

Campbell Lane owners INC.
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Honorable Corni A. Feige Commissioner
Alaska Dept. of Natural Resources
550 W 7th Ave Suite 1400
Anchorage, Alaska 99501

DEPARTMENT OF
NATURAL RESOURCES

AUG 20 2020
COMMISSIONER'S OFFICE
ANCHORAGE

99501-355450



The Honorable Corri A. Feige, Commissioner
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August 19, 2020

DEPARTMENT OF
NATURAL RESOURCES

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COMMISSIONER'S OFFICE
ANCHORAGE

Re: Campbell Lake issues; Meeting Request

Dear Commissioner Feige:

On December 6, 2019, The Alaska Department of Natural Resources and the Municipality of Anchorage issued a "Joint Statement" that discusses questions about ownership and use of Campbell Lake and associated access issues. The Joint Statement states emphatically that it was not intended to be legal advice to anyone, and that anyone interested in the matters it addresses should consult others for legal advice. Unfortunately, it appears that the general public and the State itself are relying on the Joint Statement as if it were authoritative legal guidance, to the detriment of property owners around the Lake.

Campbell Lake Owners, Inc. (the "CLO"), is a nonprofit corporation owned by property owners on the Lake. It is the owner of record of the land underlying the Lake, which has been in private ownership ever since it was conveyed out of federal ownership prior to Statehood. The Joint Statement came as a surprise to the CLO, since it contradicts almost seventy-five years of history on these issues, including many official rulings and actions of federal, state and municipal government agencies. As far as the CLO is aware, the Joint Statement was developed without any formal public notice or comment process and without any outreach to the many people whose property rights are directly affected by it. And, although it has no official standing as an adjudicative determination or as a legal opinion, the Joint Statement has predictably inflamed controversy about Campbell Lake.

For example, in apparent reliance upon this Joint Statement, your Department recently submitted a document to the Federal Aviation Administration asserting that it owns Campbell Lake and that the seaplane base on Campbell Lake, a private facility of long standing, should be a public facility. This action compounds the confusion created by the Joint Statement, and raises serious operational and life safety issues. Like the Joint Statement itself, this recent action by your Department could give rise to liability problems for the State.

The purpose of this letter is to request a meeting with you to address the CLO's concerns about the Joint Statement and the State's recent submission to the FAA. As recommended by the Joint Statement, the CLO sought independent legal advice. It learned that the positions expressed in the Joint Statement on behalf of the State and the Anchorage Municipality are not supported by law, but are actually contrary to law. Enclosed is a very brief summary of some of the legal problems raised by the Joint Statement. (This list mentions only some of the legal problems that CLO has discovered; there are many others.) At the meeting we are requesting, the CLO will explain to you why the positions taken in the Joint Statement are incorrect and why the Joint Statement should be withdrawn.

I will contact your office in a few days to follow up as to a suggested time and place for the meeting we have requested.

We appreciate your courtesy in giving the CLO a chance to be heard on this important subject.

Thank you,



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SOME REASONS WHY THE CAMPBELL LAKE "JOINT STATEMENT"
IS DEAD WRONG

A. The land under the lake does not belong to the State.

1. The bed of the lake was private land when it was first inundated by construction of the federally-authorized dam. Flooding private land cannot divest its owner of title.
2. As for the Creek bed itself (in whatever location one might speculate that it occupied before the Lake was created), the U.S.A. determined, before the dam was constructed, that the Creek was nonnavigable. (This happens to be consistent with a guideline published by DNR in 1996, under which the State presumes that a stream that is less than 70 feet wide is nonnavigable. DNR's contention appears to disregard applicable law, including an important 2012 U.S. Supreme Court decision about riverbed title adjudication. The State is free to express a contention about title; but it is only a contention; the State does not have the authority to make a binding determination.)
3. There is no evidence that any part of the Lake lies on State-owned tidelands.

B. The Lake is not open to use by the general public.

1. Alaska Constitution provisions cited in the Joint Statement do not apply to all water in the State, wherever located, but only to "waters of the state." The Lake on this private land is not water "of the state."
2. The Lake is not comprised of waters "in their natural state," under the Common Use and Water Rights provisions of the Alaska Constitution.
3. The Lake cannot be classified as "public waters" under Title 38 because the Lake is not "reasonably suitable for public use," as has been determined by the Anchorage Municipality.
4. The Public Trust Doctrine is not a source of power to confiscate private property or regulate its use; it is a limitation upon the State's power to use or dispose of natural resources the State owns.

C. There is no R.S. 2477 right-of-way on the section line that crosses the Lake and adjoining property.

1. By federal law, the Alaska statutes by which the Territory and State purported to "accept," generally and categorically, R.S. 2477 easements on all section lines on available federal public land, without the construction of a highway of any kind, nor even any specific plan to do so, were not sufficient to accomplish the acceptance of R.S. 2477's offer.
2. Federal law limits the manner by which a Territory or State could accept the R.S. 2477 offer in order to acquire a federal section-line easement. Past Alaska Supreme Court decisions have not considered what is sufficient under federal law to accept the grant, because no appeal presented the issue.
3. Even if the Territory or State had accepted federal section-line easements by an action that was sufficient under federal law to satisfy R.S. 2477 (which it did not), R.S. 2477 only offered to grant a right for "construction" of a "highway" over "public land." No matter how liberally one chooses to define the words "construction" and "highway," this offer would not, under any circumstance, provide a basis for a public easement over the land involved here, because this land is not "public land." It became private land well before Statehood.
4. Other legal infirmities with the State's reliance upon R.S. 2477, are numerous to list here.