

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

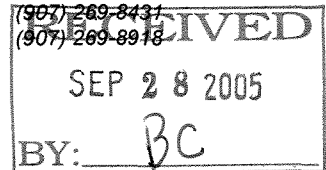
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September 21, 2005

AK-930

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

BLM AK SO 952  
ANCHORAGE, AK  
05 SEP 29 AM 8:12

Re: Recordable Disclaimer of Interest Application for Muddy River

Dear Mr. Bisson:

The State of Alaska files this application for a recordable disclaimer of interest for the lands underlying the Muddy River, pursuant to 43 CFR §1864.

This application is submitted for all submerged lands lying within the bed of Muddy River between the ordinary high water lines of the left and right banks, beginning from its outlet at Lake Minchumina within Township 12 South, Range 23 West, Fairbanks Meridian, Alaska, downstream to the confluence with Birch Creek in Township 12 South, Range 21 West, Fairbanks Meridian, Alaska. As a general rule, any sloughs, braids, or channels which carry water from a navigable river are an integral part of the river and thus, are navigable as well. A map highlighting Muddy River and a legal description of the townships and ranges underlying the river are enclosed.

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.

A recordable disclaimer for this land will help lift the cloud on its title stemming from the lack of any permanent determination of ownership. Because Muddy River is navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine. 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

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automatically pass to the state as a matter of constitutional grace. The lack of any title document or judgment creates a cloud on the state's title.

Where the state is the owner of the uplands adjacent to Muddy River, the state owns the bed of Muddy River 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 result of the intent of the grantor and 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 shoreland owner unless the intent of the grantor is expressly stated to the contrary.

The State's application for a Recordable Disclaimer of Interest is based on the Equal Footing Doctrine; the Submerged Lands 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 grounds that apply.

The Bureau's own formal determinations confirm navigability of Muddy River. A December 13, 1982, Bureau navigability report on state selections recommended the Muddy River be determined navigable. A December 28, 1982 Bureau memorandum confirmed the recommendation and determined the Muddy River, including interconnecting sloughs, to be navigable. A May 29, 1984, Bureau memorandum provided the final navigability determination for state selected lands, confirming that the Muddy River is navigable. A summary of navigability determinations and copies of the supporting documents are attached.

In addition to the Bureau's navigability determinations, substantial historic information demonstrates the navigability of the Muddy River. The Arctic Environmental Information and Data Center (AEIDC) mentioned in a summary report, *"A Study of the Historical Use and Physical Characteristics of Alaska's Inland Water Bodies"*, that in 1889 prospectors poled up the Kantishna and Muddy Rivers, taking 12 days to reach Lake Minchumina. The Bureau's report on *"Alaska's Kuskokwim River Region"* (C. Michael Brown 1983), describes the Muddy River as a transportation route for miners and other travelers to reach the Takotna/McGrath mining district via the Minchumina portage. Pole boats and motor launches were used to transport miners and equipment from Nenana down the Tanana River to the mouth of the Kantishna River. Travel then continued up the Kantishna River and Muddy River to Lake Minchumina and then across the Minchumina portage to the North Fork of the Kuskokwim River. Fuel and supplies for the FAA support facilities at Lake Minchumina were barged to the lake via Kantishna and Muddy Rivers until the 1950's. An August 1979 report, *"Ethnohistory of Four Interior Waterbodies"* by Dianne Gudgel-Holmes from the Department of Natural Resources-Alaska, refers to statements by local residents

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regarding the river's historic navigability as well as reports that Lake Minchumina and Muddy River were an integral part of an early Native water route for trade and travel between the Tanana (Yukon) and Kuskokwim drainages. A bibliography of sources compiled for the Bureau summarizing historical navigability information on the Muddy River is provided.

As evidenced by navigability determinations and the available historic information, the State of Alaska determines there is sufficient information to conclude that the Muddy River is a navigable waterway and ownership of its submerged lands should be confirmed in the State.

Because the Bureau has found the Muddy River to be navigable, it has meandered it in conveyances of the adjacent uplands and thus eliminated any possibility that others might claim an interest in the bed of the river. In any event, the state is not aware of any adverse claimant or occupant of these lands.

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

Sincerely,

  
Thomas E. Irwin  
Commissioner

Enclosures

cc: David Marquez, Attorney General, State of Alaska  
Michael Menge, Special Staff Assistant, Office of the Governor  
McKie Campbell, Commissioner, Alaska Dept. of Fish and Game  
Cam Toohey, Special Assistant to the Secretary for Alaska  
Robert Loeffler, DNR, Division of Mining, Land and Water  
Senator Gene Therriault, Chair, Legislative Budget & Audit Joint Comm.  
Public Information Center, Department of Natural Resources  
Paul Anderson, Superintendent, Denali National Park and Preserve  
Chris Milles, Acting Regional Manager, Northern Region, DNR  
Wendy Woolfe, Acting Executive Director, Mental Health Trust Auth.  
Denali Borough, Planning Commission  
Doyon, Limited  
Harold Brown, Tanana Chiefs Conference

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### Legal Description

The Muddy River within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of the Muddy River, including all sloughs, channels and braids between the ordinary high water lines of the left and right banks, beginning at Lake Minchumina in Township 12 South, Range 23 West, Fairbanks Meridian, Alaska;

Thence easterly, northerly and southerly, generally within the following townships of the Fairbanks Meridian as determined from USGS 1:63,360 series topographic maps Mt. McKinley (D-4) 1953 (minor revisions 1968); Kantishna River (A-4) 1953 (minor revisions 1967); Mt. McKinley (D-5) 1953 (minor revisions 1987); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 12 South, Range 23, 21 West;  
Township 11 South, Range 23, 22, 21 West;  
Township 10 South, Range 21 West.

To the terminus, being all points of confluence with Birch Creek within Township 12 South, Range 21 West, Fairbanks Meridian, Alaska.