STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886

550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

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 Kasilof River

Dear Mr. Bisson,

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

The application is submitted for all submerged lands lying within the bed of the Kasilof River, and all interconnecting sloughs, between the ordinary high water lines of the left and right banks from the boundary of the Kenai National Wildlife Refuge at Township 2 North, Range 11 West, Sections 5 and 8, Seward Meridian, Alaska downstream to its mouth in Cook Inlet within Townships 3 and 4 North, Range 12 West, Seward Meridian, Alaska. A map highlighting the river and a legal description of the townships and ranges underlying the Kasilof River is 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 Kasilof 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.

AA85446

Where the state is the owner of the uplands adjacent to Kasilof River, the state owns the bed of Kasilof 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.

An August 19, 1980 BLM navigability report determined that the Kasilof River was navigable in T. 3 N., R. 11 W. and T. 3 N., R. 12 W., Seward Meridian, Alaska. A BLM navigability determination issued on July 12, 1984, established that the Kasilof River was navigable from its mouth to Tustumena Lake. A Ninth Circuit U.S. Court of Appeals decision rendered on March 20, 1970 determined that lands within the exterior boundaries of the Kenai National Moose Range are excluded from the operation of the Submerged Lands Act. The State of Alaska's application is for those submerged lands downstream of the refuge boundary. An April 8, 1986 BLM navigability determination stated that the Kasilof River is navigable within Sections 5 and 8, T. 2 N., R. 11 W., Seward Meridian, Alaska.

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

Enclosures

cc:

Gregg Renkes, Attorney General
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

AA85446

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
Rowan Gould, Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503-6199
Robin West, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, AK 99669-2139
Mayor, Kenai Peninsula Borough, 144 Binkley St., Soldotna, AK 99669
CIRI, P.O. Box 93330, Anchorage, AK 99509
Ninilchik Traditional Council, 701 W. 41st St., Anchorage, AK 99503
Ninilchik Native Association, 701 W. 41st St., Suite 201, Anchorage, AK 99503-6604
Kenaitze Indian Tribe, P.O. Box 988, Kenai, AK 99611-0988

AA85446

LEGAL DESCRIPTION

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

All submerged lands within the bed of the Kasilof River between the ordinary high water lines of the left and right banks, including all named and unnamed interconnecting sloughs of the Kasilof River, beginning in Sections 5 and 8, Township 2 North, Range 11 West, Seward Meridian, Alaska;

Thence northerly generally within the following townships of the Seward Meridian as determined from USGS 1:63,360 series topographic map Kenai (B-4) 1951 (minor revision 1966); the precise river location may be within other townships due to the ambulatory nature of the water body;

Township 2 North, Range 11 West;
Township 3 North, Ranges 11, 12 West;
Township 4 North, Range 12 West;

To the terminus at Cook Inlet within Townships 3 and 4 North, Range 12 West, Seward Meridian, Alaska.

AA85446