

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

- ☐ 400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886
- ☐ 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

January 27, 2006

Henri Bisson
Director, Alaska State Office
Bureau of Land Management
222 W. 7th Avenue, #13
Anchorage, Alaska 99513-7599

BLM AK SO 954
ANCHORAGE, AK
2006 JAN 27 AM 10:11

Re: Recordable Disclaimer of Interest Application for Little Scottie Creek, a right bank tributary and unnamed lakes.

Dear Mr. Bisson:

Pursuant to 43 CFR §186, the State of Alaska files this application for a Recordable Disclaimer of Interest for the lands underlying Little Scottie Creek, two unnamed lakes through which it flows, and a right bank tributary.

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands below the ordinary high water line of the unnamed lakes and all submerged lands lying within the bed of Little Scottie Creek and the right hand tributary between the ordinary high water lines of the left and right banks, beginning at the 60 foot wide neutral strip at the Alaska/Canada International border at Section 25, Township 10 North, Range 23 East Copper River Meridian, Alaska, downstream to its junction with Scottie Creek within Section 24, Township 10 North, Range 23 East, Copper River Meridian, Alaska. As a general rule, any sloughs, braids or channels that carry water from a navigable creek are an integral part of the creek and thus, are navigable as well. A map highlighting the creek, tributary and two unnamed lakes, with a legal description of the townships and ranges underlying the water bodies are enclosed.

II. WAIVER REQUEST

As previously discussed with the Bureau of Land Management Alaska State Director, the State requests a waiver under §1864.1-2(d) of the requirement of 43 CFR §1864.1-2 (c)(1) for a description based on a public land survey or certified metes and bounds survey because the map and legal description included here clearly identify the land subject to this application.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

III. BASIS FOR THE STATE'S REQUEST FOR A RECORDABLE DISCLAIMER OF INTEREST

Navigability of the waterway - The State's application for a Recordable Disclaimer of Interest is based on the Equal Footing Doctrine; the Submerged Land Act of May 22, 1953; the Alaska Statehood Act; the Submerged Lands Act of 1988, or any other legally cognizable reason. The Bureau may disclaim interest in the submerged lands on any of the grounds that apply.

Because Little Scottie Creek, the right hand tributary and the two unnamed lakes are navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine and the Submerged Lands Acts. Under the Equal Footing Doctrine, new states created from federal territories are admitted to the Union with all the powers of sovereignty and jurisdiction that pertain to the original states. Upon admission of a state to the Union, the title to lands underlying navigable waters within its boundaries automatically passes to the state as a matter of constitutional grace.

The State as the upland owner - Generally, where the state is the owner of the uplands adjacent to Little Scottie Creek, a right bank tributary, and two unnamed lakes, the State owns the beds of these waterbodies even in the absence of a navigability determination. In such circumstance, the State took title under the Equal Footing Doctrine if the water is navigable, or if it is non-navigable, the State gained title as a matter of state law governing riparian rights. In Alaska, where the land bordering a non-navigable body of water is ceded, title to the submerged lands passes to the upland owner unless the intent of the grantor is expressly stated to the contrary.

IV. REASON FOR THE STATE'S REQUEST FOR A RECORDABLE DISCLAIMER OF INTEREST

The lack of any title document or judgment creates a cloud on the state's title. A Recordable Disclaimer of Interest for this land will help lift the cloud on its title stemming from the lack of any permanent determination of ownership.

V. EVIDENCE OF THE NAVIGABILITY OF THE WATERBODIES

The Bureau of Land Management's own formal determinations confirm the navigability of Little Scottie Creek, a right bank tributary, and two unnamed lakes. A June 29, 1994 Bureau navigability report with background information, physical information and public use statements and information of this waterway concludes that the creek may be susceptible to navigation. An August 25, 1994, Bureau memorandum documents a field trip on this waterway. Bureau staff determined from this field trip that Little Scottie Creek to the Canadian Border, unnamed lakes in the SE $\frac{1}{4}$ of Section 24 T. 10 N, R 23 E., CRM and in the NE $\frac{1}{4}$

of Section 25 T 10 N, R. 23 E., CRM, and the right bank tributary of Little Scottie Creek in the NE¼ of Section 24, T. 10 N., R 23 E., CRM are all navigable. Two Bureau navigability reports, dated September 20, 1994, describe field trips by Bureau staff and determine that Little Scottie Creek and the right bank tributary are navigable to the Canadian border. A September 22, 1994, Bureau memorandum confirms the field report and navigability of Little Scottie Creek from the Alaska/Canada border to the confluence with Scottie Creek, including the two lakes that it flows through, and the right bank tributary. A summary of the navigability determinations are attached to this application.

VI. OTHER KNOWN INTERESTED PARTIES

The state is not aware of any adverse claimant or occupant of these lands.

VII. CONCLUSION

As evidenced by navigability determinations, the State of Alaska determines there is sufficient information to conclude that Little Scottie Creek, the right hand tributary and the unnamed lakes are navigable waterways and ownership of the submerged lands should be disclaimed by the Department of the Interior.

The state agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land, and Water, 550 W. 7th Avenue, Anchorage, Alaska 99501, Attention Richard Mylius, (907) 269-8600. The State hereby authorizes BLM to bill the State's account \$100 for the application fee required by regulation.

Sincerely,

Michael Menge
Commissioner

Enclosure

Cc:* McKie Campbell, Commissioner, Alaska Department of Fish & Game
Linda Hay, Special Asst. for Natural Resources, Office of the Governor
David W. Marquez, Attorney General – State of Alaska
Special Assistant to the Secretary for Alaska
Dick Mylius, Acting Dir., Dept. of Natural Resources, State of AK, DMLW
Senator Gene Therriault, Chair, Legislative Budget & Audit Joint Comm.
Department of Natural Resources, Public Information Center
Jim Stratton, Alaska Regional Director, National Parks Conservation Assoc.
Chris Milles, Acting Regional Manager, Northern Region, Dept. of Natural
Resources, State of Alaska DMLW
Tony Booth – Acting Manager, Tetlin National Wildlife Refuge
Warren Keogh, Water Rights Coordinator – NWRS Alaska
Northway Traditional Council
Northway Village Council, Planning Commission
Northway Natives, Inc.
Georgianna Lincoln, Chairwoman, Doyon, Limited
Harold Brown, Tanana Chiefs Conference

* These recipients were provided only with a copy of the application filed with BLM. Copies of map(s) for the waterbodies and any historical documents referenced in support of this application can be obtained via DNR's website (<http://www.dnr.state.ak.us/mlw/nav/rdi/>) or the Bureau's website (<http://www.ak.blm.gov/ak930/rdi/index.html>). If you are unable to access these websites or are unable to download the information, please feel free to contact Mark McCart at (907) 269-6018 and we will provide you with the information through the mail.

Legal Description

Little Scottie Creek, the right bank tributary and the unnamed lakes within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of the Little Scottie Creek, two unnamed lakes that it passes through, and the right hand tributary of Little Scottie Creek, including all sloughs, braids and channels of Little Scottie Creek between the ordinary high water lines of the left and right banks, beginning at the 60 foot wide neutral strip of the Alaska – Canada International Border within Section 25, Township 10 North, Range 23 East, Copper River Meridian, Alaska

Thence westerly and northerly, generally within the following township of the Copper River Meridian as determined from USGS 1:63,360 series topographic maps Nabesna (C-1) 1955 (minor revisions 1963); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 10 North, Range 23 East.

To the terminus, being all points of confluence with Scottie Creek within Township 10 North, Range 23 East, Copper River Meridian, Alaska.