United States Department of the Interior

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

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AA-85087 (1864)
(932)

SEP 3 2004

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DECISION

State of Alaska	:	AA-85087
Department of Natural Resources	:	Recordable Disclaimer of Interest
Division of Mining, Land and Water	:	Application -
Attn: Dick Mylius, Acting Director	:	
550 West Seventh Avenue, Suite 1070	:	Klutina River and Klutina Lake
Anchorage, Alaska 99501-3579	:	

ADMINISTRATIVE WAIVER GRANTED
APPLICATION APPROVED

On July 18, 2003, the State of Alaska filed an application for a recordable disclaimer of interest (AA-85087), under the provisions of Sec. 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 Part 1864, for certain lands underlying Klutina River and Klutina Lake. 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.

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 the Alaska Statehood Act, July 7, 1958, 72 Stat. 339, 343, as amended, made the Submerged Lands Act applicable to Alaska.

Section 315(a) of FLPMA, authorizes the Secretary of the Interior to issue a document of disclaimer of interest(s) 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 the submerged lands encompassed by the ordinary high water line of Klutina Lake and all submerged lands of the upper and lower Klutina River between the ordinary high water lines of the left and right banks and all interconnecting sloughs from its confluence of the upper Klutina River with Stephens Creek downstream to Klutina Lake, and the bed of lower Klutina River from its outlet at Klutina Lake to its confluence with the Copper River.

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 July 18, 2003, 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 bodies is not needed to adjudicate the State of Alaska application, and the waiver is hereby granted, provided the term "interconnected sloughs" is not contained in the legal description of the recordable disclaimer of interest.

Notice of the State's application, including the grounds for supporting it, was published in the Federal Register on September 15, 2003. On Wednesday, June 30, 2004, the BLM sent a copy of the draft navigability report for the Klutina River system to the State of Alaska and Ahtna, Inc., inviting their review and comments and offering them an opportunity to provide additional information. The report was also posted on the BLM-Alaska website. Interested parties were afforded an additional 30-day comment period, ending August 6, 2004.

During this time, the BLM received one comment, dated December 15, 2003, which addressed the processing of the State's application; no factual evidence to support or contradict a finding of navigability was provided.

In support of its application, the State submitted four BLM memoranda dated November 5, 1979, August 15, 1980, January 19, 1983, and May 17, 1993, all containing statements to the effect that lower Klutina River, upper Klutina River, and Klutina Lake are navigable. The BLM issued these memoranda in support of land conveyances to Native corporations (Kluti-Kaah Corporation and Ahtna, Inc.) under the Alaska Native Claims Settlement Act and to the State of Alaska under the Alaska Statehood Act. [1]

The BLM also prepared a comprehensive review of the lands applied for and on September 1, 2004, issued a final navigability report which discussed the land status, previous conveyance actions by the BLM, and the physical character and historical uses of Klutina River and Klutina Lake for travel, trade, and commerce. [2] The report also considered all available historical records, including official BLM case files, federal records, newspapers, published documents, oral interviews, and photographs. After reviewing the State's application, land status, the historic record pertaining to the Klutina River system, and legal guidance on title navigability, the BLM concluded that the upper and lower Klutina Rivers from its mouth at the Copper River

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[1] The surface and subsurface were either interim conveyed or patented to Kluti-Kaah Corporation, a village corporation, and Ahtna, Inc, respectively. The village corporation has subsequently merged into Ahtna, Inc., the regional corporation.

[2] The State's application, supporting evidence, and the BLM navigability report can be found on BLM-Alaska's website.

concluded that the upper and lower Klutina Rivers from its mouth at the Copper River to its confluence of Stephens Creek, including Klutina Lake, was navigable at the time of statehood.

In assessing the navigability of inland water bodies, the BLM relies upon federal administrative and case law and the advice of the Interior Department's Solicitor's Office. The classic definition of navigable waters is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). Pertinent DOI Office of the Solicitor's opinions include Associate Solicitor Hugh Garner's memo of March 16, 1976 ("Title to submerged lands for purposes of administering ANCSA) and Regional Solicitor John Allen's memo of February 25, 1980 ("Kandik, Nation Decision on Navigability"). The agency is also guided by the Submerged Lands Act of 1953 and the Alaska Submerged Lands Act of 1988.

The Submerged Lands Act of 1988 (P.L. 100-395) provides that the "execution of an interim conveyance or patent, as appropriate, by the Bureau of Land Management which conveys an area of land selected by a Native or Native Corporation which includes, surrounds, or abuts a lake, river, or stream, or any portion thereof, shall be the final agency action with respect to a decision of the Secretary of the Interior that such lake, river, or stream, is or is not navigable, unless such a decision was validly appealed to an agency or board of the Department of the Interior on or before December 2, 1980."[3]

APPLICATION APPROVED

The United States affirms it has no interest in the lands described below because all of the federal interests passed to the State of Alaska at the time of statehood. Approving the State's application for a recordable disclaimer of interest will remove a cloud on the title by providing certainty about the ownership of submerged lands underlying the lower Klutina River, Klutina Lake, and the upper Klutina River. Without this certainty, ownership between the two sovereigns, the State of Alaska and the United States, is unclear. This lack of clarity of sovereign ownership greatly complicates the application of natural resources, hunting, fishing, and other laws to the submerged lands involved. Resolving clouds on title between the State of Alaska and the United States is thus of even greater importance than resolving title between a private party and the United States.

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 with 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:

1. The lands underlying the lower Klutina River, between the lines of ordinary high water marks on its banks, from its confluence with the Copper River in T. 2 N., R. 1 E., Copper River Meridian (C.R.M.) upstream approximately twenty-five river miles to Klutina Lake in T. 1 S., R. 3 W., C.R.M.

[3] The Submerged Lands Act of 1988 (P.L. 100-395) Section 101, amending the Alaska National Interest Lands Conservation Act (P.L. 96-487) Section 901 (c)(1).

2. The lands underlying Klutina Lake, approximately 14,080 acres, between the lines of ordinary high water marks on its banks, located in Tps. 1 – 3 S., R. 4 W., and T. 1 S., R. 3 W., C.R.M.

3. The lands underlying upper Klutina River, between the lines of ordinary high water marks on its banks, from Klutina Lake in T. 3 S., R. 4 W., C.R.M., upstream approximately ten river miles to the mouth of Stephens Creek, located in T. 4 S., R. 4 W., C.R.M.

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 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.

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/ Henri R. Bisson

Henri R. Bisson
State Director

Enclosure
Form 1842-1

cc: (w/enclosure)

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The Wilderness Society
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Sierra Club
Attn: Jack Hession, Alaska Representative
201 Barrow Street # 101
Anchorage, Alaska 99501

Special Assistant to the Secretary for Alaska

FM, Glennallen Field Office (050)

Regional Solicitor