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Commissioner

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Department of  
Natural Resources

Anchorage, Alaska

STATE OF ALASKA

PRESS RELEASE

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## Win in Federal Land Appeal Bolsters “Unlocking Alaska” Initiative

**(Anchorage, AK)** – A federal appeals board decision upholding the State of Alaska’s ownership of 7,552 acres of submerged lands beneath the Kuskokwim River validates essential elements of Governor Mike Dunleavy’s “Unlocking Alaska” initiative to establish clear ownership of submerged lands across the State, DNR Commissioner Corri Feige said today.

“The Department of Natural Resources has been doggedly advocating for Alaska’s land ownership rights for many decades and on many different fronts,” Feige said. “This Interior Board of Land Appeals’ (IBLA) decision demonstrates the strength of our position, and should point the way to continued success in the governor’s efforts to assert state sovereignty in the face of federal overreach.”

“The essential legal principles supporting Alaska’s win in this case are the same ones underlying my ‘Unlocking Alaska’ Initiative,” Governor Dunleavy said. “While it’s taken nearly six years, the Interior Department has acknowledged that the U.S. Constitution and federal law make it clear Alaska owns submerged lands in Alaska.”

At issue is 7,552 acres of submerged land underlying the Kuskokwim River near McGrath. In 2015, DNR applied to the federal Bureau of Land Management (BLM) for a recordable disclaimer of interest (RDI), confirming that the federal government had no ownership interest in the land. After BLM denied the request, the State appealed to the department’s Interior Board of Land Appeals on December 8, 2015.

In defending its decision before the board, BLM argued that its 1944 Public Land Order 258 temporarily reserving the land for possible military use during World War II exempted the land from possible selection under the 1959 Alaska Statehood Act.

The State argued it had rights to the submerged land under the U.S. Constitution’s “Equal Footing Doctrine” giving Alaska the same rights other states enjoy in controlling submerged land beneath rivers and lakes within their boundaries, rights further codified in the Submerged Lands Act of 1953.

The State further argued that PLO 258's expiration in 1945 at the war's end made the Kuskokwim River lands available, and that a 1954 federal law explicitly ending the national emergency justifying PLO 258 made it doubly clear that title transferred to the State at Statehood in 1959.

In its decision, the IBLA cited the U.S. Constitution's "Equal Footing Doctrine" and Submerged Land Act as controlling legal authorities justifying the state's arguments. It also ruled in the State's favor that PLO 258's temporary reservation of the land for possible military use did not constitute permanent withdrawal outweighing Alaska's statehood land rights. The panel ordered BLM to process the RDI request and confirm the state ownership of the submerged lands.

In addition to the "Equal Footing Doctrine" the governor's initiative relies on the Alaska National Interest Lands Conservation Act of 1980's (ANILCA) specific exemption of state and private water and land inside federal conservation system units (National Parks, refuges, etc.) from most federal regulation. It also relies on John Sturgeon's second U.S. Supreme Court victory, a ruling that federal regulations do not supersede state ownership within ANILCA-established conservation units.

In other recent statehood defense actions, the governor has sued in federal district court to force Interior to terminate decades-long "temporary" public land orders withdrawing nearly 28 million acres of federal land from consideration for statehood land selections, Alaska Native allotments, or other beneficial uses. He has also sought additional funding to bolster the state's legal resources to defend state land claims against federal overreach, delay, and obstruction.

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