

# MEMORANDUM

State of Alaska

Department of Law

TO: Navigable Waters Team

DATE: May 29, 1992

FILE NO:

TEL. NO: 269-5100

SUBJECT: Synopsis of the Quiet Title Act

FROM: Joanne Grace  
Assistant Attorney General  
Natural Resources-Anchorage

**Confidential**

This memorandum outlines some of the major procedural points of the Quiet Title Act, 28 U.S.C. §2409a, under which the State must bring suit against the United States to resolve ownership of the navigable waters in Alaska.

1. The Quiet Title Act is the exclusive means by which adverse claimants can challenge the United States' title to real property. Block v. N.D. Ex Rel. Bd. of University & School Lands, 103 S.Ct. 1811 (1983).
2. Not less than one hundred and eighty days before bringing a quiet title action, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit. 28 U.S.C. §2409a(m).
3. The complaint must set forth with particularity the nature of the right, title, or interest which the plaintiff claims in the real property, the circumstances under which it was acquired, and the right, title, or interest claimed by the United States. 28 U.S.C. §2409a(d).
4. No preliminary injunction may issue against the United States in a quiet title action. 28 U.S.C. §2409a(c).
5. If the United States disclaims all or part interest in the real property at any time prior to the trial, and the disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the suit on a ground other than the Quiet Title Act. 28 U.S.C. §2409a(e).
6. A civil quiet title action against the United States shall be



tried by the court without a jury. 28 U.S.C. §2409a(f).

7. A state may not bring a quiet title action against the United States with respect to defense facilities of the United States so long as the lands at issue are being used or required by the United States for national defense purposes as determined by the head of the Federal agency with jurisdiction over the lands involved, if it is determined that the State's action was brought more than twelve years after the State knew or should have known of the claims of the United States. Upon cessation of such use or requirement, the State may dispute title to such lands. The decision of the head of the Federal agency is not subject to judicial review. 28 U.S.C. §2409a(h).

8. If a final determination in an action brought by a State under this section involving submerged or tide lands on which the United States or its lessee or right-of-way or easement grantee has made substantial improvements or substantial investments is adverse to the United States and it is determined that the State's action was brought more than twelve years after the State received notice of the Federal claim to the lands, the State shall take title to the lands subject to any existing lease, easement, or right-of-way. Any compensation due with respect to such lease easement, or right-of-way shall be determined under existing law. 28 U.S.C. §2409a(j).



# MEMORANDUM

State of Alaska

Department of Law

TO Distribution List

DATE August 27, 1992

FILE NO:

TEL. NO: 269-5100

SUBJECT: Quiet Title Actions

FROM

Joanne Grace  
Assistant Attorney General  
Natural Resources-Anchorage



RECEIVED  
MAY 21 1993

Attached is a copy of the letter I sent today to Manuel Lujan, Secretary of the Interior. I sent similar letters to the Secretaries of Agriculture and Defense. For the next six or eight weeks I will be devoting almost all my time to writing a brief for the PLO 82 case, and I do not anticipate meeting until the brief is finished. At that point we should begin meeting regularly to refine a litigation strategy for March 1993, when 180 days will have passed.

### Distribution List

- ✓ Dan Allison, ADNR, Navigability Supervisor, Division of Water
- John Baker, ADOL, Asst A.G., Natural Resources Section
- Rich Cannon, ADF&G, Fisheries Biologist
- Tina Cuning, ADF&G, ANILCA Coordinator
- Ric Davidge, ADNR, Director, Division of Water
- Christopher Estes, ADF&G, Sport Fish
- Jim Fall, ADF&G, Subsistence
- Jim Hansen, ADNR, Chief Petroleum Geophysicist, Div. Oil and Gas
- Mitch Henning, ADNR, Field Operations, Division of Mining
- Cheri Jacobus, ADOL, Chief Assistant, Anchorage Attorney General's Office
- Rich Kornbrath, ADNR, Petroleum Geologist, Division of Oil and Gas
- Paul Larson, ADF&G, Deputy Director of Fisheries
- Rob Nauheim, ADOL, Asst A.G., Natural Resources Section
- Dave Orr, ADNR, Chief of Special Reports, Division of Water
- Judd Peterson, ADNR, Chief Field Operation and Permitting, Division of Mining
- Dave Stephens, ADNR, Chief Operations & Planning Section, Division of Parks and Outdoor Recreation
- Kim Sundberg, ADF&G, Habitat
- Ron Swanson, ADNR, Director, Division of Land
- Russ Watts, ADNR, Navigability Section, Division of Water



# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

- 1031 WEST 4TH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 209-5100  
FAX: (907) 276-3697
- KEY BANK BUILDING  
100 CUSHMAN ST., SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 451-2811  
FAX: (907) 451-2846
- P.O. BOX 110300 - STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3800  
FAX: (907) 463-5286

August 27, 1992

Manuel Lujan, Jr., Secretary  
Department of the Interior  
1849 C Street NW  
Washington, D.C. 20240

Dear Mr. Lujan:

The State of Alaska intends to file real property quiet title actions as to the submerged lands described on the list attached as appendix A, and is providing you this notice pursuant to 28 U.S.C. §2409a(m). Title to these lands passed to Alaska at statehood based on the equal footing doctrine, the Submerged Land Act of May 22, 1953, P.L. 83-31, 67 Stat. 29, 43 U.S.C. §§1301 et seq., and the Alaska Statehood Act of July 7, 1958, P.L. 85-508, 72 Stat. 339, 48 U.S.C. note preceding §21.

Sincerely,

CHARLES E. COLE  
ATTORNEY GENERAL

By:

*Joanne M. Grace*  
Joanne M. Grace  
Assistant Attorney General

JMG/sh  
Attachment

cc: J. T. Tangen, Regional Solicitor, Department of Interior  
Edward F. Spang, State Director, Bureau of Land Management  
Niles Cesar, Area Director, Bureau of Indian Affairs  
Walter Stieglitz, Regional Director, Fish and Wildlife Service  
John Morehead, Regional Director, National Park Service

*8/27 mailed cert return receipt*





Mouth of Porcupine River to Boundary  
Ray River  
Mouth of Seventymile River to Barney Creek  
Mouth of Sheenjek River to Thluickohnjik Creek  
Mouth of Tatonduk River to Boundary

#### 40 Mile Area

Forty Mile River  
Mouth of North Fork Forty Mile River to Kink  
Mouth of South Fork Forty Mile River to Mosquito Fork

#### South Central Region

Mouth of Chulitna River to Tokositna River  
Mouth of Kasilok River to Tustumena Lake  
Mouth of Kenai River to Kenai Lake  
Kenai Lake  
Knik River  
Lake Louise and outlet  
Lake Tustumena  
Mouth of Skwentna River to Portage Creek  
Susitna Lake  
Mouth of Susitna River to Indian River  
Mouth of Talkeetna River to Chunilna Creek  
Mouth of Tokositna River to Home Lake Outlet  
Tyone Lake  
Mouth of Tyone River to Tyone Lake  
Mouth of Yentna River to confluence of its East and West Forks  
Johnson River  
Red River

#### Tanana Region

Mouth of Chena River to North Fork  
Mouth of Chisana River to Scottie Creek  
Mouth of Goodpasture River to Central Creek  
Harding Lake  
Healy Lake and outlet  
Johnson River  
Mouth of Kantishna River to Lake Minchumina  
Lake George and outlet  
Lake Mansfield and outlet  
Mouth of Nabesna River to Nabesna Mine  
Mouth of Nenana River to Healy River  
Mouth of Salcha River to Paldo Creek  
Mouth of Tanana River to Nabesna and Chisana Rivers  
Mouth of Teklanik River to near Comma Lake  
Mouth of Tetlin River to Tetlin Lake  
Mouth of Tolovana River to West Fork  
Mouth of Wood River to Fish Creek



Black Lake  
Mouth of Chignik River to Black Lake  
Chikuminuk Lake  
Chilikadrotna River  
Chulitna River  
Clark River  
Mouth of Copper River to Falls  
Dago Creek  
Dog Salmon River  
Eek River  
Egegik River and Becharof Lake  
Gibraltar Lake and outlet  
Mouth of Goodnews River to Watlamuse Creek  
Mouth of Igushik River to Amanka Lake  
Illiamna Lake  
Mouth of Illiamna River to Forks  
Mouth of Kanektok River to Kagati Lake  
Kakhonak Lake  
Mouth of King Salmon River to Olds Creek  
Mouth of Kvichak River to Illiamna Lake  
Lake Aleknagik  
Lake Chavekuktuli  
Lake Clark  
Lake Beverly  
Lake Kulik  
Lake Nerka  
Lower Pike Lake and outlet  
Kokwok River  
Koktuli River  
Muklung River  
Mouth of Mulchatna River to Summit Creek  
Mouth of Naknek River to Naknek Lake  
Negukthlik River  
Newhalen River  
Nishlik Lake  
Mouth of Nushagak River to New Stuyahok  
Mouth of Nuyakuk River to Nuyakuk Lake  
Ongoke River  
Osviak River  
Quigmy River  
Pile River  
Ruth Lake and outlet  
Mouth of Smelt Creek to Smelt Lake  
Mouth of Snake River to Nunavaugaluk Lake  
Stuyahok River  
Tazmina River  
Mouth of Togiak River to Togiak Lake  
Tunuk River  
Ualik Lake  
Mouth of Ugashik River to Lower and Upper Ugashik Lakes  
Upnuk Lake  
Weary River



Mouth of Wood River to Lake Aleknagik

Copper River Region

Mouth of Bering River to near Bering Lake  
Mouth of Chitna River to Tana River  
Mouth of Copper River to Batzulnetas (above Slana)  
Crosswind Lake  
Mouth of Eyak River and Eyak Lake  
Mouth of Klutina River to Klutina Lake  
Lowe River  
Miles Lake and outlet  
Nelchina River  
Tasruna River  
Mouth of Tazlina River to Tazlina Lake

Southeast Region

Chilkat River  
Chilkoot River  
Stikine River

Kodiak Island and Shelikof Strait Region

Afognak Lake  
Mouth of Afognak River to the remains of the Bridge  
Akalura and Red Lakes  
Mouth of Aniakchak River to Albert Johnson Creek  
Karluk Lake  
Mouth of Karluk River to Karluk Lake

Statewide Region

Yukon River



### Middle Yukon River

Mouth of Innoko River to Cripple Creek  
Mouth of Iditarod River to Iditarod  
Khotol River  
Little Melozitna River  
Melozitna River  
Mouth of Nowitna River and Sulstna Rivers to Tamarack Creek  
Tozitna River

### Lower Yukon Region

Anvik River  
Bonasila River  
Kotlik River  
Nulato River  
Pastolik River

### Kuskokwim River Region

Mouth of Aniak River to Salmon River  
Mouth of Big River to Otter Creek  
Mouth of Chukowan River to Gemuk River  
Crooked Creek  
Mouth of East Fork Kuskokwim River to Slow Fork and Tonzona River  
Mouth of Gemuk River to Beaver Creek  
Mouth of George River to Julian Creek  
Mouth of Holitna River to Chukowan River  
Hoholitna River  
Mouth of Johnson River from Mud Creek Portage to Crooked Creek  
Mouth of Johnson River to Nunapitchuk and Atmautluak  
Kisaralik River  
Mouth of Kuguklik River to Kipruk  
Kulik Lake  
Mouth of Kuskokwim River to North Fork  
Little Tonzona River  
Mouth of Middle Fork and Big River to Salmon River  
Mouth of Middle Fork Kuskokwim River to Pitka Fork  
Mouth of Nixon Fork to its West Fork  
Mouth of North Fork Kuskokwim to Lake Minchumina Portage  
Mouth of South Fork Kuskokwim River to Tatina River  
Mouth of Stoney River to Lime Village  
Mouth of Swift Fork to Highpower Creek  
Mouth of Tokotna River to Fourth of July Creek  
Mouth of Talbiksok River to Yukon-Kuskokwim Portage  
Mouth of Tuluksak River to Upper Land  
Whitefish Lake and outlet

### Bristol Bay Region

Alec River  
Aniakchak River





Appendix A to letter of August 27, 1992.

Colville Region

Mouth of Colville River to Nuka River  
Mouth of Kuna River to Chefornak

Northwest Region

Mouth of Agiapuk River to American River  
Mouth of American River to Budd Creek  
Mouth of Buckland River to West Fork  
Mouth of Fish River to Omilak Creek  
Mouth of Niukluk River to Council  
Mouth of Kobuk River to Lower Kobuk Canyon  
Mouth of Koyuk River to Dime Landing  
Mouth of Kuzitrin River to Noxapaga River  
Mouth of Noxapaga River to Turner Creek  
Mouth of Noatak River to Aniak River  
Mouth of Selawik River to Kugarak River  
Shaktoolik River  
Throat River  
Ungalik River  
Mouth of Unalakleet River to Termile Creek

Koyukuk River Region

Mouth of Hoquatza River to Hog Landing  
Mouth of Koyukuk River to Bettles  
Mouth of Middle Fork to Wiseman

Upper Yukon Region

Mouth of Bearpaw River to Diamond  
Mouth of Beaver Creek to Victoria Creek  
Birch Creek  
Mouth of Black River to Boundary  
Mouth of Chandalar River to North and West Forks  
Mouth of Charley River to Bear Creek  
Mouth of Chatanika River to Steese Highway Bridge  
Christian River  
Mouth of Coleen River to Lake Creek (59 miles)  
Mouth of Crooked Creek to Bridge  
Grass River  
Mouth of Hess Creek to North and South Forks  
Mouth of Hodzana River to Pitka Fork (79 miles)  
Jim Lake  
Mouth of Kandik River to Boundary  
Mouth of Nation River to Boundary