

Federal Disclaimers of Submerged Lands to the State of Alaska: Gwich'in Issues on the Black River of the Yukon Flats

Biography

Warren Keogh is currently the Water Rights Coordinator for the Alaska Region of the U.S. Fish and Wildlife Service. Since beginning work for the USFWS in 1995, his work has focused on issues concerning water rights, submerged lands beneath navigable waters, and water boundaries. He previously carried the title of Navigable Waters Specialist and has written several research reports regarding title navigability of specific water bodies within the 80 million acre National Wildlife Refuge System in Alaska. His most recent work regards coordinating a water boundary investigation in the Arctic National Wildlife Refuge, and assessing the recently implemented "Federal Disclaimer of Interest in Lands" regulation as applied to the submerged lands beneath navigable waters in the Yukon Flats National Wildlife Refuge. He has a background in geography and received a M.A. in Environmental Science from Alaska Pacific University in 1994. Like many long-time Alaskans he has a diverse employment and career history, as indicated by previously held positions between 1968 and 1993 as a soldier, an Emergency Room R.N., a mobile intensive care paramedic, and a structural firefighter.

Abstract

The Bureau of Land Management (BLM) in early 2003 amended and expanded a long-standing regulation of the Federal Land Policy Management Act. The regulation, 43 CFR 1864, allows the Secretary of the Interior, through the BLM, to disclaim Federal interests in lands where the United States does not hold a valid interest. The first disclaimer application in the nation to be processed under the amended regulation regards the beds of approximately 450 linear miles of rivers, streams, and sloughs in a remote area of Alaska. The water bodies at issue are located in the Yukon Flats region of the upper Yukon River, Alaska, and include the Black River, three tributary streams, and numerous adjacent sloughs. The applicant, the State of Alaska (State), asserts the navigability of these water bodies and therefore the ownership of the submerged lands beneath them. The State desires to remove a cloud on land title, and bases its claim in large part on 20-year-old BLM navigability determinations made for purposes of land conveyance to Alaska Native corporations under the Alaska Native Claims Settlement Act of 1971. The BLM, as the Department of the Interior (DOI) regulatory agency, and the U.S. Fish & Wildlife Service, as the primary affected DOI land managing agency due to its management of the immense Yukon Flats National Wildlife Refuge through which most of the waters flow, dispute only a few specific aspects of the State application for disclaimer, e.g., inadequate description of "interconnected sloughs" and the upstream extent of navigability on some streams.

Alaskan Athabaskan Indians, particularly Gwich'in people of upper Yukon River and the Black River basin, have contested the State's application. Numerous conservation non-governmental organizations (NGOs) similarly oppose the State filings. Alaska Native entities opposing pending disclaimer actions include the Tanana Chiefs Conference, Gwichyaa Gwich'in Tribal Government, Chalkytsik Village Council, Chalkytsik Village Corporation, and 16 individual Native allottees of the Black River basin. Their opposition is based on several concerns there including, among others: general distrust of State government on land and water issues; fear of erosion of subsistence hunting and fishing

rights on navigable waters; increased possibility of mining activity on streambeds; lack of public meetings and dialogue between the State, BLM, and Native interests; inadequacy and poor timing of 90 day comment period; absence of National Environmental Policy Act review process; validity of navigability criteria used by government agencies; possible impacts on a cooperative wildlife (moose) management agreement; and potential impacts on historical and cultural sites along water bodies.

The public comment period for Alaska's Black River disclaimer application ended in August. The Black River application, the BLM analysis, and public and agency comments are under review in Washington, D.C., at this time. It is anticipated the BLM will issue a decision and disclaimer document to the State in October of 2003. The action will be precedent setting. The BLM's decision may be contested and litigated by conservation NGOs and representatives of Alaska Natives of the upper Yukon River region.