



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue
Anchorage, Alaska 99513-7504
<http://www.blm.gov/ak>

In Reply Refer To:
FF-94608
1864 (AK927)

FEB 08 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

State of Alaska	:	FF-94608
Department of Natural Resources	:	Recordable Disclaimer of Interest
Attn: Daniel S. Sullivan, Commissioner	:	Application
550 W. 7th Avenue, Suite 1400	:	
Anchorage, Alaska 99501	:	Jim Lake

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-94608) 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 Jim Lake (approximately 700 acres), located in the Tanana River Subregion in Interior Alaska.¹

The State made this application based on 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 Jim Lake 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 encompassed by the ordinary high water line of Jim Lake within Township 11 South, Ranges 25, 24 West, and Township 12 South, Range 25 West, Fairbanks Meridian, Alaska." With the application, the State also submitted a map entitled

¹ See Dick Mylius to Henri Bisson, September 20, 2005, file FF-94608 (1864). This application was submitted as a group, which included Deep Creek (FF-94609), Muddy River, (FF-94610), Lake Minchumina (FF-94611), and Kantishna River and a segment of Birch Creek (FF-94612).

“State of Alaska – Jim Lake – Recordable Disclaimer of Interest Application,” 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 he determines a record interest of the United States in lands has terminated by operation of law or is otherwise invalid.

ADMINISTRATIVE WAIVER GRANTED

In its application, the State also requested a waiver of survey under 43 CFR 1864.1-2(c)(1). As explained below, the State owns the submerged lands under Jim Lake whether or not the lake is navigable. Due to its size, Jim Lake will be meandered and segregated prior to patent to the State of Alaska. Therefore, a survey description of the subject water body is not needed to adjudicate the State’s application and the waiver is hereby granted.

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 were inconclusive regarding Jim Lake’s use as highway of commerce, and very little information was available regarding its physical characteristics; therefore, the draft recommendation was to reject the State’s application for lack of evidence.

The BLM sent copies of the 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; Doyon Ltd. inviting their review and comment. On June 25, 2007, Notice of the State’s Application was published in the *Federal Register*.³ 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 did receive comments specific to Jim Lake, including additional information to support the State’s assertion it was navigable.

² 72 Stat. 339, 343

³ 72 FR 34713-34714

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 Jim Lake to the State of Alaska.⁴ The Submerged Lands Act of 1988 (Pub. L. 100-395), 43 U.S.C. specifically addressed the issue of upland ownership, in Section 101 amending ANILCA Section 907 (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.

Accordingly, 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 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, as follows:

The submerged lands encompassed by the ordinary high water line of Jim Lake within Township 11 South, Ranges 24, 25 West, and Township 12 South, Range 25 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 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. 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 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.

⁴ See Tentative Approval 1963-0121 (F-28722, September 11, 1963); Tentative Approval 2009-0048 (AA-21222, April 29, 2009) and Tentative Approval 2011-0022 (AA-21222, March 22, 2011), BLM Records

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.

/s/ Ron Dunton for

Bud Cribley
State Director, Alaska

Enclosure

cc (w/o enclosure):

David Schade, 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

Sue Masica, Regional Director
National Park Service
240 W. 5th Avenue
Anchorage, Alaska 99501

Paul Anderson, Superintendent
National Park Service
Denali National Park and Preserve
P.O. Box 9
Denali Park, Alaska 99755

Fairbanks District Manager (AKF000)
