STATE OF ALASKA

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DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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September 21, 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 Deep Creek

Dear Mr. Bisson:

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

This application is submitted for all submerged lands lying within the bed of Deep Creek between the ordinary high water lines of the left and right banks, beginning at Section 15 within Township 14 South, Range 26 West, Fairbanks Meridian, Alaska, flowing northeasterly to its confluence with Lake Minchumina at Township 12 South, Range 25 and 24 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 the creek and a legal description of the townships and ranges underlying the creek are enclosed.

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.

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 Deep Creek 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

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 Deep Creek, the state owns the bed of Deep Creek even in the absence of a navigability determination. In such circumstances, 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. BLM may disclaim interest in the submerged lands on any of the grounds that may apply.

The Bureau of Land Management's own formal determinations confirm the navigability of the Deep Creek. A December 13, 1982, BLM navigability report recommends that Deep Creek (including interconnecting sloughs) be determined navigable; and the Report mentions historical references to boat use. A December 28, 1982, BLM Memorandum adopts the navigability determination presented in the December 13, 1982 Navigability Report. A summary of the navigability determinations and copies of the documents are attached as supporting documentation to this application.

In addition, an August 1979, Department of Natural Resources-Alaska report, "Ethnohistory of Four Interior Alaskan Waterbodies", prepared by Dianne Gudgel-Holmes, refers to boat use on the waters of Deep Creek in support of hunting and berry picking. Historically and presently, Lake Minchumina residents use Deep Creek for boat access to forested areas along the creek to provide house logs for local use.

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

Because the Bureau of Land Management has found Deep Creek 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 creek. 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 BLM 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
Chris Milles, Acting Regional Manager, Northern Region, DNR
Doyon, Limited
Harold Brown, Tanana Chiefs Conference

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Legal Description:

Deep Creek within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of Deep Creek between the ordinary high water lines of the left and right banks, including all interconnecting sloughs of Deep Creek, beginning in Section 15 within Township 14 South, Range 26 West, Fairbanks Meridian, Alaska; thence northeasterly, generally within the following townships of the Fairbanks Meridian as determined from USGS 1:63,360 series topographic maps Mt. McKinley (C-6) 1958; Mt. McKinley (C-5) 1953 (minor revisions 1963); Mt. McKinley (D-5) 1953 (minor revision 1987); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 14 South, Ranges 26, 25 West;
Township 13 South, Range 25 West;
Township 12 South, Ranges 25, 24 West.

To the terminus, being all points of confluence with Lake Minchumina within Township 12 South, Range 25 and 24 West, Fairbanks Meridian, Alaska.

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