



# 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/ak>



FF-94263 (1864)  
AK9270

NOV 29 2010

CERTIFIED MAIL  
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## DECISION

State of Alaska	:	FF-94263
Department of Natural Resources	:	Recordable Disclaimer of Interest
Attn: Thomas E. Irwin, Commissioner	:	Application
550 West 7 <sup>th</sup> Avenue, Suite 1400	:	
Anchorage, Alaska 99501-3650	:	Salcha River

## ADMINISTRATIVE WAIVER GRANTED APPLICATION APPROVED

On May 12, 2004, the State of Alaska (State) filed an application for a recordable disclaimer of interest (RDI) for the lands underlying the Salcha River (FF-94263) 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. The State had made this application on the grounds that title has passed from the United States to the State of Alaska due to 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 applied for all submerged lands within the bed of approximately 140 miles of the Salcha River between the lines of ordinary high water, including all interconnecting sloughs, from its origins within Township 3 North, Range 19 East, Fairbanks Meridian (FM), Alaska, downstream to its confluence with the Tanana River located in T. 5 S., R. 4 E., FM.

On September 30, 2005, the Bureau of Land Management (BLM) issued a decision accepting the State's RDI application for those lands underlying the Salcha River from its mouth at the Tanana River to its confluence with Lost Creek (approximately 109 river miles) and those submerged lands from river mile 112 upstream approximately twenty-eight [28] river miles to the head of the river.

The BLM suspended a portion of the application due to insufficient evidence of navigability. The lands suspended were identified as “lands underlying the Salcha River, between the ordinary high water marks on its banks, from the mouth of Lost Creek, at river mile 109, upstream approximately three [3] miles to river mile 112. This section of the Salcha River is presently located in Sections 2, 3, 10, 11, and 15, T. 1 S., R. 16 E., FM, Alaska.” On November 15, 2005, the BLM issued a disclaimer for those lands approved in the application.

In a letter dated October 6, 2009, the State requested that the BLM reconsider that portion of the Salcha River previously suspended.<sup>1</sup> On April 3, 2008, the BLM conveyed Tracts A to E, inclusive, T. 1 S., R. 16 E., FM, to the State in Tentative Approval (TA) 2008-0130. Tract A encompasses in its entirety those lands underlying the Salcha River, previously suspended.<sup>2</sup> The State noted that it had been conveyed the uplands to both sides of the suspended portion of the Salcha River by the TA issued on April 3, 2008. Under the Submerged Lands Act of 1988, title to the lands underlying the previously suspended three miles of the Salcha River RDI application vested in the State of Alaska as owner of the uplands even though those three miles of the Salcha River had not been found navigable.

## BACKGROUND

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 Alaska Statehood Act, July 7, 1958, made the Submerged Lands Act applicable to Alaska.<sup>3</sup>

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 on the title of such lands and where he determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid.

Pursuant to 43 CFR 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 requested a waiver of the survey requirement; it was granted in the September 30, 2005 Decision.

Notice of the State’s application, including the grounds for supporting it, was published in the *Federal Register* on March 25, 2005. In addition, the BLM prepared a draft navigability report describing riparian land status, previous conveyance actions by the BLM, and the physical character and historical uses of the Salcha River.

<sup>1</sup> Thomas E. Irwin, Commissioner, Alaska Department of Natural Resources, to Thomas P. Lonnie, BLM-Alaska State Director, October 6, 2009, File FF-94263, BLM Records.

<sup>2</sup> The lands suspended were described by Section. The lands were later surveyed and conveyed as Tract A. See T. 1 S., R. 16 E., FM, Alaska, Survey executed by Kurt D. Huhta, 2005, Survey Plat and Field Notes Approved and Accepted, October 13, 2006.

<sup>3</sup> 72 Stat. 339, 343



Notice of the State's application and the availability of the draft navigability report were published in the Anchorage Daily News and the Fairbanks Daily-News Miner (April 7, 14, and 21, 2005). On September 29, 2005, the BLM issued its final navigability report, which affirmed the earlier determination of nonnavigable upstream of Lost Creek.

The Submerged Lands Act of 1988 specifically addressed the issue of upland ownership, in Section 101 amending the Alaska National Interest Lands Conservation Act 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 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.

#### APPLICATION APPROVED

The United States affirms it has no interest in the lands described below. The lands have been conveyed to the State. I have determined that the State's application for a disclaimer of interest is legally sufficient within the provisions of Section 315 of FLPMA and the regulations contained in 43 CFR Part 1864. The State's application for a disclaimer of interest is hereby approved, as follows:

The lands underlying the Salcha River, between the ordinary high water marks on its banks, from the mouth of Lost Creek, at river mile 109, upstream approximately three [3] miles to river mile 112. This section of the Salcha River is presently located in Tract A, T. 1 S., R. 16 E., FM, 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 CFR 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. 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 CFR 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 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 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 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.

/s/ Julia Dougan

Julia Dougan  
State Director, Alaska

Enclosure  
Form 1842-1

cc (w/o enclosure):

Alaska Department of Natural Resources  
Division of Mining, Land and Water  
Public Access Assertion & Defense Unit  
Attn: David Schade  
550 West 7<sup>th</sup> Avenue, Suite 1070  
Anchorage, Alaska 99501

Alaska Department of Fish & Game  
Attn: Ellen Simpson  
333 Raspberry Road  
Anchorage, Alaska 99518

Office of SJA/JAG  
HQ USARAK  
ATTN: APVR-RJA  
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