STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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May 12, 2004

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

BLM AK SO 952
ANCHORAGE, AK
04 MAY 13 PM 2:22

Re: Recordable Disclaimer of Interest Application for Salcha River

Dear Mr. Bisson,

The State of Alaska files this application for a Recordable Disclaimer of Interest for the lands underlying the Salcha River, pursuant to 43 CFR §1864.

The application is submitted for all submerged lands lying within the bed of the Salcha River, and all interconnecting sloughs, between the ordinary high water lines of the left and right banks from its origins within Township 3 North Range 19 East, Fairbanks Meridian, Alaska downstream to its confluence with the Tanana River at Township 5 South, Range 4 East, Fairbanks Meridian, Alaska. A map highlighting the river, and a legal description of the townships and ranges underlying the river are enclosed. 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 because the map and legal description included here clearly identify the land subject to this application.

A recordable disclaimer for this land will help lift the cloud on its title stemming from the lack of any permanent determination of ownership for most submerged lands in Alaska. Because the Salcha River is 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 lack of any title document or judgment creates a cloud on the state's title.

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Where the state is the owner of the uplands adjacent to Salcha River, the state owns the bed of Salcha River 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. Under state law, 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. Therefore, where the state is the upland owner, the BLM may approve the state's application for a Recordable Disclaimer of Interest for the bed of the waterbody based on the state's ownership of the adjacent uplands. In such areas, a navigability determination is not required.

The Bureau of Land Management's own formal determinations confirms the navigability of the Salcha River. On May 28, 1980, the Fairbanks BLM office recommended that the Salcha River be determined navigable from the confluence with the Tanana River, upstream to the confluence with Paldo Creek. On June 23, 1980, the BLM State Director established that the Salcha River was navigable in certain townships. Additional navigability determinations on January 29, 1982; January 27, 1984; April 15, 1988; March 13, 1989 and February 6, 1991 confirmed the Salcha River was navigable in selected townships. An October 16, 2003 BLM memorandum affirms that the Salcha River is navigable to Paldo Creek and states that watercraft can continue upstream past Paldo Creek. The extent of navigability on the Salcha River appears to be further upstream and we request that BLM establish the upper limit of navigability.

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

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 Robert Loeffler, (907) 269-8600. The State hereby authorizes BLM to bill the State's account $100 for the application fee required by regulation.

Sincerely,

Tom Irwin
Commissioner

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cc:

Gregg Renkes, Attorney General, State of Alaska
Michael Menge, Special Staff Assistant, Office of the Governor
Kevin Duffy, Commissioner, Alaska Department of Fish and Game
Cam Toohey, Special Assistant to the Secretary for Alaska, 1689 C Street, Suite 100, Anchorage, AK 99501

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Robert Loeffler, DNR, Division of Mining, Land, and Water
Mayor, Fairbanks North Star Borough, P.O. Box 71267, Fairbanks, AK 99707
Orie Williams, President & CEO, Doyon, Limited, 1 Doyon Place, Suite 300, Fairbanks, AK 99701
Meddas Cha-ag Native Corporation, 457 Cindy Dr., Fairbanks, AK 99701
Healy Lake Traditional Council, P.O. Box 60300, Healy Lake No. 19, Fairbanks, AK 99706
Dot Lake Native Corporation, P.O. Box 2271, Dot Lake, AK 99737
Native Village of Dot Lake, P.O. Box 2272, Dot Lake, AK 99737
Colonel Donna G. Boltz, Garrison Commander, U.S. Army Garrison, Alaska, 600 Richardson Drive, Fort Richardson, AK 99505

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LEGAL DESCRIPTION

The Salcha River within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of the Salcha River between the ordinary high water lines of the left and right banks, including all interconnecting sloughs of the Salcha River, beginning in Township 3 North, Range 19 East, Fairbanks Meridian, Alaska;

Thence southerly and westerly, generally within the following township of the Fairbanks Meridian as determined from USGS 1:63 360 series topographic maps Big Delta (B-6) 1949 (photorevised 1975, minor revision 1987); Big Delta (C-6) 1949 (photorevised 1975, minor revision 1987); Big Delta (C-5) 1958 (photorevised 1972); Big Delta (C-4) 1958 (photorevised 1972); Big Delta (C-3) 1958; Big Delta (C-2) 1958; Big Delta (D-2) 1958; Big Delta (D-1) 1958; Circle (A-2) 1955 (minor revisions 1962); Circle (A-1) 1955 (minor revisions 1966); Charley River (A-6) 1956 (minor revisions 1972); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 1 North, Range 16 East;
Township 2 North, Range 16 East;
Township 3 North, Ranges 16, 17, 18, 19 East;
Township 1 South, Range 16 East;
Township 2 South, Ranges 14, 15, 16 East;
Township 3 South, Ranges 8, 9, 10, 11, 12, 13, 14 East;
Township 4 South, Ranges 6, 7, 8, 9 East;
Township 5 South, Ranges 4, 5, 6, and 7 East;

To the terminus, being all points of confluence with the Tanana River within Township 5 South, Range 4 East, Fairbanks Meridian, Alaska.

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