United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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TAKE PRIDE IN AMERICA

FF-94661
1864 (932)

Memorandum

JUL 11 2006

To: Chief, Branch of Lands and Realty (932)

From: Callie Webber, Realty Specialist

Subject: Final Summary Report for Fish Lake in the Tanana River Region, Alaska

On December 22, 2005, the State of Alaska (State) filed an application for a recordable disclaimer of interest (RDI) for the lands underlying Fish Lake (FF-94661) located within Tps. 13 and 14 N., R. 19 E., Copper River Meridian (CRM), Alaska. Fish Lake is shown on the map dated December 22, 2005, and entitled "Fish Lake Recordable Disclaimer of Interest Application" which the State attached to its application.

The State has requested a disclaimer of interest based on the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act, the Submerged Lands Act of 1988, or any other legally cognizable reason. This paper is an analysis of the record to determine whether or not the State's RDI application for lands underlying the subject water body meets the regulatory requirements (43 CFR 1864).

In support of its application, the State submitted to the Bureau of Land Management (BLM) various investigation reports, memoranda, navigability reports, and decisions. Most documents were issued by the BLM in support of land conveyances to Native corporations under the Alaska Native Claims Settlement Act (ANCSA). The State also provided two Alaska Native Claims Appeal Board (ANCAB) decisions dated August 5, 1981 and October 30, 1981; a State of Alaska report, "Contemporary Uses of Lakes in the Northway Region of Alaska" (August 1982); and other miscellaneous correspondence documents. These documents are summarized in the attachment.

Fish Lake (approximately 690 acres) is located in Sections 3 and 4, T. 13 N., R. 19 E., and Sections 28, 29, 32 to 34, T. 14 N., R. 19 E., CRM, Alaska. The riparian lands surrounding Fish Lake have been conveyed out of federal ownership. There are two certificated Native allotments, conveyed under the Native Allotment Act of 1906, along the northwestern shore.

The remaining riparian lands were conveyed to Northway Natives, Inc., a village corporation, and Doyon, Limited, a regional corporation, under the ANCSA. None of the riparian lands, or the lake, was reserved at the time of statehood.

The ANCAB issued a decision that Fish Lake was navigable. These findings are final for the Department of the Interior, State of Alaska, Northway Natives, Inc., and Doyon, Limited. [6 ANCAB 1 (August 5, 1981) and 6 ANCAB 138 (October 30, 1981)]. Since the issue of navigability has been determined with finality between the BLM and the State, it is recommended that the application for an RDI be approved.

Attachment
Summary of Documentation (2 pp)

Summary of Documentation – Fish Lake
Recordable Disclaimer of Interest Application

The State provided many documents to support its applications for those lands underlying Fish Lake (FF-94661) and Mark Creek (FF-94662). On March 10, 2006, the State withdrew its application for Mark Creek. The following is a chronological summary of the documentation pertaining to Fish Lake. Some of these documents were attached to the Mark Creek application.

- BLM report, entitled "Navigability Investigation Report on Unnamed Lake and Channel System in Section 21 and 28, Township 14 North, Range 19 East, Copper River Meridian the connecting Channel to Fish Lake and Fish Lake," dated October 16, 1975. The purpose of this report was to provide data on waterbodies within the Northway Natives, Inc. and Doyon, Inc. selection areas. The report was only informational; it did not provide an analysis of that information for the purposes of making a navigability determination.
- BLM report, entitled "Navigability Investigation Report on Mark Creek Affecting Northway Natives, Inc. Selection F-14912 A," dated October 16, 1975. The purpose of this report was to provide data on waterbodies within the Northway Natives, Inc. as a response to the State of Alaska's assertion that Mark Creek is navigable. The report was only informational; it did not provide an analysis of that information for the purposes of making a navigability determination.
- Decision approving an interim conveyance, dated June 26, 1978 (F-19155-20). This decision approved lands for conveyance to Doyon, Inc. The decision identified no navigable waters within the selected areas. Fish Lake was within the selected area. This determination was appealed to the Alaska Native Claims Appeal Board (ANCAB).
- Decision approving an interim conveyance, dated June 26, 1978 (F-14912-A, et al.). This decision approved lands for conveyance to Northway Natives, Inc. Fish Lake was not identified as navigable; therefore the underlying lands were approved for conveyance. This determination was appealed to the ANCAB.
- BLM Memorandum, "Navigable and Non-Navigable Water Bodies in the Northway Area, Eastern Alaska," dated March 22, 1979, attached to the BLM navigability report dated March 16, 1979. This report described the physical and historical characteristics of certain water bodies, including those applied for, within the upper Tanana region. It recommended that all lakes and creeks, within the Northway Natives, Inc. selection area be determined non-navigable.
- Decision approving an interim conveyance, dated February 27, 1980 (F-14192-B). This decision approved lands for conveyance to Northway Natives, Inc., and specifically described Fish Lake as non-navigable.
- BLM Memorandum, dated March 28, 1980. This report was prepared in light of recent decisions and guidance offered by the ANCAB for those waterbodies under appeal [June 26, 1978 (F-14192-A, et. al) and June 26, 1978 (F-19155-20)]. Based on information and its analysis, the State Director concurred with the finding that Fish Lake was navigable.
- ANCAB Decision, 6 ANCAB 1, dated August 5, 1981 (F-14192 A/B). This decision accepted the BLM's finding of navigability (March 28, 1980) for Fish Lake, within the Northway Natives, Inc. selection area.
- ANCAB Decision, 6 ANCAB 138, dated October 30, 1981 (F-19155-20). This decision accepted the BLM's finding of navigability (March 28, 1980) for Fish Lake within the Doyon, Inc. selection area.

- State of Alaska report, entitled "Contemporary Uses of Lakes in the Northway Region of Alaska" (August 1982). This report was prepared by the Department of Resources, Division of Research and Development Policy Research and Land Entitlement for the purpose of gathering information for an anticipated litigation filed by the State of Alaska regarding a navigability case. The report's focus was on contemporary use, and was for informational use only. It did not provide an analysis of that information for the purposes of making a navigability determination.
- Decision approving an interim conveyance, dated August 4, 1983 (F-19155-20). This decision modified the decision, dated June 26, 1978 (F-19155-20), to state that Fish Lake is navigable.