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DEPARTMENT OF NATURAL RESOURCES

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Mr. Bud Cribley
State Director
Bureau of Land Management
222 West 7th Avenue, #13
Anchorage, Alaska 99513-7504

Subject: Recordable Disclaimer of Interest Application for the Kisaralik River System (including Kisaralik Lake)

Dear Mr. Cribley:

Pursuant to 43 CFR §1864, the State of Alaska (State) files this application for a recordable disclaimer of interest (RDI) for the lands underlying the herein-described portions of the Kisaralik River System including Kisaralik Lake.

I. Description of Waterway

This application is submitted for the submerged lands and bed up to and including the ordinary high water line of Kisaralik Lake within Township 03 North, Range 58 West, Seward Meridian and for the submerged lands and bed of the Kisaralik River lying between the ordinary high water lines of the right and left banks of that river from the outlet of Kisaralik Lake within Township 03 North, Range 58 West, Seward Meridian, Alaska, downstream to the location where the river enters the Kuskokuak Slough within Township 09 South, Range 67 West, Seward Meridian, Alaska. This includes the submerged lands and beds of all sloughs, braids and channels that carry water from the navigable Kisaralik River and thus are a part of the navigable river and all lands within the river system permanently or periodically covered by tidal waters up to the line of mean high tide. A map highlighting the river and lake system and legal description of the townships and ranges underlying the river and lake are enclosed as Exhibit 1.

II. Waiver Requests

A. Survey Requirements

The State acknowledges Bureau of Land Management (BLM) approval of the State's request for a waiver of the survey requirements, as noted in Acting State Director Dougan's June 3, 2010 correspondence to ADNR Commissioner Tom Irwin. As previously discussed with the Alaska State Director, the State requested 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. The map and legal description submitted with this RDI application sufficiently identify the land subject to this application, but if not the recordable disclaimer can be worded appropriately to fit the circumstances without requiring a public land survey. The submerged lands for which this RDI is sought are identified by name or, if unnamed, readily identified as the Kisaralik Lake and the Kisaralik River including interconnected channels and other portions of the Kisaralik River system. Navigable waterways such as the Kisaralik River are typically ambulatory, thus making a public survey of them problematic and unnecessary. Such a meander line survey would have to cover a large, long stretch of river system including interconnected channels and sloughs, would be very expensive and time-consuming, and then would only be a representation of a moving boundary. The Department of the Interior has issued RDIs to the State for the beds of navigable rivers in the past without requiring a public land survey of the river system or any part of it, and judgments, decisions, and decrees of the U.S. District Court, Ninth Circuit Court of Appeals, and U.S. Supreme Court finding title in the State to the beds of navigable waters have not required a public land survey.[1]

B. $100.00 Application Fee

The State's request for a waiver under §1864.1-2(d) of the application fee provided for under 43 CFR §1864.1-2(b) was denied. Therefore, the State submits the $100.00 application fee herewith.

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[1] *See, e.g., Alaska v. United States*, 546 U.S. 413, 415-17 (2006): *State of Alaska v. Ahtna, Inc. & United States*, 891 F.2d 1401 (9th Cir. 1989); *State of Alaska v. United States*, 662 F. Supp. 455 (D. Alaska 1987).

III. Dual Basis of the State's Request for a Recordable Disclaimer of Interest

A. Navigable Waterway

The State's RDI application to the bed of the navigable Kisaralik Lake and River system is supported by the Equal Footing Doctrine, the Submerged Lands Act of 1953, the Alaska Statehood Act, the Alaska Right of Way Act of 1898, and other title navigability law. BLM may disclaim interest in the submerged lands on any or all of those grounds.

Because the Kisaralik Lake and River system was navigable on January 3, 1959, when Alaska became a state, the State of Alaska owns the river and lake beds by virtue of the Equal Footing Doctrine and the Submerged Lands Act. *State of Alaska v. Ahtna, Inc. & United States*, 891 F.2d 1401, 1404 (9th Cir. 1989), *cert. denied*, 495 U.S. 919 (1990). The constitutional Equal Footing Doctrine "guarantees to newly-admitted States [like Alaska] the same rights enjoyed by the original thirteen States and other previously-admitted States." *Ibid.*, citing *Utah v. United States*, 482 U.S. 193, 196 (1987). "One of these rights is title ownership to the lands underlying navigable rivers." *Ibid.* The Submerged Lands Act of 1953 confirmed and extended "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States." *Ibid.*, citing 43 U.S.C. § 1311(a). "Congress explicitly provided for this rule to apply to Alaska when Alaska became a State in 1959. 48 U.S.C. Chapter 2 ("the Statehood Act") note 6(m) prec. sec. 21 (1982)." *Ibid.* The rule includes state ownership of tidelands and the beds of marine waters up to three miles seaward of Alaska's coastline. *Ibid*; 43 U.S.C. §§ 1301(a), 1311(a); *United States v. California*, 436 U.S. 32, 35 n.7, 37 (1978). In addition, in the Alaska Right of Way Act of May 14, 1898, 30 Stat. 409, 43 U.S.C. §§ 942-1 to 942-9, Congress recognized application of the equal footing doctrine to Alaska. It expressly reserved, as a matter of federal law: "the title of any State that may hereafter be erected out of the Territory of Alaska, or any part thereof, to tidelands and beds of any of its navigable waters, . . . it being declared that all such rights shall continue to be held by the United States in trust for the people of any State or States which may hereafter be erected out of said Territory."

B. The State of Alaska as Upland Owner

Even in the absence of a navigability determination, where the State is the owner of uplands adjacent to a river or lake, the State generally owns the bed of that water body to its middle in front of those uplands, or the entire bed if the State's uplands surround the water body. In such circumstances, the State gained title to the bed of the waterway either way: under the general law governing riparian rights if the waterway is not navigable (absent contrary intent expressed by the grantor) or under the law of title navigability if the waterway is navigable.

IV. Reason for the State's Request for a Recordable Disclaimer of Interest

The lack of any title document or judgment creates a cloud on the State's title to submerged or submersible lands beneath navigable waters. A recordable disclaimer of interest for this land will help lift the cloud on the State's title stemming from the lack of any permanent determination of ownership and correct any conflict and uncertainty in the public's understanding of title and use, without the time, expense and trouble of engaging in quiet title litigation.

V. Determining Navigability of Water Bodies under Current Law

Whether a river is navigable for purposes of state ownership is decided according to federal law. *State of Alaska,* 891 F.2d at 1404, citing *United States v. Holt State Bank,* 270 U.S. 49, 55-56 (1926). The basic definition for navigability was expressed in *The Daniel Ball,* 77 U.S. (19 Wall) 557, 563 (1870), as follows:

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Ibid. As the appeals board for the U. S. Department of the Interior noted in *Appeal of Doyon, Ltd.,* 86 Interior Dec. 692, 698 (ANCAB 1979), the U. S. Supreme Court used that definition in the *Holt State Bank* case, 270 U.S. at 56, as the basic test for determining those "streams and lakes" which are navigable for state title.

Subsequent case law, including the *State of Alaska* and *Appeal of Doyon* decisions regarding the Gulkana, Kandik and Nation Rivers in Alaska, has explained the meaning of that basic definition. An important factor is the physical character of the waterway, and in particular its capacity to be navigated. However, that does not require easy navigation. As the Department of the Interior observed in the *Doyon* decision, citing U. S. Supreme Court authority:

> The presence of rapids, sandbars, shallow waters, and other obstructions making navigation difficult or even impossible in sections ... does not destroy title navigability so long as the river or part of it is usable or susceptible to use as a highway for commerce for a significant portion of the time. *United States v. The Montello*, 87 U.S. 430 (1874); *United States v. Utah*, 283 U.S. 64 (1931). * * * A recent case emphasized that sporadic and short-lived use of a waterway for travel and transportation by local residents for their own purposes and not for hire meets the requirement that a waterway be useful as a highway for commerce. *Utah v. United States*, 403 U.S. 9 (1971). * * * Neither the Kandik nor Nation Rivers have been improved at any time. Accordingly, both in 1959 when Alaska entered the Union and at the present time, the rivers are in their natural and ordinary condition. Although rapids, shallow waters, sweepers, and log jams make navigation difficult on both rivers, the evidence shows that these impediments do not prevent navigation.

86 Interior Dec. at 697.

As the Ninth Circuit Court also stated, with regard to the Gulkana River: "A river's use 'need not be without difficulty, extensive, or long and continuous' for the river to be a highway for commerce." *State of Alaska*, 891 F.2d at 1404 (quoting from *Oregon v. Riverfront Protection Ass'n*, 672 F.2d 792, 795 (9th Cir. 1982) (finding 32-mile stretch of river navigable in its natural and ordinary condition based on its use for driving logs downstream by the "rough means" of temporarily deepening the channel, using horse teams to move logs over "exposed gravel bars, boulders, and shoals," and breaking up "intractable log jams" with dynamite). That court emphasized: "Although the river must be navigable at the time of statehood, . . . *this only means* that, at the time of statehood, *regardless of the actual use of the river*, the river must have been *susceptible* to use as a highway of commerce. * * * [I]t is not even necessary that commerce be in fact conducted . . . 'The extent of existing commerce is not the test.'" *Ibid.* (citing and quoting from *United States v. Utah*, 283 U.S. 64, 75,

82-83 (1931) (emphasis added)). Rather, it is enough to show:

> the capacity of the rivers in their ordinary condition to meet the needs of commerce as they may arise in connection with the growth of the population, the multiplication of activities, and the development of natural resources. And this capacity may be shown by physical characteristics and experimentation as well as by the uses to which the streams have been put.

United States v. Utah, 283 U.S. at 83.

Applying these standards to Alaska, the courts and Department of the Interior have found waterways navigable for title based on their susceptibility to use for navigation by river boats, inflatable rafts, or canoes having a capacity for "commercial" loads of about 1000 lbs. of supplies or recreationalists. *State of Alaska*, 891 F.2d 1401 (Gulkana River); *Appeal of Doyon*, 86 Interior Dec. 692 (Kandik and Nation Rivers): Feb. 25, 1980 Memorandum from Regional DOI Solicitor John ("Jack") Allen to BLM Alaska State Director re "Kandik, Nation Decision on Navigability." *See also Alaska v. United States*, 201 F.3d 1154 (9th Cir. 2000); August 18, 1983 Recommended Decision by DOI Administrative Law Judge Luoma in *Appeal of Alaska*, Interior Board of Land Appeals No. 82-1133 (recommending that the Matanuska River be determined navigable) & July 19, 1990 Memorandum of BLM Alaska State Director E. Spang (Matanuska River is navigable), BLM Files AA-11153-23, -31; *Appeal of State of Alaska & Collier*, 168 IBLA 334 (2006) (noting navigability standards).

VI. Evidence of the Navigability of the Kisaralik Lake and River System

Historic documentation and reports regarding boat use, susceptibility of use, historic routes, and activities confirm and establish that the Kisaralik River is navigable from Kisaralik Lake, which is also large and navigable, to the river's confluence with the Kuskokuak Slough. In addition to the water body's actual use, the materials attached to and referenced in this application document its physical characteristics. These characteristics also show the river and lake's susceptibility to navigable uses.

A. Use-in-Fact Demonstrating Navigability, including Use and Susceptibility to Use in Commerce

The State of Alaska and the Department of the Interior, Bureau of Land Management, developed an Assistance Agreement whereby historical reports

are prepared for rivers in Alaska. Through cooperative arrangements, the BLM and the Alaska Departments of Fish and Game and Natural Resources have supported DNR's Office of History and Archeology (OHA) in preparing these reports. The first region being researched is the Kuskokwim Basin. The Kisaralik River System Final Summary Report dated January 15, 2010, is part of that Kuskokwim region reporting area. That use report is incorporated as evidence of the navigability of the Kisaralik River system. Substantial historical information contained in the OHA report on the Kisaralik River system supports the system's navigability. It includes the following information.[2]

1. Pre-statehood Use. There is evidence of at least three significant types of navigation of the Kisaralik River during the period prior to statehood. In one customary travel mode, local Natives from Akiak built skin boats to float down the Kisaralik River each spring prior to World War II. They traveled by dog sled to the Kisaralik-Nushagak uplands to hunt in the spring. At the conclusion of the spring camp, they used spruce poles and sewed skins from the animals they hunted to assemble boats that carried their equipment (including sleds and dogs), family, and meat down the river from just below Kisaralik Lake to Akiak. This traditional spring hunt and travel down the river occurred for generations. It faded in the 1940s as teachers in the village school refused to allow the children to leave the classroom. Similar navigation in connection with a subsistence economy was considered significant in *Appeal of Doyon*, 86 Interior Dec. 692, *Alaska v. United States*, 662 F. Supp. at 467, and in the Recommended Decision on the Matanuska River (downstream Native skin boat use to transport subsistence meat and skins in 1916 testified to by John Shaginoff).

A second mode of known pre-statehood navigation was by boats to carry mining equipment, supplies, and men up and down the river. The power boat *Alaska* carried 20 tons and six men in 1919 from Bethel to Herman Reeth's camp at about river mile 29 of the Kisaralik River, just downstream from the abandoned fishing village site of Nunalenhak (Sec. 7, T. 8 N., R. 65 W, SM). Other prospectors used rafts to descend the river, as depicted in the photograph of two men rafting through Golden Gate Falls in 1921 (Figure 16, page 34). Remains of old pre-statehood cabins, presumably of prospectors and trappers, have been observed on the upper river. In 1930, Reeth ascended the Kisaralik River in a power boat to show his mining properties to a potential

[2] Attachments 1, 4, 5, 7 & 9 of the Kisaralik River System Final Summary Report dated January 15, 2010 address tidal influence for at least the first two miles up river from the Kuskokwak Slough.

investor, but it is unclear how far up the river the vessel went. Navigation in connection with prospecting and trapping activities using smaller boats than those reported on the Kisaralik has been used to support navigability for title determinations in several court decisions and BLM determinations. *See, e.g., Appeal of Doyon*, 86 Interior Dec. 692 (discussing court decisions and uses).

A third mode of pre-statehood navigation of the river includes two local Natives who ascended the river in boats with outboard motors each year in the 1950s to access exclusive use areas (later recognized as Native allotments) on portions of the river now within the Yukon Delta NWR (established 1980) near the confluence with Nukluk Creek.

2. Post-statehood Use. Since statehood (1959), there is evidence of at least four different modes of boat use up and down the Kisaralik River. The first mode of travel is by Alaska Natives on the river in skiffs with outboard motors. At least six people who have been granted Native allotments along the river within the Yukon Delta NWR have traveled up and down the river annually to carry out subsistence activities at their allotment sites from the 1960s to the present. These allotment sites are located starting at river mile 31 and extending to Golden Gate Falls.

A second mode of post-statehood use is private recreational fishing and sightseeing, using power boats and rafts. A BLM official characterized recreational use of the river as "heavy" in 1976. Another study, completed in 1993, estimated the number of "floaters" at just under 100 per year, consisting of 11 parties of 3 to 14 people per group annually. The study in 1993 characterized the Kisaralik as "the most heavily used recreational river on the refuge by both local residents and non-local visitors." Such use demonstrates susceptibility of the river for commercial activity utilizing similar watercraft in the "recreation industry", as held by the Ninth Circuit Court in *State of Alaska*, 891 F.2d at 1405 (Gulkana River).

A third mode of post-statehood use has consisted of commercial rafting companies and guides taking paying clients down the entire Kisaralik River, from Kisaralik Lake to the Kuskokwim River, for sightseeing, fishing, and wilderness river travel. As the court held in the Gulkana River case, such post-statehood commercial use in fact in connection with Alaska's recreation industry "provides conclusive evidence" of the river's "susceptibility for commercial use at statehood." *State of Alaska*, 891 F.2d at 1405. The USF&WS adopted a management plan and implemented a permit system for commercial guides in the early 1990s. Citing conflicts between user groups and increased use levels that could adversely affect nesting raptors and

fisheries on the river, the agency has not issued any commercial permits, effectively halting commercial guiding activity on the river but not the river's natural susceptibility to such use.

A fourth mode of post-statehood use of the river has been by state and federal officials who floated the Kisaralik at least six times between 1976 and 1981 as part of their official duties to study the river's resources and measure the number of people using it for subsistence and recreational use. [3]

In 1978 the USDI Heritage Conservation and Recreation Service also performed a field inspection on the Kisaralik River for a wild and scenic river analysis. The interagency/interdisciplinary team[4] described the trip by date and section of the river floated. Data was collected along the length of the Kisaralik River beginning at the outlet of Kisaralik Lake to near the Kuskokwim

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[3] The second to last paragraph of section III of the Kisaralik River System Final Summary Report dated January 15, 2010, also states, with respect to prior BLM navigability determinations:

> [T]o date, the Kisaralik River has been determined navigable for the first 5 miles near its mouth and the last 13 miles ending at Kisaralik Lake. Approximately 15 miles of the river within lands interim conveyed to the Kokarmiut and Calista corporations have been determined non-navigable. No other navigability determinations have been made on the 86 miles of river along lands in the Yukon Delta National Wildlife Refuge.

However, research reveals that those non-navigability determinations resulting in conveyances to the Native corporations were made in 1982, based on early BLM criteria in use before the navigability standards for Alaska were clarified by the courts and the Department of Interior. Those early non-navigability determinations related to river miles 9.5 – 29 of the Kisaralik River. They were made before the BLM determined the upper river miles 99 – 114.5 just below Kisaralik Lake navigable in 1990 in connection with a conveyance to the State and before the BLM determined river miles 0 – 9.5 of the lower Kisaralik River navigable in surveying instructions in 2006. Those agency determinations of the river system's navigability were for portions *upriver* and *downriver* from the early "non-navigability" determinations. Those early non-navigability determinations were also made for the agency purpose of charging acreage under selection, and later the river was meandered due to its great width by the BLM survey crews in those areas previously determined "non-navigable". Similar incongruous administrative results using different navigability standards were addressed in the context of the full Gulkana River system in *Alaska v. United States*, 662 F. Supp. 455, 456-458 (D. Alaska 1987), *aff'd*, *State of Alaska*, 891 F.2d 1401 (1989), *cert. denied*, 495 U.S. 919 (1990). They are not determinative for purposes of this RDI application. *Ibid.; State of Alaska & Collier*, 168 IBLA 334, 343-349 (2006); *Appeal of State of Alaska*, 167 IBLA 250, 256 (2005).

[4] Clay, Roger, 1983, A Compilation of Hydrologic Data on the Kuskokwim Region, Alaska Division of Geological & Geophysical Survey.

River. A paragraph describing the upper falls in detail states that portage around the upper falls is "relatively easy".[5] These documents also describe subsistence uses and recreational uses. For example, they describe travel upriver by riverboat with outboard motor to Golden Gate Falls for fishing. Rafting is also listed as one of the "outstanding opportunities" of the Kisaralik River, stating "eight to 10 groups of four persons each float the Kisaralik each season. Estimated cost per person for a seven-day float trip was listed between $600 and $800. This includes round-trip airfare from Anchorage, air freight, air charter costs, depreciation/rental costs, and food."[6]

B. Physical Character Supporting Navigability

The courts and the Department of the Interior have also considered the physical characteristics of the river system in its natural and ordinary condition in their navigability determinations. *See, e.g., State of Alaska,* 891 F.2d at 1402, 1405; *State of Alaska v. United States*, 662 F. Supp. at 466-67; *Appeal of Doyon,* 86 Interior Dec. 692. The physical characteristics of the Kisaralik River system compare favorably to the Gulkana, Kandik, and Nation rivers considered in those decisions.

1. River. Kisaralik River, Variant name: Kilakalik, Kiolemik, Kioleralik, Kiolerulik, Kiselalik, Kiseralik, Kiserolik and Kisarolik.

Coordinate location at confluence with Kuskokuak Slough:
Latitude 60° 51' 30" N
Longitude 161° 14' W

Lake: Major lakes include Kisaralik, Gold and North Fork

Basin area: 1470 square miles

Elevation at source: 1600 feet

Main Channel Length: 110 miles

Average Channel Slope: 16 feet/mile

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[5] Ibid.
[6] USDI, NPS, 1984, Kisaralik River Alaska Draft Wild and Scenic River Study.

2. Climate. The Kisaralik River system is within the transitional climate zone, which is between maritime and continental climatic zones. This transition zone in the Yukon-Kuskokwim Delta area extends 100 to 150 miles inland.[7] No weather-gathering stations are located along or near the Kisaralik River. The nearest stations are located at Bethel and Nyac, both approximately 30 miles from the river. The average annual precipitation is estimated to be between 20 and 40 inches.[8] In the late 1970s and early 1980s, the Kisaralik River was studied for its hydroelectric power production potential by the Alaska Power Authority (Alaska Energy Authority). An extensive analysis of the climate, hydrology, and geology of the Kisaralik River drainage was completed at that time. This analysis used a conservative 20 inches average annual precipitation for the hydroelectric study.[9] The most up to date summary data from the Bethel and Nyac weather stations (Table 1 and Table 2) are provided below.[10]

Table 1 (Bethel Airport Weather Station Summary, 500754, Period of Record: 9/3/1949 to 12/31/2007)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Average Max. Temperature (F)	12.5	15.2	21.3	33.2	49.5	60.0	62.9	59.7	52.0	35.9	23.9	13.9	36.7
Average Min. Temperature (F)	-0.5	1.4	5.2	17.3	32.5	43.1	48.1	46.7	38.5	24.5	11.8	0.9	22.5
Average Total Precipitation (in.)	0.77	0.67	0.74	0.71	0.97	1.52	2.16	3.38	2.49	1.47	1.26	1.05	17.18
Average Total Snowfall (in.)	7.8	6.9	8.6	5.4	1.9	0.1	0.0	0.0	0.3	3.9	9.6	10.3	54.9
Average Snow Depth (in.)	8	9	9	5	0	0	0	0	0	0	2	6	3

[7] Harza Engineering Company, December 1982, Bethel Area Power Plan Feasibility Assessment, Appendix B
[8] USDI, NPS, 1984, Kisaralik River Alaska Draft Wild and Scenic River Study
[9] Robert W. Retherford Associates, 1980, Reconnaissance Study of the Kisaralik River Hydroelectric Power Potential and Alternate Electric Energy Resources in the Bethel Area.
[10] Western Regional Climate Center, Historic Climate Records, Retrieved 12/3/2008, http://www.wrcc.dri.edu/summary/Climsmak.html

Table 2 (Nyac Weather Station Summary, 506760, Period of Record: 9/1/1949 to 9/30/1963)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
Average Max. Temperature (F)	19.9	22.6	28.3	38.5	52.8	62.4	65.7	61.5	53.8	38.9	28.8	15.6	40.7
Average Min. Temperature (F)	-0.9	-0.2	3.7	16.8	32.5	40.2	44.7	45.1	36.5	23.6	12.3	-3.2	20.9
Average Total Precipitation (in.)	1.25	0.97	1.21	0.81	1.20	2.00	2.48	5.61	3.65	1.55	1.04	1.21	23.34
Average Total Snowfall (in.)	10.9	9.5	13.5	7.4	0.3	0.1	0.0	0.0	0.0	4.6	11.8	12.5	70.5
Average Snow Depth (in.)	14	16	18	10	1	0	0	0	0	1	4	9	6

3. General Basin Description. The headwaters of the Kisaralik River flow out of Kisaralik Lake within Section 20, T. 3 N., R. 58 W., S.M. in the Kilbuck-Kuskokwim Mountains at approximately 1600 feet above sea level.[11] The Kisaralik River drains an area of approximately 1470 square miles.[12] Flowing generally N-NW, the Kisaralik River extends approximately 110 miles to Section 19, T. 9 N., R. 67 W., S.M. where it flows into the Kuskokuak Slough of the Kuskokwim River.

[11] Navigable Waters Map; http://dnratwmlwims01/navwatersmap/
[12] Clay, Roger, 1983, A Compilation of Hydrologic Data on the Kuskokwim Region, Alaska Division of Geological & Geophysical Survey.

4. Available Stream Flow Data. The United States Geological Survey (USGS) operated a stream gage on the Kisaralik River above the Upper Falls from October 1, 1979 through September 30, 1987.[13] The stream gage was located at Latitude 60° 21" 10' North, Longitude 159° 55" 00' West at an elevation of 1,050 feet above sea level. The drainage area upstream of the gage totals 265 square miles, as compared to a total drainage area for the Kisaralik River system of 1470 square miles. Table 3 shows the mean, maximum and minimum discharge values for this station.

Table 3 (mean, minimum and maximum monthly discharge values for Kisaralik River, USGS gage station 15304200)

KISARALIK RIVER NR AKIAK AK (15304200)			
	Mean (cfs)	Minimum (cfs)	Maximum (cfs)
January	218	125	380
February	203	125	300
March	190	120	240
April	215	120	700
May	984	160	3900
June	2790	950	5070
July	2190	701	4680
August	1080	415	2350
September	823	360	2660
October	1000	218	4260
November	563	130	1090
December	285	130	520
Annual	878	545.9	1379

[13] USGS, National Water Information System, Surface Water, Retrieved 8/29/2008, Web Interface for site 15304200 Kisaralik R NR AKIAK AK, http://waterdata.usgs.gov/ak/nwis/dv/?site_no=15304200

Mean monthly discharge at the gage was greater than 2,000 cubic feet per second (cfs) during June and July, and greater than 1,000 cfs during August for the eight years the gage was in operation. Snow melt typically begins in May in this region of Alaska and continues through June and July. The gage data show a more than four fold increase in mean flow between April and May as snowmelt begins and another three fold increase between May and June when maximum flows were recorded (Table 3). The high flow continued through July before tapering off and remaining steady through August, September and October when mean monthly flow ranged between 823 cfs and 1080 cfs (Table 3). The highest peak stream flow of 5,070 cfs at the area of this gage was recorded on June 28, 1982.

5. Review of Existing Hydrologic and Onsite Studies. An attached Compilation of Hydrologic Data on the Kuskokwim Region discusses a large volume of data on the Kisaralik River.[14]

As previously noted, in 1978 the USDI Heritage Conservation and Recreation Service also performed a field inspection of the Kisaralik River for a wild and scenic river analysis. The interagency/interdisciplinary team[15] described the trip by date and section of the river floated. Data were collected along the Kisaralik River beginning at the outlet of Kisaralik Lake downstream to near the confluence with the Kuskokwim River. The Kisaralik River is fifty feet wide and four feet deep where it exits Kisaralik Lake. It gathers additional water as it flows its length of 110 miles; it is six feet deep and one hundred feet wide in the last 25 miles.[16] The inspection report describes river conditions including river width, depth, flow rate, river morphology, and color.

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[14] Clay, Roger, 1983, A Compilation of Hydrologic Data on the Kuskokwim Region, Alaska Division of Geological & Geophysical Survey.
[15] Ibid.
[16] Heritage Conservation & Recreation Service, October 1979, Kisaralik River, A Wild and Scenic River Analysis.

The Alaska Department of Fish and Game describes the Kisaralik River in two documents: (1) In the Inventory and Cataloging of Sport Fish and Sport Fish Waters of Western Alaska, (Alt)[17] and (2) in the Kisaralik Drainage Stream and Lake Inventory (Baxter)[18]. The first report divides the river into three zones as characterized by channel morphology and bed materials: Mile 0 to 19; Mile 19 to Quartz Creek; and Quartz Creek to Kisaralik Lake. The second report categorizes the river into two zones: Kisaralik Lake to Golden Gate Falls, and Golden Gate Falls to mouth of river. Both documents describe the lower reaches of the river as having a mud bottom and banks. Alt[19] described this portion of the river as a single meandering channel while noting discharge, velocity, depth and width, while Baxter[20] considered gradient. Alt[21] also noted that during high water periods some water from the Kisaralik River flows into the Kasigluk River. Alt[22] describes the middle section of the river as braided with log jams and overhanging banks. He also describes material particle sizes and percentages with the various sizes of gravels making up 80% of the bed materials. Baxter[23] is not as detailed, describing the bottom materials as gravel. Alt[24] describes the upper reach as a single channel with boulders, while Baxter[25] describes the bottom materials as bed rock, boulders and gravel. Baxter[26] also describes the upper reach as having few deep pools and long stretches of shallow water. In addition, Baxter[27] describes the channel gradient in the upper reach as 21 feet per mile and in the lower reach as 10 feet per mile.[28]

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[17] Alt, Kenneth T,1977, Inventory and Cataloging Western Alaska Waters, Alaska Department of Fish and Game, Sport Fish Division.
[18] Baxter, R., 1981-1982, Kisaralik Drainage Stream and Lake Inventory, , Alaska Department of Fish and Game, Commercial Fisheries Division, Bethel, Kuskokwim Resource Report #6
[19] Alt, Kenneth T.,1977, Inventory and Cataloging Alaska Waters.
[20]Baxter, R., 1981-1982, Kisaralik Drainage Stream and Lake Inventory.
[21] Alt, Kenneth T., 1977, Inventory and Cataloging Alaska Waters.
[22] Ibid.
[23] Baxter, R., 1981-1982, Kisaralik Drainage Stream and Lake Inventory.
[24] Alt, Kenneth T., 1977, Inventory and Cataloging Alaska Waters.
[25] Baxter, R. Kisaralik Drainage Stream and Lake Inventory.
[26] Ibid.
[27] Ibid.
[28] Clay, Roger, 1983, A Compilation of Hydrologic Data on the Kuskokwim Region, Alaska Division of Geological & Geophysical Survey.

As noted earlier, the Kisaralik River was studied for hydroelectric feasibility in the early 1980s by the Alaska Power Authority. Three locations were considered for hydroelectric potential: Upper Falls, Lower Falls, and Golden Gate Falls. Golden Gate Falls was the primary location of choice in the preliminary study.[29] In the Bethel Area Power Plan Feasibility Assessment[30], flow measurements collected in the vicinities of the Upper Falls and Lower Falls are listed as 1,120 cfs and 1,945 cfs respectively.[31] While the Kisaralik River Golden Gate Falls project could have produced more than sufficient energy for the region, another potential hydroelectric project at Chikuminuk Lake was more economically feasible. Due to economic cost analyses, none of the hydroelectric options were acted upon.[32]

VII. Other Known Interested Parties

The BLM may have purported to convey submerged lands to the Kokarmiut and Calista Corporations in portions of the river system once determined "non-navigable" by BLM. This river system is also within the exterior boundaries of the Yukon Delta NWR, but the refuge area was established after statehood in 1980 so has no effect on state title to the beds of navigable waters.

VIII. Conclusion

The State of Alaska has determined there is sufficient evidence to conclude that the Kisaralik River and Lake system, as described in section I of this application, is a navigable waterway and its submerged lands and beds are owned by the State of Alaska and should be disclaimed by the Bureau of Land Management, Department of the Interior. The evidence of tidal influence in the river system to at least Section 20, T9N R67W SM, the historical and present use information, the State's upland ownership surrounding Kisaralik Lake and the upper river, and the river's susceptibility to use as a highway of commerce

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[29] Robert W. Retherford Associates, 1980, Reconnaissance Study of the Kisaralik River Hydroelectric Power Potential and Alternative Electric Energy Resources in the Bethel Area.

[30] Harza Engineering Company, December 1982, Bethel Area Power Plan Feasibility Assessment,

[31] Clay, Roger, 1983, A Compilation of Hydrologic Data on the Kuskokwim Region, Alaska Division of Geological & Geophysical Survey.

[32] Alaska Power Authority, December 20, 1985, Bethel Area Power Plan, Findings and Recommendations.

at the time of statehood as described in this application and in the January 15, 2010 Kisaralik River System Phase IV report, all support this conclusion.

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: Dick Mylius, (907) 269-8600. Please start the application process for this river and forward the estimate of cost of administration to Director Mylius.

Sincerely,

for Thomas E. Irwin
Commissioner

Attachments: Exhibit 1: Map and Legal Description
Exhibit 2: January 15, 2010 Kisaralik Phase IV Report – Office of History and Archaeology
Exhibit 3: Referenced Hydrological Documents - Kisaralik River pages only

cc: Mr. Geoffrey L. Haskett, Regional Director , USFWS
Denby Lloyd, Commissioner, Alaska Department of Fish and Game
Andrew J. Guy, President and CEO, Calista Corporation[33]
Karl Potts, President and Chief Executive Officer, Kokarmiut Corporation[34]

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[33] This recipient was provided only with a copy of the application filed with BLM. Copies of the map(s) for the water bodies and any historical documents referenced in support of this application can be obtained via DNR's website (http://www.dnr.state.ak.us/mlw/nav/rdi/) or the Bureau's website (http://www.ak.blm.gov/ak930/rdi/index.html). If you are unable to access these websites or are unable to download the information, please feel free to contact Wendy Steinberger at (907) 269-6018 for a copy of the information through the mail.
[34] Ibid.