

# STATE OF ALASKA

**DEPARTMENT OF NATURAL RESOURCES  
OFFICE OF THE COMMISSIONER**

**FRANK H. MURKOWSKI, GOVERNOR**

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June 23, 2005

Henri Bisson  
Director, Alaska State Office  
Bureau of Land Management  
222 W. 7<sup>th</sup> Avenue, #13  
Anchorage, Alaska 99513

SD: \_\_\_\_\_ ✓  
ASD: \_\_\_\_\_ ✓  
2005 JUN 29 PM 1:59

Re: Amended Recordable Disclaimer of Interest Application for Chilkat Lake  
BLM Case No. AA-85443

Dear Mr. Bisson,

The State of Alaska filed a Recordable Disclaimer of Interest application with BLM for lands underlying Chilkat Lake on 13 May 2004. New public use information requires the State to amend that application to include the outlet stream of Chilkat Lake, locally known as Clear Creek. Clear Creek provides an important transportation link between two navigable water bodies, Chilkat Lake and Tsirku River.

This amended application is submitted for all submerged lands lying within the bed of Clear Creek between the ordinary high water lines of the left and right banks in Sections 11 and 14, Township 29 South, Range 56 East, and all 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 stream, and a legal description of the townships and ranges underlying the lake and stream 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.

The State's application for a Recordable Disclaimer of Interest is based on the Equal Footing Doctrine; the Submerged Land Act of May 22, 1953; the Alaska Statehood Act; the Submerged Lands Act of 1988; or any other legally cognizable

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**Amendment to Chilkat Lake RDI Application**

June 23, 2005

Page 2 of 4

reason. BLM may disclaim interest in the submerged lands on any of the grounds that may apply.

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 and Clear Creek are 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 and Clear Creek, the state owns the bed of Chilkat Lake and Clear Creek even in the absence of a navigability determination. In such circumstances, 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 result of the intent of the grantor and 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. 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 confirm 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.

Information obtained from local residents and Alaska Department of Fish and Game biologists provides evidence of public boating on Clear Creek. Clear Creek, the outlet stream of Chilkat Lake, is about 1 mile long, averaging about 75 feet wide and up to 9 feet deep. The Alaska Department of Fish and Game operates a salmon enumeration weir on the stream, with a total return often exceeding 150,000 fish. The weir has a movable panel that allows boat passage, and seasonally as many as 50-80 drops/day are required for transient boat traffic. The state supplies material, equipment and personnel to the weir site by boat. Private homeowners and public recreation users access Chilkat Lake via Clear Creek from the Tsirku River.

**Amendment to Chilkat Lake RDI Application**

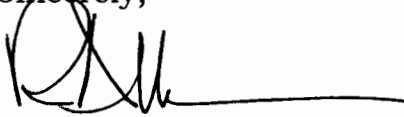
June 23, 2005

Page 3 of 4

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. 7<sup>th</sup> Avenue, Anchorage, Alaska 99501, Attention Robert Loeffler, (907) 269-8600.

Sincerely,



Thomas E. Irwin  
Commissioner

**Enclosures**

Cc: David Marquez, Attorney General, State of Alaska  
Michael Menge, Special Staff Assistant, Office of the Governor  
McKie Campbell, 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  
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

**Amendment to Chilkat Lake RDI Application**

June 23, 2005

Page 4 of 4

Legal Description

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

All submerged lands encompassed by the ordinary high water lines of Chilkat Lake and the left and right banks of Clear Creek 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.