# United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7599
http://www.blm.gov/ak

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FF-94661 (1864)
(AK-932)

JUL 19 2006

CERTIFIED MAIL
RETURN RECEPIT REQUESTED

DECISION

| | | |
|---|---|---|
| State of Alaska | : | FF-94661 |
| Department of Natural Resources | : | Recordable Disclaimer of Interest |
| Attn: Michael Menge, Commissioner | : | Application |
| 550 West 7th Avenue, Suite 1400 | : | |
| Anchorage, Alaska 99501-3650 | : | Fish Lake |

ADMINISTRATIVE WAIVER GRANTED
APPLICATION APPROVED

On December 22, 2005, the State of Alaska (State) filed an application for a recordable disclaimer of interest for the lands underlying Fish Lake (FF-94661) 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 Fish Lake. 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.

## 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.[1]

[1] 72 Stat. 339, 343

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.

The State applied for all submerged lands lying below the ordinary high water line of Fish Lake, an area of approximately 690 acres, located within Tps. 13 and 14 N., R. 19 E., Copper River Meridian (CRM), Alaska.

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. On December 22, 2005, the State of Alaska requested a waiver of this requirement under 43 CFR 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 the waiver is hereby granted.

In support of its application, the State submitted to the Bureau of Land Management (BLM) the following documents: BLM navigability investigation report dated October 16, 1975; two BLM memoranda dated March 22, 1979 and March 28, 1980; BLM navigability report dated March 16, 1979; five BLM decisions dated June 23, 1978 (F-19155-20), June 26, 1978 (F-14912-A, et al.), June 26, 1978 (F-19155-20) February 27, 1980 (F-14192-B), and August 4, 1983 (F-19155-20). These documents were issued 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 and a State of Alaska report, "Contemporary uses of Lakes in the Northway Region of Alaska" (August 1982).

Notice of the State's application, including the grounds for supporting it, was published in the *Federal Register* on April 13, 2006. Comments on the State's application and supporting evidence were accepted through July 12, 2006. Public notice of the State's application, and the availability of the draft summary report, was published in the *Anchorage Daily News* (April 21, 28, and May 5, 2006), the *Fairbanks Daily-News Miner* (April 20, 27, and May 4, 2006) and the Mukluk News (May 4, 18, and June 1, 2006).

In addition, the BLM prepared a draft summary report analyzing the information presented to determine whether or not the State's RDI application for lands underlying the subject water body meets the regulatory requirements. The report was posted on the BLM website, with a 60-day comment period, ending June 12, 2006. The BLM also sent copies of its draft summary report to the State of Alaska (Departments of Natural Resources and Fish and Game), Tanana Chiefs Conference, Doyon Limited, Northway Natives, Northway Traditional Council, and the Northway Village Council, inviting their review and comments. The BLM received no comments on the draft summary report during the review period, ending June 12, 2006; therefore finalized the report on July 10, 2006. The BLM received no comments regarding the State's application and supporting evidence, during the notice period, ending July 12, 2006.

After reviewing the State's application, land status, and the legal record pertaining to Fish Lake, including previous navigability determinations; the BLM finds that Fish Lake was determined navigable by ANCAB and that determination is final for the Department and that Fish Lake was unreserved at time of statehood; therefore under the Equal Footing Doctrine, title to the submerged lands is in the State.

APPLICATION APPROVED

The State of Alaska has made this application on the grounds that title has 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 United States affirms it has no interest in the lands described below; therefore, the State's application for the lands described in this section is hereby approved for reasons listed below. Accordingly, based on the foregoing and the documentation contained in the case record, 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 CFR Part 1864. The State's application for a recordable disclaimer of interest is hereby approved, as follows:

The lands underlying Fish Lake, approximately 690 acres, between the ordinary high water marks on its banks, presently located in Tps. 13 and 14 N., R. 19 E., CRM, Alaska. In decisions dated August 5, 1981 and October 30, 1981, the ANCAB found Fish Lake to be navigable; therefore that determination is final for the Department of the Interior. 6 ANCAB 1, 6 ANCAB 138, and 43 U.S.C. § 1631(c)(1).

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 document s 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 S. Dougan

ACTING

State Director

Julia Dougan
Acting State Director

2 Enclosures:
Form 1842-1 (1 p)
Memo- "Final Summary Report for Fish Lake in the Tanana River Region, Alaska" (4 pp)

cc (w/enclosures):

State of Alaska
Department of Natural Resources
Attn: Michael Menge, Commissioner
550 West 7th Avenue, Suite 1400
Anchorage, Alaska 99501-3650

State of Alaska
Division of Mining, Land & Water
Public Access Assertion & Defense Unit
Attn: Scott Ogan
550 West 7th Avenue, Suite 1330
Anchorage, Alaska 99501-3514

State of Alaska
Alaska Department of Fish & Game
Attn: John Westlund
333 Raspberry Road
Anchorage, Alaska 99518

Harold Brown, President
Tanana Chiefs Conference
122 1st Avenue
Fairbanks, Alaska 99701

Doyon, Limited
Lands and Natural Resources Department
Attn: Sherry Bestard
1 Doyon Place, Suite 300
Fairbanks, Alaska 99701

Northway Natives, Inc.
P.O. Box 476
Northway, Alaska 99764-0476

Lorraine Titus, President
Northway Traditional Council
P.O. Box 406
Northway, Alaska 99764

Robert Silas, President
Northway Village Council
P.O. Box 516
Northway, Alaska 99764

cc (w/o enclosures):

Special Assistant to the Secretary for Alaska

DSD, Resources (930)

FM, Northern Field Office (020)

Branch Chief, Lands (932)

Section Chief, Navigability (927)

Regional Solicitor, Alaska