STATE OF ALASKA

. . ANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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March 10, 2006

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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 a portion of Mud Creek and Unnamed Lake

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 a portion of Mud Creek and an Unnamed Lake (hereinafter referred to as Unnamed Lake #1).

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands lying within the bed of a portion of Mud Creek, between the ordinary high water lines of the left and right banks from the E½ NW¼ of Sec. 26, Township 17 North, Range 62 West, Seward Meridian, Alaska, generally southerly to its confluence with the Kuskokwim River within Section 6, Township 16 North, Range 62 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. A map highlighting the river and a legal description of the townships and ranges underlying the river are enclosed.

This application is also submitted for the submerged lands encompassed by the ordinary high water line of Unnamed Lake #1 within Section 22, Township 17 North, Range 62 West, Seward Meridian, Alaska.

A map highlighting the creek and unnamed lake and a legal description of the townships and ranges underlying the river and lake are enclosed.

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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.

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 this portion of Mud Creek and Unnamed Lake #1 are navigable, Alaska owns the submerged lands underlying the waterbodies 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 this portion of Mud Creek and Unnamed Lake #1, 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 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 A PORTION OF MUD CREEK AND UNNAMED LAKE #1

In 1983 the Bureau compiled a regional report detailing historical information and documents related to the Kuskokwim 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, including this portion of Mud Creek and Unnamed Lake #1, providing information regarding the use of waterways in the region and details about the historic communities and activities such as exploration, mining, hunting, fishing, trapping, water transport and road and trail use.

Subsequent to the Regional Report, on November 8, 1984, the Bureau published a report entitled Navigable Waters of the Kuskokwim Region, Alaska (hereinafter referred to as "1984 Report"). This report provided further information related to the region and made navigability determinations for a number of waterbodies previously identified in the Regional Report. The report specifically addressed what is known as the Kuskokwim-Yukon Portage, which includes Mud Creek and Unnamed Lake #1, stating that:

> The Portage was suitable for a wide range of crafts, including kayaks, canoes, rowboats, and poling boats, which ranged in length from eighteen to thirty-two feet. Prior to 1930 the mail carrier maintained five rowboats on the Portage. These made it possible for him to travel the distance from Bethel to Russian Mission and return in fifteen to twenty days, all the while carrying a minimum of 600 pounds of mail and oftentimes passengers.

The Report further discussed certain improvements made to the Portage over time, and stated that:

> All these improvements were designed to accommodate boats as large as the mail carrier's – a thirty-foot boat with a four-foot beam and a payload capacity of 2,600 pounds. The project evidently was successful, for in 1938 a Bureau of Fisheries agent reported, "The largest boats now that go over the portage do not exceed 30 feet in length, 4 foot beam, and should not draw over a foot or fifteen inches of water at most." The improvements had no effect on the navigability status of the subject waterbodies, for it is clear that the streams and lakes were navigable for boats similar to those in commercial use in 1959 before the improvements were effected.

In this report, the Bureau deems this section of the Portage, including a portion of Mud Creek and Unnamed Lake #1, navigable.

Another report focusing on the portage area entitled "Reconnaissance Report: Yukon-Kuskokwim Portage, Yukon-Kuskokwim Rivers, Alaska" authored by the Alaska District, Corps. of Engineers in January, 1971 discusses commerce on the Portage and states that:

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> The Yukon and Kuskokwim River area is connected to a major supply and market centers by water and air traffic only. The movement of freight by water, although seasonal, is vital to the sustained economic growth of the area. Large quantities of bulk materials and supplies are moved throughout the two river systems each summer by boat and barge.

The 1984 Report and the Army Corp. report are affixed hereto as support for the State's application. The Regional Report is not affixed to this application due to its voluminous size. It can, however be accessed through 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 1984 Report, Army Corp. Report and Regional Report and the available historic information included therein, the State of Alaska determines there is sufficient information to conclude that this portion of Mud Creek and Unnamed Lake #1 are navigable waterways and ownership of the 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

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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
City of Russian Mission
Russian Mission Native Corporation
Russian Mission Traditional Council
June McAttee, Calista Corporation
City of Upper Kalskag
Village of Kalskag
Kuskokwim Native Association
City of Lower Kalskag
Village of Lower Kalskag
Myron Naneng, President, Association of Village Council Presidents

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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.

Legal Description

A portion of Mud Creek within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of Mud Creek between the ordinary high water lines of the left and right banks from the E½ NW¼ of Sec. 26, Township 17 North, Range 62 West, Seward Meridian, Alaska, generally southerly to its confluence with the Kuskokwim River within Section 6, Township 16 North, Range 62 West, Seward Meridian, Alaska USGS 1:63,360 series topographic map Russian Mission C-5 (1952). This portion of Mud Creek flows through the following Townships and Ranges:

Seward Meridian:
- Township 17 North, Range 62 West;
- Township 16 North, Range 63 West; and
- Township 16 North, Range 62 West.

Unnamed Lake #1 within the State of Alaska, more particularly described as follows:

All submerged lands encompassed by the ordinary high water line of an Unnamed Lake within Section 22, Township 17 North, Range 62 West, Seward Meridian, Alaska, USGS 1:63,360 series topographic map Russian Mission C-5 (1952).

The precise location of these waterbodies may be within other townships due to the ambulatory nature of water bodies.