

STATE BOARD OF LAND COMMISSIONERS

September 19, 2023

Regular Agenda

Subject

Modification of Delegation of Authority for Disclaimers of Interest

Question Presented

Shall the Land Board modify the delegation of authority to address lake disclaimers?

Background

Idaho holds title to the beds and banks of navigable waterways below the ordinary high-water mark (OHWM). The State Board of Land Commissioners (Land Board) is the statutorily designated trustee of these lands. Meander line surveys were completed on Idaho lakes and rivers by the Government Land Office around the time of statehood. The purpose of these surveys was to generally define the banks of the lakes and rivers and establish lots with specific acreages for settlement.

Current landowners adjacent to navigable waterways often have a cloud on their title when the meander lines do not match the current location of the OHWM. This clouded title can affect property transactions, entitlement work, and mortgages. Upland property between the meander lines and the OHWM may be subject to adverse possession by the adjacent upland landowner through a quiet title action. Land Board policy from 1984 directs the Department to work with landowners to pursue disclaimers of interest (disclaimer) for clearing title to the accreted land.

Discussion

At the April 18, 2023 regular Land Board meeting the Idaho Department of Lands' Director was delegated the authority to approve disclaimers if six conditions were met. These conditions were oriented toward disclaimers on navigable rivers, which are the most common. Disclaimers on navigable lakes, however, are not uncommon. This is especially true for Bear Lake in southeast Idaho.

One of the six conditions states "The proposed public use right-of-way is not less than or greater than twenty-five feet (25') in width." This condition is problematic for lake disclaimers because the public use right-of-way is not reserved around lakes. The OHWM of lakes does not move or change, unlike those along most rivers. The location of a lake OHWM is usually not affected by artificial means such as diking or filling, so the easement is not needed to compensate the state for any uncertainty related to the OHWM. The 2007 Land Board policy regarding public access easements reserves a 25-foot public use right of way along navigable rivers except in unusual circumstances. No mention is made of lakes.

The OHWM of a lake is set at a specific elevation. As described in the case *City of Coeur d'Alene v. Lake Coeur d'Alene Property Owners Association et al*, 143 Idaho 443, 147 P.3d 75 (2006), the OHWM is the same elevation at all points around a lake. Modern surveying and LiDAR imagery greatly simplifies the location of the OHWM around a lake.

The condition regarding the public use right-of-way needs to be modified to process routine lake disclaimers more efficiently and allow most to be Director approved. This condition would be modified as follows:

"For navigable rivers, the proposed public use right-of-way is not less than or greater than twenty-five feet (25') in width. For navigable lakes, a public use right-of-way is not required."

The other five conditions would remain unchanged.

Recommendation

Modify the April 18, 2023 policy for disclaimer delegation of authority by replacing the public use right-of-way condition with the following:

"For navigable rivers, the proposed public use right-of-way is not less than or greater than twenty-five feet (25') in width. For navigable lakes, a public use right-of-way is not required."

Board Action