



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office

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Anchorage, Alaska 99513-7599

<http://www.ak.blm.gov>



JUN 28 2005

AA-85086 (1864)
(932)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

State of Alaska	:	AA-85086
Department of Natural Resources	:	Recordable Disclaimer of Interest
Attn: Tom Irwin, Commissioner	:	Application
550 West Seventh Avenue, Suite 1400	:	
Anchorage, Alaska 99501-3579	:	Tazlina River and Tazlina Lake

ADMINISTRATIVE WAIVER GRANTED APPLICATION APPROVED, IN PART

On July 18, 2003, the State of Alaska (State) filed an application for a recordable disclaimer of interest (AA-85086), 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 Subpart 1864, for certain lands underlying Tazlina River and Tazlina Lake. The State 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. On June 8, 2005, the State amended its application to include entitlement under the Submerged Lands Act of 1988 (P.L. 100-395) or any other legally cognizable reason.

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, made the Submerged Lands Act applicable to Alaska.¹

¹ 72 Stat. 339, 343

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 on the title of such lands and where she 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 below the ordinary high water line of Tazlina Lake and all submerged lands within the bed of Tazlina River, including all named and unnamed interconnecting sloughs, between the lines of ordinary high water from Tazlina 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.

In support of its application, the State submitted five Bureau of Land Management (BLM) memoranda all containing statements to the effect that Tazlina River or Tazlina Lake is navigable: March 13, 1980 (T. 2 N., R. 7 W., Copper River Meridian [CRM]); August 19, 1980 (Supplemental Memorandum to the March 13, 1980 Report); January 19, 1983 (T. 3 N., R. 2 W., CRM); November 15, 1991 (Tps. 4 N., Rs. 4 and 5 W., Tps. 3 N., Rs. 4, 5, and 6 W., CRM); and May 17, 1993 (Tps. 3 N., Rs. 1, 2, and 3 W., Tps. 4 N., Rs. 2 and 3 W., CRM).³ The BLM issued these memoranda in support of land conveyances to Village (Tazlina, Inc.) and Regional (Ahtna, Inc.) Native corporations under the Alaska Native Claims Settlement Act (ANCSA) and to the State of Alaska under the Alaska Statehood Act.⁴ The recommendations from the January 19, 1983, and the May 17, 1993, memorandum, were not directly incorporated into decisions to convey lands.

In the following decisions granting tentative approval to the State of Alaska, portions of the Tazlina River and Tazlina Lake were determined to be navigable: September 29, 1980 (T. 2 N., R. 7 W., CRM); February 18, 1982 (T. 2 N., Rs. 5 and 6 W., CRM); May 14, 1982 (T. 3 N., Rs. 4 and 5 W., CRM); June 29, 1982 (T. 4 N., R. 4 W., CRM); August 30, 1982 (T. 2 N., R. 7 W., CRM); and October 10, 1982 (T. 3 N., R. 6 W., CRM).

On June 21, 1979, the State Director issued a BLM memorandum describing Final Easements for the Village of Tazlina. In this memorandum, the navigability of Tazlina River was considered,

³ BLM records – State Selection files, AA-21200, AA-4801, AA-4810, AA-4811, and AA-4812. The State did not submit copies of the 1979 BLM findings that the lower portion of the Tazlina River was non-navigable.

⁴ The surface and subsurface were either interim conveyed or patented to Tazlina, Inc., a village corporation, and Ahtna, Inc., a regional corporation, respectively. The village corporation has subsequently merged into Ahtna, Inc.

and determined to be non-navigable. On August 16, 1979, this determination was incorporated into a decision to convey lands under ANCSA in the following townships: Tps 3 and 4 N., Rs. 1, 2, and 3 W., CRM, Alaska.⁵

On August 21, 1991, Ahtna, Inc. requested the BLM to modify previous navigability determinations. On May 17, 1993, the BLM responded to the request of Ahtna, Inc., and with the concurrence of the State of Alaska, re-determined the navigability of waters within the areas that had been previously conveyed to Ahtna, Inc. This included the area within Interim Conveyance (IC) 245, which included portions of the Tazlina River. It was determined that the Tazlina River was navigable to its confluence with the Copper River, *i.e.* as it flows through Tps. 3 N., Rs. 1, 2, and 3 W., and Tps. 4 N., Rs. 2 and 3 W. Although not specifically mentioned, the portion of the northern part of the channel as it flows through Section 31, T. 4 N., R. 1 W., is navigable since the BLM found that the southern portion of the channel as it flows through Section 6, T. 3 N., R. 1 W. is navigable. This re-determination has been relied upon by these parties since that time.

BLM has not incorporated a navigability determination for the portion of Tazlina Lake in T. 1 N., R. 7 W. and T. 1 S., R. 7 W., CRM, into decisions to convey lands, except for those lands described above.

Notice of the State's application, including the grounds for supporting it, was published in the *Federal Register* on September 15, 2003. On July 9, 2004, BLM sent a copy of its draft navigability report for the Tazlina 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 13, 2004.

During this time, BLM received two comments. One comment, dated December 15, 2003, addressed the processing of the State's application; no factual evidence to support or contradict a finding of navigability was provided. The other comment, dated August 13, 2004, provided by Ahtna, Inc., asserted its historical use of the Tazlina River and Tazlina Lake for subsistence and travel. Ahtna, Inc. also requested any change of land ownership be credited and substituted for lands of its choosing.⁷

BLM also prepared a comprehensive review of the lands applied for and on June 17, 2005, issued a final navigability report which discussed the land status, previous conveyance actions by the BLM, and the physical character and historical uses of the Tazlina River and Tazlina Lake. 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 Tazlina River system, and legal guidance on title navigability, the BLM concluded that the prior determinations

⁵ BLM Records – ANCSA Easement File, AA-6704-EE.

⁷ The Tazlina River, in its entirety, has been meandered and segregated from conveyance documents. There is no entitlement charge for those lands underlying the Tazlina River.

of navigability would be followed due to lack of evidence that would require a change to the prior determination.

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 Submerged Lands Act of 1988 (P.L. 100-395).

The Submerged Lands Act of 1988, section 101 amending the Alaska National Interest Lands Conservation Act (ANILCA) Section 901(c)(1), 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.

The Act specifically addressed the issue of upland ownership, in section 101 amending ANILCA section 901(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.

APPLICATION APPROVED, IN PART

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, or upon conveyance of the uplands pursuant to the Submerged Lands Act of 1988, or for any other cognizable reason. The State's application for the lands described in this section is hereby approved for reasons listed below.

The United States affirms its prior appealable determinations of navigability for Tazlina Lake. These determinations were incorporated into decisions dated September 29, 1980, February 18, 1982, August 30, 1982, and October 10, 1986 and incorporated into conveyance documents. A portion of Tazlina River was also determined to be navigable for purposes of conveyance under the Alaska Statehood Act. These determinations were incorporated into decisions dated May 14, 1982 (T. 3 N., Rs. 4 and 5 W., CRM), and June 29, 1982 (T. 4 N., R. 4 W., CRM), and October 10, 1986 (T. 3 N., R. 6 W., CRM). The lower portion of the Tazlina River was determined navigable. All of these determinations were final for the Department of the Interior pursuant to ANILCA, as amended by the Submerged Lands Act of 1988. The State is the upland owners of certain lands in T. 3 N., R. 1 W., CRM. The 1993 re-determination found the Tazlina River through Tps. 3 and 4 N., Rs. 1, 2, and 3 W., CRM., to be navigable.

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 Subpart 1864 and hereby approved for the following lands:

1. The lands underlying Tazlina Lake, approximately 36,480 acres, between the lines of ordinary high water marks on its banks, located in the following townships: T. 1 S., R. 7 W., T. 1 N., R. 7 W., Tps. 2 N., Rs. 6 and 7 W., and T. 3 N., R. 6 W., CRM, Alaska.
2. The lands underlying the Tazlina River, between the lines of ordinary high water marks on its banks, from the outlet of Tazlina Lake downstream approximately forty (40) river miles to its confluence with the Copper River. The Tazlina River is presently located in the following townships: Tps. 3 N., Rs. 1 to 6 W., and Tps. 4 N., Rs. 1 to 4 W, CRM, Alaska.
 - Excepting therefrom any submerged lands underlying the Tazlina River held by the owners of Native Allotments (patent nos.: 50-69-0003, 50-74-0154, 50-66-0514, 50-69-0004 and 50-77-0139);
 - Reserving to the United States that oil and gas interest, if any, held in conjunction with those Native Allotments listed above; and
 - Further reserving to the United States that mineral interest, if any, in the submerged lands underlying the Tazlina River attendant on patent no. 1158433.

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.

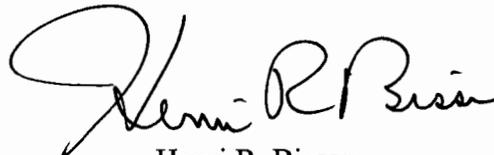
If you wish to file a petition pursuant to regulations contained in 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board,

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.



Henri R. Bisson
State Director

2 Enclosures

- 1 - Form 1842-1 (1 p)
- 2 - Memo "Navigability of Tazlina River and Tazlina Lake in the Copper River Region"
(37 pp)

Copy furnished (w/enclosures):

Alaska Department of Natural Resources
Division of Mining, Land and Water
Attn: Dick Mylius
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Alaska Department of Fish & Game
Attn: Tina Cunning
333 Raspberry Road
Anchorage, Alaska 99518

Ahtna, Inc.
P.O. Box 649
Glennallen, Alaska 99588-0649

National Parks Conservation Association
Attn: Jim Stratton, Alaska Regional Director
750 West 2nd Avenue, Suite 205
Anchorage, Alaska 99501

The Wilderness Society
Attn: Eleanor Huffines, Alaska Regional Director
430 West 7th Avenue, Suite 210
Anchorage, Alaska 99501

Sierra Club
Attn: Jack Hession, Alaska Representative
201 Barrow Street # 101
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Earthjustice
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Juneau, AK 99801-1145

Copy furnished (w/o enclosures):

Special Assistant to the Secretary for Alaska

FM, Glennallen Field Office (050)

DSD, Resources (930)

Branch Chief, Lands (932)

Regional Solicitor, Alaska