

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

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April 6, 2006

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

2006 APR - 6 PM 1:24
BLM AK SO 954
ANCHORAGE, AK

Re: Recordable Disclaimer of Interest Application for Moose Creek and an unnamed lake

Dear Mr. Bisson,

Pursuant to 43 CFR §1864, the State of Alaska files this application for a recordable disclaimer of interest for the lands underlying Moose Creek and a connecting unnamed lake.

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands within the bed of Moose Creek including that portion identified as Chindaglekne Creek, including all sloughs, braids and channels between the ordinary high water lines of the left and right banks, and all submerged lands below the ordinary high water line of a connected unnamed lake, beginning in Township 12 North, Range 19 East, Copper River Meridian, Alaska downstream to its confluence with Chisana River at Township 14 North, Range 19 East, Copper River Meridian, Alaska. A map highlighting the creek and unnamed lake and a legal description of the townships and ranges underlying the waterbodies 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 1953; the Submerged Lands Act of 1988; the Alaska Statehood Act; or any other legally cognizable reason. The Bureau may disclaim interest in the submerged lands on any of the grounds that apply.

Because Moose Creek and the unnamed lake are navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine and the Submerged Lands Act. 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 Moose Creek and the unnamed lake, the state owns the bed of the waterbodies even in the absence of a navigability determination. In such circumstance, the state took title under the Equal Footing Doctrine if the water is navigable, or if it is non-navigable, the state gained title as a matter of 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 of interest for this land will help lift the cloud on its title stemming from the lack of any permanent determination of ownership.

V. EVIDENCE OF THE NAVIGABILITY OF MOOSE CREEK AND THE UNNAMED LAKE

The Bureau's own formal determinations confirm the navigability of Moose Creek and the connected unnamed lake. A Bureau memorandum dated March 28, 1980 regarding navigable and nonnavigable waters in the Northway Area, Eastern Alaska, recommends a navigable determination for Moose Creek to the unnamed lake in Section 21 and 28, T. 14 N., R. 19 E., CRM. This memorandum states that local residents use the unnamed lake and Moose Creek as an alternative route of travel to the navigable Chisana River.

Two Alaska Native Claims Appeal Board decisions, dated August 5, 1981 and October 30, 1981, determine that the unnamed lake in Secs. 21 and 28, T. 14 N., R. 19 E., CRM, and Moose Creek to that unnamed lake are navigable.

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A June 22, 1994 Bureau memorandum considered physical characteristics and evidence of use to determine that Moose Creek in Sections 9 and 16, to the lake in the SW¼ of Section 21 is navigable. A summary of the navigability determinations and copies of the documents are attached as supporting documentation to this application.

Historic boat use information from local Native residents was used by the Bureau to determine that Moose Creek in Sections 9 and 16 and the unnamed lake were navigable waterways. Similar long-term annual boat use on Moose Creek by local residents supports a navigability finding for the upstream portion of Moose Creek. A May 24, 1994 Bureau report contains personal interview information from residents of Tok and Northway indicating boat use on Moose Creek was common upstream to Fish Lake near the Black Hills. Several residents stated they made frequent boat trips on the waterbody with people, gear, moose and supplies weighing over 1,000 pounds. An interview with long-time Tok resident Dan Grangaard provided further evidence supporting regular boat use of the upper portions of Moose Creek by local residents. Since the mid 1960's, he has made annual trips and used boats capable of carrying over 1000 pounds on the upper portion of the creek to the Black Hills. Long-term, regular boat use by residents described in the report and interviews justifies claiming the upstream portion of Moose Creek as a navigable waterway. A summary of bibliography references, interviews and navigability reports describing travel on Moose Creek is included.

VI. OTHER KNOWN INTERESTED PARTIES

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

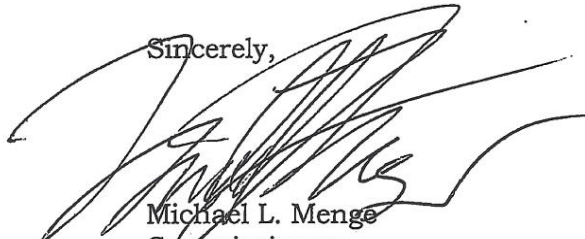
VII. CONCLUSION

As evidence by navigability determinations, ANCAB decisions, personal interviews and available historic information, the State of Alaska determines there is sufficient information to conclude that Moose Creek and the unnamed lake are navigable waterways and ownership of the submerged lands should be disclaimed by the Department of Interior.

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The state agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land, and Water, 550 W. 7th Avenue, Anchorage, Alaska 99501, Attention Richard Mylius, (907) 269-8600. The State hereby authorizes BLM to bill the State's account \$100 for the application fee required by regulation.

Sincerely,



Michael L. Menge
Commissioner

Enclosure

CC:¹ Governor Frank H. Murkowski
David W. Marquez, Attorney General
Mckie Campbell, Commissioner, Department of Fish and Game
Gale A. Norton, U.S. Secretary of the Interior
Drue Pearce, Senior Advisor to the Secretary for Alaskan Affairs
Special Assistant to the Secretary for Alaska
Richard Mylius, DNR, Division of Mining, Land, and Water
Senator Gene Therriault, Chair, Legislative Budget and Audit Joint Comm.
Department of Natural Resources, Public Information Center
Jim Stratton, Alaska Regional Director, National Parks Conservation Assoc.
Chris Milles, Acting Regional Manager, Northern Region, Dept. of Natural
Resources, State of Alaska DLMW
Edward Merritt – Acting Manager, Tetlin National Wildlife Refuge
Warren Keough, Water Rights Coordinator – NWRS 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 Scott Ogan at (907) 269-5515 and we will provide you with the information through the mail.

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Georgianna Lincoln, Doyon Limited, Doyon Building
Harold Brown, Tanana Chiefs Conference
Northway Traditional Council
Northway Village Council
Northway Natives, Inc.

Legal description

Moose Creek and an unnamed lake within the State of Alaska, more particularly described as follows:

Moose Creek

All submerged lands within the bed of Moose Creek including that portion known as Chindaglekne Creek, including all sloughs, braids and channels between the ordinary high water lines of the left and right banks, beginning within Township 12 North, Range 19 East, Copper River Meridian, Alaska; thence northerly, 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 1978); Tanacross (A-2) 1955 (minor revisions 1972); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 12 North, Range 19 East
Township 13 North, Range 18, 19 East
Township 14 North, Range 18, 19 East

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

Unnamed Lake

All submerged lands encompassed by the ordinary high water line of the Unnamed Lake within the following townships and ranges in the Copper River Meridian as determined from Alaska USGS 1:63,360 series topographic map Nabesna D-2 (1955, minor revisions 1978):

Township 14 North, Range 19 East, sections 21 and 28.

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