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
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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 Kuskokwim 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 Kuskokwim River.

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands lying within the bed of the Kuskokwim River, between the ordinary high water lines of the left and right banks from its origins at the confluence with the South Fork of Kuskokwim River and North Fork of Kuskokwim River within Township 28 South, Range 22 East, Kateel River Meridian, Alaska, downstream to its confluence with the Kuskokwim Bay within Township 2 South, Range 77 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. Maps highlighting the river and a legal description of the townships and ranges underlying the river 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.

AA 86371

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 the Kuskokwim River is navigable, Alaska owns the submerged lands underlying the Kuskokwim River 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 the Kuskokwim River, the State owns the bed of the Kuskokwim River 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 THE KUSKOKWIM RIVER

In May of 1980, the Bureau published a report entitled Navigable and Nonnavigable Waters in the Upper Kuskokwim River Basin (hereinafter referred to as "Kuskokwim Report"). This report provided a detailed summary of the existing historic information available for certain waterbodies in the region. This report provides information regarding the use of certain waterways in the region, including the Kuskokwim River, and details historic communities and activities such as exploration, mining, hunting, fishing, trapping, water transport and road and trail use. Based on this information, the Bureau deemed certain waterbodies navigable, specifically, the Kuskokwim River for its entire length. In summarizing

its review of the historical information contained in the report regarding the Kuskokwim River, the report states that:

> We recommend that the entire length of the Kuskokwim River be determined navigable. Since the early 1900's, the Kuskokwim River has been the principal supply line for the Innoko and McKinley mining districts. The river continues to be the principal route of travel and trade from tidewater to numerous villages and towns, including McGrath and Medfra.

In 1985, subsequent to the Kuskokwim Report, the Bureau compiled a regional report detailing historical information and documents related to the Kuskowim 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, and includes additional detailed information related to the use of the Kuskowim River for travel, trade and commerce at the time of Statehood. The historical information contained in this Regional Report further supports the navigability determination made by the Bureau in the Kuskokwim Report.

In 1985, subsequent to the Regional Report, the Bureau compiled a list of waterbodies throughout Alaska that were deemed navigable through the regional report process (hereinafter referred to as the "Regional Report List")

The Kuskokwim Report and Regional Report List are affixed hereto as support for the State's application. Due to its voluminous size, a brief summary of the Regional Report is affixed hereto as support for the State's application. [A full version of the report is available 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 the Kuskokwim River is a navigable waterway and ownership of its submerged lands should be disclaimed by the Department of Interior.

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,

FOR

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
B.J. Baker, Environmental Paralegal, Office of SJA/JAG, HQ USARAK
Colonel Donna G. Boltz, Garrison Commander, U.S. Army Garrison, Alaska
Major Suzette Seuell, Deputy Staff Judge Advocate, 354 FW/JA
Scott Marchand, Chief of General Law, USAF, 3 WG/JA

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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.

Captain Jennifer Aaron, Deputy Staff Judge Advocate, USAF, 11 AF/JA
City of Akiak
Kokarmuit Corporation
Akiak Native Community (IRA)
Akiachak, Limited
Akiachak Native Community (IRA)
City of Aniak
Kuskokwim Native Association
The Kuskokwim Corporation
Village of Aniak
Atmautluak Limited
Village of Atmautluak
Mayor R. Thor Williams, City of Bethel
Bethel Native Corporation
Orutsararmuit Native Council
City of Chuathbaluk
Chuathbaluk Traditional Council
Native Village of Crooked Creek
City of Eek
Iqfijouaq Company, Incorporated
Eek Traditional Corporation
Georgetown Tribal Council
Qemirtalek Coast Corporation
Native Village of Kongiganak
City of Kwethluk
Kwethluk Incorporated
Organized Village of Kwethluk (IRA)
Kasigluk Incorporated
Kasigluk Traditional Council
City of Lower Kalskag
Village of Lower Kalskag
City of McGrath
MTNT Limited
McGrath Native Village Council
Oscarville Native Corporation
Oscarville Tribal Council
City of Napakiak
Napakiak Corporation
Native Village of Napakiak (IRA)
City of Napaskiak
Napaskiak, Incorporated
Native Village of Napaskiak
Native Village of Napaimute
City of Nikolai

Nikolai Edzeno' Village Council
City of Nunapitchuk
Nunapitchuk, Limited
Native Village of Nunapitchuk
Red Devil People & Community, Inc.
Red Devil Traditional Council
Nagamut, Ltd.
Sleetmute Traditional Council
Village of Stony River
Takotna Community Assoc., Inc.
Takotna Village
Tuntutuliak Land Limited
Tuntutuliak Traditional Council
Tulkisarmute, Incorporated
Tuluksak Native Community (IRA)
City of Upper Kalskag
Village of Kalskag
Harold Brown, Tanana Chiefs Conference
Georgianna Lincoln, Chairwoman, Doyon, Limited
Myron Naneng, President, Association of Village Council Presidents
June McAttee, Calista Corporation

Legal Description

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

All submerged lands within the bed of the Kuskokwim River, including all channels, braids and sloughs between the ordinary high water lines of the left and right banks of the Kuskokwim River, beginning at the confluence with the South Fork of the Kuskokwim River and North Fork of the Kuskokwim within Township 28 South, Range 22 East, Kateel River Meridian, Alaska;

Thence (southwesterly), generally within the following townships:

Kateel River Meridian

Township 27 South, Range 22 East;
Township 28 South, Ranges 20-22 East;
Township 29 South, Range 18-21 East.

Seward Meridian

Township 34 North, Ranges 29-33 West;
Township 33 North, Ranges 29-34 West;
Township 32 North, Ranges 33-34 West;
Township 31 North, Ranges 34-35 West;
Township 30 North, Ranges 34-35 West;
Township 29 North, Ranges 34-35 West;
Township 28 North, Ranges 35-36 West;
Township 27 North, Ranges 36-37 West;
Township 26 North, Range 37 West;
Township 25 North, Ranges 37-38 West;
Township 24 North, Range 38 West;
Township 23 North, Range 38 West;
Township 22 North, Range 38 West;
Township 21 North, Ranges 38, 46-48 West;
Township 20 North, Ranges 39-41, 44-46, 48-49 West;
Township 19 North, Ranges 40-44, 49-50 West;
Township 18 North, Ranges 42-44, 49-50, 57 West;
Township 17 North, Ranges 50-61 West;
Township 16 North, Ranges 61-63 West;
Township 15 North, Ranges 63-64 West;
Township 14 North, Ranges 63-64 West;
Township 13 North, Ranges 64-65 West;
Township 12 North, Ranges 65-66 West;

Township 11 North, Ranges 66-67 West;
Township 10 North, Ranges 66-69 West;
Township 9 North, Ranges 67-70 West;
Township 8 North, Ranges 69-71 West;
Township 7 North, Ranges 71-73 West;
Township 6 North, Ranges 72-74 West;
Township 5 North, Ranges 73-75 West;
Township 4 North, Ranges 75-76 West;
Township 3 North, Ranges 75-77 West;
Township 2 South, Range 77 West;
Township 2 North, Ranges 75-77 West;
Township 1 South, Ranges 76-77 West;
Township 1 North, Ranges 75-76 West;

To its terminus at the Kuskokwim Bay within Township 2 South, Range 77 West, Seward Meridian, Alaska. The precise location may be within other townships due to the ambulatory nature of water bodies.

Township designation is based upon the following USGS 1:63,360 series topographic maps Baird Inlet A-1 (1954), A-2 (1954), B-1 (1954), B-2 (1954 minor revision 1984) , C-1 (1954 minor revisions 1980); Bethel C-8 (1954), D-6 (1954), D-7 (1954 minor revisions 1970), D-8 1954 limited revision 1985); Iditarod A-1 (1954), B-1 (1954 minor revision 1984); McGrath B-6 (1954), C-6 (1954), D-4 (1953), D-5 (1953 minor revisions 1966), D-6 (1954 minor revisions 1966); Medfra A-4 (1959 minor revisions 1971), A-5 (1954 minor revisions 1971); Russian Mission A-5 (1954), A-6 (1954), B-4 (1954 minor revisions 1972), B-5 (1954), C-1 (1952 minor revisions 1973), C-2 (1952 minor revisions 1970), C-3 (1952 minor revisions 1984), C-4 (1954 minor revisions 1972); Sleetmute C-3 (1954 minor revisions 1972), C-4 (1954), C-6 (1954), C-7 (1957 minor revisions 1973), C-8 (1954 minor revisions 1972), D-1 (1954 minor revision 1985), D-2 (1954 minor revisions 1977), D-3 (1954 minor revisions 1976), D-4 (1954 minor revisions 1973), D-5 (1954 minor revisions 1975), D-6 (1954 minor revisions 1986).