THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Natural Resources
DIVISION OF MINING, LAND AND WATER
PUBLIC ACCESS ASSERTION AND DEFENSE UNIT
550 West 7th Avenue, Suite 1420
Anchorage, AK 99501-3561
Main: 907.269-4755

September 16, 2015

Ms. Angela Nichols
RDI Program Manager
Cadastral Services Coordinator
Bureau of Land Management
222 West 7th Avenue, #13
Anchorage, Alaska 99513-7504

Subject: Recordable disclaimer of interest application approval for:
Kantishna River - FF-94612
Lake Minchumia -FF-94611
Muddy River - FF-94610
Chisana River - FF-94615
Nabesna River - FF-94614
George River - AA-86373
Takotna River - AA-86374

Dear Ms. Nichols;

Pursuant to § 315(a) of the Federal Land Policy and Management Act ("FLPMA") and its implementing regulations, the State of Alaska (State) filed applications for a recordable disclaimer of interest (RDI) for the lands underlying the above referenced waterbodies. In enacting § 315(a), Congress placed the responsibility for determining whether the United States claims an interest in land on the Secretary of the Interior.[1] BLM, as the Secretary's delegate for these purposes, shall issue an RDI if it concludes that the United States does not claim an

[1] *State of Alaska,* IBLA 2010-136-1, at 4 ("Section 315(a) squarely places the *responsibility* on and grants the *authority* to the Secretary of the Interior to determine whether a record interest of the United States has terminated by operation of law or is otherwise invalid, Thus, BLM, as the Secretary's delegate, is the appropriate entity to decide whether a legitimate title dispute exists."(emphasis added)).

interest in the lands. If BLM concludes that the United States does claim an interest, the agency shall reject the RDI application.[2]

For each of the waterbodies listed above, BLM has issued a navigability determination or report finding that at least segments of these waterbodies are navigable-in-fact. On some of the waterbodies, BLM has concluded that some of the segments are not navigable-in-fact. To simplify the processing of these applications, the State now modifies these applications to seek an RDI on only those portions of the waterbodies that BLM has previously determined navigable-in-fact. None of the waterbodies were included in a pre-statehood withdrawal that could have potentially defeated the State's interest at statehood. The State obtained title to these submerged lands via the Equal Footing Doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act.[3]

By excluding those segments of the waterbodies that BLM previously found non-navigable, the State does not concede the waterbody is not navigable. It expressly reserves the right to clear title at another time. The State amends its previously filed applications for the sole purpose of simplifying the RDI process and allowing the State and the United States to work together and efficiently clear the State's title to submerged lands in which the United States clearly does not claim an interest.

For each waterbody listed below, the State has identified the BLM navigability determination or reports that supports the State's application. Pertaining to the State's previously filed applications on these waterbodies, the State modifies its application to withdraw its request for an RDI on any portion of the waterbody that does not have an existing BLM finding of navigability.

---

[2] 43 C.F.R. § 1864.3 ("Upon receipt of the payment required . . . and following, by not less than 90 days, the publication required . . . the authorized officer *shall* make a decision upon the application, and if the application is allowed, *shall* issue to the applicant an instrument of disclaimer." (emphasis added)).

[3] *See* 43 C.F.R. § 1864.1-2(c)(4)(ii)(A) (requiring the applicant to state why "[t]he record title interest of the United States in the lands included in the application has terminated by operation of law or is otherwise invalid"). The State acquired title to the submerged land underlying these waterbodies at statehood because the waterbodies are navigable-in-fact and there were no pre-statehood withdrawals that could potentially have defeated the State's interest. *See Utah Div. of State Lands v. United States*, 482 U.S. 193, 196 (1987). The State's application is supported by BLM's own navigability determinations, in which BLM has already concluded that these waterbodies are, indeed, navigable in fact. *See*43 C.F.R. § 1864.1-2(c)(5) (requiring the RDI applicant to provide any available documents or title evidence that supports the application).

Kantishna River and Birch Creek- The State modifies its September 21, 2005 application to include only the submerged lands underlying the portion of the Kantishna River from its mouth to the area of the old abandoned town of Roosevelt (Sec. 31, T 11 S., R 19 W., F.M.). The State withdraws its request for an RDI on the submerged lands underlying the portion of the river between Sec. 31, T 11 S., R 19 W., F.M. and Birch Creek.

The BLM determined the river navigable on January 16, 1980 to the old town of Roosevelt. Determinations on April 17, 1980, April 30, 1980, May 22, 1980, June 26, 1980, December 21, 1981 and March 16, 1982 all reaffirmed the navigability within the respective conveyance areas. There are no known pre-statehood reservations or withdrawals that could potentially defeat the State's title to this portion of the Kantishna River. The State is unaware of any basis for the United States to claim an interest in the submerged lands of the Kantishna River from the mouth to Sec. 31, T 11 S., R 19 W., F.M.

Lake Minchumia- The State requests BLM to process its September 21, 2005 application in its current form.

In the Final Navigability Determination on December 28, 1982, the BLM determined the lake navigable. There are no known pre-statehood reservations or withdrawals that could potentially defeat the State's title to the submerged land underlying this lake. The State is unaware of any basis for the United States to claim an interest in the submerged lands of Lake Minchumia.

Muddy River- The State requests BLM to process its September 21, 2005 application in its current form.

The BLM recommended the Muddy River navigable on December 13, 1982. The navigability was confirmed by final navigability determinations for State selections on December 28, 1982 and May 29, 1984. There are no known pre-statehood reservations or withdrawals that could potentially defeat the State's title to the submerged land underlying this river. The State is unaware of any basis for the United States to claim an interest in the submerged lands of Muddy River.

Chisana River- The State modifies its October 4, 2005 application to include only the submerged lands underlying the Chisana River from its mouth to Scottie Creek. The State withdraws its request for an RDI on the submerged lands underlying the portion of Chisana River from Scottie Creek to its origin at Chisana Glacier.

On March 16, 1974 the BLM recommended a determination that the Chisana River navigable from its mouth to Scottie Creek. The State Director determined the Chisana River navigable to Scottie Creek on March 22, 1979. That determination was confirmed on April 15, 1983, in the Final Navigability Determination for State Selections. There are no known pre-statehood reservations or withdrawals that that could potentially defeat the State's title to the submerged land underlying this river. The State is unaware of any basis for the United States to claim an interest in the submerged lands of the Chisana River from its mouth to Scottie Creek.

Nabesna River- The State modifies its October 4, 2005 application to include only the submerged lands underlying the Nabesna River from its mouth to the Black Hills (Sec. 25, T11N, R17E, and C.R.M.). The State withdraws its request for an RDI on the submerged lands underlying the portion of the Nabesna River from Sec. 25, T11N, R17E, C.R.M. and the river's source at the Nabesna Glacier.

On March 16, 1974 the BLM recommended a determination that the Nabesna River was navigable from its mouth to Northway. Again on November 7, 1978 the BLM recommended a determination that the Nabesna River was navigable from its mouth to Northway. That determination was reaffirmed on March 22, 1979. Again on March 28, 1980 the BLM recommended the Nabesna River was navigable within the selection area. Accompanying that determination was a report stating that the Nabesna River "affords a route for water travel" to the Black Hills. There are no known pre-statehood reservations or withdrawals that that could potentially defeat the State's title to the submerged land underlying this river. The State is unaware of any basis for the United States to claim an interest in the submerged lands of Nabesna River from its mouth to the Black Hills.

George River- The State modifies its March 10, 2006 application to include only the submerged lands underlying the portion of the George River from its mouth to Julian Creek. The State withdraws its request for an RDI on the submerged lands between Julian Creek and the source of George River.

On November 8, 1984 the BLM determined the George River navigable to Julian Creek. This determination was reaffirmed on July 8, 1985. There are no known pre-statehood reservations or withdrawals that could potentially defeat the State's title to the submerged land underlying this river. The State is unaware of any basis for the United States to claim an interest in the submerged lands of George River from its mouth to Julian Creek.

Takotna River- The State modifies its October 4, 2005 application to include only the submerged lands underlying the Takotna River from its mouth to Fourth of July Creek. The State withdraws its request for an RDI on the submerged lands portion between Fourth of July Creek and Moore Creek.

On May 6, 1980 the BLM recommended that the Takotna River was navigable from its mouth to Fourth of July Creek. On July 8, 1985 the BLM reaffirmed that Takotna River was navigable to Fourth of July Creek. There are no known pre-statehood reservations or withdrawals that that could potentially defeat the State's title to the submerged land underlying this river. The State is unaware of any basis for the United States to claim an interest in the submerged lands of the Takotna River from its mouth to Fourth of July Creek.

If for any reason an RDI cannot be issued promptly on any of the above applications please contact our office.

With these modifications, all the above referenced waterbodies are, according to the BLM, navigable. Pursuant to BLM's regulations, BLM shall act on the State's application by either granting or denying the RDI applications. Since BLM has determined the waterbodies navigable the only basis for the rejection can be that BLM no longer agrees with a particular navigability determination and that the United States has an interest in the submerged lands underlying that particular waterbody.

Priority

Please prioritize the applications in the order listed above, which is the chronological order of filing the applications. Prioritize these before any other pending RDI applications. Given BLM's previous navigability determinations—and the lack of any issues pertaining to pre-statehood withdrawals—the State requests BLM to act on these applications in a prompt and timely fashion.

Administrative Processing Funds

The State has funded the administrative costs for processing RDI applications. The latest records show that there is funding needed for four of the above referenced applications. As of May 7, 2015 the balances were as follows:

Kantishna River	$0
Lake Minchumia	$0
Muddy River	$4,939.11
Chisana River	$0
Nabesna River	$1,941.84
George River	$0
Takotna River	$2,194.80

The State requests that $2,000 be taken from the Muddy River account and placed in the Kantishna River account and that $6,000 be taken from the Eek River System account and $2,000 placed in Lake Minchumia, Chisana River and George River accounts.

Accounting

The State requests a monthly accounting of the administrative processing funds for all RDI application accounts. This accounting should have the beginning balance in each account and the end of the month balance with the costs itemized. The itemization should include the nature of the expense. For BLM personnel time, please describe what was done in enough detail so the State can gauge where in the process the application may be and to be assured that the funds are being spent only on administrative process. Please note that BLM should bear its own costs if it chooses to re-evaluate a previously published BLM navigability determination. Similarly, BLM's need to defend or respond to another federal agency's challenge of BLM's navigability determination is not an administrative cost chargeable to the State. The purpose of the administrative costs is to process the State's applications, not for BLM to conduct an extensive and costly re-evaluation of its previous

determinations. The United States should bear its own costs if it decides to revise previous navigability determinations or conduct a review for the basis of those previous navigability determinations.

If you have any questions please contact our office.

Sincerely,

James Walker
Public Access Assertion and Defense Unit
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska
907-269-4755