STATE OF ALASKA

FRANK 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 Klehini River

Dear Mr. Bisson,

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

This application is submitted for all submerged lands within the bed of the Klehini River between the ordinary high water lines of the left and right banks, and all interconnecting sloughs of the Klehini River, beginning at the Alaska/Canada border in Township 28 South, Range 53 East, Copper River Meridian, Alaska, downstream to the confluence with the Chilkat River in Township 28 South, Range 56 East, Copper River Meridian, Alaska. A map highlighting the river, and a legal description of the townships and ranges underlying the river 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 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 Klehini 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.

Where the state is the owner of the uplands adjacent to Klehini River, the state owns the bed of Klehini River even in the absence of a navigability determination. In such circumstance, the state

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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.

The Bureau of Land Management's own formal determinations confirms evidence of the navigability of the Klehini River. On June 3, 1980, a BLM Navigability Report said the Klehini River was navigable from the Alaska/Canada border to its confluence with the Chilkat River. A May 24, 1983 BLM report determined that the Klehini River was navigable through T. 28 S., R. 54 E. Copper River Meridian, and a June 27, 1991 BLM report determined that the Klehini River was navigable in T. 28 S., R. 56 W., Copper River Meridian, Alaska.

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

Enclosures

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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
Mayor, Haines Borough, P.O. Box 1209, Haines, AK 99827

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Chris E. McNeil, Jr., President & CEO, Sealaska Corporation, One Sealaska Plaza, Suite 400, Juneau, AK 99801-1276
Chilkat Indian Village of Klukwan, P.O. Box 210, Klukwan, AK 99827-0210
Central Council of Tlingit and Haida Indian Tribes of Alaska, 320 W. Willoughby Ave., Suite 300, Juneau, AK 99801
Chilkoot Indian Association, P.O. Box 490, Haines, AK 99827
Klukwan, Incorporated, P.O. Box 209, Haines, AK 99827

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LEGAL DESCRIPTION

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

All submerged lands within the bed of the Klehini River between the ordinary high water lines of the left and right banks, including all interconnecting sloughs of the Klehini River, beginning at the Alaska/Canada International Border in Township 28 South, Range 53 East, Copper River Meridian, Alaska,

Thence easterly and northerly, generally within the following townships of the Copper River Meridian as determined from USGS 1:63,360 series topographic maps, Skagway (B-3) 1954, minor revisions 1963; and Skagway (B-4) 1954, minor revisions 1972; the precise location may be within other townships due to the ambulatory nature of the water bodies;

Township 28 South, Ranges 53, 54, 55, and 56 East;

To the terminus, being all points of confluence with the Chilkat River within Townships 28 South, Range 56 East, Copper River Meridian, Alaska.

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