



MEMORANDUM

Department of Natural Resources

STATE OF ALASKA
Office of the Commissioner

TO: DNR Staff

DATE: September 22, 2017

FROM: Andrew T. Mack, Commissioner

SUBJECT: School Trust Lands
Final Decision
Rescission of DO 143

1. Recommended Actions

- a. The Department of Natural Resources ("Department") determine that § 2, ch. 182, SLA 1978 (the "1978 Legislation") redesignated into general grant land those lands granted to the State in lieu of school trust lands¹ under § 906(b) of the Alaska National Interest Lands Conservation Act ("ANILCA"), and those lands for which the federal Bureau of Land Management ("BLM") issued a decision after July 1, 1978 which confirmed title had vested in the State before July 1, 1978. The Department will manage these lands previously identified as school trust lands as general state lands; and
- b. Department Order 143 be rescinded.
 - i. Department Order 143 ("DO 143") generally requires that fair market value be received for the use of any school trust lands. If fair market value is not to be received for a land authorization, justification and approval is required by the Director of the Division of Mining, Land and Water. Revenues from land transactions are to be segregated in a litigation escrow account.
 - ii. Future disposals and land use authorizations proposed for lands previously identified as school trust land will follow the same procedures as general state lands as prescribed by appropriate state statutes. Revenues generated from these lands will no longer be segregated or escrowed.

2. Scope of Decision

The scope of this decision applies to the approximate 182,850 acres of land granted under the Alaska Statehood Act as school trust lands, or granted in lieu of those lands as school trust lands.

3. History of School Lands

In 1915, to support public schools in the territory of Alaska, Congress reserved Sections 16 and 36 in each township when surveyed. Once reserved by survey, Congress allowed the Territory to lease the reserved lands. Congress directed that all "proceeds or income derived from" reserved lands be placed in a permanent fund, to be invested, and income from which "shall be expended only for the exclusive use and benefit of the public schools of Alaska."² Congress repealed the 1915 Act, effective January 3, 1959 when the State of Alaska was admitted into the Union.³

¹ School trust lands are also referred to as school lands in this order.

² 48 U.S.C. § 353 (§ 1 of the 1915 Act) (repealed 1959).

³ Alaska Statehood Act § 6(k), 48 U.S.C. prec. § 21 (1958).

Congress in the Alaska Statehood Act granted to the State for the support of public schools land in every section 16 and 36 in every township in Alaska that had been surveyed as of July 7, 1958.⁴

In 1978, the legislature transformed the public school trust from a land-based trust into a monetary trust.⁵ School trust lands were transformed into “general grant lands.” To compensate the school trust for the land, the 1978 Legislation also allocated for deposit into the Public School Fund (later renamed the Public School Trust Fund – AS 37.14.150), one-half of one percent of the total receipts derived from the management of all state lands. Receipts from state lands include land sale and rental proceeds, oil and gas royalties, mineral lease rentals, and other land receipts. The monetary trust’s allocation of these revenues in 1978 enabled the school trust to share in the state’s Prudhoe Bay oil wealth. Under the monetary trust, the balance of the Public School Trust Fund has grown from \$8.5 million in 1978 to approximately \$591 million at the end of fiscal year 2016.

4. Background of School Land Litigation

School Trust lands have been the subject of two recent litigation cases.

In 1998, the plaintiffs in *Kasayulie v. State*, (Alaska Superior Court Case No. 3AN-97-3782 CI), brought claims, *inter alia*, alleging that the State of Alaska breached the trust by redesignating school trust lands as general state lands. The state acknowledged that it owed compensation for the fair market value of former school trust lands, but contended no breach of trust occurred. The trial court found a breach of trust because the state transformed the trust to a monetary trust without valuing the land.⁶ The court postponed determining a remedy for the breach of trust until after the parties completed a cooperative valuation of the land, with most land valued as of July 1, 1978.⁷ The court’s ultimate remedy might have confirmed the transformed monetary trust, or required the reconstitution of a land based trust.

Because the reconstitution of a land trust was possible, the Department issued DO 143 as part of the State’s efforts to prevent any diminishment in potential trust land value during the pendency of the litigation. DO 143 generally requires the Department to obtain fair market value for the use of any school trust lands. If fair market value is not to be received, justification and approval is required by the Director of the Division of Mining, Land and Water. DO 143 also requires revenues from school trust land transactions be segregated in a litigation escrow account.

The State settled *Kasayulie v. State* in 2012. The settlement left in place the transformed monetary trust, and permitted the State to complete the valuation of school trust lands begun jointly with *Kasayulie* plaintiffs.⁸ The completed valuation estimated all school trust lands have a value of approximately \$242 million, with most land valued as of July 1, 1978.

In 2013 plaintiffs in *Citizens Alliance for Public School Lands*, (“CAPSL”) *v. State of Alaska*, (Alaska Superior Court Case No. 1JU1300582) brought, *inter alia*, breach of trust claims substantially similar to those brought by plaintiffs in *Kasayulie*. CAPSL also asserted that the State and Territory of Alaska had a fiduciary duty to obtain 23 million acres of school trust land

⁴ *Id.*

⁵ Secs. 2 and 4, ch. 182, SLA 1978, and AS 37.14.150.

⁶ Exhibit A at 3, ¶9.

⁷ *Id.* at ¶11.

⁸ Exhibit A at 7-8, ¶6.

from the federal government for all lands in sections 16 and 36, not just those lands that were surveyed on July 7, 1958. The State prevailed in the litigation; the court entered a final judgment dismissing all CAPSL claims.

There are no remaining legal challenges to the 1978 redesignation of school trust land into general state land.

5. Decisions

a. Land Identified as School Trust Land after July 1, 1978

An issue identified but not resolved by the *Kasayulie* trial court was the status of lands granted as school trust land that were not identified until after July 1, 1978. The Department determines that these school trust lands were redesignated into general state lands by the 1978 Legislation.

The 1978 Legislation redesignated school trust lands that were patented or approved for patent as of July 1, 1978, and lands the state received in lieu of or in exchange for school trust land granted under the Alaska Statehood Act.⁹ There are two categories of land identified as school trust land after July 1, 1978 that meet these criteria.

First, Congress granted approximately 75,000 acres of land in lieu of school trust lands under § 906(b) of ANILCA. The State received these ANILCA lands in lieu of or in exchange for school trust lands granted under the Alaska Statehood Act. The 1978 Legislation redesigned lands the state received in lieu of or in exchange for school trust land.

Second, the BLM issued several decisions after July 1, 1978 which confirmed the State held title to approximately 2,850 acres of school trust lands. While these decisions were issued after July 1, 1978, each BLM decision confirmed that title to the specified school trust land had vested in the State of Alaska before July 1, 1978.¹⁰

In order to ensure full compensation for school trust lands redesignated in 1978, the Court in *Kasayulie* ordered a valuation of school trust lands. The State and *Kasayulie* plaintiffs jointly started, and the State completed, this valuation. The completed valuation estimated all school trust lands have a value of approximately \$242 million. This valuation included both the approximate 75,000 acres of § 906(b) ANILCA lands and the approximate 2,800 acres for which BLM confirmed title had vested before July 1, 1978.

Based upon these facts, the Department determines that the 1978 Legislation redesignated both the § 906(b) ANILCA lands and the school trust lands for which the BLM confirmed title was vested in the State before July 1, 1978. Having been redesignated, the Department will manage these lands as general state lands.

⁹ Sec. 2(a), ch. 182, SLA 1978

¹⁰ See BLM Confirmation of Title Decisions, attached hereto and incorporated by this reference herein as Exhibits B – I.

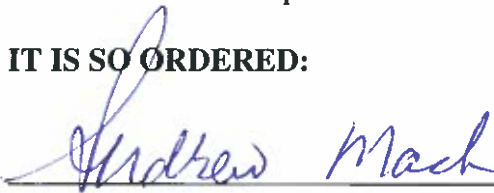
b. Rescission of Department Order 143

DO 143 was issued and implemented because one possible remedy in school trust litigation was the reconstitution of a land based trust. If a court had ordered a land based trust be reconstituted, any diminishment of school trust land or land value could constitute a breach of trust or give rise to additional damage claims. DO 143's purpose was to implement a management policy to avoid these litigation harms.

The school trust litigation has now been settled or dismissed leaving the monetary trust in place. The monetary trust's allocation of one-half of one percent of all state land revenues into the Public School Trust Fund provides compensation for all school trust lands, to the benefit of public schools. Under the monetary trust, the balance of the Public School Trust Fund has grown from \$8.5 million in 1978 to approximately \$591 million at the end of fiscal year 2016. Given the fact that these lands are now going to be treated as general state lands and DO 143 is rescinded it is no longer necessary to require that revenues from land transactions from former school trust lands be segregated into a litigation escrow account.

Because all school trust litigation has settled or been dismissed, the underlying purposes for Department Order 143 no longer exist and the order should be rescinded.

IT IS SO ORDERED:



Andrew T. Mack, Commissioner
Alaska Department of Natural Resources



Date