STATE OF ALASKA

FRA 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
Anchorage, Alaska 99513-7599

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

Re: Recordable Disclaimer of Interest Application for Chilkat Lake

Dear Mr. Bisson,

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

This application is submitted for the submerged lands encompassed by the ordinary high water line of Chilkat Lake in Township 30 South, Range 57 East, Copper River Meridian, Alaska, and Township 29 South, Ranges 56 and 57 East, Copper River Meridian, Alaska. A map highlighting the lake, and a legal description of the townships and ranges underlying the lake 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 of interest in 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 Chilkat Lake 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.

Where the state is the owner of the uplands adjacent to Chilkat Lake, the state owns the bed of Chilkat Lake 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

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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 evidence of the navigability of Chilkat Lake. On June 3, 1980, a BLM navigability determination stated that Chilkat Lake was navigable. An August 11, 1982 State Director memorandum determined that Chilkat Lake was navigable in T. 29 S., R. 57 E., Copper River Meridian, and a May 24, 1983 report reaffirmed that decision. A January 5, 1984 report affirmed that Chilkat Lake was navigable in T. 29 S., R. 56 E., and T. 29 S., R. 57 E., Copper River Meridian.

The state is unaware 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
Drue Pearce, Senior Advisor to the Secretary for Alaskan Affairs, 1840 C Street NW, Washington, DC 20240
Cam Toohey, Special Assistant to the Secretary for Alaska, 1689 C Street, Suite 100, Anchorage, AK 99501
Robert Loeffler, DNR, Division of Mining, Land, and Water
Chris E. McNeil, Jr., President & CEO, Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, AK 99801
Mayor, Haines Borough, P.O. Box 1209, Haines, AK 99827
Chilkat Indian Village of Klukwan, P.O. Box 210, Klukwan, AK 99827-0210

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Central Council, Tlingit and Haida Indian Tribes of Alaska, 320 Willoughby Ave., Suite 300, Juneau, AK 99801
Chilkoot Indian Association, P.O. Box 490, Haines, AK 99827-0490

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LEGAL DESCRIPTION

Chilkat Lake within the State of Alaska, more particularly described as follows:

All submerged lands encompassed by the ordinary high water line of Chilkat Lake in:

Township 29 South, Ranges 56, 57 East; and
Township 30 South, Range 57 East;

as determined from USGS 1:63,360 series topographic map Skagway (B-3) 1954, minor revisions 1963.

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