WHEN THE ALASKA "LAND FREEZE" ENDS: Issues of Policy and Administration Associated With the Expiration of Public Land Order 4582

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In November 1966 Secretary of the Interior Stewart Udall announced the suspension of mineral leasing on public lands in Alaska claimed by Native groups. By August 1967 the Department of the Interior had suspended almost all proceedings to dispose of disputed lands or rights in resources on them under the public land laws and the Alaska Statehood Act. This administrative action was superseded on January 20, 1969, by Public Land Order 4582, which withdrew all unreserved public lands in Alaska from disposition. Both the original suspension of land disposition and the withdrawal order have come to be known popularly as the "land freeze"; the term is used here to include both actions.[1]

This paper was prepared in response to a request from the Regional Coordinator for Alaska, Office of the Secretary, U.S. Department of the Interior, for an independent evaluation of administrative and policy problems which might be anticipated upon the end of the land freeze. The conclusions here do not necessarily reflect the policy of any federal agency.

Federal Land Laws

Federal land laws, including the Mineral Leasing Act and mining and homestead laws, generally provide for disposal of public lands or rights in public lands on a first-come, first-served basis. Land selection authority under the Alaska Statehood Act, and the ability of the government to withdraw land for various federal purposes operate on the same principle. In most cases these laws and procedures automatically give control of the land or of specific resources to the first claimant and provide no means of determining what use of the land would be the most productive or which ownership status would be most in the public interest.[2]

None of the above is new or unique to Alaska; the land laws have come under great criticism in recent years, and the Public Land Law Review Commission has examined possible reforms in all areas of land law and administration. But the existing laws will contribute to a particularly critical situation in Alaska upon expiration of the Native protests withdrawal. At that time there will have been a three-year period in which filings and applications were not processed. Even under normal circumstances the Bureau of Land Management would have legal and administrative difficulties in sorting out and processing the backlog of applications and filings. But during the freeze Alaska entered a spectacular oil boom and the demands upon the public lands for development and for speculation have increased enormously. In addition, the winter haul road, the pipeline road, and new airstrips and roads assocation with oil exploration and development will have opened millions of additional acres to access by the general public or by selected private interests. This set of circumstances raises the possibility of administrative chaos and years of litigation.

Expiration of Segregation Authority Under the Multiple Use and Classification Act

An aggravating factor is the imminent expiration of the Multiple Use and Classification Act, which temporarily allows the Department

of the Interior to segregate from disposal some of the public lands to classify them for priority uses after public hearings. The segregation authority expires six months after the Public Land Law Review Commission presents its final report to Congress. Under the present calendar, the end of this authority will coincide exactly with the end of the land freeze.[3]

National Parks, Wilderness and Wildlife

Another critical issue sharpened by public attention on Alaska—particularly northern Alaska—during the period of the land freeze is the demand for new national parks and monuments, wilderness areas, and wildlife reserves. The failure to meet this demand will (with some justification) encourage opposition from conservationists and public sentiment generally to any further natural resource development on public lands in Alaska.

The Secretary of the Interior has limited authority under the Pickett Act and the Antiquities Act to make protective withdrawals of lands for preservation purposes. Although several secretaries have asserted and exercised this authority, the chairman of the Interior and Insular Affairs Committee of the House of Representatives and other members of Congress vehemently insist that these actions have been violations of the intention of the law. Unilateral executive order or administrative preservation withdrawals would be strongly resented and opposed within Alaska, and could force a confrontation between the Department of the Interior and the House Committee.

State Selections

The Alaska Statehood Act authorizes the state to select within 25 years of statehood up to 103.5 million acres from the unreserved public domain. The state was authorized to select land under federal mineral lease for a period of ten years, which authority has now expired. The state was not to obtain land belonging to Alaska

Natives—hence the Native protests and the present freeze. All land selected by the state was "subject to valid existing rights"—mining claims, homestead entries, etc.

The rationale of the State of Alaska's own land laws and administrative practices is somewhat different from those of federal law. The state requires classification and development planning before disposal of land—it generally provides for disposal of resources competitively or otherwise at fair market value. It requires prospectors to obtain permits and requires protection of, or payment for, surface resources affected by exploration or mining activity. The state, therefore, has strong grounds for selecting land in order to control development and to avoid dissipation of potential mineral revenues. Just as important, the state must select land defensively before the issuance of federal mineral leases or location of mining claims in order to protect its right ever to select the land.

Native Claims Settlement

It is not possible now to predict whether legislation settling Alaska Native claims will be passed prior to the revocation of the land freeze, nor to predict the character of that settlement, if any. The absence of a settlement would probably result in litigation over each individual parcel of land selected by the state or entered under the public land laws, but even a complete legislative settlement would leave behind many difficulties. Pending bills provide for land withdrawals, land selection rights for Native groups or individuals, and/or shares of revenues from public lands. Any or all of these features would add further complications to the legal and administrative situation, unless the land claims legislation resolves some of the existing conflicts, irrationalities, and ambiguities. Such provisions would also place on the Bureau of Land Management further responsibilities which it is not now organized, staffed, nor funded to perform.

Preemption, Confrontation, Administrative Chaos

Regardless of the nature of any Native claims settlement, upon lifting of the land freeze, the factors listed above will cause:

1. a rush by developers and speculators to obtain mineral leases and control of public lands under the more "liberal" federal land laws;

2. defensive selection of lands by the state[4] to prevent loss of potential mineral lease bonuses and loss of the state's option ever to select the land in question, and to prevent haphazard and scattered private enclaves and unwise land use; and

3. demands from within the government, from conservationists, and from certain classes of resource users for unilateral executive order or administrative withdrawals of public land in Alaska.

At present neither the Bureau of Land Management, the State of Alaska Division of Lands nor the Congress is prepared to deal with these issues. The situation is an invitation to administrative chaos and to confrontations among the Department of the Interior, the State of Alaska, private interests, and perhaps Alaska Natives and/or Congress. It suggests years of delay in the consummation of legitimate public land entries, leases, and transfers, including state selections, and suggests the possibility of years of litigation. It is unlikely that the outcome will be a wise pattern of land ownership and land use.

Some Approaches to Resolution

There are a number of ways in which a resolution of these problems might be approached. For instance, one study[5] has

suggested placing unreserved federal lands under state land laws and establishment of a joint state-federal commission with authority (1) to determine which lands would be retained by the federal government and which would be transferred to the state; (2) to develop a statewide land use plan and classification system fro both state and federal lands; and (3) to review existing federal withdrawals.

A less radical program would include some or all of the following:

1. Extension of life of the Multiple Use and Classification Act until all public lands are classified;

2. an increase in funds and personnal of the Bureau of Land Management to enable it to carry out with reasonable dispatch its responsibilities under the public land laws, the extended Multiple Use and Classification Act, the Statehood Act, and the anticipated Alaska Native claims settlement;

3. an increase in funds and personnel of the Geological Survey to permit acceleration of geological mapping and resource inventory for intelligent land classification;

4. reform of the mining and homestead laws (e.g., replacement of the existing claims system with a uniform leasing system for all minerals, separation of minerals from the surface estate, replacement of the Homestead Act with sale at fair market value of land classified for agriculture, etc.);

5. authority for competitive leasing of all Leasing Act minerals wherever there is competitive interest in them; and

6. temporary withdrawal from disposal of land under consideration for inclusion in the federal preservation system (National Parks and Monuments, wilderness areas and wildlife reserves, and wild rivers) and appointment of a commission to make an early recommendation to Congress for additions to this system within Alaska.

Emergency State-Federal Planning

All the measures suggested above, and most alternatives of a similar kind, would require some action by Congress. Few if any are likely to be accomplished before the end of the land freeze. There are some important steps, however, which can be taken without new legislation.

Before the end of the land freeze, the Department of the Interior and the State of Alaska should agree upon the lands which need immediate protection from entry under the public land laws.[6] Lands which are obviously candidates for provisional protection are substantial corridors along the rights of way of the Walter J. Hickel Highway and the trans-Alaska pipeline, and the area of the proposed Gates of the Arctic National Park. This protection might come either from state selection or from administrative withdrawals. Yet in the absence of planning and cooperation, the two governments will almost certainly use these measures *against each other*; i.e., federal withdrawals may be made, at least in part, to frustrate state selection and state selections may be made to preclude federal withdrawal. There have been instances of both kinds in the past; the pressures for them will be much stronger under the new circumstances.

The administrative complications of preemptive selection of withdrawals are easy to see; in some cases they will amount to a new *de facto* land freeze. Possible political repercussions also deserve attention. Selection by the state, for instance, of the Gates of the Arctic area as it selected the Wood River-Tikchik Lakes area in order to prevent establishment of a National Park, could now cause a serious national backlash against Alaska and its entire land selection

program. Public and congressional acceptance of further state selections north of the Yukon-Porcupine line (which selections require secretarial approval) is already questionable; a confrontation over a potential national park would not be in the state's interest. On the other hand, an administrative or executive order withdrawal in the same area in the face of state protests could also generate a furor in Congress from which neither the state nor the Department of the Interior would benefit. Failure of either to act would leave the area open to fragmetation by speculators and reduce the ultimate value of any national or state park.

A similar dilemma can be foreseen for the areas adjoining the pipeline and winter haul road rights of way.

Prior to expiration of the land freeze, the Governor of Alaska and the Secretary of the Interior should at minimum come to an agreement regarding:

1. federal land to be selected by the state and to be processed promptly (without opposition by the department) at least to the stage of tentative approval;

2. federal lands to be temporarily withdrawn or segregated from entry under the public land laws (without opposition by the state) pending resource inventory, classification, consideration for park and wilderness status, or consideration by the state for selection; and

3. federal lands to be closed to noncompetitive mineral leasing pending either amendment of the Mineral Leasing Act, determination of existence of a "known geological structure," or a decision on state selection.

Clearly, no agreement of this sort will be able to satisfy both state and federal interests completely, but both interests—and the interest of the public at large—will be much better served under such an agreement than in its absence. The secretary and the governor

ought to be prepared to support both the contents of their agreement and the means by which it was achieved before the relevant committees of the Congress.

Conclusion

Calling things by their right names, the proposals here amount to another temporary land freeze. There will surely be strong protests in Alaska against any new land withdrawals, however temporary or partial they are. It is repeatedly said that the present land freeze is strangling the state's economic development. This is the official stance of the state government and the nearly unanimous voice of Alaska's newspapers and business leaders. Alaskans need to realize just how ludicrous this complaint looks to non-Alaskans, including influential members of Congress, in the context of the state's unprecendented growth and in the face of the state's assured revenues from oil and gas leases.[7] Alaska's big economic problem over the next few years will *not* be a rate of mineral development and industrial development which is too slow. Because Arctic oil the state is entering a boom which is already outstripping its supply of skilled labor and of housing, its public utilities and service industries, and the administrative capacities of state and local governments. The critical economic issue in Alaska in the near future will be inflation rether than stagnation. In this situation neither the national interest nor the state's interest demands an immediate and irreversible commitment of the newly accessible lands to uncontrolled speculation and unplanned development.

The purpose of the proposed agreements would not be to lock up forever the resources of northern Alaska but to allow the state, the Department of the Interior, and the Congress time to take a hard look at the development and conservation needs of this huge and neglected region.

NOTES

[1]When this paper was written the land freeze was due to expire December 31, 1970. On December 11, 1970 the Acting Secretary of Interior issued Public Land Order 4962 (FR 35 No. 240) extending the freeze until June 30, 1971 or until a law concerning Native claims is signed. Ed.

[2]With a few exceptions, the public land laws do not provide for payment of a fair market price no matter how valuable are the rights conveyed, and they require no test of *bona fides* or development intentions. Homesteads can be filed where there is no possibility of commercial agriculture. The mining laws provide no protection for surface resources; claims do not even have to be recorded, and there is no way the government can contest a fraudulent claim or void an abandoned claim.

The vast majority of homestead entries in recent years have never been farmed; only a very small proportion of mining claims is actually ever explored for minerals, and the great majority of noncompetitive mineral leases have never been drilled. Many of these archaic laws now seem to be made to order for purely speculative raids on the public domain rather than for development.

[3]The Classification and Multiple Use Act did expire December 31, 1970. The public land order was extended, as already noted. Ed.

[4]Public Land Order 4582 and its December 11, 1970 extension allow the state a selection priority over other applicants for three months after temination of the withdrawal.

[5]Tussing and Erickson, *Mining and Public Policy in Alaska*, prepared for the Federal Field Committee for Development Planning in Alaska and the Public Land Law Review Commission, Fairbanks: University of Alaska, 1969, pp. 19-24.

[6]An especially urgent need is for suspension of, or control of, claims on locatable minerals in critical areas. Prospecting activity, whether *bona fide* or otherwise, and claims location are not affected by the present withdrawal order, but they represent the single most

serious threat to the integrity of future national or state parks or to any classification program, through the easy creation of nonconforming inholdings. Next to noncompetitive mineral leasing, they are the second most serious obstacle to completion of the state's land selection program. Open entry and uncontrolled activity on mining claims in the vicinity of the trans-Alaska pipeline may threaten the structural security of the pipeline itself because of erosion and solifluction.

[7]A study by the Federal Field Committee staff in 1968 found no clear instance in which the land freeze in effect at the time had stood in the way of any contemplated economic development. (Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land*, Anchorage, 1968, pp. 522-527.) As has been pointed out above, neither the original administrative "land freeze." which was in effect from November 1966 to January 1969, nor Public Land Order 4582 stands in the way of exploration for locatable minerals or location of claims anywhere in Alaska.