



# United States Department of the Interior



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In Reply Refer To:  
AA-94269  
1864 (LLAK9420)

DEC 12 2018

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## DECISION

State of Alaska	:	AA-94269
Department of Natural Resources	:	Recordable Disclaimer of Interest
Division of Mining, Land & Water	:	Application
Public Access Assertion & Defense Unit	:	
550 West Seventh Avenue, Suite 1420	:	Egegik River, Becharof Lake,
Anchorage, Alaska 99501-3579	:	and Ruth Lake and Outlet

### ADMINISTRATIVE WAIVER GRANTED APPLICATION APPROVED

On Sept. 1, 2016, the State of Alaska (State) filed a draft application with the Bureau of Land Management (BLM) for a recordable disclaimer of interest (RDI) under the provisions of Section 315 of the Federal Land Policy and Management Act of Oct. 21, 1976 (FLPMA), 43 U.S.C. §1745, and the regulations contained in 43 CFR Subpart 1864, for certain lands underlying the Becharof Lake and the Egegik River located in southwest Alaska. On Dec. 28, 2017, the State filed its final application and added Ruth Lake and its unnamed outlet to their application. The State's final application included the following lands: "1) Becharof Lake: All submerged lands between the ordinary high water lines of Becharof Lake upstream from its outlet within Sec. 08, T. 25 S., R. 46 W., S.M., Alaska. 2) Egegik River: All submerged lands between the ordinary high water lines of the left and right banks of the Egegik River beginning at the outlet of Becharof Lake downstream to the limit of tidal influence. 3) Unnamed outlet Ruth Lake: All submerged lands between the ordinary high water lines of Unnamed outlet of Ruth Lake upstream from its outlet at Becharof Lake within Sec. 05, T. 30 S., R. 42 W., S.M., Alaska, upstream to Ruth Lake. 4) Ruth Lake: All submerged lands between the ordinary high water lines of Ruth Lake upstream from its outlet within Sec. 09, T. 30 S., R. 42 W., S.M., Alaska."

The State contends the above-described water bodies were navigable at the time of statehood and therefore, title to these submerged lands vested in the State upon the date of statehood of Alaska, Jan. 3, 1959. The State based its application for the RDI on the grounds that title passed by operation of law from the United States to the State on the date of statehood pursuant to the

Equal Footing Doctrine, the Submerged Lands Act of May 22, 1953, the Alaska Statehood Act of 1959, the Alaska Right of Way Act of 1898, and other title navigability law.

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 of July 7, 1958, 72 Stat. 339, made the Submerged Lands Act of 1953, 67 Stat. 29, applicable to Alaska.<sup>1</sup>

Section 315(a) of FLPMA, 43 U.S.C. § 1745(a), 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 on the title of such lands and to determine whether a record interest of the United States in lands has terminated by operation of law or is otherwise invalid. This authority has been delegated to the BLM State Director.<sup>2</sup>

## BACKGROUND

In support of its application, the State submitted the following documents: a navigability finding prepared by the BLM on Jan. 24, 1984, and a letter addressed to Mr. William J. Wilson, Arctic Environmental Information and Data Center from Sherman Berg, COAR, dated Oct. 26, 1978, containing information about the U.S. Army Corps. Of Engineers' (COE) activities in the area. Attached to the application was a copy of the publication: "United States Coast Pilot," dated Nov. 10, 2012, containing navigation information for water bodies in coastal Alaska including the Egegik River and Lake Becharof.<sup>3</sup> Also attached was a map based on the Alaska Mapped WMS<sup>4</sup> Feed with water body data extracted from the U.S. Geological Survey (USGS) National Hydrography Dataset – 2016, and a legal description with a list of townships and sections affected by the water bodies therein.

Notice of the State's application was published in the *Federal Register* on Aug. 20, 2018.<sup>5</sup> The BLM prepared a draft report, "Summary Report on Federal Interest in Lands underlying the Egegik River, Becharof Lake, and Ruth Lake and Outlet in Alaska." The report detailed supporting evidence, riparian land status, physical character, and historical uses. Public notice of the State's application, including the availability of the draft navigability summary report, was published in the *Anchorage Daily News* on Sept. 5, 9, and 12, 2018, and the *Bristol Bay Times* on Sept. 6, 13, and 20, 2018. Information about this application, including the draft summary report, was also posted on the BLM-Alaska website.<sup>6</sup>

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<sup>1</sup>72 Stat. 339, 343.S.

<sup>2</sup> 209 DM 7; 235 DM 1; BLM Manual MS-1203, App. 1, p.52.

<sup>3</sup>NOAA, United States Dept. of Commerce, United States Coast Pilot, *Pacific and Arctic Coasts Alaska: Cape Spencer to Beaufort Sea*, 2012 (30<sup>th</sup>) Edition.

<sup>4</sup> Web Mapping Service.

<sup>5</sup> Volume, 83, No. 152, FR 38724-38725.

<sup>6</sup>[https://www.blm.gov/sites/blm.gov/files/uploads/LandsRealty\\_Alaska\\_RDI\\_Egegik\\_Becharof\\_DraftSummaryReport\\_08-06-18.pdf](https://www.blm.gov/sites/blm.gov/files/uploads/LandsRealty_Alaska_RDI_Egegik_Becharof_DraftSummaryReport_08-06-18.pdf).

The BLM sent copies of its draft report to the Bristol Bay Native Corporation, Becharof Corporation and Egegik Village Council on Aug. 7, 2018, and the State of Alaska (Departments of Natural Resources and Fish and Game) and the U.S. Fish and Wildlife Service on Aug. 13, 2018. The notices invited review and comments, and offered the opportunity to present additional information. The comment period ended on Nov. 7, 2018. The BLM did not receive any comments during the published notice period, so the report was finalized on Nov. 8, 2018.

#### ADMINISTRATIVE WAIVER GRANTED

Pursuant to 43 CFR 1864.1-2 (c) (1) and (d), a legal description of the lands for which a waiver 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, unless a waiver is granted. In the State's application dated Mar. 14, 2017, the State requested a waiver of this requirement under 43 CFR 1864.1-2(d). The location of the Egegik River, Becharof Lake, and Ruth Lake and Outlet are clearly depicted on the USGS quadrangle maps and is not in dispute.<sup>7</sup> The ordinary high water mark of these water bodies is the legal boundary of the submerged lands. Since the boundaries of these water bodies are ambulatory, the location may change over time. The BLM therefore determines that a survey description of the subject water body is not needed to adjudicate the State's application.<sup>8</sup> The waiver is hereby granted.

#### APPLICATION APPROVED

The Federal test of navigability is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). There, the U.S. Supreme Court stated: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

In assessing the navigability of inland water bodies, the BLM relies upon this test as well as Federal statutes, Federal case law, and the advice of the Department of the Interior's Office of the Solicitor. Relevant Federal statutes include the Submerged Lands Act of 1953 and the Submerged Lands Act of 1988. The Supreme Court's most recent decision on title navigability, *PPL Montana, LLC v. Montana*, 132 S. Ct. 1215 (2012), summarizes and explains the proper interpretation of *The Daniel Ball* criteria. Additional guidance is provided in *Alaska v. Ahtna, Inc.*, 891 F.2d 1401 (9<sup>th</sup> Cir. 1989), *cert. denied*, 495 U.S. 919 (1990) [Gulkana River]; *Alaska v. United States*, 754 F.2d 851 (9<sup>th</sup> Cir. 1983), *cert. denied*, 474 U.S. 968 (1985) [Slopbucket Lake]; and *Appeal of Doyon, Ltd.*, Alaska Native Claims Appeal Board RLS 76-2, 86 I.D. 692 (1979) [Kandik and Nation Rivers].

In cases concerning pre-statehood reservations, the BLM uses the established criteria set out and applied in Alaska cases including *Alaska v. United States*, 545 U.S. 75 (2005) ("*Glacier Bay*");

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<sup>7</sup> USGS 1:63, 360 Topographic Maps: Naknek A-1 through A-3 (minor revisions 1970, 1982), Karluk C-6 and D-6, 1951 (minor revisions 1975, 1988) and Ugashik C-1 and D-1 (minor revision 1975), D-2, D-3 (minor revision 1973).

<sup>8</sup> "Manual of Survey Instructions 2009," U.S. Department of the Interior, Bureau of Land Management, Sections 3-158, 3-160, page 81.

*United States v. Alaska*, 521 U.S. 1 (1997) (“Arctic Coast/Dinkum Sands”); *Utah Division of Lands v. United States*, 482 U.S. 193 (1987) (Utah Lake); *Alaska v. United States*, No. 98-35310 (9<sup>th</sup> Cir. 2000) [Kukpowruk River]; *Alaska v. United States*, 102 IBLA 357 (1988) (Katalla River); and *United States v. Alaska*, 423 F.2d 764, 1 ERC 1195, (9<sup>th</sup> Cir. Dec. 21, 1970) (Tustumena Lake).

As set forth in the final navigability report, “Summary Report on the Federal Interest in Lands underlying the Egegik River, Becharof Lake, and Ruth Lake and Outlet in Alaska,” there is substantial evidence of the pre-statehood historical use of these inter-connected water bodies as avenues of transportation and for subsistence purposes. In addition, evidence of post-statehood use of the river for various activities using a wide variety of watercraft, including large boats with drafts of up to three feet, provides evidence that these water bodies were susceptible to use as avenues of commerce at the time of statehood.

Accordingly, I have determined that the State’s application for a recordable disclaimer of interest is both legally sufficient to demonstrate the navigability of these water bodies at the time of statehood and in compliance with the applicable provisions and requirements of Section 315 of FLPMA and the regulations contained in 43 CFR Subpart 1864. For that reason, the United States affirms it has no interest in the lands described below because 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 provide certainty about ownership of the submerged lands underlying the Egegik River, Becharof Lake, and Ruth Lake and Outlet and remove a cloud on the title.

The State’s application for a recordable disclaimer of interest is hereby approved as follows:

- 1) Becharof Lake: All submerged lands between the ordinary high water lines of Becharof Lake upstream from its outlet within section 8, township 25 south, range 46 west, Seward Meridian, Alaska;
- 2) Egegik River: All submerged lands between the ordinary high water lines of the left and right banks of the Egegik River beginning at the outlet of Becharof Lake downstream to the limit of tidal influence;
- 3) Unnamed outlet Ruth Lake: All submerged lands between the ordinary high water lines of Unnamed outlet of Ruth Lake upstream from its outlet at Becharof Lake within section 5, township 30 south, range 42 west, Seward Meridian, Alaska, upstream to Ruth Lake; and
- 4) Ruth Lake: All submerged lands between the ordinary high water lines of Ruth Lake upstream from its outlet within section 9, township 30 south, range 42 west, Seward Meridian, Alaska.

## HOW TO APPEAL THIS DECISION

A Federal agency, the State of Alaska, or any party claiming an interest in 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 4.400 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (either at the above address or the e-mail address set forth on Form 1842-1) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

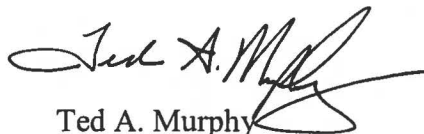
If you wish to file a petition pursuant to regulations contained in 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below.

Copies of the notice of appeal and petition for a stay, if any, must be submitted to each party named in this decision, the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (see 43 CFR 4.413 and Form 1842-1) at the same time the original documents are filed with this office.

### 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.

  
Ted A. Murphy  
Acting State Director

Enclosures

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