STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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October 3, 2005

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 the Chisana River

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 the Chisana River.

This application is submitted for all submerged lands lying within the bed of the Chisana River between the ordinary high water lines of the left and right banks from its origin at the Chisana Glacier within Township 3 North, Range 17 East, Copper River Meridian, Alaska, downstream to its confluence with the Tanana River in Township 15 North, Range 19 East, Copper River Meridian, Alaska. This application also specifically includes an unnamed channel that interconnects the Chisana River and Mark Creek, located in Township 14 North, Ranges 19 and 20 East, Copper River Meridian, Alaska (hereinafter referred to in this application as the "unnamed channel"). 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. Maps highlighting the river and the unnamed channel, and a legal description of the townships and ranges underlying the river and unnamed channel 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 the Chisana River and the unnamed channel are navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine. Under the Equal

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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 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 the Chisana River and the unnamed channel, 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. Therefore, where the State is the upland owner, the Bureau may approve the State's application for a Recordable Disclaimer of Interest for the bed of the waterbody based on the State's ownership of the adjacent uplands. In such areas, a navigability determination is not required.

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 grounds that apply.

Chisana River navigability reports have been reviewed for information supporting navigable uses. A 1975 Navigability Investigation Report briefly summarizes physical information and historic and current use of the Chisana River. The report includes personal statements from local residents documenting boat use on the Chisana River as far upstream as Mirror Creek. A 1975 report by the Grumman Ecosystems Corporation recommends that the Chisana River be determined navigable to river mile 61.2, the mouth of Mirror Creek.

The Bureau of Land Management's own formal determinations confirm navigability of portions of the Chisana River. A March 16, 1979 Bureau staff report regarding the navigable and non-navigable water bodies in the Northway area recommended that the Chisana River is navigable from its mouth to Scottie Creek. This report listed other historic boat use on the Chisana River extending farther upstream than Scottie Creek.

The Bureau State Director confirmed the previous navigability recommendation on March 22, 1979. BLM documents dated March 28, 1980 and April 15, 1983

refer to the March 22, 1979 navigability determination for the Chisana River to Scottie Creek. A November 7, 1978 Bureau memorandum report on navigability of the Nabesna River, includes information on historical boat use of the Chisana River. That report states that "[t]he Chisana River, on the other hand, has a long history of river boat traffic...During the Chisana Gold Rush of 1913, a large number of people ascended the river as far as Chathenda Creek in poling boats."

In addition to these navigability determinations, there is substantial historic information describing navigability on the Chisana River. A May 1979 Alaska Department of Natural Resources report entitled Historic Use of the Chisana and Nabesna Rivers, Alaska prepared by Terrence M. Cole presents information on public use of the Chisana River as a transportation route for early mining explorations. In that report, Cole references a newspaper article from The Fairbanks Daily Times dated May 9, 1914 which states that the sternwheeler Mabel overwintered on the Chisana River near Johnson City. In detailing the 1913-14 gold exploration period in the Chisana area, Cole references these newspaper reports and states as follows:

> Many men in poling boats did ascend the Chisana in 1913 to the mouth of Chathenda Creek, more than 113 miles above the mouth of the Chisana River....In addition to Reliance City at the mouth of Chisana, and Gasoline City at the mouth of Scottie Creek, the stampeders staked a more permanent town site on Chathenda Creek, which was variously called Chisana City or Johnson City, and was the major distribution point for the district. As Reliance City had been located at the head of navigation for large sternwheelers like the Reliance, and Gasoline City had been located at the head of navigation for shallower draft vessels like the Marathon, the Mabel and Tom Dood's gas boat, so too Johnson City had been located near the head of navigation for poling boats.

A 1916 USGS Bulletin entitled The Chisana-White River District Alaska prepared by Stephen R. Capps describes transportation on the Chisana River for early mining explorations, stating that "...under favorable conditions launches may be taken up these rivers [Chisana and Tanana] as far as the north front of the Nutzotin Mountains, and boats were lined or poled all the way up to the mouth of Chathenda Creek."

Personal statements made by residents of the Village of Northway dated May 5 and 7, 1975 describe navigation of the Chisana River above Scottie Creek to the mouth of Mirror Creek. A March 2, 1979 personal interview of Mr. Ted Lowell taken by historian Richard O. Stern for the Department of Natural Resources provided information on personal and commercial boating use on the Chisana River. Information from that interview indicates that the steamboats White Seal

and Samson traveled some distance up the Chisana River. Poling boats were also mentioned as methods of travel 30-35 miles up the Chisana River. A March 1, 1982, personal statement letter provided to a Department of Natural Resources historian by local resident Ivan Thorall stated that it was his belief that the Chisana River "...should be considered navigable from the glacier...." An April 3, 1995 report by the Navigability Section of the Department of Natural Resources summarizes much of this information. A bibliography of sources compiled for the Bureau detailing historical navigability information on the Chisana River is attached.

The Chisana River is used as a travel route for hunters accessing the Nutzotin Mountains to hunt sheep. Department of Fish and Game staff have conducted personal interviews with members of the public documenting their boat trips up the Chisana to the hunting areas, and that information is included in this application. The common method of transportation is by outboard powered boat, ranging from 14 to 20 feet in length, with 2 to 4 persons and gear and food for a weeks trip. Most trips begin at the bridge over the Chisana River and include an average of 80 to 100 gallons of gasoline.

As evidenced by navigability determinations and available historic and current use information, the State of Alaska determines there is sufficient information to conclude that the Chisana River and the unnamed channel are navigable waterways and ownership of the submerged lands should be confirmed in the State.

Because the Bureau has found the Chisana 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. 7th 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

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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
Jed Davis, Superintendent, Wrangell-St. Alias National Park and Preserve
Warren Keogh, Water Rights Coordinator, NWRS, US Fish and Wildlife Service
Edward Merritt, Refuge Manager, Tetlin National Wildlife Refuge
Chris Milles, Acting Regional Manager, Northern Region, DNR
Rick Thompson, Regional Manager, Southcentral Region, DNR
Northway Traditional Council
Northway Village Council
Northway Natives, Inc.
Community of Chisana
John Craig, Chair, Ahtna, Inc.
Georgianna Lincoln, Doyon, Limited
Harold Brown, Tanana Chiefs Conference

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Legal Description:

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

All submerged lands within the bed of the Chisana River, including all sloughs, braids and channels between the ordinary high water lines of the left and right banks, beginning at the Chisana Glacier within Township 3 North, Range 17 East, Copper River Meridian, Alaska;

Thence northeasterly and northwesterly, generally within the following townships of the Copper River Meridian as determined from USGS 1:63,360 series topographic maps Nabesna (A-3) 1960 (minor revisions 1973); Nabesna (A-2) 1960; Nabesna (B-2) 1960; Nabesna (C-2) 1955 (minor revisions 1963); Nabesna (C-1) 1955 (minor revisions 1963); Nabesna (D-1) 1952 (minor revisions 1967); Nabesna (D-2) 1955 (minor revisions 1978); Tananacross (A-2) 1955 (minor revisions 1972); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 3 North, Range 17, 18 East;
Township 4 North, Range 18 East;
Township 5 North, Range 18, 19 East;
Township 6 North, Range 19, 20 East;
Township 7 North, Range 20 East;
Township 8 North, Range 20, 21 East;
Township 9 North, Range 21, 22 East
Township 10 North, Range 22 East;
Township 11 North, 21, 22 East;
Township 12 North, Range 20, 21 East;
Township 13 North, Range 20 East;
Township 14 North, Range 19, 20 East;
Township 15 North, Range 19 East.

To the terminus, being all points of confluence with the Tanana River within Township 15 North, Range 19 East, Copper River Meridian, Alaska.

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The unnamed channel within the State of Alaska connecting the Chisana River and Mark Creek, more particularly described as follows:

All submerged lands within the bed of the unnamed channel between the ordinary high water lines of the left and right banks, beginning at Township 14 North, Range 20 East, Copper River Meridian, Alaska to its terminus within Township 14 North, Range 19 East, Copper River Meridian, Alaska.

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