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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SEP 17 2004

AA-85088 (1864)
(932)

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DECISION

State of Alaska	: AA-85088
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	: Kvichak River and Iliamna Lake
Anchorage, Alaska 99501-3579	:

ADMINISTRATIVE WAIVER GRANTED
APPLICATION APPROVED

On July 18, 2003, the State of Alaska (State) filed an application for a recordable disclaimer of interest (AA-85088) 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 Kvichak River and Iliamna Lake. The State of Alaska has made this application on the grounds that title 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 Iliamna Lake and all submerged lands lying within the bed of the Kvichak River between the

ordinary high water lines of the left and right banks and all interconnecting sloughs of the Kvichak River, beginning at Iliamna Lake downstream to Kvichak Bay.

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 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's 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 August 5, 2004, the Bureau of Land Management (BLM) sent a copy of the draft navigability report for the Kvichak River and Iliamna Lake to the State of Alaska, Bristol Bay Native Corporation, Alaska Peninsula Corporation,[1] Pedro Bay Native Corporation, Levelock Natives Limited, Igiugig Native Corporation, Iliamna Natives Limited, Levelock Village Council, Village of Iliamna, Igiugig Village Council and Pedro Bay Village Council 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 September 10, 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 the following BLM documents: two memoranda dated December 5, 1979, and September 4, 1984, three navigability recommendations dated October 19, 1982, February 22, 1985 and June 2, 1986, and a letter from the Alaska State Director dated May 13, 1974, all containing statements to the effect that Kvichak River and Iliamna Lake are navigable. The BLM issued these memoranda in support of land conveyances to Village (Levelock Natives Limited, Igiugig Native Corporation, and Pedro Bay Native Corporation) and Regional (Bristol Bay Native Corporation) Native corporations under the Alaska Native Claims Settlement Act and to the State of Alaska under the Alaska Statehood Act.[2]

BLM also prepared a comprehensive review of the lands applied for and issued a final navigability report on September 14, 2004, which discussed the land status, previous conveyance actions by the BLM, and the physical character and historical uses of Kvichak River and Iliamna Lake for travel, trade, and commerce.[3] On the basis of this review and legal guidance on title

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[1] Alaska Peninsula Corporation is Successor in Interest to Kokhonak Native Corporation.

[2] The surface and subsurface were either interim conveyed or patented to the village and regional corporations respectively.

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

navigability, we conclude that the Kvichak River and Iliamna Lake were navigable at the time of statehood. BLM's past navigability determinations for these two waterways are affirmed.

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 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. [4]"

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 application for a recordable disclaimer of interest will remove a cloud on the title by providing certainty about the ownership of submerged lands underlying Kvichak River and Iliamna Lake. 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 Subpart 1864. The State's application for a recordable disclaimer of interest is hereby approved as follows:

1. The lands underlying the Kvichak River, between the lines of ordinary high water marks on its banks, beginning at Kvichak Bay, in T. 14 S., Rs. 46 and 47 W., Seward Meridian (SM), Alaska, upstream approximately fifty (50) river miles to Lake Iliamna, in T. 10 S., R. 39 W., SM.

[4] 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 Iliamna Lake, approximately 713,600 acres (1,115 sq. miles), between the lines of ordinary high water marks on its banks, located in the following townships: T. 4 S., R. 27 W., Tps. 4 – 6 S., Rs. 28 – 30 W., Tps. 5 – 9 S., Rs. 31 – 33 W., Tps. 6 – 9 S., Rs. 34 – 36 W., Tps. 6 – 10 S., Rs. 37 and 38 W., Tps. 7 – 10 S., R. 39 W., SM, Alaska.

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

Enclosure
Form 1842-1 (1 pp)

cc (w/enclosure):

Bristol Bay Native Corporation
800 Cordova Street, Suite 200
Anchorage, Alaska 99501-6299

Village of Iliamna
P.O. Box 286
Iliamna, Alaska 99606

Alaska Peninsula Corporation
Successor in Interest to Kokhonak Native Corporation
Successor in Interest to Newhalen Native Corporation
800 Cordova Street, #103
Anchorage, Alaska 99501-3717

Igiugig Native Corporation
P.O. Box 4009
Igiugig, Alaska 99613-4009

Levelock Natives Limited
P.O. Box 109
Levelock, Alaska 99625

Pedro Bay Native Corporation
P.O. Box 47015
Pedro Bay, Alaska 99647

Pedro Bay Village Council
P.O. Box 47020
Pedro Bay, Alaska 99647

Iliamna Natives Limited
P.O. Box 245
Iliamna, Alaska 99606-0245

Igiugig Village Council
P.O. Box 4008
Igiugig, Alaska 99613

Levelock Village Council
P.O. Box 70
Levelock, Alaska 99625

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
Anchorage, Alaska 99501

Special Assistant to the Secretary for Alaska

FM, Anchorage Field Office (040)

Regional Solicitor, Alaska