

JAHNA M. LINDEMUTH
ATTORNEY GENERAL
Jessica Moats Alloway (Alaska Bar No. 1205045)
Senior Assistant Attorney General
Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501
Telephone: (907) 269-5232
Facsimile: (907) 276-3697
Email: jessie.alloway@alaska.gov
Attorney for the State of Alaska

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Civil Action No.: 3:18-cv-00265-TMB

COMPLAINT TO QUIET TITLE

INTRODUCTION

1. The State of Alaska (“State”), through the office of the Attorney General, brings this action to quiet title to state-owned submerged land underlying the Middle Fork of the Fortymile River and the North Fork of the Fortymile River.

2. The Middle and North Forks of the Fortymile River are navigable-in-fact waters within the boundaries of the State of Alaska, and the State obtained ownership to its submerged lands on the date of statehood pursuant to the Equal Footing Doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act.

3. The State brings this action because defendant United States claims ownership over the submerged land underlying the Middle and North Forks of the Fortymile River. This claim of federal ownership creates a cloud on the State's title and causes uncertainty regarding the ownership, use, management, and control of the submerged lands.

JURISDICTION AND VENUE

4. The State brings this action under the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, which authorizes a federal district court to adjudicate disputes over the title to real property in which the United States claims an interest. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1346(f) & 2409a.

5. This Court has jurisdiction over this action because the QTA waives sovereign immunity of the Federal government to resolve disputes over the title to real property in which the United States claims an interest.

6. The State satisfied the QTA's 180-day notice of intent to sue requirement. *See* 28 U.S.C. § 2409a(m). By letter dated April 3, 2018, the Office of the Attorney General for the State of Alaska gave notice to the Secretary of the Interior of its intent to file suit with regard to the ownership of the submerged land at issue in this case. A copy of this Notice of Intent is attached as Exhibit 1.

7. This is an action brought by a state and is timely under 28 U.S.C. § 2409a(g).

8. Title 28, United States Code, Section 1346(f) provides that federal district courts have exclusive original jurisdiction over civil actions arising under the QTA.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the lands at issue in this lawsuit are located within the District of Alaska.

10. A case or controversy has arisen over the State's ownership of the submerged lands described herein and its jurisdiction to regulate and control this land.

PARTIES

11. The Plaintiff State of Alaska is a sovereign state, with a sovereign interest in the management and conservation of the beds of navigable rivers and other navigable waters and submerged lands to which it has title. In bringing this lawsuit, the State of Alaska seeks to confirm its right to manage its own lands, and to remediate and prevent the attendant harm of being deprived of this right.

12. Defendant United States of America is a sovereign nation and claims an interest in the submerged lands underlying the Middle Fork and the North Fork of the Fortymile River, as more fully set forth below.

DESCRIPTION OF THE MIDDLE FORK AND THE NORTH FORK OF THE FORTYMILE RIVER

13. The Fortymile River is an approximately sixty-mile tributary of the Yukon River within Alaska and the Yukon Territory, Canada. The Fortymile River generally flows northeast from its headwaters near Chicken, Alaska, until its confluence with the Yukon River in Canada. From this confluence, the Yukon River generally flows northwest and reenters the United States in proximity to Eagle, Alaska. Within this Complaint, reference to the Fortymile River includes only that portion of the Fortymile River located in Alaska, not including where the river crosses the International Boundary.

14. Within Alaska, the Middle Fork of the Fortymile River flows from Joseph Village downstream to its confluence with the North Fork of the Fortymile River. This action is to quiet title to the submerged lands and bed up to and including the ordinary high water lines of the left and right banks of the Middle Fork of the Fortymile River within the following townships: T. 6 S., R. 23 E. Fairbanks Meridian; T. 6 S., R. 24 E., Fairbanks Meridian; T. 6 S., R. 25 E., Fairbanks Meridian; T. 5 S., R. 25 E., Fairbanks Meridian; T. 5 S., R. 26 E., Fairbanks Meridian; T. 5 S., R. 27 E., Fairbanks Meridian; T. 5 S., R. 28 E., Fairbanks Meridian. The portion of the Middle Fork at issue in this complaint (referred to as the “disputed portion of the Middle Fork”) includes the portion of the river starting at river mile 0 upstream to approximately river mile 44. A map highlighting the river is attached as Exhibit 2.

15. Within Alaska, the North Fork of the Fortymile River flows from its headwaters at the junction of Slate and Independence Creeks to the Kink. This action is to quiet title to the submerged lands and bed up to and including the ordinary high water lines of the right and left banks of the North Fork of the Fortymile River within the following townships: T. 3 S., R. 27 E. Fairbanks Meridian; T. 3 S., R. 28 E., Fairbanks Meridian; T. 4 S., R. 28 E., Fairbanks Meridian; T. 5 S., R. 28 E., Fairbanks Meridian; T. 5 S., R. 29 E., Fairbanks Meridian; T. 6 S., R. 29 E., Fairbanks Meridian. The portion of the North Fork at issue in this complaint (referred to as the “disputed portion of the North Fork”) includes the portion of the river starting at approximately river mile 22 upstream to approximately river mile 59.3. A map highlighting the river is attached as Exhibit 2.

16. Within this action, the State does not seek to quiet title to any portion of the North Fork of the Fortymile downstream of the Kink. The United States previously found this portion of the North Fork navigable-in-fact, and the State's ownership is not in dispute.

17. The North Fork and Middle Fork of the Fortymile River have been used almost continuously as a highway of commerce since before the Purchase of Alaska in 1867.

ALASKA'S TITLE TO ITS SUBMERGED LANDS

18. The "equal footing doctrine" guarantees to newly-admitted states the same rights enjoyed by the original thirteen states and other previously-admitted states.

Utah v. United States, 482 U.S. 193, 196 (1987); *Alaska v. Ahtna, Inc.*, 891 F.2d 1401, 1404 (9th Cir. 1989). This includes title ownership to lands underlying navigable and tidally influenced waters. *Utah*, 482 U.S. at 196.

19. In addition to the "equal footing doctrine," the Submerged Lands Act of 1953 vested in the states "title to and ownership of lands beneath navigable waters within the boundaries of respective States." 43 U.S.C. § 1311(a) (2012).¹ Congress expressly

¹ "Lands beneath navigable waters" is defined as:

- (1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;
- (2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three

applied the Submerged Lands Act of 1953 to Alaska in the Alaska Statehood Act. § 6(m) of the Alaska Statehood Act, 48 U.S.C. note prec. § 21.

20. Moreover, Congress expressly applied the “equal footing doctrine” to the Territory of Alaska through the Alaska Right of Way Act of 1898, 30 Stat. 409, codified at 43 U.S.C. §§ 942-1 to 942-9. And the general mining laws make clear that although “the laws of the United States relating to mining claims, mineral locations, and rights incident thereto” were extended to the Territory of Alaska, “[n]o person shall acquire by virtue of [that extension] any title to any land below the line of ordinary high tide or the line of ordinary high-water mark.” 30 U.S.C. § 49a.

21. As a result of the above-described statutes and constitutional doctrines, the State generally owns and manages the submerged lands and the resources located within or on such lands and waters.

22. The people of Alaska “have a constitutional right to free access to and use of the navigable or public water of the state,” and the “state has full power and control of all of the navigable or public water of the state ... and ... holds and controls all navigable or public water in trust for the use of the people of the state.” AS 38.05.126(a), (b).

23. Alaska’s title to its submerged lands vested at statehood on January 3, 1959. Therefore, unless a pre-statehood withdrawal clearly included the

geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approve by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, . . .

43 U.S.C. § 1301(a).

submerged lands and intended to defeat Alaska's statehood title, Alaska retains ownership and management authority of its submerged lands and navigable waters.

24. There is no pre-statehood withdrawal that would defeat Alaska's title to the disputed portions of the Middle Fork and North Fork of the Fortymile River.

THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

25. In 1980, Congress passed Public Law 96-487, the Alaska National Interest Lands Conservation Act ("ANILCA"). ANILCA affected over 100 million acres of federal lands in Alaska, including incorporating 25 rivers into the National Wild and Scenic River System. *See* Wild and Scenic Rivers Act, Pub. L. No. 90-542, 82 Stat. 90 (1968) (codified as amended at 16 U.S.C. §§ 1271–1287 (2012)).

26. Section 603 of ANILCA amended the Wild and Scenic Rivers Act, 16 U.S.C. § 1274(a)(48), to include within the system: (a) the Middle Fork of the Fortymile River downstream from the Village of Joseph, Alaska, and (b) the North Fork of the Fortymile River. *See* Exhibit 2, setting forth the wild and scenic corridor.

27. Section 605 of ANILCA classified the section of the Middle Fork of the Fortymile River downstream from the Village of Joseph, Alaska and the North Fork of the Fortymile Rivers as "wild river areas." BLM currently manages the Middle Fork and the North Fork of the Fortymile River pursuant to the Fortymile River Management Plan ("1983 RMP"). *See* Exhibit 2, setting forth the wild and scenic corridor.

28. Every wild, scenic, or recreational river designated by the Wild and Scenic Rivers Act is a "free-flowing stream." 16 U.S.C. § 1273(b).

29. The Wild and Scenic Rivers Act defines “free-flowing” as “existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.” 16 U.S.C. § 1286(b).

30. “Wild river areas” as defined by the Wild and Scenic Rivers Act are “[t]hose rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.” 16 U.S.C. § 1273(b)(1).

FEDERAL AGENCY DETERMINATIONS OF OWNERSHIP

31. On June 29, 1983, the Alaska State Office of the Bureau of Land Management (“BLM”) issued an administrative decision (“1983 Navigability Finding”) which purported, *inter alia*, to find non-navigable both the Middle Fork of the Fortymile River from the Village of Joseph, Alaska to its confluence with the North Fork of the Fortymile River and the North Fork of the Fortymile River from its headwaters to the Kink.

32. This casts a cloud on the rights and title of the State of Alaska to the lands underlying the Middle Fork and North Fork of the Fortymile River.

NAVIGABILITY OF THE MIDDLE FORK AND NORTH FORK OF THE FORTY MILE RIVER

33. The disputed portions of the Middle Fork and North Fork of the Fortymile River were in their natural and ordinary conditions at the time of statehood and remain in their natural and ordinary conditions today.

34. The disputed portions of the Middle Fork and North Fork of the Fortymile River were navigable-in-fact as they were used or were susceptible of being used in their ordinary condition as a highway for commerce over which trade and travel may be conducted in the customary modes of trade and travel, including the following specific uses: (a) in its fluid capacity as a highway—floating of logs, use by wooden and skin boats, log and inflatable rafts, power and jet boats, and canoes providing transportation for individuals and supplies, for subsistence and recreational guided and non-guided hunting and fishing activities, for trapping, mining and prospecting, freighting and similar purposes, related to commerce and travel; and (b) any other additional uses the State proves at trial.

CLAIM FOR RELIEF

(Quiet Title for the State against United States pursuant to 28 U.S.C. § 2904a)

35. Plaintiff realleges the allegations contained in paragraphs 1–34 above.

36. Pursuant to 28 U.S.C. § 2409a, the United States is subject to suit to quiet title to real property in which both the State and the United States claim an interest.

37. The disputed portions of the Middle Fork and North Fork of the Fortymile River were navigable-in-fact at the time of statehood, and there were no valid pre-statehood withdrawals in effect for these disputed areas that defeated the State’s interest to the submerged lands. Therefore, title automatically transferred to the State of Alaska pursuant to the equal footing doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act.

38. The State is entitled to an order of this Court quieting title to the submerged land underlying the disputed portions of the Middle Fork and North Fork of the Fortymile River.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Alaska prays as follows:

1. That this Court enter judgment declaring that the disputed portions of the Middle Fork and North Fork of the Fortymile River are navigable-in-fact and that there were no pre-statehood withdrawals in effect at the time of statehood that defeated the State's interest to the submerged land underlying these portions of the Fortymile River. As a result, title to the bed of the disputed portions of the Middle Fork and North Fork of the Fortymile River is in the State of Alaska, and that the United States has no title thereto or interest therein since January 3, 1959.
2. That the Plaintiff State of Alaska be awarded costs and attorney's fees.
3. For such further and other relief as the Court may deem just and proper.

DATED: November 8, 2018.

JAHNA LINDEMUTH
ATTORNEY GENERAL

By: /s/ Jessica Moats Alloway
Jessica Moats Alloway
Alaska Bar No. 1205045
Senior Assistant Attorney General
Department of Law
1031 West 4th Avenue, Suite 200
Anchorage, AK 99501
Telephone: (907) 269-5275
Facsimile: (907) 276-3697
Email: jessie.alloway@alaska.gov