

Politics

# Gov. Dunleavy orders steps to assert Alaska's water and land rights over feds - including a trespass notice

By Alex DeMarban

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Gov. Mike Dunleavy speaks to reporters in Anchorage in March. (Bill Roth / ADN)

The administration of Gov. Mike Dunleavy has announced several actions against the federal government to assert its ownership of rivers and lakes following a landmark 2019 Supreme Court decision that acknowledged Alaska's right to manage navigable waterways in national parks and other federal conservation areas.

Dunleavy and some of his top officials said the new actions include a lawsuit involving Lake Clark National Park and Preserve in Southwest Alaska. They also include a

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trespass notice to the park's superintendent, as well as a cease-and-desist notice to a supervisor at the Tongass National Forest.

The effort, designed to expand state control over areas currently managed by the federal government, drew skepticism from some observers who saw the move as political and questioned how much of the governor's plan can actually be accomplished—and whether the state has the money to take over federal management.

The governor said the state owns the submerged lands beneath rivers and waterways across Alaska. But he said the federal government continues to violate the law by not transferring title to the lands or resolving the state's arguments over water rights.

"When it does, we're going to assert ourselves," Dunleavy said. "I will fight for every acre owed to Alaskans."

The administration says it has received title to just 9% of submerged lands beneath 800,000 miles and 16% of submerged lands beneath 30 million acres of lakes.

Skeptics of the governor's effort said he is playing to his Republican political base while he seeks re-election this year. Some said his plan could bring decades of litigation over navigability and access of lakes and rivers across the state.

"This is a lawyer relief plan for the next 30 years," said Doug Pope, who defended Alaskan John Sturgeon in [his victorious case that led to the Supreme Court decision](#) three years ago.

Les Gara, a Democrat who is challenging Dunleavy in the election for governor, said he agreed that the federal government owes the state land. But he questioned Dunleavy's aggressive posture.

"If I were governor I'd speak to a Republican or Democratic president, not just yell at them on social media," Gara said.

Rep. Christopher Kurka, a Republican challenger, also said he supports the governor's action but said he should have started it when he was first elected.

Some applauded Dunleavy, saying the federal government has been slow to act after the Supreme Court's decision, limiting Alaska's right to manage its lands and waters.

Sturgeon, who [chairs](#) the Dunleavy for Governor campaign, also spoke to reporters at the governor's press conference Tuesday.

He said the federal government has not transferred a single navigable water to the state since he won his court case.

“It appears federal agencies are thumbing their nose not only at the state of Alaska, but also the Supreme Court,” Sturgeon said.

The state’s newly filed lawsuit involves multiple lakes in Lake Clark National Park and Preserve and portions of two rivers fed by the lakes, including the Mulchatna River, a contributor to the wild salmon fishery in Bristol Bay.

The federal government claims ownership of the submerged lands beneath those waters, creating uncertainty over the state’s ownership and ability to manage them, the state argues in the [lawsuit](#), filed in U.S. District Court in Anchorage.

In another action involving Alaska’s congressional delegation, the Dunleavy administration says it has undertaken an audit of the Interior Department with the Government Accountability Office. The audit seeks answers about how Interior is spending more than \$100 million appropriated by Congress to accelerate federal land conveyances to the state, and to resolve questions of title involving navigable waters, according to the administration.

The actions are part of a broader effort announced by the Dunleavy administration last year. It has [characterized](#) the effort, which it calls “Unlocking Alaska,” as an attempt to improve permitting and expand the public’s access to lands and waters.

*[\[Interior moves to get land to Alaska Native veterans, but plans review of orders for land sought by state and Native corporations\]](#)*

In October, the state Department of Law [filed a lawsuit](#) against the federal government to stop it from claiming ownership of lands underneath three rivers in the Interior, including portions of the Koyukuk River.

Multiple federal officials declined to comment for this story or discuss specifics about the state’s attempts to gain more control of lands and rivers.

Tyler Cherry, a spokesman with Interior, said in an email that he could not provide comment.

A spokeswoman with the U.S. Forest Service said the agency will review documents related to the governor’s effort and will continue to work closely with the state on this topic and others.

The new state actions also include a [trespass notice](#) dated Monday from the Department of Natural Resources that names Susanne Fleek-Green, superintendent for the Lake Clark park and preserve.

The notice says the park system built a dock at Crescent Lake on state-owned submerged lands, but it did not apply with the state for a permit. It orders Fleek-Green

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to remove the dock within 30 days, and raises arrest or civil actions as possible outcomes.

“You are hereby notified that this dock is unauthorized; constitutes trespass; and has been officially placed in trespass status to initiate proceedings for its removal from state land,” the notice says.

The Department of Natural Resources also sent a [cease-and-desist notice](#) on Monday to Earl Stewart, supervisor of the Tongass National Forest. The state says the forest is not allowing Alaskans to use motorized watercraft at Mendenhall Lake and River, though such use is allowed under state law. The notice says the forest is also permitting commercial activity but should not be. It says that’s a state responsibility.

“Any attempt to permit, authorize or otherwise regulate commercial operators on state-owned submerged lands and the waters flowing over them violate state law; places a cloud on state title; and constitutes overreach of federal authority,” the notice says.

*[\[Seeking to speed development, Alaska aims to take over enforcement of Clean Water Act program from the feds\]](#)*

Fleek-Green and Stewart on Tuesday said they had not seen the notices. They declined to provide further comment.

The state says it issued the notices after federal officials, including at conservation units across the state, failed to cooperate or consult with state land managers to address the state’s concerns.

The state, to no avail, had attempted to coordinate with federal officials to determine such things as permitting authorizations that need to be converted to state permits, or identifying federal infrastructure built over state-submerged lands, the notices say.

The notices say the state is still willing work with federal officials to resolve differences.

The Resource Development Council for Alaska, an industry trade group, said it welcomed the governor’s decision to stand up for Alaska’s land and water rights.

“We understand the governor’s frustration as the federal government continues to slow roll on its obligation to issue titles to the full inventory of Alaska’s submerged lands and navigable rivers and lakes,” the group said in a statement Wednesday. “These lands and waters belong to Alaskans and should be managed as such. The litigation announced yesterday is unfortunately necessary, but absolutely the right call.”

But Pope, who defended Sturgeon, said the governor's broad plans may not be accomplished for decades.

Such an effort involves complex questions such as which rivers, and which parts of those rivers, were navigable when Alaska became a state more than 60 years ago, he said. The issues would likely have to be sorted out in federal court as disputes arise, over decades in what could be a case-by-case and waterway-by-waterway effort, he said.

Pope said he views the governor's efforts as largely "symbolic" for political gain and to satisfy Dunleavy's Republican base.

"I don't see this flag-waving as serious," he said.

But while Pope called the trespass and cease-and-desist notices "ridiculous," he said they could be important actions that ultimately lead to court cases for the areas in question at Lake Clark National Park and the Tongass forest.

"Good for them for identifying an alleged controversy," Pope said.

Lorraine Henry, a spokeswoman with the state natural resources department, said in an email that "there is no requirement that navigability be determined by a specific agency or court —the state received these submerged lands by operation of law at statehood, and no other steps were required to effectuate the conveyance."

Jim Adams, head of the Alaska region of the National Parks Conservation Association, said taking over state oversight of many often-remote areas could be costly. It might mean, say, sending state troopers into areas where federal authorities are currently available to respond.

The state "doesn't have the budget or the troopers to patrol all the rivers and lakes it is claiming authority over," Adams said in an email. "This looks more like an attention-grab than an effort to make life better for Alaskans or visitors."

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