks Range and extending from the Canadian border westward to the Chukchi Sea, is an area of strong interest for environmental and wildlife values as well as an area which contains some of the best possibilities for major new petroleum discoveries under United States jurisdiction. According to studies by the Federal Government and the State of Alaska, the areas of highest interest from an energy viewpoint lie across the entire midsection of the National Petroleum Reserve -- Alaska, extend into the current producing area surrounding Prudhoe Bay and continue along the coastal plain into the Arctic National Wildlife Range."

S. Rep. No. 413, 96th Cong., 1st Sess. 242, reprinted in 1980 U.S. Code Cong. & Ad. News 5186.

evaluate each as circumstances require. It may well be the case that an FPGP designation under paragraph 1008(e) based on a discovery of oil and gas on a noncompetitive lease may not encompass the entire established province because analysis of the geological information available at the time of the discovery may indicate that the entire province as previously defined for section 1008 purposes is not favorable for the further discovery of oil and gas.

[3] The Cape Lisburne FPGP was not designated under paragraph 1008(e), however. The designation is based on Survey's initial evaluation of the provinces it has identified for purposes of section 1008. What is at issue here is whether Survey properly designated the defined Cape Lisburne Province as an FPGP under the criteria it set for doing so. As we have already indicated, the criteria set out by Survey are consistent with expressions of congressional intent; that is, a province may be considered "favorable" for discovery of oil and gas where an actual discovery has occurred within the province or where technical evaluation of available geologic, geophysical, and/or drilling data indicate that there is a high probability that oil and gas will be discovered in the province. 46 FR 59317 (Dec. 4, 1981).

For the purposes of the initial FPGP designation, Survey analyzed both direct evidence of discoveries and indirect geologic data for each identified province and concluded that the available indirect evidence was insufficient to indicate that discovery was "favorable" in any of the identified provinces but that "those areas in which actual discoveries have been made" are properly designated FPGP's.

The parties' arguments at this point are quite simple. Appellants point out that there has been no discovery of oil and gas within the Cape Lisburne Province as defined by Survey. BLM responds that the "geologic province" in question is greater than the Cape Lisburne Province as defined and that discoveries have been made in that "geologic province." Thus, the question raised is whether Cape Lisburne was properly designated as an FPGP. Our analysis leads to the conclusion that it was.

The concept of an FPGP was to be a modification of the concept of a KGS, which Congress considered too limited for defining competitive leasing areas in Alaska. A KGS determination is an administrative action taken to delineate Federal lands that may be leased only by competitive bidding. A KGS of a producing oil or gas field is defined as the trap in which an accumulation has been discovered and determined productive. The limits of such structure include all acreage that is presumptively productive. 43 CFR 3100.0-5(a). It has long been recognized that defining the boundaries of a KGS is for administrative purposes and is not a guaranty of geologic character. Thus, such boundaries do not show absolutely the extent of the geological structure, but may later change in accordance with new information. Columbus C. Mabry, 55 I.D. 530 (1936). See generally E. Finley, "The Definition of Known Geologic Structural Producing Oil and Gas Field," Geological Survey Circular No. 419 (1959); Conservation Division Manual 620.3 (1981) - "Known Geologic Structure Determinations."

An FPGP determination is also an administrative action taken to delineate Federal lands that may be leased only by competitive bidding. Defining the boundaries of an FPGP is similarly for administrative purposes and is

not a guaranty of geologic character. Thus, the boundaries of an FPGP may not necessarily show the extent of the actual geologic province involved but only that, based on present information, the geologic province delineated must be leased by competitive bidding.

Survey itself recognized this distinction. Its Federal Register notice stated:

The division of the onshore areas in Alaska into the above provinces is a judgment that was made on the basis of currently available geologic and geophysical data and in light of the purposes of section 1008 of ANILCA. The provinces delineated for the purposes of section 1008 differ, however, from provinces used by the USGS for resources assessment purposes because the objectives and purposes of classification and assessment are not synonymous, i.e., identification of areas, specifically Federal lands, subject to competitive leasing as opposed to estimating the overall oil and gas resources potential of a particular region. The list of provinces subject to designation as FPGP's may be revised or the boundaries of established provinces adjusted as new information becomes available.

46 FR 59317 (Dec. 4, 1981).

We will now examine the reasons for designating the Cape Lisburne Province as an FPGP, as revealed by the documents submitted by BLM in response to Asamera's appeal.

Based on an initial reading of Title X of ANILCA, Survey believed that the section 1008 leasing program did not apply to any lands north of the 68 degrees N. latitude (the North Slope) and so its initial analysis discussed options for implementing the program only for lands south of the 68 degrees N. latitude. As reported by James Callahan, a Survey employee in Alaska with responsibility for evaluating lands offered for competitive leasing:

Three options were considered by the USGS for criteria for the initial designations of FPGP's (see document entitled, "Comparisons of definitions of Favorable Geologic Petroleum Provinces"). This document discussed only areas south of 68 degrees N. latitude which are identified as "favorable basinal areas" in American Association of Petroleum Geologists (AAPG) Memoir 15, including the Cook Inlet Subprovince, the Pacific Margin Province and the Bristol Bay Province. Upon reviewing the proposed options, the Alaska Regional Office of the USGS, Conservation Division, called Conservation Division Headquarters' attention to the apparent applicability of Section 1008 to Federal lands NORTH of 68 degrees N. latitude and west of NPRA, and noted that the AAPG "favorable basinal area" designation applied to these lands. It was agreed that these lands should be subject to consideration for inclusion in the FPGP classification. It was also agreed that the criteria described in Option II * * * should be used for initial FPGP designations. Option II requires a commercial discovery of hydrocarbons somewhere within a geological petroleum province in order for that province to qualify as an FPGP.

(Affidavit at 3, BLM Exh. 2 (Asamera)). A July 1981 draft of Survey's Federal Register notice reflects the proposed designation of the Arctic Slope Province and two others as initial FPGP's because those were the only provinces in which actual discoveries of oil and gas had been made. In addition to the Arctic Slope Province, the draft notice identified 14 other provinces based on onshore sedimentary basins in Alaska. The justification for designation of the Arctic Slope Province as an FPGP was that it "contains the giant Prudhoe Bay oil field, the Kuparuk oil field, the Barrow gas fields, and an oil field at Umiat." See Draft notice contained in BLM Exh. 2 (Asamera). Thus, it appears that Survey's original intent, once it established the direct evidence criteria, and we note consistent with that criteria, was to designate the entire Arctic Slope Province as an FPGP. Sometime thereafter, however, Survey revised its list of section 1008 provinces, eliminating one and changing the Arctic Slope Province, which had embraced the entire North Slope, to the Cape Lisburne Province, which covered the North Slope west of NPR -- A. As we shall point out, the change was made because technically, the entire Arctic Slope Province could not be classified as an FPGP under section 1008, since section 1008 expressly excluded all of the North Slope lying east of the western boundary of the NPR -- A from its purview.

The actual discoveries would have supported the designation of the entire Arctic Slope Province as an FPGP. When BLM changed its designation from the Arctic Slope Province in its draft notice to the Cape Lisburne Province in the published December 1981 notice, however, it failed accurately to explain the basis for its designation.

As set forth by the Solicitor in his response to the statement of reasons at page 9:

In Future Petroleum Provinces of the United States-Their Geology and Potential, published by the American Association of Petroleum Geologists in 1971, a complete summary of the potential petroleum province in Alaska is well formulated. See exhibit #3. In that study both the Cook Inlet Province and the Gulf of Alaska Province, later designated as FPGP's, were analyzed. The Cape Lisburne area is also discussed in that study but it is not discussed as a distinct province, rather it is viewed in terms of the larger "Arctic Slope Province" of which it is designated as a part. The Arctic Slope Province is described as covering the whole North Slope of Alaska, and as containing four major structural subdivisions. The Arctic Slope Province is defined as "including an area of more than 100,000 sq. mi. (259,000 sq. km) of which at least 70,000 sq. mi. (181,300 sq. km) is considered potentially petroliferous." Id. at 62. The report indicates that areas within the Arctic Slope Province which have "prove[n] production are Umiat oil fields (70-100 million bbl), Simpson Seeps (12 million bbl), Barrow gas fields (5-7 trillion cu. ft.), Gabik (300 million cu. ft.), as well as areas near Prudhoe Bay." Id.

Therefore, the Cape Lisburne Province is actually a portion of the much larger Arctic Slope Province which includes two areas excluded from leasing under section 1008 of ANILCA -- the NPR -- A and the area north of 68 degrees N. latitude

and east of the western boundary of the NPR-A identified for study in section 1001 of ANILCA.

The Arctic Slope Province is an area "favorable for the discovery of oil or gas." The fact that the Cape Lisburne area is the only part of the geologic province which is open to leasing under section 1008 does not change the geological realities.

Clearly, Survey is subject to criticism for failing accurately to explain these circumstances in the Federal Register notice. However, on appeal BLM has provided information to show how and why the Survey determination was made. We find that the record supports the designation of the Cape Lisburne FPGP.

Appellants cannot claim to have been misled by the Federal Register notice designating the Cape Lisburne FPGP, since their noncompetitive oil and gas lease offers were filed many years earlier. Their position is that leasing in the Cape Lisburne area should proceed on a noncompetitive basis. Even if we were to conclude that the Barrow, Prudhoe, Umiat, and Kuparuk discoveries, not being within the actual described boundaries of the Cape Lisburne Province, were not sufficient to justify the description of that area as an FPGP under Survey's direct evidence criteria, we would not conclude that the area could be leased noncompetitively. The record demonstrates that assuming, arguendo, that the determination was not supported by the direct evidence criteria, the Cape Lisburne FPGP clearly is justified by indirect evidence. Thus, under no circumstances could appellants' offers be accepted.

In conclusion, the Arctic Slope Province would meet the direct evidence criteria for designation as an FPGP. The Cape Lisburne area is the only part of that province which is available for leasing under section 1008 of ANILCA. Cape Lisburne is geologically a subpart of the Arctic Slope Province. Survey properly designated Cape Lisburne as an FPGP, even though it did not accurately set forth its rationale for doing so in the Federal Register notice.

Accordingly, 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, BLM, are affirmed.

Bruce R. Harris
Administrative Judge

I concur:

James L. Burski
Administrative Judge

APPENDIX A

IBLA 82-1175, Earl M. Cranston

	F 2348	F 2356	F 2362
F 2349	F 2357	F 2363	
F 2350	F 2358	F 2364	
F 2351	F 2359	F 2365	
F 2353	F 2360	F 2366	
F 2354	F 2361	F 2367	
F 2355			

IBLA 82-1178, John T. Rowlett

F 2832	F 2869	F 2903	
F 2833	F 2870	F 2907	
F 2837	F 2871	F 2908	
F 2841	F 2872	F 2909	
F 2848	F 2873	F 2910	
F 2849	F 2874	F 2912	
F 2850	F 2875	F 2913	
F 2851	F 2876	F 2914	
F 2852	F 2877	F 2915	
F 2853	F 2878	F 2916	
F 2854	F 2879	F 2917	
F 2855	F 2880	F 2918	
F 2856	F 2884	F 2919	
F 2857	F 2885	F 2920	
F 2858	F 2886	F 2921	
F 2859	F 2887	F 2922	
F 2860	F 2888	F 2923	
F 2861	F 2889	F 2924	
	F 2862	F 2890	F 2925
	F 2863	F 2891	F 2926
	F 2864	F 2892	F 2927
	F 2866	F 2896	F 2928
	F 2867	F 2897	F 2929
F 2868	F 2898		

IBLA 82-1236, Kenneth J. Gain

F 7182	F 7189
F 7186	F 7191
F 7188	

ADMINISTRATIVE JUDGE IRWIN DISSENTING:

I cannot agree with the majority. The Geological Survey's notice said it would require actual discoveries before it would designate an area as an FPGP. There have been no discoveries in the area described as Cape Lisburne, so until the Geological Survey changes its criteria, or determines that indirect evidence is convincing that there is a high probability that oil or gas will be discovered within that area, it cannot be so designated. I do not think the record contains adequate information to make that determination for the Cape Lisburne area, nor do I believe the Board should assume the role of deciding whether there is sufficient indirect evidence. That is Geological Survey's area of expertise, not ours. Finally, to hold that the entire Arctic Slope geologic province can be an FPGP both stretches that legal term well beyond even a generous interpretation of what Congress intended it to mean ("more likely to contain oil or gas than surrounding areas," supra note 9), and obliterates any distinction between it and the geological definition of geologic province.

Will A. Irwin
Administrative Judge

