



Fact Sheet: Recordable Disclaimers of Interest: State Owned Navigable Waters

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?

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. A Recordable Disclaimer of Interest for submerged lands will lift the cloud on the state's title. Whether a waterway meets the technical criteria for navigability is not always clear. While ideally the state would like to verify ownership of lands underlying all 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 more information, please visit:

www.dnr.state.ak.us/mlw/nav/

The state website contains an up-to-date list of all RDI applications and their status.

Contact Information:

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