

# 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 7<sup>TH</sup> AVENUE, SUITE 1400  
ANCHORAGE, ALASKA 99501-3650  
PHONE: (907) 269-8431  
FAX: (907) 269-8918

March 10, 2006

BLM AK SO 954  
ANCHORAGE, AK  
2006 MAR 10 PM 2:54

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

**Re: Recordable Disclaimer of Interest Application for Whitefish Lake and its Outlet**

Dear Mr. Bisson:

Pursuant to 43 CFR §1864, the State of Alaska files this application for a recordable disclaimer of interest for the lands underlying Whitefish Lake and its Outlet.

**I. DESCRIPTION OF WATERWAY**

This application is submitted for the submerged lands encompassed by the ordinary high water line of Whitefish Lake within the following townships and ranges in the Seward Meridian: Township 14 North, Range 60 West; Township 15 North, Ranges 59-60 West. This application is also submitted for the submerged lands within the bed of the Whitefish Lake Outlet between the ordinary high water lines of the left and right banks of the Outlet, beginning at its source, Whitefish Lake, in the SW $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 3 in Township 15 North, Range 60 West, Seward Meridian; thence west-northwest to its confluence with two other unnamed streams in the NE $\frac{1}{4}$  SW $\frac{1}{4}$  of Section 1 in Township 15 North, Range 61 West, Seward Meridian. A map highlighting the lake and its outlet and a legal description of the townships and ranges underlying the lake and its outlet are enclosed.

**II. WAIVER REQUEST**

As previously discussed with the BLM 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"*

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

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

Because Whitefish Lake and its Outlet are navigable, Alaska owns the submerged lands underlying Whitefish Lake and its Outlet 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 the Whitefish Lake and its Outlet, the State owns the bed of Whitefish Lake and its Outlet 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 to the beds of waterways 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.

IV. REASON FOR THE STATE'S REQUEST FOR 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 WHITEFISH LAKE AND ITS OUTLET

In 1983 the Bureau compiled a regional report detailing historical information and documents related to the Kuskokwim Region (hereinafter referred to as the "Regional Report"). This 800 page report provides an extensive description and summary of historic use of the waterways in the region, including Whitefish Lake and its Outlet, providing information regarding the use of waterways in the region and details about the historic communities and activities

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such as exploration, mining, hunting, fishing, trapping, water transport and road and trail use.

Subsequent to the Regional Report, on November 8, 1984, the Bureau published a report entitled Navigable Waters of the Kuskokwim Region, Alaska (hereinafter referred to as "1984 Report"). This report provided further information related to a number of waterbodies previously identified in the Regional Report, including Whitefish Lake and its Outlet. The 1984 Report summarizes historic information related to Whitefish Lake and its Outlet being used as a link in water and land routes to prospective mining ground on Ophir Creek and mining operations on the headwaters of the Tuluksak River. The report further cites interviews with local residents in the early 1980's who traveled the water route in boats or skiffs in connection with subsistence activities. The report also states that historic observations of the hydrologic characteristics of the lake and its outlet indicate that the lake was approximately 10-15 feet deep and the outlet was narrow and deep (from 6 to 15 feet deep in places). The report concludes that:

In view of the physical character of the lake and its effluent, and its past history as a route of travel to Ophir Creek and Tuluksak River points in boats comparable to riverboats extant in 1959, it is clear that Whitefish Lake and its outlet are susceptible to commercial navigation.

The 1984 Report is affixed hereto as support for the State's application. The Regional Report is not affixed to this application due to its voluminous size. It can, however be accessed through [BLM WEBSITE?].

VI. OTHER KNOWN INTERESTED PARTIES

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

VII. CONCLUSION

As evidenced by the Bureau's 1984 Report and Regional Report and the available historic information included therein, the State of Alaska determines there is sufficient information to conclude that Whitefish Lake and its Outlet are navigable and ownership of the underlying submerged lands should be disclaimed by the Department of Interior.

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,

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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,

A handwritten signature in black ink, appearing to read "Michael L. Menge". To the right of the signature, the word "FOL" is written in a smaller, less legible script.

Michael L. Menge  
Commissioner

Enclosures

cc:\* McKie Campbell, Commissioner, Alaska Dept. of Fish & Game  
Linda Hay, Special Asst. for Natural Resources, Office of the Governor  
David W. Marquez, Attorney General for the State of Alaska  
Special Asst. to the Secretary for Alaska  
Dick Mylius, Acting Director, State of Alaska Dept. of Natural Resources, Division of Mining, Land and Water  
Senator Gene Therriault, Chair, Legislative Budget & Audit Joint Committee  
Public Information Center, Department of Natural Resources  
Jim Stratton, Alaska Regional Director, National Parks Conservation Association  
Regional Manager of Southcentral Region, Division of Mining Land & Water, State of Alaska DNR  
Michael Rearden, Refuge Manager, Yukon Delta National Wildlife Refuge  
Warren Keough, Water Rights Coordinator - NWRS Alaska  
June McAttee, Calista Corporation  
City of Upper Kalskag  
Village of Kalskag  
Kuskokwim Native Corporation  
City of Lower Kalskag

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\* 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 Scott Ogan at (907) 269-5515 and we will provide you with the information through the mail.

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Myron Naneng, President, Association of Village Council  
Village of Lower Kalskag

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**Legal Description**

Whitefish Lake and its Outlet within the State of Alaska, more particularly described as follows:

**Whitefish Lake:**

All submerged lands encompassed by the ordinary high water line of Whitefish Lake within the following townships and ranges in the Seward Meridian as determined from Alaska USGS 1:63,360 series topographic map Russian Mission B-3 (1952):

Township 14 North, Range 60 West;  
Township 15 North, Ranges 59-60 West..

The precise location may be within other townships due to the ambulatory nature of water bodies.

**Whitefish Lake Outlet:**

All submerged lands within the bed of the Whitefish Lake Outlet between the ordinary high water lines of the left and right banks of the Outlet, beginning at its source, Whitefish Lake, in the SW¼ SW¼ of Section 3 in Township 15 North, Range 60 West, Seward Meridian, Alaska USGS 1:63,360 series topographic map Russian Mission B-3 (1952). Thence west-northwest to its confluence with the Kuskokwim River in the SW¼ of Section 16 in Township 16 North, Range 61 West, Seward Meridian, Alaska USGS 1:63,360 series topographic map Russian Mission B-4 (1954 minor revisions 1972).

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