STATE OF ALASKA

FRANK H. MURKOWSKI, GOVERNOR

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

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

February 17, 2005

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
05 FEB 22 AM 11:04

Re: Recordable Disclaimer of Interest Application for Stikine River

Dear Mr. Bisson:

The State of Alaska files this application for a recordable disclaimer of interest for the lands underlying the Stikine River, pursuant to 43 CFR §1864.

The application is submitted for all submerged lands lying within the bed of the Stikine River, and all named and unnamed interconnecting sloughs including Binkleys Slough, Red Slough, Guerin Slough, King Slough, Andrew Slough, Hooligan Slough, Shakes Slough, Shakes Lake, North Arm and Ketili River, between the ordinary high water lines of the left and right banks from the Alaska/Canada International Border in T. 60 S., R. 86 E., Copper River Meridian, Alaska, downstream approximately 27 miles to all points of confluence at its mouth in the Eastern Passage, Dry Strait and Frederick Sound, within T. 60 S., R. 82 E.; T. 61 S., R. 83 E. and T. 61 S., R. 84 E.; and T. 62 S., R. 82, 83 and 84 E., Copper River Meridian, Alaska. A map highlighting the river and a legal description of the townships and ranges underlying the Stikine River are enclosed. As discussed previously 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.

Those portions of the bed of Stikine River that are permanently or periodically covered by tidal water up to the line of mean high tide are already included in a Disclaimer of Interest by the United States filed in *Alaska v. United States*, Original 128, that is awaiting confirmation by the United States Supreme Court, so there is some overlap of those same lands in 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 Stikine 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 into 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. The state is not aware of any adverse claimant or occupant of these lands.

Where the state is the owner of the uplands adjacent to Stikine River, the state owns the bed of Stikine 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 shoreland owner unless the intent of the grantor is expressly stated to the contrary.

The Stikine River has been an important waterway for travel and navigation by many types of watercraft throughout the history of Alaska. Coastal Tlingits sailed and paddled log canoes upriver to trade with Interior tribes. Early Russian and European explorers traded furs with local inhabitants; however it was the discovery of gold that established the Stikine River as a major transportation route. The 1861 discovery of gold near the present day town of Telegraph Creek led to a rush of miners demanding transportation to the area. In 1862, the vessel *"Flying Dutchman"* took passengers and cargo up the Stikine River to the head of navigation. This began the history of steamboat navigation on the Stikine River.

A treaty between Great Britain and Russia, signed in February 1825, recognized the right of free navigation on the Stikine River. Article VI of that treaty, states that " *the subjects of His Britannic Majesty,.... shall forever enjoy the right of navigating freely ..., all the rivers and streams which, in their course towards the Pacific Ocean, may cross the line of demarcation...*" The demarcation line referred to is the inland boundary of Southeast Alaska determined by the treaty. The Stikine River crosses this "line of demarcation" and was cited as one of the rivers where navigation was allowed.

Navigability of the Stikine River was again recognized on May 8, 1871 when the United States and Great Britain signed the Washington Treaty guaranteeing use of several specifically listed navigable rivers, including the Stikine, that cross the international boundary between the Alaska Territory and Canada. Article XXVI of

BLM AK SO 952
ANCHORAGE, AK
05 FEB 22 AM 11:04

AA85787

that treaty permanently established navigation rights *"for the purposes of commerce"* on the Stikine River for the citizens of the United States.

An article appearing in the April 1879 edition of Scribner's Monthly, *'The Stikeen River and its Glaciers'*, describes a steamboat trip up the Stikine River with freight and passengers to the towns of Glenora and Telegraph Creek.

In 1903, the Alaskan Boundary Tribunal included an 1867 published report by the United States Coast Survey, stating that the Russian American Telegraph Company reported the Stakeen (sic) River "*to be navigable for boats for one hundred and fifty miles, to the mouth of the great canon...*"

A 1942 *Alaska Life* magazine article described early steamboat navigation of the Stikine River by Sid and Hill Barrington. In 1916, the Barrington brothers of Wrangell, Alaska began commercial steamboat navigation on the Stikine River. They regularly hauled supplies and passengers to the community of Telegraph Creek, approximately 163 river miles. This activity continued through the end of WWII.

A 1954 report from the Secretary of the Army to the 83rd Congress, Committee on Public Works, described harbors in Alaska and their related water uses. On page 37, paragraph 84, it was reported that "*Two rivers in southeast Alaska, the Stikine and Taku, are navigable....*" Also, on page 37, paragraph 85, the report stated that "*A river-transport service is operated out of Wrangell up the Stikine River as far as Telegraph Creek. A shallow-draft boat tows barges and carries passengers, making weekly trips during the navigable season. The traffic consists principally of packaged oil products, machinery, and food upstream, and of empty oil drums, furs, and some ore downstream.*"

Use of the Stikine for commerce is discussed in Reminiscences of Captain Billie Moore, a biography written by Dr. Will H. chase, a former mayor of Cordova.

The use of the Stikine River to transport goods and people since the early 1800's is well documented in *Alaska Geographic* (The Stikine River, *Alaska Geographic*, Vol. 6, No. 4, 1979). *Alaska Geographic* describes the historical use of the Stikine River as a transportation corridor to the Canadian interior. Commercial operation of riverboats on the Stikine River extended over a period of about 107 years, with the most recent period beginning in 1916 and lasting until 1969. The '*Margaret Rose*' was the last riverboat to commercially operate on the Stikine River, ending regular service in 1969. *Alaska Geographic* provides a brief description of construction locations, dates of operation, captains and other information for over 59 vessels that operated commercially on the Stikine River.

BLM AK SO 952
ANCHORAGE, AK
05 FEB 22 AM 11:04

AA85787

In 1987 the U.S. Forest Service, following requirements in Section 1113 of ANILCA, prepared the Stikine River Region Access Study. This report from the President of the United States to the Congressional Committee on Interior and Insular Affairs, describes historical and current uses of the Stikine River Region.

> *"Commercial uses of the river include: recreational charter boat...operations, freight operations, snag clearing to remove hazards to navigation ..."*(p. 14)

> *"The town's development was strongly influenced by the Stikine and its role as a transportation corridor. Not until after the last gold rush in the late 1800's did fishing and timber begin to assume more of a role..."* (p. 14)

> *"Historically, the river has supported a significant amount of commerce and trade. The first boats were log canoes belonging to the Tlingits who traded with the Tahltans. Later, gold brought the first steam power to the Stikine. From the spring of 1862 to the end of the era, August 1916, boats were a common sight delivering men and materials to Telegraph Creek. This small British Columbia community is historically considered the head of navigation on the Stikine."*(p. 15)

Moreover, in the Consultations and Recommendations section, pages 7-10, the USFS report recognizes that the Government of Canada was guaranteed navigation privileges on the Stikine River that predate ANILCA. As mentioned previously, Article XXVI of The Treaty of Washington (May, 1871) provides for navigation of the Stikine River for the *"purpose of commerce"*. The Canadian government maintains that its right of access is also derived from the 1825 Convention between Great Britain and Russia (see above). The USFS report acknowledges the Government of Canada's continued navigation privileges on the Stikine River as provided by treaty.

BLM AK SO 952
ANCHORAGE, AK
05 FEB 22 AM 11:04

A September, 2003 Corps of Engineers report for the Alaska District states that the Stikine River is navigable for shallow draft boats transporting supplies between Wrangell, Alaska, and Telegraph Creek, British Columbia. The Corps oversees projects that clear snags from the river that would be hazards to navigation.

A 2004 web site article for the Stikine River Historical Foundation describes current plans by the foundation to salvage, restore and repair the last remaining wooden-hulled riverboat to have navigated the Stikine River. The *"Judith Ann"* was constructed in 1950 at the Campbell-House shipyard in Wrangell, Alaska and operated between Wrangell and Telegraph Creek.

The above information and attached documentation summarizes historic navigation on the Stikine River. This information supports the conclusion that the Stikine River is a navigable waterway and ownership of its submerged lands should be confirmed in the State.

AA85787

The state agency responsible for this application is the Alaska Department of Natural Resources, Division of Mining, Land and Water, 550 W. 7th Avenue, Suite 1070, 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,

Thomas E. Irwin
Commissioner

BLM AK SO 952
ANCHORAGE, AK
05 FEB 22 AM 11:04

Enclosures

Cc: Michael Menge, Special Assistant for Natural Resources, Office of the Governor
Scott Nordstrand, Acting Attorney General
Kevin Duffy, Commissioner, 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
Forrest Cole, Forest Supervisor, Tongass National Forest, 648 Mission St., Federal Building, Ketchikan, AK. 99901-6591
Denny Bschor, Regional Forester, U.S. Forest Service, Alaska Region, P.O. Box 21628, Juneau, AK 99802-1628
Chip Weber, District Ranger, Wrangell Ranger District, 525 Bennett St., Wrangell, AK. 99929-0051
Barbara Stanley, Lands Specialist, Tongass National Forest, c/o Craig Ranger District, P.O. Box 705, Craig, Alaska 99921
Mayor, City of Wrangell, P.O. Box 531, Wrangell, AK 99929
Mayor, City of Petersburg, P.O. Box 329, Petersburg, AK 99833
Mayor, City of Kupreanof, P.O. Box 50, Petersburg, AK 99833
Chris E. McNeil Jr., President & CEO, Sealaska Regional Corporation, One Sealaska Plaza, Suite 400, Juneau, AK. 99801-1276
Petersburg Indian Association, P.O. Box 1418, Petersburg, AK 99833
Wrangell Cooperative Association, P.O. Box 247, Wrangell, AK 99929

AA85787

LEGAL DESCRIPTION

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

All submerged lands within the bed of the Stikine River between the ordinary high water lines of the left and right banks, including all named and unnamed interconnecting sloughs of the Stikine River, beginning at the Alaska/Canada International Border in Township 60 South, Range 86 East, Copper River Meridian, Alaska;

Including but not limited to the following sloughs: Binkleys Slough, Red Slough, Guerin Slough, King Slough, Andrew Slough, Hooligan Slough, Shakes Slough, Shakes Lake, North Arm and Ketili River;

Thence westerly and southerly, generally within the following townships of the Copper River Meridian as determined from USGS 1:63,360 series topographic maps Petersburg (C-2) 1997; Petersburg (C-1) 1953 (minor revisions 1980); Bradfield Canal (C-6) 1955 (minor revisions 1981); the precise location may be within other townships due to the ambulatory nature of water bodies:

Township 58 South, Range 84 East;
Township 59 South, Ranges 84, 85 East;
Township 60 South, Ranges 82, 83, 84, 85, 86 East;
Township 61 South, Ranges 82, 83, 84 East;

To the terminus, being all points of confluence with Eastern Passage, Dry Strait and Frederick Sound within Township 60 South, Range 82 East; Township 61 South, Range 83 East; and Township 61 South, Range 84 East, Copper River Meridian, Alaska.

BLM AK SO 952
ANCHORAGE, AK
05 FEB 22 AM 11:04

AA85787