



Disclaimers of Interest Policy

This agency guidance document is not a new law. This document is an interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Purpose

This policy delegates certain decision-making authority to the Director for disclaimers of interest and sets fees. It also directs the Department to reserve a 25-foot wide public use right-of-way along navigable rivers when issuing disclaimers of interest while allowing the Department to propose alternatives to the Land Board due to unusual circumstances.

Agency Contact

Division Administrator – Minerals, Navigable Waters, Oil & Gas

Background

Idaho holds title to the beds and banks of navigable waterways below the ordinary high water mark. The State Board of Land Commissioners (Land Board) is the statutorily designated trustee of these lands. When a river moves due to accretion (the natural, gradual process whereby deposited material causes the river to move), title to the riverbed moves as well. Since the State does not have clear title to these lands, these accreted lands are subject to adverse possession by the adjacent upland landowner through a quiet title action. The Land Board has directed the Idaho Department of Lands (Department) to work with landowners to pursue disclaimers of interest for clearing title to the accreted land.

Policy

I. Disclaimers of Interest

For formerly submerged lands to which the state has no claim of title, the state will issue a disclaimer of interest instead of a quit claim deed specific to those lands above the ordinary high water mark. (Attachment 1, September 11, 1984)

II. Fees

The fee for a disclaimer of interest is the greater of \$600 or the actual cost of processing the application. (Attachment 2, October 21, 1997)

III. Navigable Rivers 25-foot Wide Public Use Right-of-Way

The Department shall reserve a 25-foot wide public use right-of-way along navigable rivers when issuing disclaimers of interest, while allowing the Department to propose alternatives to the Land Board due to unusual circumstances. Alternatives to the 25-foot wide public use right-of-way will be presented to the Land Board for approval. (Attachment 3, June 12, 2007)

IV. Delegation of Authority

Authority for the Director to approve disclaimers is delegated by the Land Board, given that the disclaimers are within the following six conditions:

- A. Gross acreage of the disclaimed parcel is not over 25 acres.
- B. There are no existing structures (non-agricultural) in the proposed disclaimer area.
- C. Land Board staff has reviewed the disclaimer to determine if the disclaimer warrants being brought before the Land Board as a consent item.
- D. If requested, information gathered as part of the disclaimer process, such as tax and deed records, will be provided to Land Board staff.
- E. 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.
- F. The Department has not received public inquiries or media questions regarding the proposed disclaimer.

(Attachment 4, April 18, 2023 and Attachment 5, September 19, 2023)

Revision History (Board Action)

09/11/1984	Disclaimers of interest
10/21/1997	Fees
06/12/2007	Reservation of 25-foot wide public use right-of-way along navigable rivers
04/18/2023	Delegation of authority for disclaimers of interest
09/19/2023	Modification of delegation of authority for disclaimers of interest

STATE BOARD OF LAND COMMISSIONERS

September 11, 1984

SUBJECT

Issuance of a disclaimer for non-state lands lying between
meander line survey ^{and} ordinary high water mark.

AUTHORITY

Idaho Code Section 6-402

DISCUSSION

The state lacks a substantive claim to title of lands lying above the ordinary high water mark and below the meander line as surveyed in the GLO surveys. The issuance of Quit Claim Deeds to these lands may indicate on the surface that the State has an interest which is being disposed of contrary to laws covering disposal of state lands. When these deeds are platted on official plats indication is also made that state interests may have been disposed of improperly.

RECOMMENDATION

The department recommends that when Quit Claim Deeds are requested for lands to which the state has no claim of title, the state issue a disclaimer instead of a Quit Claim Deed specific to those lands above the ordinary high water mark.

BOARD ACTION

Approved. SEP 11 1984

STATE BOARD OF LAND COMMISSIONERS
October 21, 1997

SUBJECT

This is a request to increase the administrative fees charged for processing disclaimer of interest requests for accretion land along navigable rivers and lakes.

RECOMMENDATION

The department recommends that the minimum fees for disclaimers of interest be raised from \$200.00 to \$600.00 effective November 1, 1997; however, the fee could be greater if the department incurs costs in excess of \$600.00. This is for non endowment land that lies between the ordinary high water mark and the meander lines established by the original surveys by the General Land Office, the predecessor to the Bureau of Land Management.

OVERVIEW

The department began issuing quitclaim deeds for accretion lands to adjacent landowners in 1975 for \$10.00 which was the deed fee in use at that time. This process continued until 1984 when the department presented to the Land Board a proposal to issue disclaimers of interest rather than quitclaim deeds. This was done to clarify that the department was not conveying a property interest and, in doing so, bypassing the laws pertaining to disposal of state lands as outlined in Idaho Code, Title 58-313. This proposal was approved on September 11, 1984. The department established a policy at that time to charge a \$200.00 fee or the cost of the inspection, whichever is greater. In the intervening 13 years, the largest amount an applicant paid for a disclaimer of interest was \$400.00.

The department is currently developing a policy (Operations Memorandum) for processing disclaimers of interest. In doing so, it is necessary to review the existing fee structure which has been in operation for 13 years. In 1984, the only document that the department prepared was the disclaimer of interest which was issued to the applicant. Now, there is also one and, sometimes two acquired easements for unimproved pedestrian access or an improved greenbelt easement to be prepared by the department. Most of the time there is also a disclaimer of interest for a portion of the current river bed to be disclaimed to the state from the applicant which is usually prepared by department personnel. In addition, in some cases a conservation easement is also prepared in cooperation with the Idaho Fish and Game Department. That adds up to a lot more department personnel time involved in inspecting the properties and preparing the necessary documents.

The work that goes into preparing and completing a disclaimer of interest request can be fairly simple to complex depending on 1.) the number of documents to be prepared; 2.) the completeness and accuracy of the survey provided by the applicant and the surveyor; 3.) the number of individuals that have to be contacted during the preparation of the documents, i.e., the applicant, the surveyor, an attorney, a title company representative, etc. After doing some research and questioning of the usual people ordinarily involved in processing a disclaimer of interest application, it appears that the administrative costs accumulated in the processing of an average request ranges between \$500.00 and \$700.00.

The action the department takes in issuing these disclaimers of interest are extremely helpful to the adjacent landowner in clearing title to their property as title companies require some sort of documentation that they (the landowner) have clear title to their property before they can build on it or sell it. If the landowner had to go through a quiet title process through the court system, it would be considerably more expensive. Department staff believe the fees should be related to the costs we have in preparing the disclaimer request versus producing revenue since the properties are not endowment land. The disclaimer of interest is a much better process than a quiet title suit in the courts for clearing title to properties which the state has no property rights.

BOARD ACTION

APPROVED OCT 21 1997

ATTACHMENTS

1. Copy of Land Board Minutes dated September 11, 1984

DFM

DFM:mh
September 30, 1997

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STATE BOARD OF LAND COMMISSIONERS

June 12, 2007

Regular Agenda

SUBJECT

Adoption of a formal policy regarding the reservation of a 25-foot wide public use right-of-way in exchange for disclaimers of interest along navigable rivers.

BACKGROUND

The State owns the beds and banks of navigable rivers below the ordinary high water mark (OHWM). The OHWM, however, is not a permanently fixed location. Many of the navigable rivers have changed course since the original meander surveys in the 19th and 20th centuries. Where the course of the river has changed and the former riverbed is now dry uplands, the land no longer retains public trust values and the State no longer has an interest in retaining title to these lands. The State should, however, protect the public trust by maintaining public access along the existing bed of the river.

Prior to September 11, 1984 the Department issued quit claim deeds for former riverbeds. On the above date the State Board of Land Commissioners (Land Board) directed the Department to issue disclaimers of interest instead of quit claim deeds when clearing title to former riverbeds. In 1986 the Department began reserving 25-foot wide public access easements along the upland side of the newly surveyed ordinary high water marks. This practice has continued on most disclaimers issued statewide. (Refer to Attachment 6, Issuance History for River Disclaimers.) Disclaimers are initiated by landowners and are voluntary. Both parties must agree on the terms of the disclaimer.

The easement reservation began along the Boise River. The popularity of the greenbelt system, and rapid growth in the 1980's, dictated that the Department attempt to protect the public trust values of the river, while simultaneously helping to clear ownership and make way for riverside development. The law governing riparian and littoral rights indicates that rivers or lakes cannot be diked, diverted, or filled in, and then claimed by an adjacent owner as private uplands. These activities have historically taken place along the Boise River and have clouded the exact location of the OHWM. In addition, dam construction upstream has altered the historic flow patterns, further complicating the establishment of the correct OHWM. Most other rivers in the State have these same issues of bank alteration and changed high water marks. These uncertainties underscore the give and take of the disclaimer process.

DISCUSSION

The Department's current practice in resolving ownership issues is to generally accept the current location of the river, as defined by the OHWM identified by Department personnel. In exchange for accepting the current location of the river, a 25-foot wide public use right-of-way is reserved to the State or a local municipality on the upland adjacent to the OHWM. This serves to protect the public trust values associated with rivers, by providing river access to the public. In some instances the easement differs in dimension or location based on site specific facts. In a few extraordinary circumstances, the easement is not reserved at all. These rare exceptions are carefully weighed by the Department against the needs of the public trust.

Land Board records reveal no indication of a specific adopted policy related to the reservation of public easements, in conjunction with disclaimers of interest, along navigable rivers. What is apparent, however, is that Land Board members from the 1980's up through the present have vigorously supported the easement reservation associated with disclaimers. Land Board members routinely ask if the easement reservation is part of the disclaimer package.

Perhaps the greatest benefit of the easement reservation process has been the establishment of a greenbelt from Lucky Peak Dam to the City of Eagle; the envy of many other western states. As title to other lands adjacent to navigable rivers are cleared up throughout Idaho, other residents can enjoy the same benefits. After 20 years of successful implementation of this practice, the Department requests that the Land Board adopt a formal policy that directs the Department to reserve a 25-foot wide public use right-of-way when issuing disclaimers of interest.

This item was last before the Land Board at the March 13, 2007 meeting (Attachment 1). The Land Board directed the Department to seek an Attorney General's opinion regarding the policy of asking for a 25-foot wide public use right-of-way from the riparian landowner, who seeks a Disclaimer of Interest on the former public trust property as a condition of the State of Idaho granting the disclaimer.

RECOMMENDATION

Consistent with the recommendation as presented at the March 13, 2007 Board meeting, direct the Department to reserve a 25-foot wide public use right-of-way along navigable rivers when issuing Disclaimers of Interest, while allowing the Department to propose alternatives to the Land Board due to unusual circumstances. Alternatives to the 25-foot wide public use right-of-way will be presented to the Land Board for approval.

BOARD ACTION

A motion was made by Attorney General Wasden to move the adoption of the suggested formal policy regarding reservation of a 25-foot wide public use right-of-way along navigable rivers. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 3-2, with Governor Otter and Superintendent Luna voting nay.

ATTACHMENTS

1. March 13, 2007 Land Board Memorandum
2. March 23, 2007 Letter from Judy Peavey Derr, President, Foundation for Ada/Canyon Trail Systems
3. April 17, 2007 Letter from Tom Dale, Chair, Community Planning Association
4. May 25, 2007 Email from Brian Hoff
5. June 3, 2007 Letter from Stephanie Burgess, Meridian
6. Issuance History for River Disclaimers
7. Attorney General Opinion No. 07-1, May 7, 2007



STATE BOARD OF LAND COMMISSIONERS

April 18, 2023
Regular Agenda

Subject

Delegation of Authority for Disclaimers of Interest

Question Presented

Shall the Land Board delegate routine Disclaimers of Interest to the Director?

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. When a river moves due to accretion (the natural, gradual process whereby deposited material causes the river to move), title to the riverbed moves as well. Since the state does not have clear title to these lands, these accreted lands are subject to adverse possession by the adjacent upland landowner through a quiet title action. Land Board policy from 1984 directs the Idaho Department of Lands (Department) to work with landowners to pursue disclaimers of interest (disclaimer) for clearing title to the accreted land. See Attachment 1, Disclaimer of Interest Procedures.

Discussion

In recent years, the number of disclaimer requests from landowners has increased. Current Land Board policy is to present each disclaimer to the Land Board as a Consent Agenda item. In seeking greater efficiency, the Department worked with the Office of the Attorney General to research whether disclaimers could be processed without Land Board action.

Idaho Code § 58-119(1) provides that the Department shall have power "To exercise, under the general control and supervision of the state board of land commissioners all the rights, powers and duties vested by law in the state board of land commissioners, except the supervision of public investments [EFIB], the administration of the Carey Act and the administration of chapter 26, title 42, Idaho Code." Under that provision, the Land Board could delegate its authority regarding disclaimers to the Department.

Idaho Code § 58-119A further clarifies the authority for the Department to issue disclaimers without obtaining formal approval from the Land Board: "The department of lands may enter into an agreement with an owner of land adjacent to accreted land along a navigable river for the issuance of a disclaimer of interest as to the accreted land by the state in exchange for a reservation of a public use right-of-way along the navigable river. Any proposed agreement that seeks to reserve a public use right-of-way in excess of, or less than, a width of twenty-five (25) feet shall be approved by the state board of land commissioners prior to finalization of the agreement."

In the proposed revised process, the Department would maintain the current research and field inspection tasks required for the disclaimer process, including obtaining and evaluating tax and deed records. The Department would utilize its website to provide appropriate transparency regarding potential disclaimers. The Department would coordinate the disclaimer process, where possible, to allow for public access to the rights-of-way received.

Rather than presenting each disclaimer to the Land Board, the Director would approve or deny each disclaimer as long as the following conditions are met:

- Gross acreage of the disclaimed parcel is not over 25 acres.
- There are no existing structures (non-agricultural) in the proposed disclaimer area.
- Land Board staff has reviewed the disclaimer to determine if the disclaimer warrants being brought before the Land Board as a consent item.
- If requested, information gathered as part of the disclaimer process, such as tax and deed records, will be provided to Land Board staff.
- The proposed public use right-of-way is not less than or greater than twenty-five feet (25') in width.
- The Department has not received public inquiries or media questions regarding the proposed disclaimer.

Recommendation

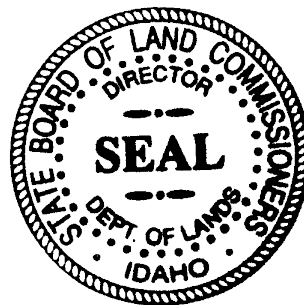
Delegate the approval of Disclaimers of Interest to the Director as long as the above six conditions are met.

Board Action

A motion was made by Superintendent Critchfield that the Land Board approve delegation of disclaimers of interest contingent upon the conditions that are set forth in the Land Board materials. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Disclaimer of Interest Procedures



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

A motion was made by Controller Woolf that the Land Board adopt the Department's recommendation and 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 25 feet in width; for navigable lakes, a public use right-of-way is not required. Attorney General Labrador seconded the motion. The motion carried on a vote of 4-0.

