

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

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May 15, 2002

Roger Semler  
Acting Superintendent  
Gates of the Arctic National Park  
201 1<sup>st</sup> Street  
Fairbanks, Alaska 99701

Dear Mr. Semler:

The State of Alaska has reviewed the National Park Service April 2002 Environmental Assessment and Corps of Engineers (COE) permit to remove a retaining wall from the shoreline of Walker Lake within the boundaries of the Gates of the Arctic National Park and Preserve. The retaining wall consists of approximately 75 55-gallon metal drums filled with rock and concrete material. The COE permit also authorizes the disposal of approximately 8.43 cubic yards of rock and concrete material used as fill in the barrels into Walker Lake.

After review of the Environmental Assessment and COE Nationwide Permit the State has identified several issues that must be addressed before work is conducted at the site on Walker Lake. First, the Service should have, and must still apply for a, state permit to alter state land and dispose of waste materials in a state-owned navigable waterway. Second, while we do not necessarily take issue with the conclusion in the ANILCA Section 810 analysis, we find that the analysis lacks documentation. Finally, the State requests the Service to contact DGC or the appropriate state departments to notify them in advance of upcoming projects that may be on state lands and waters or otherwise affect state jurisdictions and authorities.

#### Actions On or Affecting State Land and Water

State land includes land, water, and the bed of navigable lakes and streams. Because this lake is navigable, the State owns the bed of the lake. Title to the beds of all navigable waters passed to the State of Alaska at statehood based on the equal footing doctrine, the 1953 Submerged Land Act, 43 U.S.C. 1301 et seq., and the Alaska Statehood Act. Any activity on State lands not listed as generally allowed requires a Land Use Permit.

Where projects are proposed in areas of mixed federal and state ownership, we request the Service notify the state early in the process. Early notification will result in better identification

of jurisdictions and authorities as well as identify pertinent issues and possible solutions to common problems. While the State Historic Preservation Office was contacted in regards to this proposed project some years ago, DNR, Division of Mining Land and Water, Northern Region Office was not contacted. The Alaska Department of Natural Resources (DNR) was not listed on page 7 of the Environmental Assessment as a permitting agency. Nor was the State notified in advance of the proposed project. As a result, we were not able to contribute to the development of the alternatives or selection of the preferred alternative. The State should have been listed as owner or co-owner of the removal site and owner of the disposal site in the UASCE permit application.

The Alaska Department of Fish and Game (ADF&G) should also have been consulted regarding the disposal sites identified in the alternatives given their jurisdiction over fish and game resources. ADF&G has determined that Walker Lake is not anadromous, so a Title 16 permit is not needed in this instance. In addition to possible permit requirements, ADF&G may offer other recommendations to reduce potential resource damage.

Prior to receiving this Environmental Assessment and COE Permit, DNR was unaware of the proposal to remove the retaining wall and discharge the material into Walker Lake. Review of our records indicates that a permit for this activity has not been issued. Once a permit application has been reviewed, DNR may attach stipulations regarding the removal or disposal of materials. A copy of the State permit application is enclosed for your convenience.

The Alaska Department of Environmental Conservation (DEC) has also identified the following concerns regarding the disposal of concrete into Walker Lake:

1. The removal of the wall should not require a Corps permit, but the disposal of the concrete into the lake will. The EA states that a Corps Nationwide 18 would apply for this project. However, concrete normally does not meet the Corps definition of clean fill. In addition, NW 18 requires a pre-construction notification to and approval by the State resource agencies prior to issuance. The DEC suggests consideration of disposing of the concrete on uplands. The lodge should have had an old landfill, or building/cesspool holes, etc. which could receive the concrete.
2. Photo 1 shows the wall to extend below the lake edge. Enclosing the work area within a silt fence will minimize siltation during wall removal.
3. Minimal vegetation removal will minimize post construction situation. The DEC is not sure about this "return to cobble surface" statement, due to lack of knowledge about why the wall was originally constructed and the cause for the associated erosion. The DEC feels that vegetation may be the best stabilizer with minimal effects on adjacent grounds.
4. The DEC is concerned that disposal of basically waste material in the lake meets the "General Management Plan" for the park.

## Subsistence 810 Analysis

The EA appropriately defers discussion of potential subsistence issues to the ANILCA Section 810 evaluation, although the text states that no impacts to subsistence activities are anticipated. While we have no indication this conclusion is incorrect, the Section 810 evaluation required by ANILCA contains absolutely no information about contemporary subsistence activities in the Walker Lake area. More specifically, nothing is said about subsistence activities that have occurred or might occur during the period proposed for concrete removal. The boilerplate language presented in the "Affected Environment" and "Subsistence Uses and Needs Evaluation" sections of the 810 evaluation is fine but must be expanded to describe any subsistence activities in the project area. A few sentences should be sufficient to provide this essential information. Without it, the 810 evaluation is inadequate and incomplete.

To assist with meeting the requirements of Section 810, we note that Walker Lake is within the area traditionally used by residents of the upper Kobuk; however knowledgeable ADF&G staff understand it is infrequently used by upper Kobuk residents today. Canyons on the upper Kobuk prevent boat travel from the villages to Walker Lake. When trapping was more lucrative, Kobuk and Shungnak residents would set up camps on the upper Kobuk and run trap lines in that area e.g. at nearby Narvak Lake and several other a few miles South of Walker Lake. We are unaware of such camps on Walker Lake itself. The villages of Anaktuvuk Pass, Alatna and Allakaket may also have a tradition of use.

Thank you for the opportunity to provide these comments and pertinent permit application materials. If you have any questions, please feel free to call me at 907-269-7477.

Sincerely,

/ss/

Sally Gibert  
State CSU Coordinator

## Attachments

cc: Joan Darnell, NPS Support Office  
Pat Galvin, DGC  
Frank Rue, ADF&G  
Pat Pourchot, DNR  
Michele Brown, DEC  
Debby Sedwick, DCED