STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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March 10, 2006

BLM AK SO 954
ANCHORAGE, AK
2006 MAR 10 PM 2:5

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

Re: Recordable Disclaimer of Interest Application for Aniak River and Aniak Lake

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 Aniak River and Aniak Lake.

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands lying within the bed of Aniak River, between the ordinary high water lines of the left and right banks beginning at its source in Section 20 of Township 3 North, Range 57 West, Seward Meridian, Alaska, northerly to its confluence with the Kuskokwim River in Section 7 of Township 17 North, Range 56 West, Seward 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. This application is also submitted for the submerged lands encompassed by the ordinary high water line of Aniak Lake within the following townships and ranges in the Seward Meridian: Township 5 North, Range 56 West; Township 4 North, Range 57 West. A map highlighting the river and lake and a legal description of the townships and ranges underlying the river and lake 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.

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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 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 Aniak River and Aniak Lake are navigable, Alaska owns the submerged lands underlying the waterbodies 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 Aniak River and Aniak Lake, 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 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 ANIAK RIVER AND ANIAK LAKE

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 Aniak River and Aniak Lake, providing information regarding the use of waterways in the region and details about the historic communities and activities 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 the region and made navigability determinations for a number of waterbodies previously identified in the Regional Report, including Aniak River, stating that:

> During the gold rush era the Aniak was an important poling boat highway to the Marvel Creek Diggings. According to a local newspaper in 1912, two men took a poling boat loaded with nearly a ton of supplies up the river to the diggings on the upper reaches of Salmon River. The newspaper observed that prospectors should have no difficulty in reaching the mouth of Marvel Creek by poling boat. In 1914 a part of eight men reportedly ascended the Aniak at high water stage in a poling boat for a distance of forty-five miles. Another group of miners took a "large power boat" to a roadhouse forty miles upriver. In 1937 another local newspaper reported that the river was navigable for small boats a distance of sixty miles. These and other reports of boat traffic on the Aniak indicate that the Aniak was in 1959 susceptible to commercial navigation to at least the mouth of the Salmon River.

In this report, the Bureau deems Aniak River navigable from Salmon River to the Kuskokwim River.

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 the Alaska Resources Library & Information Services (ARLIS).

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 Kuskokwim Report and Regional Report and the available historic information included therein, the State of Alaska determines there is sufficient information to conclude that Aniak River and Aniak Lake are navigable waterways and ownership of the submerged lands should be disclaimed by the Department of Interior.

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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 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
City of Aniak
Kuskokwim Native Association
The Kuskokwim Corporation
Village of Aniak

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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.

City of Chuathbaluk
Chuathbaluk Traditional Council
Myron Naneng, President, Association of Village Council Presidents
June McAttee, Calista Corporation

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Legal Description

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

All submerged lands within the bed of Aniak River between the ordinary high water lines of the left and right banks, beginning at its source in Township 3 North, Range 57 West, Section 20, Seward Meridian, Alaska USGS 1:63,360 series topographic map Bethel B-1 (1979). Thence northerly to its confluence with the Kuskokwim River in Township 17 North, Range 56 West, Section 7, Seward Meridian, Alaska USGS 1:63,360 series topographic map Russian Mission C-2 (1952, minor revisions 1970). The Aniak River flows through the following Townships and Ranges:

Seward Meridian:

Township 3 North, Range 57 West
Township 4 North, Range 57 West
Township 5 North, Range 56 West
Township 6 North, Range 56 West
Township 7 North, Ranges 55-56 West
Township 8 North, Range 56 West
Township 9 North, Range 55 West
Township 10 North, Range 55 West
Township 11 North, Ranges 55-56 West
Township 12 North, Ranges 55-56 West
Township 13 North, Range 55 West
Township 14 North, Ranges 55-56 West
Township 15 North, Range 56 West
Township 16 North, Ranges 56-57 West
Township 17 North, Range 56 West

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

Aniak Lake within the State of Alaska, more particularly described as follows:

All submerged lands encompassed by the ordinary high water line of Aniak Lake within the following townships and ranges in the Seward Meridian as determined from Alaska USGS 1:63,360 series topographic map Bethel B-1 (1979):

Township 5 North, Range 56 West
Township 4 North, Range 57 West

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

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