



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Alaska State Office
222 West Seventh Avenue, #13
Anchorage, Alaska 99513-7504
www.blm.gov/alaska

In Reply Refer To:
1750 (AK940)

May 12, 2022

Mr. Thatcher Brouwer, House Fisheries Committee Aide
Alaska State House Representative Geran Tarr
By email: Thatcher.Brouwer@akleg.gov

Re: Bureau of Land Management Position on House Bill 397

Dear Mr. Brouwer:

Thank you for your email of April 25, 2022. Outlined below is my response to your specific inquiries regarding the BLM's position on HB 397, State Ownership of Submerged Land, introduced in the House and Senate this year by Governor Dunleavy.

1. Does the Bureau of Land Management (BLM) have a position on the bill as a whole?

Response: The BLM will not take a position on state laws and is responding to the questions as asked. The BLM agrees that the State received title to submerged lands beneath waters that were navigable at the time of statehood. The issue in question is whether the *individual water bodies* were navigable in fact at the time of statehood. While recognizing that the United States has no ownership interest in numerous waterbodies within the state, the BLM has not received applications requesting Recordable Disclaimers of Interest (RDIs) for a majority of those waterbodies. For this reason, the BLM has not been able to start the administrative review process for making navigability determinations in accordance with current caselaw to clarify title and issue RDIs when it is legally appropriate to do so.

2. Does the Bureau of Land Management consider all waterways listed in the bill as navigable?

Response: The BLM has made navigability findings on thousands of waterbodies that flow through nearly 105 million acres of lands that have been conveyed to either an Alaska Native Claims Settlement Act corporation or the State of Alaska. In fact, the State of Alaska owns the submerged lands beneath nearly all water bodies that flow through State-owned uplands, regardless of whether they are navigable or not. The majority of work that is left to be done is on water bodies that flow through federal

uplands. The BLM evaluates each waterbody to determine its navigability by applying federal law and court precedence to the qualifications of each individual water body. For a general answer to the question, the BLM has found some of these water bodies (at least in part) to be navigable, some to be non-navigable, and others have not yet been determined. The navigability determination process is ongoing and for different reasons such as those associated with the conveyance of federal lands under the Alaska Native Claims Settlement Act and the Alaska Statehood Act.

3. Does the Bureau of Land Management have concerns with the Section 7 of the bill which sets a way for the state to identify additional navigable waters?

Response: The BLM remains committed to working with the State of Alaska in determining navigability according to the required laws and regulations. The BLM processes recordable disclaimers of interest for the submerged lands of water bodies navigable at statehood, and the BLM supports the Department of Justice in its federal response to Quiet Title Act litigation.

4. Can you please summarize the process the Bureau of Land Management currently uses to permit activities on submerged lands?

Response: The BLM issues land use authorizations under the Federal Land Policy Management Act of 1976 (FPLMA). Applications for use are processed pursuant to the regulations under 43 CFR 2800 for rights-of-way or 43 CFR 2920 for permits and leases. Applications from other federal agencies are processed pursuant to the regulations under 43 CFR 2800 for rights of way, or 43 CFR 2300 for withdrawals. Unless the water boundary has been surveyed, it is not always clear whether an authorization is on the submerged lands or the uplands. The BLM reviews the land status and in general if the uplands are federal land and the water body has not been determined to be navigable, the BLM proceeds with processing the application through a public process and appealable decision.

5. Can you please list some of the activities that are permitted on submerged lands in Alaska?

Response: Permitting covers a wide array of activities consistent with the BLM's multiple use mission. Typically, permits tie to uses of the uplands and examples of activities permitted include, stream gages, fish weirs, road/utility/pipeline crossings, and temporary use permits for construction or maintenance of facilities.

If you have questions, please contact Dave Mushovic, Acting Deputy State Director, Division of Lands, Cadastral and Authorized Pipeline Officer, at (907) 271-4682 or dmushovi@blm.gov.

Sincerely,

Thomas Heinlein
Acting State Director