



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Alaska State Office  
222 West Seventh Avenue, #13  
Anchorage, Alaska 99513-7504  
<http://www.blm.gov>

**MAR 25 2016**

In Reply Refer To:  
FF-94610  
FF-94611  
FF-94612  
1864 (AK9420)

**DEPARTMENT OF  
NATURAL RESOURCES**

**MAR 29 2016**

**COMMISSIONER'S OFFICE  
ANCHORAGE**

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

## DECISION

State of Alaska	:	FF-94610, FF-94611, FF-94612
Department of Natural Resources	:	Recordable Disclaimer of Interest
Attn: Marty Rutherford,	:	Applications
Acting Commissioner	:	Lake Minchumina, Muddy River,
550 West 7 <sup>th</sup> Avenue, Suite #1400	:	Kantishna River
Anchorage, Alaska 99501-3579	:	

### DECISION OF FEBRUARY 23, 2016, MODIFIED IN PART

By decision dated February 23, 2016, the State of Alaska's applications for a disclaimer of interest (RDI) for certain lands underlying the Lake Minchumina-Muddy River-Kantishna River corridor was approved.

The purpose of this decision is to make specific and limited modifications to the decision issued February 23, 2016.

An incorrect date referencing comments submitted by the National Park Service (NPS) was noted on page 7 (3<sup>rd</sup> paragraph). The decision incorrectly stated September 24, 2016 as the date comments were submitted by the NPS. The correct date should be September 24, 2007.

A typographic error on page 9 (1<sup>st</sup> paragraph) incorrectly referenced the Tanana River. The correct water bodies are: Lake Minchumina, Muddy River and the Kantishna River.

The description of lands approved for an RDI in the decision was incorrect as to the Kantishna River portion. The decision is hereby modified as follows:

On page No. 9, the description reads:

All submerged lands lying within the bed of the Kantishna River, between the ordinary high water lines of the left and right banks at the time of statehood, beginning at the abandoned site of Roosevelt (Sec. 31, T. 11 S., R. 19 W., F.M.) downstream to its confluence with the Tanana River in T. 2 S., R. 12 W., F.M.

The description is hereby modified to read:

All submerged lands lying within the bed of the Kantishna River, between the ordinary high water lines of the left and right banks at the time of statehood, beginning at the abandoned site of Roosevelt (Sec. 32, T. 11 S., R. 19 W., F.M.) downstream to its confluence with the Tanana River in T. 2 S., R. 12 W., F.M.

Except as expressly modified by this decision, the decision of February 23, 2016 is unchanged and stands as written.

#### HOW TO APPEAL THIS DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed. The appellant has the burden of showing that the decision appealed from is in error.

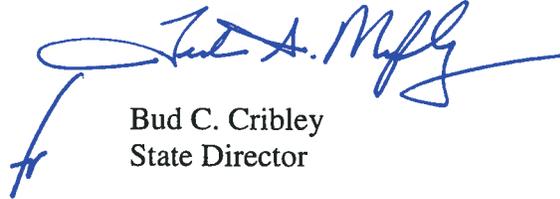
If you wish to file a petition pursuant to regulations contained in 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,

- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.



Bud C. Cribley  
State Director

Enclosure  
Original Decision dated February 23, 2016  
Appeal Form 1842-1

cc (w/o enclosure):  
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# United States Department of the Interior



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## DECISION

State of Alaska	:	FF-94610, FF-94611, FF-94612
Department of Natural Resources	:	Recordable Disclaimer of Interest
Attn: Mark Myers, Commissioner	:	Applications
550 West 7 <sup>th</sup> Avenue, Suite #1400	:	Lake Minchumina, Muddy River,
Anchorage, Alaska 99501-3579	:	Kantishna River

### ADMINISTRATIVE WAIVER GRANTED APPLICATIONS APPROVED

On September 29, 2005, the State of Alaska (State) filed three applications with the Bureau of Land Management (BLM) for recordable disclaimers of interest (RDI) (FF-94610<sup>1</sup>) under the provisions of Section 315 of the Federal Land Policy Management Act of October 21, 1976 (FLPMA), 43 U.S.C. §1745, and the regulations contained in 43 CFR Subpart 1864, for certain lands underlying multiple water bodies, located in Interior Alaska, including: Lake Minchumina, Muddy River, and the Kantishna River (includes approximately one and one-half miles of lower Birch Creek).<sup>2</sup> The State's applications included all the submerged lands lying within the beds of the following water bodies:

<sup>1</sup> FF-94610, FF-94611, FF-94612 (all 1864 case type). The State's filing also included applications for Jim Lake, FF-94608 and Deep Creek, FF-94609 (both in close proximity to Lake Minchumina). These two applications were addressed separately and are not part of this decision.

<sup>2</sup> Thomas E. Irwin, Commissioner, Alaska Department of Natural Resources, to Henri Bisson, BLM State director, September 21, 2005, file FF-94610 (Muddy River), Thomas E. Irwin, Commissioner, Alaska Department of Natural Resources, to Henri Bisson, BLM State director, September 21, 2005, file FF-94611 (Lake Minchumina) and Thomas E. Irwin, Commissioner, Alaska Department of Natural Resources, to Henri Bisson, BLM State director, September 21, 2005, file FF-94612 (Kantishna River – including the Birch Creek Segment), (all 1864 case type), Alaska State Office, BLM records.

Lake Minchumina (FF-94611)

The submerged lands encompassed by the ordinary high water line of Lake Minchumina within Township (T.) 11 South (S.), Range (R.) 24 West (W.), and T. 12 S., Rs. 23, 24 and 25 W., Fairbanks Meridian (F.M.), Alaska;

Muddy River (FF-94610)

Muddy River between the ordinary high water lines of the left and right banks, beginning from its outlet at Lake Minchumina within T. 12 S., R. 23 W., F.M., Alaska, downstream to the confluence with Birch Creek in T. 12 S., R. 21 W., F.M.;

Kantishna River, including Birch Creek Segment (FF-94612)

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 T. 12 S., R. 20 W., F.M., downstream to its confluence with the Tanana River in T. 2 S., R. 12 W., F.M.

The confluence of Birch Creek and the McKinley River forms the head of the Kantishna River. The Muddy River joins Birch Creek approximately one and one-half mile further upstream. The State's application for the lands comprising the bed of the Kantishna River included this stretch of Birch Creek. This stretch of submerged land in the application connects the navigable Tanana River to the Kantishna River-Lake Minchumina navigable corridor. The State describes Birch Creek in its application: "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 (Sections 11 and 12) 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."

The State contends the above-described water bodies were navigable at the time of statehood. As a result, title to the submerged lands vested in the State upon the date of statehood of Alaska, January 3, 1959. The State based its application for the RDI on the grounds that title passed by operation of law from the United States to the State on the date of statehood, under Section 6(m) of the Alaska Statehood Act. The State's applications for the disclaimers of interest are based on the Equal Footing Doctrine, the Submerged Lands Act of May 22, 1953, the Alaska Statehood Act, the Submerged Lands Act of 1988 (P.L. 100-395), or any other legally cognizable reason.

The Submerged Lands Act of 1953, 43 U.S.C. § 1311(a), granted and confirmed to the states title to the lands beneath inland navigable waters within the boundaries of the respective states. It also gave the states the right and power to manage, and administer these lands in accordance with state law. Section 6 (m) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, made the Submerged Lands Act of 1953, 67 Stat. 29, applicable to Alaska.<sup>3</sup>

Section 315(a) of the Federal Lands Policy and Management Act (FLPMA), 43 U.S.C. § 1745(a), authorizes the Secretary of the Interior to issue a document of disclaimer of interest(s) in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and to determine whether a record interest of the United

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<sup>3</sup> 72 Stat. 339, 343

States in lands has terminated by operation of law or is otherwise invalid. This authority has been delegated to the BLM State Director.<sup>4</sup>

### ADMINISTRATIVE WAIVER GRANTED

Pursuant to 43 CFR 1864.1-2 (c) (1) and (d), a legal description of the lands for which a waiver is sought must be based on either an official United States public land survey, or a metes and bounds survey tied to the nearest corner of an official public land survey, unless a waiver is granted. On September 29, 2005, the State requested a waiver of this requirement under 43 CFR 1864.1-2(d). The locations of Lake Minchumina; Muddy River; Birch Creek, excluding its avulsed channel in Section (Sec.) 18, T. 12 S., R. 20 W., F.M. and the Kantishna River, excluding the avulsed channel of its upper reaches,<sup>5</sup> are clearly depicted on the U.S. Geological Survey quadrangle maps and are not in dispute.<sup>6</sup> The ordinary high water mark of these water bodies is the legal boundary of the submerged lands. Since the boundaries of these water bodies are ambulatory, the location may change over time. The BLM therefore determines that survey descriptions of the subject water bodies are not needed to adjudicate the State's applications.<sup>7</sup> The waivers are hereby granted.

### **Interconnecting Sloughs**

The BLM lacked sufficient information on the navigability and hydrology of the Kantishna River's named and unnamed sloughs to make a navigability determination. Nevertheless, if water from a navigable river flowed through an interconnecting slough at the time of statehood, then the slough is considered to be an integral part of the river and the State would hold title to the lands underlying the slough. If the river no longer flows through the slough as a result of erosion, accretion or reliction, then the upland owners own the bed of the former slough. None of the sloughs were specifically identified in the State's application as a potential highway of commerce; rather, they were identified as parts of the Kantishna River.

### **Background**

In support of its applications, the State submitted legal descriptions and maps for each water body of the lands underlying Lake Minchumina, Muddy River (including the short stretch of Birch Creek from its mouth at the head of the Kantishna River to the mouth of the Muddy River), and the Kantishna River. Additional supporting information included navigability determinations issued by the BLM from January 16, 1980 to February 14, 1995,<sup>8</sup> and supporting documentation relating to the historical record of those water bodies. The State's application also included historic information regarding boat use on the Kantishna River-Lake Minchumina system.

<sup>4</sup> 209 DM 7; 235 DM 1; BLM Manual MS-1203, App. 1, p.52.

<sup>5</sup> Sec. 17, T. 12 S., R. 20 W., F.M. to Sec. 31, T. 11 S., R. 19 W., F.M.

<sup>6</sup> Mt. Hayes C-2, D-2; Big Delta A2 through A6, B-5, B-6, C-6; Fairbanks B-1, C-1 through C-5, D-1, D-2, D-3, D-5, D-6; Kantishna River D-1 through D-4; and Tanana A-2, A-3, A-4.

<sup>7</sup> "Manual of Survey Instructions 2009," U.S. Department of the Interior, Bureau of Land Management, Sections 3-158, 3-160, page 81.

<sup>8</sup> The State referred to memoranda issued in support of decisions by the BLM on January 16, 1980, and February 14, 1995, for conveyance of lands to the State of Alaska under the Statehood Act and the Mental Health Act of 1956 and to Doyon, Limited.

## Notice

Notice of the State's applications was published in the *Federal Register* on June 25, 2007.<sup>9</sup> The BLM prepared a draft report, "RDI Applications for Lands Underlying the Kantishna River, Birch Creek, Muddy River and Lake Minchumina in the Tanana River Subregion."<sup>10</sup> The report detailed supporting evidence, riparian land status, physical character, and historical uses. Public notice of the State's application, and the availability of the draft navigability summary report, was published in the *Anchorage Daily News* on June 29, and July 6, and 13, 2007. Information about this application, including the draft navigability report, was also posted on the BLM-Alaska website.<sup>11</sup>

The BLM sent copies of its draft report to the State of Alaska (Departments of Natural Resources and Fish and Game), the National Park Service (NPS), Doyon, Ltd. (a regional Native corporation), Tanana Chiefs Council, and Tanana Chiefs Conference on June 25, 2007. The notices invited review and comments, to include the opportunity to present additional information. The comment period ended on September 24, 2007.

## Comments on State's RDI Applications and BLM's Draft Navigability Report

During the published notice period, the BLM received comments from the State, the National Parks Conservation Association (NPCA),<sup>12</sup> the NPS, and a member of the public.

### State's Comments

On August 23, 2007, the Alaska Department of Natural Resources (DNR) informally told the BLM Navigability Unit that the State had "no comments" on the findings contained in the draft navigability report. However, on the following day, August 24, 2007, BLM received two letters from the State. In the first letter, the State submitted comments agreeing with the BLM's conclusions that the water bodies in the "Kantishna System" were in fact, navigable at statehood.<sup>13</sup> The State asserted that "sloughs of navigable rivers are an integral part of the navigable river and are navigable as well." The second letter from the State identified some minor technical corrections in the draft report.

On September 24, 2007, the State signaled its intent to submit additional comments and asked BLM to consider them prior to issuing an RDI. On October 3, 2007, the State submitted its final comments asserting that an avulsed slough of the Kantishna River situated within T. 12 S., R. 20 W., T. 11 S., R. 20 W. and T. 11 S., R. 19 W., F.M. existed on the date of Statehood. The State referenced a photograph from 1955 to support its claim.

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<sup>9</sup> 72 FR 34713-34714

<sup>10</sup> The applications for Jim Lake and Deep Creek are not addressed in this decision. On March 27, 2012 and December 2, 2014, the BLM issued RDIs for Jim Lake and Deep Creek, respectively.

<sup>11</sup> [http://www.blm.gov/ak/st/en/prog/rdi/tanana/kantishna\\_river.html](http://www.blm.gov/ak/st/en/prog/rdi/tanana/kantishna_river.html)

<sup>12</sup> The comment was submitted by the Trustees of Alaska on behalf of the NPCA.

<sup>13</sup> This includes the length of the Kantishna River from its head to its mouth, Birch Creek from the head of Kantishna River to the mouth of Muddy River, and the length of Muddy River from its mouth to and including Lake Minchumina.

The State included its definition of submerged lands as being “within the bed of a river [to] include all sloughs, braids and channels between the ordinary high water lines of the left and right banks.” Finally, the State commented: “although the State did not include specific navigability information, the sloughs of the Kantishna River are an integral part of the river and thus, part of the application.”

### BLM Response

Under riparian law, the State’s title to lands underlying navigable waters extends to the ordinary high water mark.<sup>14</sup> Where changes were caused by the gradual movement of the river bed, the State’s title to the bed follows the navigable waters. The State correctly noted in its applications: “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.” Since statehood, many sloughs, braids, and channels of navigable rivers and streams have frequently changed location or simply disappeared as a result of erosion, reliction, and accretion.

The avulsed slough of the Kantishna River and the lowest one-half mile of Birch Creek are situated within T. 12 S., R. 20 W., T. 11 S., R. 20 W. and T. 11 S., R. 19 W., F.M. The evidence submitted by the State for this area is insufficient to conclude that the avulsed slough existed at the date of Statehood. BLM’s memorandum titled: “State of Alaska Recordable Disclaimer of Interest Application,” dated September 29, 2005, included a detailed review of the avulsed sloughs detected along the upper Kantishna River and thoroughly analyzed the available photographic evidence.<sup>15</sup>

### NPCA Comments

On September 24, 2007, Trustees for Alaska submitted comments on behalf of the National Parks Conservation Association (NPCA). Citing the court case, *Trustees for Alaska v. Watt*, 524 F. sup. 103 (D. Alaska 1981), *aff’d* 690 F.2d 1279, the NPCA questioned the BLM’s authority to issue disclaimers of interest to lands underlying navigable waters, especially as it pertains to the Kantishna River, alleging the BLM lacks authority to process disclaimers for lands managed by the NPS. The NPCA also noted the “lack of clarity regarding the extent of title asserted by the State of Alaska based on changes to the Kantishna River since the time of Alaska’s statehood.” The NPCA added that title to the bed of a navigable river generally follows a “river’s gradual changes in course,” and that title does not follow sudden avulsive changes in the bed of a river.<sup>16</sup> The State of Alaska asserted title to “all sloughs, channels and braids between the ordinary high water lines” of the Kantishna River, but the NPCA alleged that the State did not provide any historical evidence as to the existence of these braids and sloughs at the time of statehood. Instead the NPCA claims the state relied on 2005 vintage maps “showing the relatively recent course of the river.” The NPCA alleged that the BLM did not address this deficiency in its draft Navigability Report. The NPCA then requested that the BLM require evidence from the State

<sup>14</sup> BLM Manual of Surveying Instructions (2009), Subpart 3-162 (Pg. 81-82).

<sup>15</sup> Memorandum, Hardt, Frank, A., Riparian boundary Specialist (AK94000) to Basner, Ralph, Navigable Waters Specialist (AK94220), *State of Alaska Recordable Disclaimer of Interest Application September 29, 2005*, November 16, 2012, BLM Case file F-94612 (1864).

<sup>16</sup> *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 327, (1973).

showing the course of the Kantishna River at the time of statehood, and of the existence of braids and sloughs to which the State asserts title, before issuing its final Navigability Report.

The NPCA claimed that the NPS described the nine-mile stretch of the Kantishna River as “merely a system of disconnected creeks at the time of Statehood.” Further, the NPCA claimed the State not only failed to identify this “major avulsive change,” from a point below the confluence of the McKinley River and Birch Creek to a point in Sec. 31, T. 11 S., R. 19 W., F.M., “but it asserts title to both the current channel and the past channel.” The NPCA seeks clarification from the BLM that the State’s title only extends to the river bed at the time of statehood, and that the State’s title does not extend to any subsequent avulsive changes in the bed of the Kantishna River.

### BLM Response

The NPCA alleged that the BLM was determining title to the lands, but that is not the case here. The BLM instead exercises its authority under Sec. 315(a) of FLPMA, 43 U.S.C. § 1745(a), to process an application for an RDI. In its consideration of the NPCA’s concerns regarding the BLM’s authority to process RDIs the Department of the Interior notes that Congress granted the Secretary broad discretion to issue disclaimers of interest “in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where she determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States,” 43 U.S.C. § 1745(a). In responding to the NPCA’s concerns over the braids and sloughs, including some that may be avulsed, the BLM thoroughly analyzed all the available information regarding the river at the time of statehood in the final summary report and is satisfied that the conclusions therein are adequately supported by the record.

### NPS’ Comments

The NPS provided two sets of comments on August 31, 2007,<sup>17</sup> and September 24, 2007. The NPS’ August 31, 2007 comments are summarized as follows:

Bearpaw River. The NPS requested that the report drop any discussion of the Bearpaw River;

Upper Kantishna River. At a pre-application meeting on April 1, 2005, the NPS reported that over a period of perhaps fifty years the Upper Kantishna River has cut a new main channel. The NPS changed its view, holding that the channel was formed by post-statehood avulsion. The NPS requested that the final report reflect this position. The agency noted that the State used data from a more recent time, ignoring data “gathered much closer to Statehood.” In this case, the State relied on data gathered in 2004,<sup>18</sup> 45 years after statehood. The NPS used data from the USGS Quadrangle,

<sup>17</sup> The NPS initially issued the first set of comments on August 24, 2007. However, the NPS then issued revised comments on August 31, 2007, which explicitly revoked and replaced the comments from August 24.

<sup>18</sup> River Data: USGS National Hydrography Dataset-2004.

Mt. McKinley (D-3), which was based on 1952 aerial photography. NPS stated that “the [1952] map clearly shows that the channel did not exist seven years prior to statehood.” The NPS also cited claims by users of those water bodies corroborating that the avulsed area did not exist at statehood. Those users claim that the avulsed channels were formed by avulsion in 1980, subsequent to statehood.

The NPS contended that the State’s application lacked evidence to support the State’s assertion on its map “that over 30 interconnected sloughs within Denali National Park and Denali National Preserve should be included in the RDI for the Kantishna River.” The NPS claimed that the State’s application failed to include any evidence on the thirty interconnected sloughs. The NPS agreed with the BLM draft report that a navigability determination was not possible without specific evidence.

In its September 24, 2016 comments, the NPS acknowledged that the Kantishna River, the Muddy River, and the two-mile connecting stretch of Birch Creek between the lower Muddy River and McKinley River share a history of pre-statehood commercial use. However, NPS objected to the State’s depiction of the interconnected sloughs, including approximately thirty lines indicating sloughs that were connected to the main stem of the Kantishna River. The agency alleges that the accompanying map submitted with the application was in error, based upon a lack of evidence provided to support the State’s claim. The NPS urged rejection of the State’s application unless the State presents evidence as required by 43 CFR 1864.1-2(c)(1).

#### BLM Response

In response to the avulsion concerns highlighted by the NPCA and the NPS the BLM reviewed the available aerial photographs. On November 16, 2012, the BLM issued its analysis,<sup>19</sup> which included a detailed review of the avulsive activity asserted by the NPS and the NPCA. Following this thorough review of the available photographic evidence, BLM concluded that the objection by the NPS as to the State’s application for the avulsed slough has merit.

The Secretary must consult with “any affected Federal agency” before it can issue a disclaimer of interest. 43 U.S.C. § 1745(a). However, BLM will not issue an RDI if the land managing agency with administrative jurisdiction over the lands validly objects with a “sustainable rationale.” See 43 CFR 1864.1-4.

#### Comments by Richard H. Bishop

On September 24, 2007, Richard H. Bishop of Fairbanks, Alaska, submitted comments by email on the BLM report’s recommendations.<sup>20</sup> Mr. Bishop indicated general approval of the BLM’s findings for the Lake Minchumina-Kantishna River corridor and stated support for BLM’s approval of the RDIs.

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<sup>19</sup> Hardt.

<sup>20</sup> See email from Bishop to BLM Realty Specialist Callie Webber on September 24, 2007

## **Amendment to the State's Application for the Kantishna River**

On September 16, 2015, the State withdrew its application for the portion of the Kantishna River between Sec. 31, T. 11 S., R. 19 W., F.M. and Birch Creek. In an email dated October 21, 2015, the State clarified that the withdrawal request should include "the Birch Creek Segment," the entirety of Birch Creek between the Muddy River and the Kantishna River. The State noted that its exclusion of the above-described river segment does not imply a concession by the State that the stretch of river is not navigable, and the State reserved the right to clear title at another time. The State clarified that it only amended its application to simplify and streamline the RDI process.

The withdrawn stretch of the Kantishna River includes the reach identified by the NPCA and NPS as affected by avulsion, so the NPCA and NPS concerns are rendered moot since this section of the Kantishna River and its accompanying sloughs are no longer under consideration for an RDI.

### **Navigable Water Bodies**

The Federal test of navigability is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). There, the U.S. Supreme Court stated: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

In assessing the navigability of inland water bodies, the BLM relies upon this test as well as Federal statutes, Federal case law, and the advice of the Department of the Interior's Office of the Solicitor. Relevant Federal statutes include the Submerged Lands Act of 1953 and the Submerged Lands Act of 1988. The Supreme Court's most recent decision on title navigability, *PPL Montana, LLC v. Montana*, 565 U.S. \_\_\_ (2012), summarizes and explains the proper interpretation of *The Daniel Ball* criteria. In cases concerning pre-statehood reservations, BLM uses the established criteria set out and applied by the Supreme Court in two Alaska cases, *Alaska v. United States*, 545 U.S. 75 (2005) ("*Glacier Bay*") and *United States v. Alaska*, 521 U.S. 1 (1997) ("*Arctic Coast/Dinkum Sands*").

### **Summary Report Recommendations**

Based upon the recommendations and conclusions set forth in the Summary report, dated February 10, 2016, the BLM has determined that title to the bed of the Kantishna River (from the abandoned site of Roosevelt in Sec. 31, T. 11 S., R. 19 W., F.M., downstream to the confluence with the Tanana River), Muddy River and Lake Minchumina passed to the State of Alaska at statehood. The report recommended approval of the State's applications for an RDI as to Lake Minchumina, Muddy River, and the Kantishna River.

## APPLICATION APPROVED

The United States affirms it has no interest in the lands described below because the federal interests passed to the State of Alaska at the time of statehood. Approving the State's application for a recordable disclaimer of interest will provide certainty about ownership of the submerged lands underlying the Tanana River and remove a cloud on the title. A cloud on the title would greatly complicate the application of natural resource and other laws to the submerged lands involved. Resolving clouds on title between the State of Alaska and the United States is thus of even greater importance than resolving title between a private party and the United States.

Accordingly, based on the foregoing and the documentation contained in the case record, I have determined that the State's application for a recordable disclaimer of interest is legally sufficient within the provisions of Section 315 of FLPMA and the regulations contained in 43 CFR Subpart 1864. The State's applications for recordable disclaimers of interest are hereby approved as follows:

### Muddy River (FF-94610)

Muddy River between the ordinary high water lines of the left and right banks at the time of statehood, beginning from its outlet at Lake Minchumina within T. 12 S., R. 23 W., F.M., downstream to the confluence with Birch Creek in T. 12 S., R. 21 W., F.M.;

### Lake Minchumina (FF-94611)

The submerged lands encompassed by the ordinary high water line of Lake Minchumina at the time of statehood within T. 11 S., R. 24 W., and T. 12 S., R. 23 to 25 W., F.M.;

### Kantishna River (FF-94612)

All submerged lands lying within the bed of the Kantishna River, between the ordinary high water lines of the left and right banks at the time of statehood, beginning at the abandoned site of Roosevelt (Sec. 31, T. 11 S., R. 19 W., F.M.) downstream to its confluence with the Tanana River in T. 2 S., R. 12 W., F.M.

## HOW TO APPEAL THIS DECISION

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations contained in 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413)

at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.



Bud C. Cribley  
State Director

Enclosure

cc (w/o enclosure):

James Walker  
Alaska Department of Natural Resources  
Division of Mining, Land & Water  
Public Access Assertion and Defense Unit  
550 West 7<sup>th</sup> Ave, Suite 1420  
Anchorage, Alaska 99501-3579

Kevin Sorensen  
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Public Assess Assertion & Defense Unit  
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Chief, Realty Services Section  
State of Alaska, DNR  
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Lands Program Manager  
National Park Service  
Alaska Regional Office  
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Trustees for Alaska  
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Alaska Center for Land Reform, Inc.  
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Anchorage, Alaska 99509

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JBER, Alaska 99506-2401

Richard H. Bishop  
1555 Gus's Grind  
Fairbanks, AK 99709

Fairbanks District Manager (AKF000)

Anchorage District Manager (AKA000)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

**INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS**

**DO NOT APPEAL UNLESS**

1. This decision is adverse to you,  
AND
2. You believe it is incorrect

**IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED**

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- 1. NOTICE OF APPEAL**..... A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).
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- 2. WHERE TO FILE**..... U.S. Department of the Interior  
Bureau of Land Management  
Alaska State Office  
222 W. 7th Avenue, #13  
Anchorage, Alaska 99513
- NOTICE OF APPEAL**.....
- WITH COPY TO SOLICITOR**... Regional Solicitor, Alaska Region  
1430 University Drive, Suite 300  
Anchorage, Alaska 99508-4626
- 
- 3. STATEMENT OF REASONS** Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).
- WITH COPY TO SOLICITOR**..... Regional Solicitor, Alaska Region  
1430 University Drive, Suite 300  
Anchorage, Alaska 99508-4626
- 
- 4. ADVERSE PARTIES**..... Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).
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- 5. PROOF OF SERVICE**..... Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).
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- 6. REQUEST FOR STAY**..... Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.
- Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.

### 43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

#### STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska  
Arizona State Office ----- Arizona  
California State Office ----- California  
Colorado State Office ----- Colorado  
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri  
and, all States east of the Mississippi River  
Idaho State Office ----- Idaho  
Montana State Office ----- Montana, North Dakota and South Dakota  
Nevada State Office ----- Nevada  
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas  
Oregon State Office ----- Oregon and Washington  
Utah State Office ----- Utah  
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

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(Form 1842-1, September 2006)