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NEWS RELEASE

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Alaska Property Owners Bring Class Action Suit Against Alaska Department of Natural Resources Officials

Landowners in Juneau and Seward have filed suit against Officials of the State of Alaska Department of Natural Resources on behalf of themselves and similarly situated landowners throughout the state seeking to block the state's claim to the beds of small streams that cross their property. The land in question was patented and sold as homesteads, mining claims, and townsites between the late nineteenth century and statehood in 1959.

When these lands were surveyed, federal surveyors were required to set aside navigable rivers—rivers that were ‘highways of commerce’—for the future State of Alaska. The surveyors found that many small streams were not navigable and included them in the property that landowners bought from the government. From the time of patent until the present, landowners have treated these streams as their private property. They have been a principle source of sand and gravel in several cities. In other places they were filled and are now the sites of commercial and residential development.

In the past few years, the Department of Natural Resources instituted a “Navigability Policy” which revisits the decisions of federal surveyors. Department employees determined that if a recreational rubber raft could be floated down a stream, it would be “navigable.” They then used air photos from 1959 to redraw the property lines from the old survey plats. When a landowner sought a permit to use their land, the state asserted ownership and demanded a lease.

“The state’s claim is without basis. The landowners’ predecessors bought and paid for this land and they and the current owners have paid taxes on it. Congress specifically confirmed their ownership in the Submerged Lands Act and the Alaska Statehood Act,” said William Perry Pendley of Mountain States Legal Foundation (MSLF).

In Juneau, Lacano Investments sought to mine gravel from a portion of Lemon Creek that was patented in 1913 and has been mined for gravel for about seventy years. The state demanded a lease and royalty and submitted air photo maps to Lacano purporting to show new property lines.

In Seward, the state has demanded leases and royalties from private owners and the Kenai Peninsula Borough for removal of gravel from small streams that it found “navigable.” This has hindered flood mitigation efforts and added to the extensive damage that Seward suffered in recent flooding.

Mountain States Legal Foundation, created in 1977, is a nonprofit, public-interest legal foundation dedicated to individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system. Its offices are in suburban Denver, Colorado.