

STATE OF ALASKA

**DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER**

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December 22, 2005

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

2005 DEC 22 AM 9:09
BLM AK SO 954
ANCHORAGE, AK

Re: Recordable Disclaimer of Interest Application for Mark Creek

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 Mark Creek.

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands lying within the bed of Mark Creek, and the interconnected unnamed lake system, between the ordinary high water lines of the left and right banks, from its origins within Township 13 North, Range 20 East, Copper River Meridian, Alaska, downstream through the interconnected unnamed lake system to its confluence with the Chisana River in Township 14 North, Range 19 East, Copper River Meridian, Alaska. As a general rule, any sloughs, braids or channels that carry water from a navigable creek are an integral part of the creek and thus, are navigable as well. A map highlighting the creek, and a legal description of the townships and ranges underlying the creek are enclosed.

II. WAIVER REQUEST

As previously discussed with the Bureau of Land Management 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.

"Develop, Conserve, and Enhance Natural Resources for Present and Future Alaskans"

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 May 22, 1953; the Alaska Statehood Act; the Submerged Lands Act of 1988, or any other legally cognizable reason. The Bureau may disclaim interest in the submerged lands on any of the grounds that apply.

Because Mark Creek and the unnamed lake system 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 State as the upland owner - Generally, where the state is the owner of the uplands adjacent to Mark Creek, the state owns the bed of Mark Creek 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 upland 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 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 MARK CREEK

A March 28, 1980 navigability report recommends that Mark Creek and an unnamed lake system be determined navigable. A June 24, 1994 report lists Mark Creek as navigable in selected townships. Two Alaska Native Claims Appeal Board decisions dated August 5, 1981 and October 30, 1981 determine that Mark Creek and the unnamed lakes are navigable. Copies of those reports and decisions, and other supporting documentation, are attached to this application.

VI. OTHER KNOWN INTERESTED PARTIES

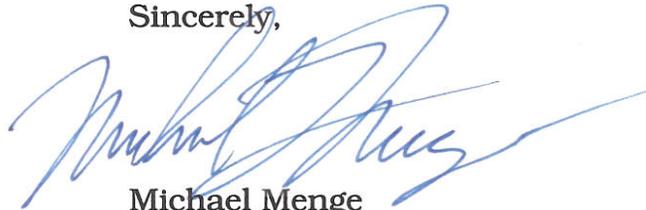
The state is not aware of any adverse claimant or occupant of these lands.

VII. CONCLUSION

As evidenced by the Bureau's navigability reports and Alaska Native Claims Appeal Board decisions, the State of Alaska determines there is sufficient information to conclude that Mark Creek 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 the Bureau to bill the State's account \$100 for the application fee required by regulation.

Sincerely,



Michael Menge
Commissioner

Enclosures

CC:¹ 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
Cam Toohey, Special Asst. to the Secretary for Alaska

¹ These recipients were provided only with a copy of the application filed with BLM. Copies of map(s) for 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 Jennifer A. Currie at (907) 269-6008 and we will provide you with the information through the mail.

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

Chris Milles, Acting Regional Manager, Northern Region, Dept. of Natural Resources

Northway Traditional Council

Northway Village Council, Planning Commission

Northway Natives, Inc.

Georgianna Lincoln, Chairwoman, Doyon, Limited

Harold Brown, Tanana Chiefs Conference

Legal Description

Mark Creek within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of Mark Creek and the unnamed lake system, between the ordinary high water lines of the left and right banks, beginning within Township 13 North, Range 20 East, Copper River Meridian, Alaska;

Thence northwesterly, generally within the following townships of the Copper River Meridian as determined from USGS 1:63 360 series topographic maps Nabesna (D-2) 1955 (minor revisions 1965); Tanacross (A-2) 1955 (minor revisions 1972); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 13 North, Range 19, 20 East;
Township 14 North, Range 19, 20 East.

To the terminus, being all points of confluence with the Chisana River within Section 15, Township 14 North, Range 19 East, Copper River Meridian, Alaska.

