

# STATE OF ALASKA

## CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS

*SEAN PARNELL,  
Governor*

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March 16, 2010

Governor Sean Parnell  
P.O. Box 110001  
Juneau, Alaska 99811-001

Dear Governor Parnell:

In February 2009, the Citizens' Advisory Commission on Federal Areas formally requested the State of Alaska initiate a quiet title action on the Mosquito Fork of the Fortymile Wild and Scenic River (WSR). The Mosquito Fork and several other segments of the Fortymile have been determined to be non-navigable by the Bureau of Land Management. The Alaska Department of Natural Resources (DNR) researched characteristics and historic uses of the Mosquito Fork and concluded it is navigable. While this disputed title remains in effect, miners who hold state mining claims on the Mosquito Fork are required to pay claim fees to DNR but are prohibited from mining by the Bureau of Land Management. The ownership of the Mosquito Fork and other segments of the Fortymile River needs to be resolved as expeditiously as possible.

Last year the State Interagency Navigability and Access Team discussed our request and tentatively concluded that the best strategy to resolve the dispute over ownership of the bed of the river would be to file quiet title action in federal court. In summer 2009, the DNR Public Access Assertion and Defense (PAAD) unit collected hydrological data to add to the available information already on file for the Mosquito Fork. Alaska Department of Fish and Game contributed to the DNR efforts, and our Commission staff also provided historical and bibliographic information to the PAAD.

Based on the information and data compiled over the years, the Mosquito Fork meets all of the federal court criteria of a navigable river. In spite of this, no decision has been made on whether or not to act on the Commission's request.

An alternative approach to finalizing title to the beds of navigable waterways is the administrative process authorized by Section 315 of the Federal Land Policy and Management Act (FLPMA). Under this process, the State of Alaska submits an application for the Bureau of Land Management to disclaim any interest, and it issues a Recordable Disclaimer of Interest (RDI) disclaiming federal title to the bed of a river or lake. This has proven to be an effective and less costly alternative to pursuing a quiet title action in the courts.

There are a number of reasons that use of the RDI process is not the best course of action in this situation. The RDI process is successful in those cases where both parties are in general agreement that a water body is navigable and that title transferred out of federal ownership under the provisions of the Submerged Lands Act or other law. The BLM has long held that the Mosquito Fork of the Fortymile is non-navigable and has made an administrative determination to that effect. It is improbable that the BLM determination would be changed by submission of an RDI application, even with the additional hydrological data collected in 2009. The designation of the Mosquito Fork under the Alaska National Interest Lands Conservation Act as a wild segment of the Fortymile Wild and Scenic River (W&SR) further reduces the chance that the RDI process would achieve an outcome favorable to the State.

After submitting 37 RDI applications during the period 2004 to 2006, the State has filed no applications in the last 3 years. Our understanding is that none were filed during 2007 and 2008 because of a backlog at the BLM. In fact, since 2004 only 11 RDI's have been issued by the BLM in Alaska. In 2009 the Department of the Interior froze approval of all RDI applications.

Although the freeze has been lifted, the backlog remains. We expect that any new applications would see considerable delays even though the BLM has developed new policies for processing applications. These delays exemplify another weakness in the RDI process. There are no time limits on processing an RDI application. Certainly we understand that a quiet title action through the court may take several years to complete and that it carries no guarantee of success. However, an unsuccessful RDI process in the case of the Mosquito Fork would further delay final resolution by the court.

The BLM will soon release the draft Eastern Interior Resource Management Plan. This plan will guide management of the federal lands in the Fortymile area, including the Fortymile W&SR, for the next twenty years or more. Land conveyances to the State and ANCSA Corporations are also being finalized in the region. It is critical that the ownership of the submerged lands in this region be determined. This Commission respectfully urges your office to take action on our previous request for initiation of a quiet title action on the Mosquito Fork. A copy of that letter is enclosed for your reference.

We appreciate that budgets and legal staff are stretched at this time, but we believe that it is time for the State to take the necessary actions to resolve this issue. Commission staff

is available to provide as much assistance as possible. The Commission would welcome the opportunity to discuss our request in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Leaphart". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stan Leaphart  
Executive Director

CC: Alaska Attorney General Daniel Sullivan  
Commissioner Tom Irwin- DNR  
Commissioner Denby Lloyd- ADF&G

Enclosure