STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

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February 14, 2003

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

Dear Mr. Bisson,

The State of Alaska (SOA) files this application for a recordable disclaimer for the lands underlying a portion of the Black River, pursuant to 43 CFR § 1864.

The application is submitted for the bed of the Black River, the Black River Slough, and all interconnecting sloughs, between the lines of the ordinary high water marks on its banks from its confluence with the Porcupine River, within T. 21 N., R. 13 E., Fairbanks Meridian, Alaska, upstream for approximately 280 miles to its confluence with the Wood River within T. 13 N., R. 27 E., Fairbanks Meridian, Alaska; the Salmon Fork to the International Boundary; the Grayling Fork to the International Boundary; Bull Creek to Section 5, T. 13 N., R. 31 E., Fairbanks Meridian; and interconnecting sloughs of these streams. A map of the river is enclosed as Exhibit A. As discussed at the January 21, 2003 meeting between representatives of the state and the Bureau of Land Management (BLM) Alaska State Director's Office, we presume that 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 is waived under § 1864.1-2(d) because a legal description is unnecessary to identify the land subject to this application.

A recordable disclaimer for this land will help lift the cloud on its title that stems from the lack of any permanent determination of ownership for most submerged lands in Alaska. Because the Black 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 of the powers of sovereignty and jurisdiction that pertain to the original states. Upon the admission of a state to the Union, the title to lands underlying navigable waters within its boundaries passes automatically to the state as a matter of constitutional grace. The lack of any title document or judgment creates the cloud on the state's title. SOA is not aware of any adverse claimant or occupant of these lands.

Evidence of the navigability of the Black River comes from the BLM's own formal determinations. On March 28, 1980, BLM issued a navigability determination establishing that the following water bodies in the Black River basin were navigable: "the Black River to Wood River, the Salmon Fork

to the International Boundary, the Grayling Fork to the International Boundary, Bull Creek to Section 5, T. 13 N., R. 31 E., F.M., and interconnecting sloughs of these streams." On July 22, 1983, BLM issued a second navigability determination concluding that interconnecting sloughs of the Black River, including certain oxbow lakes and dead-end sloughs, are also navigable. Copies of these navigability determinations are attached.

Also enclosed is a decision of the United States Court of Appeals for the Ninth Circuit, Alaska v. United States, 201 F.3d 1154 (9th Cir. 1997), which discusses the historic use of the Black River, relying on a study prepared by a BLM historian.

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. Because BLM has found the Black River to be navigable, it has meandered it in conveyances of the adjacent uplands and thus eliminated any possibility that others might claim an interest in the bed of the river.

The State hereby authorizes BLM to bill to the state's account for the $100 filing fee required by the regulations (43 CFR § 1864.1-2(b)).

Sincerely,

Thomas E. Irwin
Commissioner

Enclosures

Cc: Governor Frank H. Murkowski
Gale A. Norton, U.S. Secretary of Interior, 1849 C Street NW, Room 6156, Washington, DC 20240
Gregg Renkes, Attorney General
Kevin Duffy, Acting Commissioner, Department of Fish and Game
Drue Pearce, Sr Advisor to the Secretary of Interior for Alaska Affairs, 1840 C Street NW, Washington DC 20240
Cam Toohey, Department of Interior, 1689 C Street, Suite 100, Anch, AK 99501
Bob Loeffler, Division of Mining, Land and Water
Jim Mery, Doyon Corporation, 1 Doyon Place, Suite 300, Fairbanks, AK 99701
Patty Salmon, Chalkyitsik Native Corporation, PO Box 53, Chalkyitsik, AK 99788