

Fact Sheet

Recordable Disclaimers of Interest: State Owned Navigable Waters



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Frequently Asked Questions:

What is a Recordable Disclaimer of Interest?

A Recordable Disclaimer of Interest is a legal document through which the United States disavows ownership of specified land. The State of Alaska is asking the Bureau of Land Management to disclaim ownership of the beds of some navigable waters that the state acquired at statehood.

Is the federal government conveying federal lands through these disclaimers?

No. If a waterbody meets the federal legal requirements for navigability for title purposes, the state already owns the underlying lands. The state acquired title to the submerged lands at statehood, so when the federal government issues a recordable disclaimer of interest, it is simply acknowledging that it does not own the identified land.

Why is the state asking for disclaimers on navigable waters?

A Recordable Disclaimer of Interest for submerged lands will lift the cloud on the state's title. The state's title to submerged lands is somewhat clouded because it took ownership without any written documentation. Alaska owns the lands underlying navigable waters not because the United States conveyed them, but rather by virtue of the equal footing doctrine. Under the equal footing doctrine, new states are admitted to the Union with all of the powers of sovereignty and jurisdiction that pertained to the original states, and ownership of lands underlying navigable waters is an essential attribute of state sovereignty. When Alaska became a state, title to lands underlying navigable waters within its boundaries passed to it automatically, as a matter of constitutional grace. But whether a waterway meets the technical criteria for navigability is not always clear. While ideally the state would like to verify ownership of all lands underlying waterways in Alaska, recordable disclaimers of interest provide finality for at least

those waterways that the state and the United States agree are clearly navigable.

Under what authority does the Federal Government issue these disclaimers?

The disclaimers are issued by the federal government's primary land manager, the Bureau of Land Management (BLM). The federal law authorizing these disclaimers is section 315 of Federal Land Policy and Management Act, 43 U.S.C. 1745. BLM regulations spell out the requirements and procedures for filing and approving the disclaimers, in 43 C.F.R. 1864. In early 2003, BLM revised the regulations to allow states to apply for disclaimers for submerged lands.

What is required for the state to apply for a Recordable Disclaimer?

The federal regulations specify the filing requirements. The state must submit an application letter to the State Director of the BLM, along with a filing fee. The application must include a legal description of the lands, the reasons the applicant believes the federal government does not own the specified land, documents or title evidence to support the application, and names and addresses of any others who may claim title to the lands. BLM's State Director can waive requirements if necessary.

How does BLM Process an Application?

When BLM receives an application, it will take the following actions:

- BLM will review the application to ensure that it meets all filing requirements. Pre-application meetings may be held to ensure that the applications are complete before filing.
- BLM must publish a notice in the Federal Register at least 90 days before it issues a disclaimer, and also must publish a notice in

local newspapers. The purpose of the notice is to allow adjacent property owners an opportunity to assert a competing claim or to provide evidence of federal ownership.

- BLM must also offer an opportunity to review and comment on the application to adjacent federal landowners such as the National Park Service, the U.S. Fish and Wildlife Service, the Department of Defense, or the U.S. Forest Service.

For which rivers will the state file applications?

The state's initial filings are for rivers that BLM has previously determined to be navigable for title purposes.

The state filed its first application in February 2003 for the Black River, a tributary of the Porcupine River in Northeast Alaska. The state will file five additional applications in July 2003. These five include:

- * The Porcupine River in Northeast Alaska;
- * The Klutina River and Lake, in the Copper River Basin;
- * The Tazlina River and the Tazlina Lake, in the Copper River Basin;
- * The Kvichak River and Lake Iliamna; and
- * The Wood River and lake system, within Wood Tikchik State Park.

Within the next several months, the state intends to file applications for additional rivers that BLM has already found to be navigable. Not all navigable waters in Alaska are as well documented as these, of course. For waterways that require more research, the state and federal agencies will establish a process to gather information about the waterways from the public and other sources.

Various interest groups have claimed that the state plans to file applications for 20,000 rivers and a million lakes. Is this true?

While neither the state nor the federal government knows how many waterbodies in Alaska are navigable, hundreds of waterways certainly qualify, based on the legal standard for navigability. The state has no intention of filing applications for 20,000 rivers and a million lakes.

Why did the state file on the Black River first?

The state selected part of the Black River for its initial application for several reasons. First, BLM has previously determined this segment of the river to be navigable. In addition, in 1993 the state filed an action to quiet title to the riverbed, and the United States Court of Appeals for the Ninth Circuit acknowledged that the submerged land was probably state-owned, although it could not enter judgment for jurisdictional reasons. Finally, the river has a long history of use for navigation that precedes statehood.

How does the state's ownership impact allocation of fisheries?

State title to submerged land has no impact on allocation of fish or game. The federal subsistence priority granted by title VIII of the Alaska National Interest Lands Conservation Act applies to all waterways in which the federal government has reserved water rights, generally in federal reservations such as National Parks and National Wildlife Refuges. Thus, the federal subsistence priority applies to waters within and adjacent to reserved federal lands regardless of the ownership of the land underlying the waters. The state manages fish and wildlife and provides for harvest on all lands in Alaska, regardless of ownership. On federal lands and in waters where the United States has a federal reserved water right, the Federal Subsistence Board may limit harvests by people ineligible for the federal subsistence priority. Thus, the ownership of land under navigable waters is not a factor in allocation of fish and wildlife among users.

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