

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

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January 27, 2006

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

BLM AK SO 954
ANCHORAGE, AK
2006 JAN 27 AM 10:13

Re: Recordable Disclaimer of Interest Application for Scottie Creek

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 Scottie Creek.

I. DESCRIPTION OF WATERWAY

This application is submitted for all submerged lands lying within the bed of Scottie Creek between the ordinary high water lines of the left and right banks, beginning at the 60-foot wide neutral strip from the United States–Canada International Boundary, presently located in Section 24, Township 10 North, Range 23 East, Copper River Meridian, Alaska, downstream to the confluence with Chisana River in Section 34, Township 11 North, Range 22 East, and Section 3, Township 10 North, Range 22 East, Copper River Meridian, Alaska. As a general rule, any sloughs, braids or channels that carry water from a navigable creek are an integral part of the creek and thus, are navigable as well. A map highlighting the creek and a legal description of the townships and ranges underlying the creek 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 1953; the Alaska Statehood Act; the Submerged Lands Act of 1988, or any other legally cognizable reason. The Bureau may disclaim interest in the submerged lands on any of the grounds that apply.

Because Scottie Creek is navigable, Alaska owns the submerged lands by virtue of the Equal Footing Doctrine and the Submerged Lands Acts. 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 Scottie Creek, the state owns the bed of Scottie Creek 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 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 SCOTTIE CREEK

The Bureau's own formal determinations confirm the navigability of Scottie Creek. An April 15, 1983 Bureau memorandum concluded that Scottie Creek is navigable. According to this Bureau navigability report, canoes, kayaks, and small flat-bottomed riverboats use the creek downstream of the Alaska Highway Bridge, primarily for access to hunting and fishing areas. A personal interview with local resident Dan Granaard provided information on frequent use of Scottie Creek by local residents and others downstream of the Alaska Highway Bridge to the Chisana River. Access was for subsistence and recreational hunting and fishing activities.

A June 29, 1994 Bureau navigability report for Scottie Creek with background information, physical characteristics and public use statements and information concluded that Scottie Creek was navigable in selected townships. An August 25, 1994 Bureau memorandum describes a canoe trip on Scottie Creek by Bureau and other agency staff . They traveled from the Alaska Highway upstream to the Alaska/Canada border. A September 22, 1994 Bureau memorandum confirms the August trip report and recommends Scottie Creek as navigable in selected townships east of the Alaska Highway. According to Robert A. McKenna in his study of the upper Tanana Indians, Scottie Creek was a lesser used travel and trade route from the Tanana to White River. Summaries of the navigability determinations and historic reference documents are attached as supporting documentation to this application.

VI. OTHER KNOWN INTERESTED PARTIES

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

VII. CONCLUSION

As evidenced by the Bureau's navigability determinations and the available historic information, the State of Alaska determines there is sufficient information to conclude that Scottie Creek is a navigable waterway and ownership of its submerged lands should be disclaimed by the Department of the Interior.

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 Menge
Commissioner

Enclosures

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Cc:* McKie Campbell, Commissioner, Alaska Department of Fish & Game
Linda Hay, Special Asst. for Natural Resources, Office of the Governor
David W. Marquez, Attorney General – State of Alaska
Special Assistant to the Secretary for Alaska
Dick Mylius, Acting Dir., Dept. of Natural Resources, State of AK, DMLW
Senator Gene Therriault, Chair, Legislative Budget & 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 DMLW
Tony Booth – Acting Manager, Tetlin National Wildlife Refuge
Warren Keogh, Water Rights Coordinator – NWRS Alaska
Northway Traditional Council
Northway Village Council, Planning Commission
Northway Natives, Inc.
Georgianna Lincoln, Chairwoman, Doyon, Limited
Harold Brown, Tanana Chiefs Conference

* These recipients were provided only with a copy of the application filed with BLM. Copies of map(s) for the 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 Mark McCart at (907) 269-6018 and we will provide you with the information through the mail.

Legal Description

Scottie Creek within the State of Alaska, more particularly described as follows:

All submerged lands within the bed of Scottie Creek, including sloughs, braids and channels of Scottie Creek between the ordinary high water lines of the left and right banks, beginning at the 60-foot wide neutral strip from the United States–Canada International Boundary, within Section 24, Township 10 North, Range 23 East, Copper River Meridian, Alaska.

Thence, westerly and northerly, generally within the following townships of the Copper River Meridian as determined from USGS 1:63,360 series topographic maps Nabesna (C-1) 1955 (minor revisions 1963); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 10 North, Range 23, 22 East; except those portions excluded by PLO No. 386,

Township 11 North, Range 22 East;

To the terminus, being all points of confluence with the Chisana River in Section 34, Township 11 North, Range 22 East, and Section 3, Township 10 north, Range 22 East Copper River Meridian, Alaska.