United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

703-235-3750 703-235-8349 (fax)

September 1, 2021

IBLA 2016-65	)	AA-086371
	)	
STATE OF ALASKA	)	Recordable Disclaimer of Interest
	)	
	)	Reversed and Remanded

ORDER[1]

The State of Alaska appealed from a December 8, 2015, decision by the State Director, Alaska State Office, Bureau of Land Management (BLM). In the decision, BLM denied Alaska's application for a recordable disclaimer of interest (RDI), as to certain submerged lands beneath the navigable Kuskokwim River (River).

SUMMARY

There is a strong presumption that new states acquire title to submerged lands beneath inland navigable waters within their boundaries upon statehood. The United States can overcome this strong presumption by demonstrating that the lands were reserved for a specific public purpose at statehood *and* demonstrating a clear intent to defeat the state's acquisition of title to those lands. As fully explained below, there was no clear intent on the part of the United States to defeat Alaska's acquisition of title to the relevant submerged lands. Specifically, while section 11(b) of the Alaska Statehood Act (ASA) states Congress's intent to reserve its authority over lands held for military purposes, and Public Land Order (PLO) 255 reserved the submerged lands for military purposes, the plain language of PLO 255 terminated that reservation for military purposes prior to statehood, even though the submerged lands remained withdrawn at the time of statehood. Therefore, because section 11(b) does not apply to the submerged lands it does not demonstrate a clear intent to defeat Alaska's acquisition of title to these lands. Accordingly, we reverse BLM's decision and remand this matter for action consistent with this Order.

[1] Administrative Judge K. Jack Haugrud took no part in the consideration or issuance of this Order.

BACKGROUND

I. Legal Background.

There is a strong presumption that new states acquire title to submerged lands beneath inland navigable waters within their boundaries upon statehood. This presumption flows from two sources. First, under the "equal footing doctrine," new states enter the Union "on an 'equal footing' with the original 13 Colonies and succeed to the United States' title to the beds of navigable waters within their boundaries."[2] Second, the Submerged Lands Act of 1953 (SLA)[3] essentially codified this principle.[4] Thus, upon statehood, a state generally acquires title to submerged lands beneath its inland navigable waters, under both the equal footing doctrine and the SLA.[5]

The United States, however, may rebut this presumption and defeat a future state's title to submerged lands beneath inland navigable waters in two ways. First, the United States may convey the lands to a third party before statehood.[6] Second, as articulated by the Supreme Court in *Utah Division of State Lands v. United States* (*Utah Lake*),[7] the United States may reserve the lands prior to statehood for a specific public purpose *and* demonstrate a clear intent to defeat a future state's acquisition of title.[8]

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[2] *Alaska v. United States*, 545 U.S. 75, 79 (2005) (*Glacier Bay*); *United States v. Alaska*, 521 U.S. 1, 5 (1997) (*Arctic Coast*); *see Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212, 221-22, 229 (1845) (announcing that, under the equal footing doctrine, the United States held submerged lands beneath navigable waters in the territories "in trust" for future states).

[3] 43 U.S.C. §§ 1301-1315. As there have been no substantive changes to the relevant statutory provisions since BLM's decision, all citations to the United States Code will be to the current 2018 edition.

[4] *Id.* § 1311(a) (providing that "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States . . . are. . . recognized, confirmed, established, and vested in and assigned to the respective States"); *see Glacier Bay*, 545 U.S. at 79; *see also* Alaska Statehood Act (ASA), Pub. L. No. 85-508, § 6(m), 72 Stat. 339, 343 (1958) (expressly applying the SLA to Alaska).

[5] *Glacier Bay*, 545 U.S. at 79; *Arctic Coast*, 521 U.S. at 6.

[6] *Shively v. Bowlby*, 152 U.S. 1, 48 (1894).

[7] 482 U.S. 193 (1987).

[8] *Id.* at 196, 201–02 (ruling that the "mere act of reserve[ing]" the relevant lands will not defeat a state's presumed title; instead, the United States must not only show "Congress clearly intended to include land under navigable waters within the federal reservation," but also that "Congress affirmatively intended" to defeat the future state's title to such land); *see Arctic Coast*, 521 U.S. at 34 (A court "will not infer an intent to defeat a future

II. Factual Background.

On December 15, 1944, the Acting Secretary of the Interior, pursuant to the Pickett Act,[9] signed Public Land Order 255 (PLO 255) that "withdr[ew,]" "[s]ubject to valid existing rights," the public lands in six described areas from all forms of appropriation under the public land laws, and "reserved" them "for the use of the War Department for military purposes."[10] PLO 255 further provided for the automatic cessation of the jurisdiction granted by the PLO:

> The jurisdiction granted by this order shall cease at the expiration of the six months' period following the termination of the unlimited national emergency declared by Proclamation No. 2487 of May 27, 1941. . . . Thereupon, jurisdiction over the lands hereby reserved shall be vested in the Department of the Interior, and any other Department or agency . . . according to their respective interests then of record. The lands, however, shall remain withdrawn from appropriation as herein provided until otherwise ordered.[11]

The six described areas were Big Delta, Naknek, McGrath, Gulkana, Northway, and Galena.[12] At issue here is the McGrath area, which encompassed "both public and nonpublic lands," and consisted of "7,552 acres, more or less."[13] PLO 255 specifically described the McGrath area, as follows:

State's title to inland submerged lands 'unless the intention was definitely declared or otherwise made very plain.'") (quoting *United States v. Holt State Bank*, 270 U.S. 49, 55 (1926)).

[9] Executive Order No. 9337, 8 Fed. Reg. 5516 (Apr. 28, 1943) (delegating authority to the Secretary of the Interior to make withdrawals and reservations pursuant to the authority granted to the President by the Act of June 25, 1910, ch. 421, 36 Stat. 847 (Pickett Act)); *see S. Utah Wilderness All. v. BLM*, 425 F.3d 735, 784-86 (10th Cir. 2005) (*SUWA*) (explaining that a "withdrawal" "temporarily suspends the operation of some or all of the public land laws, preserving the status quo while Congress or the executive decides on the ultimate disposition of the subject lands[;]" whereas, a "reservation" "not only withdraws the land from the operation of the public land laws, but also dedicates the land to a particular public use").

[10] PLO 255, 11 Fed. Reg. 8368 (Aug. 2, 1946).

[11] *Id.* at 8369.

[12] *Id.* at 8368-69.

[13] *Id.* at 8369.

> Beginning at the point of intersection of Latitude 62° 55' N., with the center line of the deep water channel of the Kuskokwim River, approximate Longitude 155° 33' W. From the point of beginning: East, 2.25 miles; North, 3 miles; West, 1.12 miles, to the center line of the deep water channel of the Kuskokwim River; Southwesterly, 14.5 miles, downstream along the center line of the deep water channel of the Kuskokwim River, to the point of beginning.[14]

The McGrath area encompasses not only uplands but also "one-half" of the River, the half between the left bank and center line of the River, for a 14.5 mile stretch.[15] These are the submerged lands at issue in this appeal (Subject Lands).[16]

Following the end of the World War II, the Army asked the Department of the Interior to amend PLO 255 so that the withdrawn and reserved lands, which encompassed the Subject Lands, could "be returned to the jurisdiction of the Department of the Interior and any other department or agency of the Federal Government according to their respective interests now of record."[17] Through "inadvertence" the Department did not act immediately on this request.[18]

On April 28, 1952, President Truman issued Proclamation No. 2974, which declared the termination of the unlimited national emergency that prompted issuance of PLO 255.[19] Thus, pursuant to PLO 255's own terms, jurisdiction over the Subject Lands vested in the Department of the Interior on or about October 28, 1952.[20] The Subject Lands, however, remained withdrawn from appropriation.[21]

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[14] *Id*.
[15] *Id.*
[16] Statement of Reasons at 9 (filed Feb. 24, 2016) (SOR); *see id*., Exhibit 11 (map depicting Subject Lands).
[17] Administrative Record (AR), Letter to General Land Office (now BLM) from Director of Real Estate, U.S. Army Corps of Engineers (Oct. 30, 1945); *id*., 1959 Land Examination Report at 1 ("By letter of October 30, 1945, [the Army] advised [BLM] that there no longer existed a military necessity for the land.") (1959 Land Examination Report).
[18] 1959 Land Examination Report at 2.
[19] Proclamation No. 2974, 17 Fed. Reg. 3813 (Apr. 30, 1952).
[20] 11 Fed. Reg. at 8369.
[21] *See id*.

On January 3, 1959, Alaska was admitted into the Union.[22] On June 23, 1960, the Department issued PLO No. 2133, which formally revoked PLO 255 as to, *inter alia*, the Subject Lands.[23]

III. Procedural Background.

On March 10, 2006, Alaska filed its RDI application, pursuant to section 315 of the Federal Land Policy and Management Act (FLPMA), which provides:

> After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests 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* . . . .[24]

Alaska asked BLM to confirm that Alaska owned the lands below the ordinary high water marks on the left and right banks of the River, from its origin in T. 28 S., R. 22 E., Kateel River Meridian, Alaska, downstream to its confluence with the Kuskokwim Bay, in T. 2 S., R. 7 W., Seward Meridian, Alaska, including the Subject Lands.[25] Alaska asserted that the entire River was navigable at statehood, and, thus, pursuant to the equal footing doctrine and the SLA, title to the described lands vested in Alaska upon its admission into the Union.[26]

In response to Alaska's RDI application, the Alaska State Office, BLM, prepared a draft report.[27] In this draft report, BLM determined that the entire River was navigable at statehood.[28] The draft report also recommended that BLM grant Alaska's RDI application, except for the Subject Lands.[29] The draft report concluded that the United States retained title to the Subject Lands because the Subject Lands were withdrawn pursuant to PLO 255 at statehood.[30]

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[22] Proclamation No. 3269, 24 Fed. Reg. 81 (Jan. 6, 1959).
[23] PLO 2133, 25 Fed. Reg. 6017 (June 29, 1960).
[24] 43 U.S.C. § 1745 (emphasis added).
[25] AR, Alaska, Recordable Disclaimer of Interest Application for the Kuskokwim River, AA-086371 at 1 (Mar. 10, 2006).
[26] *Id.* at 1-3.
[27] AR, BLM, Memorandum, Federal Interest in Lands Underlying Kuskokwim River in the Kuskokwim Subregion, Alaska (undated).
[28] *Id.* at 4-8.
[29] *Id.* at 8.
[30] *Id*.

On September 3, 2010, BLM published notice of Alaska's RDI application and its draft summary report in the *Federal Register* and solicited public comment on the two documents.[31] On April 28, 2011, Alaska submitted comments objecting to the proposed denial of its RDI application as to the Subject Lands.[32] Based upon *Utah Lake* and other decisions, Alaska argued that PLO 255 did not defeat its title to the Subject Lands.[33]

On May 1, 2013, BLM issued a Final Report, in which BLM again confirmed that the entire River was navigable and recommended granting Alaska's RDI application, except for the Subject Lands.[34] In response to Alaska's argument that PLO 255 did not defeat its title to the Subject Lands, BLM concluded title to the Subject Lands did not transfer to Alaska because "[t]he United States' intent to defeat [Alaska's] title to lands within military withdrawals was clearly expressed in section 11(b) of the Alaska Statehood Act,"[35] which specifies that the United States reserved its authority to exercise "the power of exclusive legislation" over public lands "held for military, naval, Air Force, or Coast Guard purposes" "immediately prior" to statehood.[36]

On May 3, 2013, BLM issued a decision, approving Alaska's RDI application, except for the Subject Lands.[37] BLM explained that it was suspending consideration of the portion of the application that pertained to the Subject Lands while Alaska and BLM continued discussing the effect of PLO 255.[38]

On June 10, 2013, BLM issued Alaska an RDI that expressly excluded the Subject Lands:

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[31] *See* Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying the Kuskokwim River in Alaska, 75 Fed. Reg. 54,176 (Sept. 3, 2010).
[32] AR, Alaska, Response to Draft Report Regarding the State of Alaska's Recordable Disclaimer of Interest (RDI) Application for the Kuskokwim River (Apr. 28, 2011).
[33] *Id.* at 2-5.
[34] AR, BLM, Memorandum, Final Summary Report: Federal Interest in Lands Underlying Kuskokwim River in the Kuskokwim Subregion, Alaska at 9-10 (May 1, 2013) (Final Report).
[35] *Id.* at 5.
[36] ASA, Pub. L. No. 85-508, § 11(b), 72 Stat. at 347.
[37] AR, BLM, Decision, Administrative Waiver Granted; Application Approved, in Part; Application Suspended, in Part at 4-5 (May 6, 2013).
[38] *Id.* at 5; *but see* AR, Letter from Alaska to BLM at 1-3 (May 22, 2013) (criticizing BLM's decision to suspend consideration of the portion of the application that pertained to the Subject Lands).

> The lands underlying the Kuskokwim River, *excepting those lands within Public Land Order No. 255*, . . . from its beginning at the confluences of its North and South Forks, presently located in Township 28 South, Range 22 East, Kateel River Meridian, Alaska[,] downstream approximately 540 miles to its confluence with the Kuskokwim Bay presently located within Township 2 South, Range 77 West, Seward Meridian, Alaska.[39]

Further discussions regarding consideration of the portion of the application that pertained to the Subject Lands were apparently unsuccessful because on December 8, 2015, BLM issued the decision on appeal that denied Alaska's application with respect to the Subject Lands.[40] In so doing, BLM concluded Alaska did not acquire title to the Subject Lands at statehood because they were, at that time, "reserved to the federal government to retain complete control of use and occupancy of all public lands within PLO 255."[41]

Alaska timely appealed and filed its statement of reasons. BLM timely filed an answer,[42] Alaska timely filed a reply,[43] and the matter is ripe for adjudication.

ANALYSIS

I. Standard of Review and Burden of Proof.

Under section 315 of FLPMA, BLM, which acts on behalf of the Secretary of the Interior, is granted discretionary authority to issue an RDI when it determines that the RDI "will help remove a cloud on the title" and the "interest of the United States in lands has terminated by operation of law or is otherwise invalid."[44] In making a decision in the exercise of its discretionary authority, BLM must provide a rational basis for its decision and its decision must be supported by facts in the record that demonstrate the decision is not arbitrary, capricious, an abuse of discretion, or otherwise contrary to law.[45] Conversely, to successfully challenge a decision issued by BLM under section 315, an appellant must demonstrate that: (a) BLM committed a material error in its factual or

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[39] AR, Recordable Disclaimer of Interest, Serial No. AA-086371, United States Department of the Interior, Bureau of Land Management at 1 (June 10, 2013) (emphasis added).
[40] AR, BLM, Decision, Administrative Waiver Granted, Application Denied, in Part at 4 (Dec. 8, 2015) (Decision).
[41] *Id*. at 4.
[42] Government's Answer to Statement of Reasons (filed Apr. 12, 2016) (Answer).
[43] State of Alaska's Reply (filed Apr. 25, 2016).
[44] 43 U.S.C. § 1745(a).
[45] *County of San Bernardino*, 181 IBLA 1, 23 (2011).

legal analysis; (b) the decision is not supported by a record showing that BLM gave due consideration to all relevant factors; or (c) the decision is not based on a rational connection between the facts found and the choice made.[46]

In an effort to satisfy its burden on appeal, Alaska notes the "'strong presumption'" that new states acquire title to submerged lands beneath inland navigable waters within their boundaries upon statehood.[47] Alaska also emphasizes that, as the Subject Lands were not conveyed away prior to statehood, the United States can overcome this "strong presumption" only if it proves that both parts of the *Utah Lake* test are satisfied,[48] i.e., the lands were reserved at statehood for a specific public purpose *and* the United States clearly intended to defeat Alaska's acquisition of title.[49]

According to Alaska, neither part of the *Utah Lake* test is satisfied with respect to the Subject Lands. First, Alaska argues that PLO 255 did not apply to the Subject Lands.[50] In support of this argument, Alaska asserts: (1) the Subject Lands were not "public lands" when PLO 255 was issued; and (2) Alaska's future title to submerged lands beneath inland navigable waters was a "valid existing right" that PLO 255 was expressly made "subject to."[51] Second, Alaska argues that, assuming PLO 255 applied to the Subject Lands, there was no clear intent on the part of the United States to defeat Alaska's acquisition of title to the Subject Lands.[52]

Given that BLM agrees that the two-part *Utah Lake* test is applicable,[53] the primary issue on appeal is whether Alaska has established that BLM erred when it determined that both parts of the *Utah Lake* test were satisfied. As explained below, we conclude that Alaska has met its burden on appeal because BLM erred when it determined the second part of the *Utah Lake* test had been satisfied.

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[46] See *id.*
[47] SOR at 5 (quoting *Arctic Coast*, 521 U.S. at 34); *see Montana v. United States*, 450 U.S. 544, 552 (1981) ("[a] court deciding a question of title to the bed of a navigable water must, therefore, begin with a strong presumption" in favor of state ownership).
[48] *See* SOR at 5.
[49] *Utah Lake*, 482 U.S. at 202; *see Glacier Bay*, 545 U.S. at 100 ("We first inquire whether the United States clearly intended to include submerged lands within the reservation. If the answer is yes, we next inquire whether the United States expressed its intent to retain federal title to submerged lands within the reservation.").
[50] SOR at 15-19.
[51] *Id.*
[52] *Id.* at 19-22.
[53] Answer at 4.

II. Section 11(b) of the ASA Does Not Reflect A Clear Intent to Defeat Alaska's Acquisition of Title to the Subject Lands.

Under the *Utah Lake* test, Alaska's title to the Subject Lands may be defeated only if the Subject Lands were reserved for a specific purpose at statehood *and* the United States clearly intended to defeat Alaska's acquisition of title. For purposes of applying the *Utah Lake* test in this appeal, we will assume that PLO 255 applied to the Subject Lands. Thus, on December 15, 1944, the Subject Lands were "withdrawn . . . and reserved for the use of the War Department for military purposes."[54] However, under the terms of PLO 255, following issuance of Proclamation No. 2974, which declared the termination of the unlimited national emergency that prompted issuance of PLO 255, jurisdiction over the Subject Lands was automatically transferred from the War Department to the Department of the Interior on or about October 28, 1952.[55] This transfer of jurisdiction meant that the lands were to be subsequently managed by the Department of the Interior[56] and were no longer dedicated to a specific public purpose. Therefore, following Proclamation No. 2974, the Subject Lands were no longer "reserved for the use of the War Department for military purposes,"[57] although they remained withdrawn from appropriation.[58]

As this was the status of the Subject Lands at statehood, and assuming that the *Utah Lake* test applies to lands that were merely withdrawn, but not reserved,[59] the issue on appeal boils down to whether there was clear intent on the part of the United States to defeat Alaska's acquisition of title to the Subject Lands.

BLM rejected Alaska's RDI application as to the Subject Lands because it believed the United States' clear intent to defeat Alaska's title to those lands was reflected in

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[54] 11 Fed. Reg. at 8368.
[55] *Id.* at 8369; *see* AR, Letter to BLM from Director of Real Estate, U.S. Army Corps of Engineers, (June 6, 1956) ("Please be advised that all lands acquired under [PLO] No. 255, with the exception of the lands at Big Delta (Fort Greely)[,] are no longer required and *have been relinquished*.") (emphasis added).
[56] 11 Fed. Reg. at 8369.
[57] *Id.*; *see SUWA*, 425 F.3d at 784 ("'In public land laws of the United States, a reservation is a tract of land, more or less considerable in extent, which is by public authority withdrawn from sale or settlement, and appropriated to specific public uses; such as parks, military posts, Indian lands, etc.'" (quoting BLACK'S LAW DICTIONARY 1031 (1st ed. 1891)).
[58] 11 Fed. Reg. at 8369.
[59] *See Alaska v. United States*, 213 F.3d 1092, 1093-97 (9th Cir. 2000) (applying the *Utah Lake* test to lands withdrawn by PLO 82, while using the terms withdrawal and reservation interchangeably).

section 11(b) of the ASA.[60] Alaska argues this conclusion was erroneous as a matter of law because section 11(b) of the ASA applied to lands "held" for military purposes and the Subject Lands were not "held" for military purposes at statehood.[61] We agree.

Section 11(b) of the ASA, provides:

> Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States . . . for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17 of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are owned by the United States *and held for military, naval, Air Force, or Coast Guard purposes*, including naval petroleum reserve [NPR] numbered 4 . . . .[62]

To be sure, the Ninth Circuit has ruled that section 11(b) of the ASA is a clear intent on the part of the United States to defeat Alaska's title to submerged lands beneath inland navigable waters that were "held" or withdrawn *for military purposes* at statehood.[63] But, the Subject Lands were neither "held" nor withdrawn *for military purposes* at statehood in 1959. Instead, the military purposes of the Subject Lands ended following issuance of Proclamation No. 2974 in 1952, when jurisdiction over the Subject Lands was automatically transferred from the War Department to the Department of the Interior by the express terms contained in PLO 255. Thus, contrary to BLM's belief, section 11(b) of the ASA does not reflect a clear intent on the part of the United States to defeat Alaska's acquisition of title to the Subject Lands.

BLM also argues that there was a clear intent to defeat the State's title because PLO 255 was still in effect at statehood and Pickett Act withdrawals or reservations cannot be "revoked by modification or repealed by implication, but may only be terminated by express revocation."[64] BLM's argument, however, misses the mark. While a Pickett Act withdrawal or reservation may "only be terminated by express revocation," nothing prevents that "express revocation" from being included in the PLO itself.

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[60] Answer at 10-11; *see* Final Report at 5.
[61] SOR at 19-22.
[62] ASA, Pub. L. No. 85-508, § 11(b), 72 Stat. at 347 (emphasis added).
[63] *See Alaska v. United States*, 213 F.3d at 1095; *see id.* (stating that "Alaska does not dispute that the . . . lands were withdrawn for military purposes and that the withdrawal was not revoked until after statehood").
[64] Answer at 11 (citing *Wilbur v. United States*, 46 F.2d 217, 219 (D.C. Cir. 1930) (ruling that Pickett Act withdrawals or reservations "shall remain in force until revoked by the President or by an act of Congress"), *aff'd on other grounds*, 283 U.S. 414 (1931)).

Similarly, nothing prevents the military purpose of lands subject to a Pickett Act withdrawal or reservation to cease automatically pursuant to the express terms of the PLO, such as what occurred with respect to the Subject Lands pursuant to the express terms of PLO 255 upon issuance of Proclamation No. 2974.

BLM further argues that a 1992 M-Opinion issued by the Solicitor, Department of the Interior, which interpreted the effect of PLO 82, supports its conclusion that Alaska did not acquire title to the Subject Lands.[65] While the Solicitor's M-Opinions are binding on this Board,[66] we conclude the 1992 M-Opinion is not dispositive of the issues in this appeal.

PLO 82 withdrew, *inter alia*, the public lands within an area in northern Alaska and reserved the minerals in such lands "for use in prosecution of the war."[67] The area withdrawn included the pre-existing Naval Petroleum Reserve Number 4 (NPR-4) and much of the area later withdrawn for what is now known as the Arctic National Wildlife Refuge (ANWR).[68] After statehood, PLO 2215 expressly revoked PLO 82 with respect to this area; however, NPR-4 and the area that became part of ANWR remained withdrawn.[69]

After the Supreme Court's decision in *Utah Lake*, the Secretary asked the Solicitor to reconsider a 1978 M-Opinion regarding title to submerged lands beneath inland navigable waters within the area in northern Alaska affected by PLO 82.[70] Applying the two-part *Utah Lake* test, the Solicitor agreed with the previous M-Opinion that had determined Alaska did not acquire title to submerged lands beneath inland navigable waters within the area.[71] With respect to part two of the *Utah Lake* test, the Solicitor concluded that section 11(b) of the ASA demonstrated a clear intent on the part of the

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[65] *See id*. at 5-7 (citing Office of the Solicitor, M-Opinion 36911 (Supp. I), Ownership of Submerged Lands in Northern Alaska in light of *Utah Division of State Lands v. United States*, 100 I.D. 103 (1992) (M-Opinion 36911 (Supp. I))).
[66] *Savoy Energy, L.P.*, 178 IBLA 313, 320 n.10 (2010).
[67] PLO 82, 8 Fed. Reg. 1599 (Feb. 4, 1943).
[68] M-Opinion 36911 (Supp. I), 100 I.D. at 107-108 & n.20; *see id*. at 108 (explaining creation of NPR-4); *id*. at 110-11, 135-38 (explaining creation of ANWR); *see also State of Alaska*, 196 IBLA 155, 155 n.2 (2020) (describing how ANWR acquire its current name).
[69] Revoking Public Land Order No. 82 of January 22, 1943 (Northern Alaska), 25 Fed. Reg. 12,599 (Dec. 9, 1960).
[70] M-Opinion 36911 (Supp), 100 I.D. at 103; *see* Office of the Solicitor, M-Opinion 36911, The Effect of Public Land Order 82 on the Ownership of Coastal Submerged Lands in Northern Alaska, 86 I.D. 151 (1978) (M-Opinion 36911).
[71] M-Opinion 36911 (Supp. I), 100 I.D. at 124-60.

United States to defeat the State's acquisition of title to submerged lands beneath inland navigable waters within the area.[72] This conclusion was based upon the fact that the military purpose for the withdrawal never ceased and the lands were used and "held" for military purposes pursuant to PLO 82 at statehood.[73]

In contrast, pursuant to the express terms of PLO 255, the Subject Lands were neither used nor "held" for military purposes at statehood. In fact, any ability to use the "Subject Lands" for military purposes ceased seven years before statehood when jurisdiction over the Subject Lands was automatically transferred to the Department of the Interior. Given this difference between the Subject Lands and those governed by PLO 82, we conclude that the 1992 M-Opinion is not dispositive of the issues in this appeal.[74]

CONCLUSION

While the Subject Lands remained withdrawn at statehood, there is no clear intent on the part of the United States to defeat Alaska's acquisition of title to the Subject Lands, through section 11(b) of the ASA, or otherwise. Thus, Alaska has carried its burden to show BLM erred when it denied Alaska's RDI application as to the Subject Lands. Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[75] BLM's decision is reversed, and this matter is remanded for action consistent with this Order.

STEVEN LECHNER Digitally signed by STEVEN LECHNER Date: 2021.09.01 08:34:40 -04'00'

Steven J. Lechner
Deputy Chief Administrative Judge

I concur: JASON HILL Digitally signed by JASON HILL Date: 2021.09.01 09:00:28 -04'00'

Jason A. Hill
Chief Administrative Judge

[72] *Id.* at 152-60.
[73] *Id*. at 152-54; *see id*. at 153 (explaining that, at statehood, the area was still needed for "military purposes, especially as military activities shifted from the 'hot war' of World War II to the 'cold war' with the Soviet Union" and noting the existing military uses included "long range radio navigation, the use of electronic surveillance, . . . and scientific research necessary for future combat in polar regions").
[74] *See id*. at 106 n.17 (stating that the analysis "in this Opinion is controlling in the disposition of those cases before the Department pertaining to [certain areas] *withdrawn by PLO 82*") (emphasis added).
[75] 43 C.F.R. § 4.1 (2020).