



THE STATE
of **ALASKA**
GOVERNOR MIKE DUNLEAVY

Department of Natural Resources

OFFICE OF THE COMMISSIONER

550 West 7th Avenue, Suite 1400
Anchorage, AK 99501-3561
Main: 907.269.8431

April 25, 2022

Mr. Earl Stewart
Forest Supervisor, Tongass National Forest
648 Mission Street
Federal Building
Ketchikan, AK 99901-6591

Re: Notice to Cease and Desist
Mendenhall Lake and Mendenhall River
Tongass National Forest

Mr. Stewart:

The submerged lands below the ordinary-high-water mark of both Mendenhall Lake and Mendenhall River that are located within the borders of the Tongass National Forest (TNF) belong to the State of Alaska pursuant to the Equal Footing Doctrine of the United States Constitution, *U.S. Const. art. IV, § 3, cl. 1*, the Federal Submerged Lands Act, *43 U.S.C. § 1301 et seq.*, and the Alaska Statehood Act, *72 Stat. 339, Pub. Law 85-508 (1958)*. As owner and manager, it is the State of Alaska—not the United States Forest Service (USFS) or any other federal agency—that governs use of state-owned submerged lands and/or waters flowing over them. *See Sturgeon v. Frost, 136 S. Ct. 1061 (2016) [Sturgeon I]; Sturgeon v. Frost, 139 S. Ct. 1066 (2019) [Sturgeon II]*. The generally allowable uses of these submerged lands and the waters flowing over them are defined by 11 AAC 96.020 and that provision further defines those instances when a state permit or authorization is required.

Using motorized watercraft or landing an aircraft on waters flowing over state-owned submerged lands are generally allowable uses and require no permit or authorization so long as DNR, in its discretion, determines that the use does not damage the land, including shoreland, tideland, and submerged land. DNR has placed no restrictions on the motorized use of Mendenhall Lake or Mendenhall River that fall within the borders of TNF, and any interference with or obstruction to the use of motorized watercraft on Mendenhall Lake or Mendenhall River violates state law; places a cloud on state title; and constitutes overreach of federal authority. *See generally AS 38.05.128*. Additionally, permits or authorizations are required for commercial operators in many instances for the use of state-owned submerged lands and the waters flowing over them, but it is the State of Alaska—not the USFS or any other federal agency—that has the sole authority for determining when and if such commercial operations using the waters or submerged lands will be permitted or authorized. Any attempt to permit, authorize or otherwise regulate commercial operators on state-owned submerged lands and the waters flowing over them violates state law; places a cloud on state title; and constitutes overreach of federal authority.

We are advised that the USFS is actively prohibiting the use of many types of motorized watercraft by non-commercial operators on Mendenhall Lake and Mendenhall River within the borders of TNF that are permissible under state law as generally allowable uses. We are further

advised that USFS is actively adjudicating permits and other authorizations for commercial operators to use the submerged lands and the waters flowing over them of Mendenhall Lake and Mendenhall River within the borders of TNF even though the grant or denial of such permits or authorizations is solely a matter of state law. USFS's actions place unlawful clouds on state title and give rise to a variety of civil claims for injunctive and declaratory relief as well as monetary damages.

You are hereby notified to cease and desist from prohibiting any type of motorized use by non-commercial watercraft operators of Mendenhall Lake or Mendenhall River within the borders of TNF that are considered generally allowable uses pursuant to state law. You are further hereby notified to cease and desist from adjudicating any permits or authorizations for commercial uses (including, but not limited to, commercial motorized watercraft operation) of the state-owned submerged lands or the waters flowing over them that are solely within the authority of the Alaska Department of Natural Resources.

Approximately one year ago, we reached out to you via written correspondence along with all other federal land managers within the state and national leadership of the Departments of Agriculture and Interior seeking your cooperation in identifying federal commercial permits and authorizations that need to be converted to state permits and authorizations and in working together to the maximum extent possible as adjoining landowners and adjoining land managers. We indicated our desire to approach issues collaboratively and seek solutions that are in the public's best interests. Since that date, we have received no listing of federal commercial use permits and authorizations that need to be instead adjudicated as state permits and authorizations; we have seen no messaging that recognizes state ownership, management and control of submerged lands and the waters flowing over them within federal areas to better educate commercial applicants and the general public; and we have only seen continued misinformation in federal planning initiatives for Mendenhall Lake and elsewhere regarding state ownership, management and control of its sovereign lands. Sadly, this lack of cooperation and consultation, this unwillingness work with state land managers, and this lack of respect for state law has led us to this notice to cease and desist.

Even at this late hour, however, we remain willing to work with USFS. Please contact me to discuss the contents of this letter further. Time is, however, of the essence as a notice of intent to file suit pursuant to the Federal Quiet Title Act for Mendenhall Lake and Mendenhall River has been served contemporaneously herewith.

Sincerely Yours,



Corri Feige, Commissioner
Alaska Department of Natural Resources