



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Alaska State Office

222 West Seventh Avenue, #13

Anchorage, Alaska 99513-7504

<http://www.blm.gov>

In Reply Refer To:
FF-94609
1864 (AK942)

SEP 26 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

State of Alaska	:	FF-94609
Department of Natural Resources	:	Recordable Disclaimer of Interest
Attn: Joe Balash, Commissioner	:	Application
550 W. 7th Avenue, Suite 1400	:	
Anchorage, Alaska 99501	:	Deep Creek

ADMINISTRATIVE WAIVER GRANTED APPLICATION APPROVED

On September 21, 2005, the State of Alaska (State) filed with the Bureau of Land Management (BLM) an application for a recordable disclaimer of interest (FF-94609) under the provisions of Section 315 of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), 43 U.S.C. § 1745, and the regulations contained in 43 CFR Subpart 1864, for the lands underlying Deep Creek (approximately 40 miles), located in the Tanana River Subregion in Interior Alaska.¹

The State made this application based on its entitlement under the Equal Footing Doctrine, the Submerged Lands Act of May 22, 1953, the Alaska Statehood Act, the Submerged Lands Act of 1988 (P.L. 100-395), or any other legally cognizable reason. The State contends Deep Creek is navigable; therefore, title to the submerged lands passed by operation of law from the United States to the State of Alaska on January 3, 1959, the date of Alaska's statehood. The State also contends that in instances where it is the upland owner, the State took title either under the Equal Footing Doctrine or under riparian law.

The State applied for "all submerged lands lying within the bed of Deep Creek between the ordinary high water lines of the left and right banks, beginning at Section 15 within Township 14

¹ See application letter from Thomas E. Irwin to Henri Bisson, received September 28, 2005, file FF-94609 (1864). This application was submitted as a group, which included Jim Lake (FF-94608), Muddy River, (FF-94610), Lake Minchumina (FF-94611), and Kantishna River and a segment of Birch Creek (FF-94612).

South, Range 26 West, Fairbanks Meridian, Alaska, flowing northeasterly to its confluence with Lake Minchumina at Township 12 South, Range 25 and 24 West, Fairbanks Meridian, Alaska.” With the application, the State also submitted a map entitled “Deep Creek Recordable Disclaimer of Interest Application (Map 1 of 1)” showing the location of the applied-for water body.

The Submerged Lands Act of 1953, 43 U.S.C. § 1311(a), granted and confirmed to the states title to the lands beneath inland navigable waters within the boundaries of the respective states. It also gave the states the right and power to manage and administer these lands in accordance with state law. Section 6(m) of the Alaska Statehood Act, July 7, 1958, made the Submerged Lands Act applicable to Alaska.²

Section 315(a) of FLPMA authorizes the Secretary of the Interior to issue a document of disclaimer of interest in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud of title of such lands and where she determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid.

ADMINISTRATIVE WAIVER GRANTED

Pursuant to 43 C.F.R. § 1864.1-2(c)(1) and (d), unless a waiver is granted, a legal description of the lands for which a disclaimer is sought must be based on either an official United States public land survey or a metes and bounds survey tied to the nearest corner of an official public land survey. In its application, the State of Alaska requested a waiver of this requirement under 43 C.F.R. § 1864.1-2(d).

It is determined that a survey description of the subject water body is not needed to adjudicate the State’s application, and that a waiver is hereby granted. The location of the subject water body is depicted on U.S. Geological Survey, 1:63,360 series topographic maps Mt. McKinley (C-6) 1958, Mt. McKinley (C-5) 1953 (minor revisions 1963), Mt. McKinley (D-5) 1953 (minor revision 1987), and is not in dispute. The ordinary high water mark of this water body is the legal boundary of the submerged lands. Since this is an ambulatory boundary, the location of which may change over time, there is no need for a survey in order to process this application.³

BACKGROUND

The BLM prepared a draft report, “State of Alaska’s Recordable Disclaimer of Interest Applications for Lands Underlying Kantishna River, Birch Creek, Muddy River, Lake Minchumina, Deep Creek, and Jim Lake in the Tanana River Subregion.” The report included an overview of land status, previous navigability determinations, and evidence of commerce. The draft analysis regarding Deep Creek concluded that Section 2, T. 13 S., R. 25 W., Fairbanks Meridian, was susceptible to use as a highway of commerce at the time of statehood. The remainder of the remaining riparian lands (excepting that reach in T. 15 S., R. 26 W., Fairbanks Meridian, which was not included in the State’s application) are owned by the State of Alaska through riparian law; therefore, the draft recommendation was to approve the State’s application. The United States has no interest in the submerged lands where the State is the riparian landowner.

² 72 Stat. 339, 343

³ “Manual of Surveying Instructions 2009”, U.S. Department of the Interior, Bureau of Land Management, Sections 3-162 to 3-166, pp. 81-82.

The BLM sent copies of the draft report to the following: State of Alaska (Departments of Natural Resources and Fish and Game); National Park Service Regional Director and the Denali National Park and Preserve Superintendent; Tanana Chiefs Council; Tanana Chiefs Conference; and Doyon, Ltd. inviting their review and comment. On June 25, 2007, Notice of the State's Application was published in the *Federal Register*.⁴ Public notice was also published in the *Anchorage Daily News* (June 29 and July 6 and 13, 2007) and the *Fairbanks Daily-News Miner* (June 29 and July 6 and 13, 2007).

The BLM received several comments specific to the application for Recordable Disclaimer of Interest for Deep Creek. The State of Alaska commented that they agreed with BLM's report and had a typographical correction. The National Park Service commented "that while it might not be necessary to actually determine the head of navigability for Deep Creek for purposes of the title disclaimer, it might be helpful for future reference if the Deep Creek decision mentioned that the basis for the State title and the date of title varies for the remainder, depending on where the head of navigability was at the time of Statehood." This was not addressed specifically since the approval of the application is based on the State's upland ownership, not navigability.

The Trustees for Alaska (Trustees) commented that they have concerns regarding the authority of the BLM to issue a disclaimer of interest for the subject lands and regarding the scope of the State of Alaska's application. Yet, it is clear that the BLM does have this authority as set forth in Section 315 of FLPMA, 43 U.S.C. § 1745, and its implementing regulations contained in 43 C.F.R. part 1864. The Trustees also correctly noted that title to the beds of navigable waters is "typically" adjudicated by the courts. However, this action does not purport to adjudicate the navigability of Deep Creek. Instead, with its issuance of an RDI, the United States is simply affirming that it no longer has an interest in lands that were conveyed out of federal ownership.

Lastly, Mr. Richard Bishop gave additional information regarding the use of boats in the area. He also commented that he agreed with the recommendation in the BLM's draft summary report to approve the State's application.

APPLICATION APPROVED

The United States affirms it has no interest in the lands described below because the BLM has since conveyed all riparian lands surrounding Deep Creek to the State of Alaska.⁵ As confirmed by the Submerged Lands Act of 1988 (Pub. L. 100-395), 43 U.S.C. § 1631, title to the submerged lands underlying Deep Creek vested in the State of Alaska as owner of the uplands. The Submerged Land Act specifically addressed the issue of upland ownership, in Section 101 amending ANILCA Section 901 (b)(1):

Whenever...the Secretary conveys land to a Native, a Native Corporation, or the State of Alaska pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act which abuts or surrounds a meanderable lake, river, or stream, all right, title, and interest of the United States, if any, in the land under

⁴ 72 FR 34713-34714

⁵ See Tentative Approval 1963-0121 (F-28722, September 11, 1963); Tentative Approval 1982-0137 (AA-21231, May 12, 1982); Tentative Approval 2009-0047 (AA-21231, April 29, 2009); Tentative Approval 1982-0097 (AA-21232, April 12, 1982); Tentative Approval 1982-0074 (AA-21236, AA-21237, April 7, 1982), BLM Records

such lake, river, or stream lying between the uplands and the median line or midpoint, as the case may be, shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State.

Because this is precisely the situation here, I have determined that the State's application for a recordable disclaimer of interest is legally sufficient within the provisions of Section 315 of FLPMA and the regulations contained in 43 C.F.R. Subpart 1864. The United States affirms that it has no interest in the lands described below. Therefore, the State's application for a recordable disclaimer of interest is hereby approved for the lands described as follows:

The submerged lands encompassed by the ordinary high water line of Deep Creek within Township 12 South, Ranges 24 and 25 West, Townships 13 and 14 South, Range 25 West, and up to and including Section 15, Township 14 South, Range 26 West, Fairbanks Meridian, Alaska.

HOW TO APPEAL THIS DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 C.F.R. Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations contained in 43 C.F.R. § 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 C.F.R. § 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied,
- 2) The likelihood of appellant's success on the merits,

- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors the stay.



Bud C. Cribley
State Director, Alaska

Enclosure

cc (w/o enclosure):

Kevin Sorensen, Navigability Subunit Manager
Alaska Department of Natural Resources
Division of Mining, Land and Water
550 W. 7th Avenue, Suite 1420
Anchorage, Alaska 99501

Mark Fink, Access Defense Program Manager
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, Alaska 99518

Joel Hard, Acting Regional Director
National Park Service
240 W. 5th Avenue
Anchorage, Alaska 99501

Don Striker, Superintendent
National Park Service
Denali National Park and Preserve
P.O. Box 9
Denali Park, Alaska 99755

Fairbanks District Manager (AKF000)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

- | | |
|---|--|
| 1. NOTICE OF APPEAL..... | A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the <i>Notice of Appeal</i> in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a <i>Notice of Appeal</i> in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413). |
| 2. WHERE TO FILE

NOTICE OF APPEAL.....

WITH COPY TO SOLICITOR..... | U.S. Department of the Interior
Bureau of Land Management
Alaska State Office
222 W. 7th Avenue, #13
Anchorage, Alaska 99513

Regional Solicitor, Alaska Region
1430 University Drive, Suite 300
Anchorage, Alaska 99508-4626 |
| 3. STATEMENT OF REASONS

WITH COPY TO SOLICITOR..... | Within 30 days after filing the <i>Notice of Appeal</i> , file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the <i>Notice of Appeal</i> , no additional statement is necessary (43 CFR 4.412 and 4.413).

Regional Solicitor, Alaska Region
1430 University Drive, Suite 300
Anchorage, Alaska 99508-4626 |
| 4. ADVERSE PARTIES..... | Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the <i>Notice of Appeal</i> , (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). |
| 5. PROOF OF SERVICE..... | Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)). |
| 6. REQUEST FOR STAY..... | Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your <i>Notice of Appeal</i> (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> and Petition for a Stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay. Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay. |

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

(Form 1842-1, September 2006)