STATE OF ALASKA

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DEPARTMENT OF NATURAL RESOURCES

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AK-930

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

BLM AK SO 952
ANCHORAGE, AK
05 SEP 29 AM 8: 12

Re: Recordable Disclaimer of Interest Application for the Kantishna River (including the Birch Creek Segment)

Dear Mr. Bisson:

The State of Alaska files this application for a recordable disclaimer of interest for the lands underlying the Kantishna River and a segment of Birch Creek (hereinafter referred to as the "Birch Creek Segment"), pursuant to 43 CFR §1864.

This application is submitted for all submerged lands lying within the bed of the Kantishna River, between the ordinary high water lines of the left and right banks, beginning at the confluence of Birch Creek and McKinley River within Township 12 South, Range 20 West, Fairbanks Meridian, Alaska, downstream to its confluence with the Tanana River in Township 2 South, Range 12 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. This application also includes the Birch Creek Segment between the confluence of Muddy River and Birch Creek in Sections 11 and 12, Township 12 South, Range 21 West, Fairbanks Meridian, Alaska, to its confluence with the Kantishna River in Section 18, Township 12 South, Range 20 West, Fairbanks Meridian, Alaska. This short segment of Birch Creek provides an important transportation link between the Kantishna River, Muddy River and Lake Minchumina. A set of four maps highlighting the Kantishna River is enclosed. The Birch Creek Segment is highlighted on map one. Legal descriptions of the townships and ranges underlying the river and creek are enclosed.

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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 maps and legal descriptions 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 Kantishna River and the Birch Creek Segment are 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 Kantishna River and the Birch Creek Segment, the state owns the bed of Kantishna River and the Birch Creek Segment 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 result of the intent of the grantor and state law governing riparian rights. In Alaska, where the land bordering the 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 grounds that may apply.

The Bureau of Land Management's own formal determinations confirm the navigability of the Kantishna River. A summary of the navigability determinations and copies of the documents are attached as supporting documentation to this application.

Historic use of the Kantishna River supports these determinations of navigability with respect to both the Kantishna River and the Birch Creek Segment. The Kantishna River was an important water route used by Alaska Natives for travel and trade. A BLM report on the history of the Kuskokwim River Region (C. Michael Brown, 1983) presents historical information indicating miners and

other explorers traveled up the Kantishna River (and by necessity across the Birch Creek Segment) and across the Minchumina portage to reach the Takotna/McGrath mining district on the Kuskokwim River. Pole boats and motor launches were used to transport miners and equipment from Nenana down the Tanana River to the mouth of the Kantishna, continuing up the Kantishna, across the Birch Creek Segment and Muddy River to Lake Minchumina and across the portage. Though extensive mining was of short duration, use of the Kantishna River to supply the miners and small cities that grew up in the area was intense. During the mid-1950's, the Kantishna River was the principal transportation route for powerful motorboats and barges traveling to Lake Minchumina for construction and supply of the new FAA station.

In order for historical Native, prospector and trapper ascension of the Kantishna and Muddy River to Lake Minchumina, they portaged to the headwaters of North Fork of the Kuskokwim and then proceeded downstream to the Kuskokwim River. These travelers used the Birch Creek Segment to get from the Kantishna River to Muddy River.

In 1979, the University of Alaska's Arctic Environmental Information and Data Center (AEIDC) under contract with the Bureau of Land Management, compiled significant information in "*A Study of the Historical Use and Physical Characteristics of Alaska's Inland Water Bodies, Navigable Water Study.*" This report summarizes historical use of the Kantishna River and, by necessity, the Birch Creek Segment, and excerpts are included as reference. In 1975, a Grumman Ecosystems Corporation report, *Report on Navigability of Streams Tributary to the Tanana River, Alaska*, presents navigability information for the Kantishna River. A bibliography of sources summarizing navigability information on the Kantishna River is provided.

As evidenced by prior navigability determinations and/or the available historic information, there is sufficient information to conclude that the Kantishna River and the Birch Creek Segment are navigable waterways and ownership of their submerged lands should be confirmed in the State.

Because the Bureau has found the Kantishna River to be navigable, it has consistently meandered it when surveying 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 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
Doyon, Limited
Superintendent, Denali National Park and Preserve
Chris Milles, Acting Regional Manager, Northern Region, DNR
Harold Brown, Tanana Chiefs Conference
Denali Borough Planning Commission

Legal Description

A segment of Birch Creek within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of Birch Creek between the ordinary high water lines of the left and right banks, beginning at the confluence of Birch Creek and Muddy River within Township 12 South, Range 21 West, Fairbanks Meridian, Alaska to the confluence of Birch Creek and Kantishna River in Township 12 South, Range 20 West, Fairbanks Meridian, Alaska;

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

All submerged lands within the bed of the Kantishna River, including all sloughs, channels and braids between the ordinary high water lines of the left and right banks, beginning at the confluence of Birch Creek and McKinley River within Township 12 South, Range 20 West, Fairbanks Meridian, Alaska;

Thence generally northeast within the following townships of the Fairbanks Meridian as determined from USGS 1:63,360 series topographic maps Mt McKinley (D-4) 1953 (minor revisions 1968); Mt McKinley (D-3) 1952 (minor revisions 1983); Kantishna River (A-3) 1953 (minor revisions 1972); Kantishna River (A-2) 1952 (minor revisions 1971); Kantishna River (B-2) 1953 (minor revisions 1972); Kantishna River (B-1) 1952 (minor revisions 1973); Kantishna River (C-1) 1952 (minor revisions 1974); Fairbanks (C-6) 1953 (minor revisions 1964); Fairbanks (D-6) 1952 (minor revisions 1972); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 12 South, Ranges 21, 20, 19 West;
Township 11 South, Ranges 20, 19, 18 West
Township 10 South, Ranges 18, 17, and 16 West
Township 9 South, Ranges 17, 16 West;
Township 8 South, Ranges 16, 15 West;
Township 7 South, Range 15 West;
Township 6 South, Ranges 15,14 West;
Township 5 South, Ranges 14, 13 West;
Township 4 South, Range 13 West;
Township 3 South, Range 13, 12 West;
Township 2 South, Range 12 West.

To the terminus, being all points of confluence with the Tanana River within Township 2 South, Range 12 West, Fairbanks Meridian, Alaska.