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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA,
Plaintiff,

v.

UNITED STATES OF AMERICA; CHICKEN
VENTURES, LLC, an Alaska limited liability
company; GEORGE W. SEUFFERT, SR.;
GEORGE W. SEUFFERT, JR.
Defendants.

CIVIL ACTION NO:

**COMPLAINT TO QUIET TITLE
AND FOR DECLARATORY
JUDGMENT**

INTRODUCTION

1. The State of Alaska (“State”), through the office of the Attorney General, brings this action for declaratory relief and to quiet title to state-owned submerged land underlying the Mosquito Fork of the Fortymile River (“Mosquito Fork”), a navigable river within the boundaries of the State of Alaska.

2. The State brings this action because defendant United States now claims ownership over or has purported to convey a real property interest to the submerged land

underlying the Mosquito Fork to other named defendants. Such action has cast a cloud over the State's title.

3. The State brings this action under:
 - a. the Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, which authorizes a federal district court to adjudicate disputes over the title to real property in which the United States claims an interest;
 - b. the Declaratory Judgment Act, 28 U.S.C. § 2201, which authorizes a federal district court in a case or controversy to declare the rights and legal relations of an interested party seeking such declaration;
 - c. Title 28, United States Code, Section 1367(a), which authorizes a federal district court to consider pendant state law claims. In this action, the pendant state law claims are to quiet title pursuant to Alaska Statute 09.45.010 and to regain possession of a real property interest pursuant to Alaska Statute 09.45.630.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1346(f) & 2409a, 28 U.S.C. § 2201-02, and 28 U.S.C. § 1367(a).

5. This Court has jurisdiction over this action because the QTA waives sovereign immunity of the Federal government to resolve disputes over the title to real property in which the United States claims an interest.

6. The State satisfied the QTA's 180-day notice of intent to sue requirement. *See* 28 U.S.C. § 2409a(m). By letter dated December 14, 2010, the Office of the Attorney General for the State of Alaska gave notice to the U.S. Department of the Interior of its intent to file suit with regard to the ownership of the submerged lands at issue in this case. A copy of this Notice of Intent is included as Exhibit 1.

7. This is an action brought by a state and is timely under 28 U.S.C. § 2409a(g).

8. Title 28, United States Code, Section 1346(f) provides that federal district courts have exclusive original jurisdiction over civil actions arising under the QTA.

9. Venue is proper in this Court under 28 U.S.C. § 1391(e) because the lands at issue in this lawsuit are located within the District of Alaska.

10. This Court has supplemental jurisdiction over the pendant state law claims pursuant to 28 U.S.C. § 1367(a).

11. A case or controversy has arisen over the State's ownership of the submerged lands described herein and its jurisdiction to regulate and control this land.

PARTIES

12. The Plaintiff State of Alaska is a sovereign state, with a sovereign interest in the management and conservation of the beds of navigable rivers and other navigable waters and submerged lands to which it has title. In bringing this lawsuit, the State of Alaska seeks to confirm and retain its right to manage its own lands and waters, and to remediate and prevent the attendant harm of being deprived of this right.

13. Defendant United States of America is a sovereign nation and claims an interest in certain lands underlying the Mosquito Fork, near Chicken, Alaska, as more fully set forth below.

14. Defendant George W. Seuffert, Sr. is an individual and may claim an interest in a portion of the submerged lands underlying the Mosquito Fork.

15. Defendant George W. Seuffert, Jr. is an individual and may claim an interest in a portion of the submerged lands underlying the Mosquito Fork.

16. Defendant Chicken Ventures, LLC is a limited liability company organized under the laws of the State of Alaska and it may claim an interest in a portion of the submerged lands underlying the Mosquito Fork.

DESCRIPTION OF THE MOSQUITO FORK

17. The Mosquito Fork flows from its headwaters in Sec. 2, T. 25 N., R. 8 E., Copper River Meridian northeast to its confluence with Dennison Fork within Sec. 8, T. 26 N., R. 18 E., Copper River Meridian.

18. The Mosquito Fork and the Dennison Fork form the South Fork Fortymile River. The Mosquito Fork is primarily a single channel clear water stream throughout its length.

19. The Mosquito Fork is approximately 140 river miles. This action is to quiet title to the submerged lands and bed up to and including the ordinary high water lines of the right and left banks of the Mosquito Fork from its confluence with Dennison Fork within Sec. 8, T. 26 N., R. 18 E., Copper River Meridian, upstream to just above its

confluence with Wolf Creek within Sec. 24, T. 24 N., R. 12 E., Copper River Meridian, except for those portions of the river that traverse state-owned uplands and the State's ownership of the underlying bed is undisputed. The included portions of the Mosquito Fork (hereinafter referred to as the "designated portion of the Mosquito Fork") include approximately river miles 0 through 38, 39 through 44, and 53.5 through 80.5. The excluded portions of the Mosquito Fork include the point at which the river exits the National Wild and Scenic River System at approximately river mile 38 in Sec. 19, T. 26 N., R. 15 E., Copper River Meridian upstream to the point at which the river enters Sec. 25, T. 26 N., R. 14 E., Copper River Meridian at approximately river mile 39, and the section of the river that starts in Sec. 2, T. 25 N., R. 14 E., Copper River Meridian at approximately river mile 44 through 53.5 and ending at approximately river mile 53.5 in Sec. 12, T. 25 N., R. 13. (*See* Map 1 highlighting the entire river enclosed as Exhibit 2 and Map 5 highlighting the excluded portion of the river enclosed as Exhibit 3.)

20. Within this action, the State does not seek to quiet title to any portion of the river just above its confluence with Wolf Creek within Sec. 24, T. 24 N., R. 12 E., Copper River Meridian (at approximately river mile 80.5), upstream to its headwaters within Sec. 2, T. 25 N., R. 8 E., Copper River Meridian (at approximately river mile 140) (hereinafter referred to as the "upper portion of the Mosquito Fork"). In limiting this quiet title action to only the designated portion of the Mosquito Fork, the State is not presently taking a position on whether the upper portion of the Mosquito Fork is or is not

navigable and is also not taking a position regarding what, if any, legal rights the State may possess or subsequently assert in and to the upper portion of the Mosquito Fork.

ALASKA'S TITLE TO ITS SUBMERGED LANDS

21. The “equal footing doctrine” guarantees to newly-admitted states the same rights enjoyed by the original thirteen states and other previously-admitted states. *Utah v. United States*, 482 U.S. 193, 196 (1987); *Alaska v. Ahtna, Inc.*, 891 F.2d 1401, 1404 (9th Cir. 1989). This includes title ownership to lands underlying navigable waters. *Utah*, 482 U.S. at 196; *Ahtna, Inc.*, 891 F.2d at 1404.

22. In addition to the “equal footing doctrine,” the Submerged Lands Act of 1953 vested in the states “title to and ownership of lands beneath navigable waters within the boundaries of respective States.” 43 U.S.C. § 1311(a) (2012).¹ Congress expressly applied the Submerged Lands Act of 1953 to Alaska in the Alaska Statehood Act. § 6(m) of the Alaska Statehood Act, 48 U.S.C. note prec. § 21.

23. Moreover, Congress expressly applied the “equal footing doctrine” to the Territory of Alaska through the Alaska Right of Way Act of 1898, 30 Stat. 409, codified at 43 U.S.C. §§ 942-1 to 942-9. And the general mining laws make clear that although

¹ “Lands beneath navigable waters” is defined as:

all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction.

43 U.S.C. § 1301(a)(1).

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“the laws of the United States relating to mining claims, mineral locations, and rights incident thereto” were extended to the Territory of Alaska, “[n]o person shall acquire by virtue of [that extension] any title to any land below the line of ordinary high tide or the line of ordinary high-water mark.” 30 U.S.C. § 49a.

24. As a result of the above-described statutes and constitutional doctrines, the State generally manages the water columns, shorelands, tidelands, submerged lands, and the resources located within or on such lands and waters.

25. The people of Alaska “have a constitutional right to free access to and use of the navigable or public water of the state,” and the “state has full power and control of all of the navigable or public water of the state . . . and . . . holds and controls all navigable or public water in trust for the use of the people of the state.”

AS 38.05.126(a), (b).

26. Alaska’s title to its submerged lands and navigable waters vested at statehood, and Alaska became a state on January 3, 1959. Therefore, unless a pre-statehood withdrawal clearly included the submerged lands and intended to defeat Alaska’s statehood title, Alaska retains ownership and management authority of its submerged lands and navigable waters. There is no pre-statehood withdrawal that would defeat Alaska’s title to the designated portion of the Mosquito Fork.

THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

27. In 1980, Congress passed Public Law 96-487, the Alaska National Interest Lands Conservation Act (“ANILCA”). ANILCA affected over 100 million acres of

federal lands in Alaska, including incorporating 25 rivers into the National Wild and Scenic River System. *See* Wild and Scenic Rivers Act, Pub. L. No. 90-542, 82 Stat. 90 (1968) (codified as amended at 16 U.S.C. §§ 1271–1287 (2012)).

28. Section 603 of ANILCA amended the Wild and Scenic Rivers Act, 16 U.S.C. § 1274(a)(48), to include the Mosquito Fork downstream from the vicinity of Kechumstuk within the system. (See Map 3, setting forth the wild and scenic corridor, attached as Exhibit 4.)

29. Section 605 of ANILCA further classified the section of the Mosquito Fork downstream from Kechumstuk to Ingle Creek as a “wild river area.” BLM currently manages the Mosquito Fork pursuant to the Fortymile River Management Plan (“1983 RMP”). Pursuant to that plan, the Mosquito Fork from the mouth of Ingle Creek downstream to the Taylor Highway bridge is classified as a scenic river. (See Map 3, setting forth the wild and scenic corridor, attached as Exhibit 4.)

30. Every wild, scenic, or recreational river designated by the Wild and Scenic Rivers Act is a “free-flowing stream.” 16 U.S.C. § 1273(b).

31. The Wild and Scenic Rivers Act defines “free-flowing” as “existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.” 16 U.S.C. § 1286(b).

32. “Wild river areas” as defined by the Wild and Scenic Rivers Act are “[t]hose rivers or sections of rivers that are free of impoundments and generally

inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.” 16 U.S.C. § 1273(b)(1).

FEDERAL AGENCY DETERMINATIONS OF NAVIGABILITY

33. On June 29, 1983, the Alaska State Office of the Bureau of Land Management (“BLM”) issued an administrative decision (“1983 Navigability Finding”) which purported, *inter alia*, to find the majority of the Mosquito Fork—from its headwaters in Sec. 2, T. 25 N., R. 8 E., Copper River Meridian to its confluence with Chicken Creek in Sec. 6, T. 26 N., R. 18 E., Copper River Meridian—nonnavigable. This casts a cloud on the rights and title of the State of Alaska to the lands underlying the Mosquito Fork.

34. The decision concluded that the Mosquito Fork from its confluence with Chicken Creek to its confluence with Dennison Fork within Sec. 8, T. 26 N., R. 18 E., Copper River Meridian, is navigable.

35. The United States further takes the position that, even though BLM made an administrative determination of title navigability of the Mosquito Fork, that agency determination is not binding on the United States. Thus, the United States may later claim the portion of the Mosquito Fork that it concluded navigable in 1983, is non-navigable as against the State of Alaska. This casts a cloud on the rights and title of the State of Alaska to the lands underlying the Mosquito Fork that BLM previously determined navigable.

NAVIGABILITY OF MOSQUITO FORK

36. The designated portion of the Mosquito Fork was in its natural and ordinary condition at the time of statehood and remains in its natural and ordinary condition today.

37. The designated portion of the Mosquito Fork was used or susceptible of being used in its ordinary condition as a highway for commerce over which trade and travel may be conducted in the customary modes of trade and travel, including the following specific uses:

a. In its fluid condition as a highway—floating of logs, use by wooden and skin boats, log and inflatable rafts, power and jet boats, and canoes providing transportation for individuals and supplies, for subsistence and recreational guided and non-guided hunting and fishing activities, for trapping, mining and prospecting, freighting and similar purposes, related to commerce and travel.

b. Any other additional uses the State proves at trial.

PURPORTED CONVEYANCES AND MINING CLAIMS

38. The United States is without authority to convey any interest in the submerged lands underlying the designated portion of the Mosquito Fork.

39. The United States owns or has an interest in the uplands along the designated portion of the Mosquito Fork passing through T. 24 N., R. 12 E., Copper River Meridian; T. 24 N., R. 13 E., Copper River Meridian; T. 25 N., R. 13 E., Copper River Meridian; and T. 26 N., R. 14 E., Copper River Meridian. An upland owner typically owns the bed of a non-navigable river to its center.

40. On May 3, 1944, the United States issued patent number 1118395 for U.S. Mineral Survey No. 2097 to the United States Smelting Refining and Mining Company for certain mining claims near Chicken, Alaska, including portions of the submerged lands underlying the designated portion of the Mosquito Fork. The United States Smelting Refining and Mining Company (later known as UV Industries, Inc., a Maine Corporation) subsequently transferred its interest to the Alaska Gold Company, which by quitclaim deed dated August 29, 2006, transferred all interest to Chicken Ventures, LLC, George W. Seuffert, Sr., and George W. Seuffert, Jr. Consequently, Chicken Ventures, LLC, George W. Seuffert, Sr., and George W. Seuffert, Jr., hold an interest in the patented federal mining claims that are subject to conflict with the State's ownership of the submerged lands underlying the designated portion of the Mosquito Fork. (See Map 2 outlining mining interests included as Exhibit 5.)

41. On May 20, 1946, the United States issued patent number 1120940 for U.S. Mineral Survey No. 2144 to the United States Smelting Refining and Mining Company for certain mining claims near Chicken, Alaska, including portions of the lands underlying the designated portion of the Mosquito Fork. The United States Smelting Refining and Mining Company (later known as UV Industries, Inc., a Maine Corporation) subsequently transferred its interest to the Alaska Gold Company, which by quitclaim deed dated August 29, 2006, transferred all interest to Chicken Ventures, LLC, George W. Seuffert, Sr., and George W. Seuffert, Jr. Consequently, Chicken Ventures, LLC, George W. Seuffert, Sr., and George W. Seuffert, Jr., hold an interest in the

patented federal mining claims that are subject to conflict with the State's ownership of the submerged lands underlying the designated portion of the Mosquito Fork. (See Map 2 outlining mining interests included as Exhibit 5.)

42. George W. Seuffert, Jr., holds an interest in the following unpatented federal mining claims that are subject to conflict with the State's ownership of the submerged lands underlying the designated portion of the Mosquito Fork: AKFF 052152, AKFF 052153, AKFF 052154, AKFF 052155. (See Map 2 outlining mining interests included as Exhibit 5.)

43. By reason of the foregoing there is a cloud cast on the rights and title of the State of Alaska to its submerged lands underlying the designated portion of the Mosquito Fork.

FIRST CLAIM FOR RELIEF

(Quiet Title for the State against United States pursuant to 28 U.S.C. § 2904a)

44. Plaintiff realleges the allegations set forth in paragraphs 1–43 above.

45. Pursuant to 28 U.S.C. § 2409a, the United States is subject to suit to quiet title to real property in which both the State and the United States claim an interest.

46. The designated portion of the Mosquito Fork was navigable in fact at the time of statehood, and there were no withdrawals in effect for this area. Therefore title automatically transferred to the State of Alaska pursuant to the equal footing doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act.

47. The State is entitled to an order of this Court quieting title to the submerged lands underlying the designated portion of the Mosquito Fork as described herein.

SECOND CLAIM FOR RELIEF

(Declaratory judgment)

48. Plaintiff realleges the allegations set forth in paragraphs 1–47 above.

49. The designated portion of the Mosquito Fork was navigable in fact at the time of statehood, and there were no withdrawals in effect for this area. Therefore title automatically transferred to the State of Alaska pursuant to the equal footing doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act.

50. The United States denies the navigability of the designated portion of the Mosquito Fork and has purported to convey to the non-federal defendants property interests that are in conflict with the State’s title described in paragraph 49.

51. An actual controversy exists between the State, the United States, and the non-federal defendants arising out of the purported conveyances of property interests referenced in paragraph 50.

52. Pursuant to 28 U.S.C. § 2201, the State is entitled to a declaration that the designated portion of the Mosquito Fork is navigable in fact and the conveyances provided by the United States to the non-federal defendants, to the extent the conveyances conflict with the State’s title, are null and void and without effect.

THIRD CLAIM FOR RELIEF

(Quiet title for the State against non-federal defendants pursuant to Alaska Statute 09.45.010)

53. Plaintiff realleges the allegations set forth in paragraphs 1–52 above.

54. The designated portion of the Mosquito Fork was navigable in fact at the time of statehood, and there were no withdrawals in effect for this area. Therefore title automatically transferred to the State of Alaska pursuant to the equal footing doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act. The State of Alaska maintains constructive possession.

55. The non-federal defendants hold property interests that are in conflict with the State's title described in paragraph 54.

56. In each instance where the non-federal defendants claim a property interest in the submerged land underlying the designated portion of the Mosquito Fork, that interest is null and void and without effect.

57. By virtue of their interests in certain submerged land underlying the designated portion of the Mosquito Fork, the non-federal defendants claim an interest adverse to the State within the meaning of AS 09.45.010.

58. Pursuant to AS 09.45.010, the State is entitled to an order of this Court quieting title to the submerged lands underlying the designated portion of the Mosquito Fork as described herein.

FOURTH CLAIM FOR RELIEF

(Action against non-federal defendants to recover real property pursuant to Alaska Statute 09.45.630)

59. Plaintiff realleges the allegations set forth in paragraphs 1–58 above.

60. The designated portion of the Mosquito Fork was navigable in fact at the time of statehood, and there were no withdrawals in effect for this area. Therefore title automatically transferred to the State of Alaska pursuant to the equal footing doctrine, the Submerged Lands Act of 1953, and the Alaska Statehood Act.

61. The non-federal defendants purport to be in possession of the portions of submerged lands underlying the designated portion of the Mosquito Fork in which they hold an interest.

62. The State has a present right to possession of the designated portion of the Mosquito Fork and is entitled to recover possession of the same from the non-federal defendants.

63. Pursuant to AS 09.45.630, the State is entitled to an order of this Court to recover possession of the submerged lands underlying the designated portion of the Mosquito Fork as described herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Alaska prays as follows:

1. That this Court enter judgment declaring that the designated portion of the Mosquito Fork is navigable, and further, that as a result, title to the bed of said water

body is in the State of Alaska, and that the United States has no title thereto or interest therein since January 3, 1959.

2. That this Court declare that any purported conveyance of any interest in the designated portion of the Mosquito Fork by the United States to the non-federal defendants is null and void and without effect.

3. A decree against the non-federal defendants quieting title to the submerged lands underlying the designated portion of the Mosquito Fork in the State of Alaska pursuant to Alaska Statute 09.45.010.

4. A decree ejecting the non-federal defendants from any possession in conflict with the State's ownership of the submerged lands underlying the designated portion of the Mosquito Fork pursuant to Alaska Statute 09.45.630.

5. That the Plaintiff State of Alaska be awarded costs and attorney's fees.

6. For such further and other relief as the Court may deem just and proper.

DATED this 1st day of June, 2012 at Anchorage, Alaska.

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