THE STATE of ALASKA
GOVERNOR MIKE DUNLEAVY

**Department of Natural Resources**
DIVISION OF MINING, LAND & WATER
Public Access Assertion & Defense Section
550 West 7th Avenue, Suite 1070
Anchorage, Alaska 99501-3579
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November 6, 2026

Mr. Kevin Pendergast
State Director
Bureau of Land Management
222 West 7th Avenue, #13
Anchorage, Alaska 99513-7504

Re: "Draft" Recordable Disclaimer of Interest Application for Numerous Rivers and Lakes within the Gates of the Arctic NPP, Noatak NPP and Kobuk Valley NP, Alaska

Dear Director Pendergast:

Pursuant to 43 CFR §1864, the State of Alaska (State) files this application for a recordable disclaimer of interest (RDI) for the lands underlying the herein-described portions of the

**I. Description of Waterways.**

This application is submitted for the submerged lands as follows:

Koyukuk River Tributaries

1. North Fork Koyukuk River
   North Fork Koyukuk River from its confluence with Alinement Creek in Section 34, T. 37 N., R. 13 W., FM., downstream to its confluence with the Middle Fork Koyukuk River in Section 28, T. 26 N, R. 16 W., FM. Including all lands between the ordinary high water lines of the left and right banks of North Fork Koyukuk River.

2. John River
   John River, from the north section line of Section 3, T. 17 S., R. 1 W., UM., downstream to its confluence with the Koyukuk River in Sections 10 and 15, T. 24 N., R. 19 W., FM. Including all lands between the ordinary high water lines of the left and right banks of John River.

3. Hunt Fork John River
   Hunt Fork John River from its source at the confluence of Agiak Creek and Loon Creek in Section 36, T. 36 N., R. 23 W., UM., downstream to its confluence with the John River

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2. John River
   John River, from the north section line of Section 3, T. 17 S., R. 1 W., UM., downstream to its confluence with the Koyukuk River in Sections 10 and 15, T. 24 N., R. 19 W., FM. Including all lands between the ordinary high water lines of the left and right banks of John River.

3. Hunt Fork John River
   Hunt Fork John River from its source at the confluence of Agiak Creek and Loon Creek in Section 36, T. 36 N., R. 23 W., UM., downstream to its confluence with the John River

in Sections 7 and 18, T. 34 N., R. 21 W., FM. Including all lands between the ordinary high water lines of the left and right banks of the Hunt Fork John River.

4. Alatna River and Unnamed Lake (Gaedeke Lake)

Unnamed Lake and the Alatna River, this includes all lands between the ordinary high water lines of the left and right banks of Unnamed Lake (Gaedeke Lake) in Section 19, T. 29 N., R. 17 E., FM and Section 24, T. 29 N., R. 16 E., FM., and Alatna River downstream to the Koyukuk River in Section 11, T. 20 N., R. 24 W., FM. This includes all lands between the ordinary highwater lines of the left and right banks of the Alatna River.

<u>Kobuk River and Tributaries</u>

5. Kobuk River including all named and unnamed channels

Kobuk River including Nazaruk Channel, Oksik Channel, Melvin Channel, Riley Channel, Eavok Channel, Olikatuk Channel, Mukuksok Channel, Emanvicrok Channel, Attiunik Channel, Ogriveg River, Nulvororok Channel, Lewis Rich Channel, and all unnamed channels, from a confluence with an unnamed left bank stream within Section 4, T. 20 N., R. 22 E., KRM., to Hotham Inlet in Section 21, T. 18 N., R. 13 W., KRM.; Sections 11 and 14, T. 16 N., R. 15 W., KRM.; Sections 10 and 11, T. 15 N., R. 15 W., KRM.; Section 30, T. 15 M., R. 14 W., KRM.; Section 6, T. 13 N., R. 13 W., KRM.; Section 10 and 17, T. 13 N., R. 12 W., KRM.; and Sections 27 and 34, T. 14 N., R. 12 W., KRM.; excluding those lands within EO 2089 (see valid pre-statehood withdrawal section of the application). This includes all lands between the ordinary high water lines of the left and right banks of Kobuk River.

6. Walker Lake and outlet

Walker Lake and its outlet, from Sections 13, 14, and 23, T. 21 N., R. 19 E., KRM., downstream to the confluence with the Kobuk River in Section 19, T. 19 M., R. 21 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Walker Lake and its Unnamed Outlet.

7. Kichaiakaka Creek (Alatna Portage)

Kichaiakaka Creek from the east section line of Section 11, T. 19 N., R. 22 E., KRM., to its confluence with the Kobuk River in Section 12, T. 19 N., R. 21 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Kichaiakaka Creek.

8. Nutuvukti Lake

Nutuvukti Lake, within Sections 3, 4, 5, 9, 10, 11, 13, 14, 15, 16, T. 18 N., R. 19 E., KRM., and Sections 27, 28, 29, 32, 33, T. 19 N., R. 19 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Nutuvukti Lake.

9. Reed River

Reed River, from Section 10, T. 22 N., R. 17 E., KRM., to its confluence with the Kobuk River in Sections 3 and 4, T16 N., R. 18 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of the Reed River.

10. Beaver Creek

Beaver Creek, from Section 4, T. 20 N., R. 17 E., KRM., to its confluence with the Kobuk River in Sections 5, 6, and 7, T. 16 N., R. 18 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Beaver Creek.

11. Lake Minakokosa and outlet

Lake Minakokosa and its outlet, from within Section 24, T. 18 N., R. 17 E., KRM., to its confluence with Beaver Creek in Section 6, T17 N., R. 18 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Lake Minakokosa and its outlet.

12. Narvak Lake

Narvak Lake, from its inlet in Section 17, T. 18 N., R. 15 E., KRM to its outlet in Section 5, T. 17 N., R. 15 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Narvak Lake.

13. Lake Selby

Selby Lake, from its inlet in Section 8, T. 17 N., R. 15 E., KRM., to its outlet in Section 24, T. 17 N., R. 14 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Selby Lake.

14. Selby River

Selby River, from the inlet of Narvak Lake within Section 17, T. 18 N., R. 15 E., KRM., through Lake Selby, to its confluence with the Kobuk River in Section 22, T. 16 N., R. 14 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of the Selby River.

15. Ambler River

Ambler River from its confluence with an unnamed stream within Section 11, T. 25 N., R. 10 E., KRM., downstream to its confluence with the Kobuk River in Section 28, T. 20 N., R. 5 E., KRM. Including all lands between the ordinary high water lines of the left and right banks of Ambler River.

<u>Noatak River and Unnamed Lakes</u>

16. Noatak River including all named and unnamed channels

Noatak River from Luck Six Creek in Section 26, T. 25 N., R. 17 E., KRM., downstream to the Hotham Inlet and Kotzebue Sound in Section 32, T. 19 N., R. 16 W., KRM.; Section 12, T. 18 N., R. 18 W., KRM., and Section 7, T. 18 N, R. 17 W., KRM. Including

Little Noatak Slough and all unnamed bifurcations and channels. This includes all lands between the ordinary high water lines of the left and right banks of the Noatak River.

17. Unnamed Lake #1
    Unnamed Lake located within Sections 11 and 12, T. 26 N., R. 15 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Unnamed Lake.

18. Unnamed Lake #2
    Unnamed Lake located within Sections 2 and 3, T. 25 N., R. 16 E., KRM. This includes all lands between the ordinary high water lines of the left and right banks of Unnamed Lake.

Specifically, these waters are included on the Gates of the Arctic NPP – RDI ArcGIS Online webmap available at: Gates of the Arctic NPP - RDI Application. The data available on the webmap are available for download from that location. Full legal descriptions are in Appendix A.

## II. Applicant.

The State agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land and Water, 550 W. 7th Avenue, Suite 1030, Anchorage, Alaska 99501, Attention: Kris Hess (907) 269-8501. Please start the application process for this river and forward the estimate of cost of administration.

## III. Reason for the State's Request for a Recordable Disclaimer of Interest.

Title to these lands vested in the State of Alaska at statehood without any particular conveying document. The lack of any title document or judgment creates a cloud on the State's title. A RDI for this land will help lift the cloud on the State's title stemming from the lack of any permanent determination of ownership and correct any conflict and uncertainty in the public's understanding of title and use, without the time, expense, and trouble of engaging in quiet-title litigation.

## IV. Basis of the State's Request for a Recordable Disclaimer of Interest.

### A. Rationale that each waterbody or system is navigable.

Post-statehood recreational boat use contributes to local and regional economies in several ways, and can be especially important to smaller, less economically diverse communities. Boaters often take guided trips and usually require outfitting by local providers for equipment, advice, and/or logistical support. More indirectly, recreators frequent other local businesses, such as gas, food, lodging, transportation, etc. This recreational spending will likely increase as the

state's tourist and outdoor recreation economy expands.[1] While these statements were made regarding the Fortymile drainage they are applicable to the entire state as there are businesses across the state that provide rental of boats and equipment to travelers heading into remote locations. Air taxis and guide services also provide support to these types of recreational uses that contribute to the Alaska economy.

The state has created summaries describing the rationale for each waterbody in the application. These summaries and all background data are located in Appendices B, C, D, E and F.

## V. Determining Navigability of Water Bodies under Current Law.

The question of navigability for the purpose of state ownership is decided according to federal law. *Ahtna, Inc*., 891 F.2d at 1404 (citing *Holt State Bank*, 270 U.S. 49, 55-56 (1926)). The Supreme Court expressed the basic test for navigability in *The Daniel Ball*, 77 U.S. (19 Wall) 557, 563 (1870), as follows:

> 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.

*Id*. This test is applied in multiple situations, including when answering questions of title to river or streambeds under the equal footing doctrine. *See PPL Montana, LLC v. Montana*, 132 S. Ct. 1215, 1228 (2012).

Case law subsequent to *The Daniel Ball*, including *Ahtna, Inc.* and the U.S. Department of the Interior's decision in *Appeal of Doyon, Ltd.***,** 86 Interior Dec. 692, 698 (ANCAB 1979), explained the meaning of that basic test. The physical character of the waterway, and in particular its capacity to be navigated, is an important factor when considering navigability for title. In the Supreme Court's most recent decision regarding navigability for title, *PPL Montana, LLC v. Montana*, it again emphasized that rivers and streams are not only navigable if they were *used* for commerce, but also if they were *susceptible* of being used as highways of commerce at the time of statehood. 132 S. Ct. at 1233. And, as previously stated by the Ninth Circuit in *Ahtna, Inc.*: "Although the river must be navigable at the time of statehood, . . . *this only means* that, at the time of statehood, *regardless of the actual use of the river*, the river must have been *susceptible* to use as a highway of commerce. * * * [I]t is not even necessary that commerce be in fact conducted . . . 'The extent of existing commerce is not the test.'" 891 F.2d at 1404 (quoting *United States v. Utah*, 283 U.S. 64, 75, 82-83 (1931) (emphasis added)). Rather, it is enough to show:

[1] Doug Whittaker and Bo Shelby, "Boatability on the Middle Fork and North Fork of the Fortymile River, Alaska," Expert Witness Report, January 21, 2021, 15-17.

> the capacity of the rivers in their ordinary condition to meet the needs of commerce as they may arise in connection with the growth of the population, the multiplication of activities, and the development of natural resources. And this capacity may be shown by physical characteristics and experimentation as well as by the uses to which the streams have been put.

*Utah*, 283 U.S. at 83. Present-day recreational use is relevant to determining whether a river was susceptible to commercial use at the time of statehood if: "(1) the watercraft are meaningfully similar to those in customary use for trade and travel at the time of statehood; and (2) the river's post-statehood condition is not materially different from its physical condition at statehood." *PPL Montana, LLC*, 132 S. Ct. at 1233; *see Alaska v. United States, No. 3:17-cv-0090-HRH (Sept. 9, 2017)* (Knik).

Although lengthy portages, or the need to bypass a river segment, may defeat navigability for title for that particular river segment, *id.* at 1231–32, the presence of rapids, sandbars, and other obstructions, which may make navigation difficult, but not impossible, does not destroy title navigability, *see Utah*, 283 U.S. at 86. In *Utah*, a case addressing navigability for title, the Supreme Court stated: "the mere fact of the presence of . . . sandbars causing impediments to navigation does not make a river non-navigable." 283 U.S. at 86. Although "the presence of sandbars must be taken in connection with other factors making for navigability," the "essential point is whether the natural navigation of the river is such that it affords a channel for useful commerce." *Id*; *see also Oregon v. Riverfront Protection Ass'n*, 672 F.2d 792, 795 (9th Cir. 1982) (relying on the use of the McKenzie River in Oregon for log drives to determine the river navigable for title and stating that the "use of the river need not be without difficulty, extensive, or long and continuous."); *Doyon, Ltd.*, 86 Interior Dec. at 697 ("Although rapids, shallow waters, sweepers, and log jams make navigation difficult on both [the Kandik and Nation Rivers], the evidence shows that these impediments do not prevent navigation.").

Boat use is not the only method for proving a river or stream's ability to serve as a highway for useful commerce. In *Oregon v. Riverfront Protection Association*, the Ninth Circuit considered evidence of the transporting of logs (downstream traffic) on the McKenzie River relevant to determining the river's potential use for commerce. 672 F.2d at 794–96. The court further found that the seasonal and sometimes difficult nature of these log drives did not destroy navigability. *Id.* at 795–96 (holding that "notwithstanding [the] difficulties, thousands of logs and millions of board feet of timber were driven down the river" and this use was not "occasional" as it occurred over a three-month period for over seventeen years).

Applying these standards to Alaska, the courts and U.S. Department of the Interior have found waterways navigable for title based on their susceptibility to use for navigation by river boats, inflatable rafts, or canoes having a capacity for "commercial" loads of about 1000 lbs. of supplies or recreationists. *Ahtna Inc.*, 891 F.2d 1401 (Gulkana River); *Appeal of Doyon*, 86 Interior Dec. 692 (Kandik and Nation Rivers); Feb. 25, 1980 Memorandum from Regional DOI Solicitor John ("Jack") Allen to BLM Alaska State Director re "Kandik, Nation Decision on

Navigability." *See also Alaska v. United States,* Case No. 3:12-cv-00114-SLG (May 3, 2016) pp. 10-19 (Mosquito Fork); *Alaska v. United States*, 201 F.3d 1154 (9th Cir. 2000); August 18, 1983 Recommended Decision by DOI Administrative Law Judge Luoma in *Appeal of Alaska*, Interior Board of Land Appeals No. 82-1133 (recommending that the Matanuska River be determined navigable) & July 19, 1990 Memorandum of BLM Alaska State Director E. Spang (Matanuska River is navigable), BLM Files AA-11153-23, -31; *Appeal of State of Alaska & Collier*, 168 IBLA 334 (2006) (noting navigability standards); Montana v. Talen Montana, LLC, 130 F.4th 675 (9th Cir. 2025).

## VI. Other Known Interested Parties.

There may be other interested parties in the form of ANCSA Corporations and Village Corporations as well as the owners of small inholdings.

Doyon Limited
1 Doyon Place, Suite 300
Fairbanks AK 99701
Or
11500 Sukdu Way
Anchorage, AK 99515

Evansville Village,
PO BOX 26087
Bettles Field, AK 99726

Evansville, Incorporated
PO BOX 72579
Fairbanks, AK 99707

City of Allakaket
PO Box 30
Allakaket, AK 99720

Allakaket Village
PO BOX 50
Allakaket, AK 99720

Alatna Village
PO Box 70,
Allakaket, AK 99720

K'oyitl'ots'ina, Limited
1603 College Road,
Fairbanks, AK 99709

Arctic Slope Regional Corporation
PO BOX 129
Utqiagvik, AK 99723
Or
3900 C Street, Suite 801
Anchorage, AK 99503

Nunamiut Corporation
1038 Summer St.,
Anaktuvuk Pass, AK 99721

City of Anaktuvuk Pass
PO BOX 21030,
Anaktuvuk Pass, AK 99721

Village of Anaktuvuk Pass
PO BOX 21170
Anaktuvuk Pass, AK 99721

NANA Regional Corporation Inc.
PO BOX 49
Kotzebue, AK 99752
Or
909 W. Ninth Ave.
Anchorage, AK 99501

City of Kobuk
PO BOX 51020
Kobuk, AK, 99751

Native Village of Kobuk
PO BOX 51039
Kobuk, AK 99751

City of Shungnak
PO BOX 59
Shungnak, AK 99773

Native Village of Shungnak
PO BOX 73064
Shungnak, AK 99773

City of Ambler
PO BOX 9
Ambler, AK 99786

Native Village of Ambler
PO BOX 47
Ambler, AK 99786

City of Kiana
PO BOX 150
Kiana, AK 99759

Native Village of Kiana
PO BOX 69
Kiana, AK 99759

City of Noorvik
PO BOX 146
Noorvik, AK 99763

Noorvik Native Community
PO BOX 209
Noorvik, AK 99763

Kikiktagruk Inupiat Corporation
PO BOX 1050
Kotzebue, AK 99572

City of Kotzebue
PO BOX 46
Kotzebue, AK 99752

Native Village of Kotzebue
PO BOX 296,
Kotzebue, AK 99752

Native Village of Noatak
PO BOX 89
Noatak AK, 99751

**A. Valid Pre-Statehood Withdrawals by the United States Government.**

Applicant is aware of one withdrawal that may be a valid pre-statehood withdrawal by the United State Government; EO 2089 dated November 21, 1914, for Kobuk Native Reservation, that may defeat state title to the subject submerged lands. *See Alaska v. United*

*States*, Case No. 3:15-cv-0226-RRB (July 26, 2016) (August 12, 2016); *see also State of Alaska,* 102 IBLA 112. 116 (1988) (Katalla River); *State of Alaska,* 150 IBLA 112, 126 (1999) (Katalla River); *see generally Montana v. United States,* 450 U.S. 544, 554 (1981); *Utah Division of State Lands v. United States,* 482 U.S. 193, 202 (1987); *United States v. New Mexico*, 438 U.S. 696, 707 n. 14 (1978).

There is no known survey of record for EO2089. The unsurveyed area of EO 2089 is displayed on USGS Quadrangle, Selawik, AK, 1951 (1951 ed), 1:250000; as well as Selawik (D4 & D5), AK, 1955, (1968 ed.), scale 1:63360. GeoPDF's of these three maps are attached to the application as GeoTiff files. These maps were downloaded from https://ngmdb.usgs.gov/topoview/viewer/

## VII. Waiver Requests.

### A. Survey Requirements.

The State requests that the Bureau of Land Management (BLM) approve the State's request for a waiver of any survey requirements. 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. The map and legal description submitted with this RDI application sufficiently identify the land subject to this application, but if not, the recordable disclaimer can be worded appropriately to fit the circumstances without requiring a public land survey. The submerged lands for which this RDI is sought are identified by name or, if unnamed, readily identified as the above listed waters.

Navigable waterways, such as these, are typically ambulatory, thus making a public survey of them problematic and unnecessary. Such a meander line survey would have to cover a large, long stretch of river system including interconnected channels and sloughs, would be very expensive and time-consuming, and then would only be a representation of a moving boundary. The Department of the Interior (DOI) has issued RDIs to the State for the beds of navigable rivers in the past without requiring a public land survey of the river system or any part of it, and judgments, decisions, and decrees of the U.S. District Court, Ninth Circuit Court of Appeals, and U.S. Supreme Court finding title in the State to the beds of navigable waters have not required a public land survey.[2]

### B. Administrative Costs and Application Fee.

The State requests that all BLM administrative and other costs be waived, with the exception of direct (out-of-pocket) expenses including the $100.00 application fee, Federal Register Notice publication costs; local newspaper publication costs and mailing costs. The BLM

[2] *See, e.g., Alaska v. United States*, 546 U.S. 413, 415-17 (2006): *State of Alaska v. Ahtna, Inc. & United States*, 891 F.2d 1401 (9th Cir. 1989); *State of Alaska v. United States*, 662 F. Supp. 455 (D. Alaska 1987).

currently holds a balance from the State in fees paid toward processing costs from which these specific fees and costs can be deducted.

The BLM will withdraw the $100.00 application fee from the states balance on account.

**VIII. Conclusion.**

The State of Alaska has determined there is sufficient evidence to conclude the waterbodies identified herein are navigable in fact or tidally influenced waterways. Therefore, the submerged lands and beds underlying these water bodies are owned by the State of Alaska and should be disclaimed by the BLM on behalf of the federal government.

Sincerely Yours,

Kristin A. Hess
Deputy Director
DNR, DMLW

**Appendix A – Legal Descriptions**
**Appendix B – Executive Summaries**
**Appendix C – Post-Statehood Documentation**
**Appendix D – Memo - History of Use**
**Appendix E – History of Use Works Cited Documentation**
**Appendix F – Hydrology Report**

**References**

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