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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA, JUNEAU OFFICE**

LACANO INVESTMENTS, LLC,)
NOWELL AVENUE DEVELOPMENT, and)
AVA L. EADS, on behalf of themselves and) No. _____
the class they seek to represent,)
Plaintiffs,) **CLASS ACTION COMPLAINT**
v.) **FOR DECLARATORY AND**
DAN SULLIVAN, Commissioner, Alaska) **INJUNCTIVE RELIEF**
Department of Natural Resources, in his)
official capacity,)
BRENT GOODRUM, Director, Division of)
Mining, Land & Water, Alaska Department)
of Natural Resources, in his official capacity,)

Defendants.

Named Plaintiffs and the class they seek to represent in this action are fee simple owners and/or warrantors of lands within the State of Alaska that were surveyed by the United States General Land Office (“GLO”) and granted to private parties by the United States prior to

Alaska's statehood in 1959. The GLO surveyors were instructed to meander the boundaries of all navigable and tidal streams and exclude them from the grants to Named Plaintiffs' predecessors in title. Accordingly, the surveyors determined that some small streams on Named Plaintiffs' lands were not navigable or tidal and did not meander them as part of the surveys. Thus, Named Plaintiffs' predecessors in title paid the United States for these lands and were issued patents that included the streambeds. Since that time, the owners of these grants have treated the streambeds as their fee simple property and developed them accordingly.

Defendants have issued a "State Policy on Navigability" ("written policy") for allegedly "identifying and protecting the state's title to the beds of navigable waters." ALASKA DEPARTMENT OF NATURAL RESOURCES, STATE POLICY ON NAVIGABILITY, http://dnr.alaska.gov/mlw/nav/nav_policy.htm (last visited December 19, 2012). A copy of the written policy is attached hereto as Exhibit 1. Defendants implement their written policy through practices and procedures that allow them to claim title to privately-owned streambeds based on navigability criteria of Defendants' choosing that are different than those applied by the GLO surveyors at the time of patent. Defendants assert such claims to privately-owned streambeds through "navigability determinations" or when property owners seek to exercise their property rights.

In cases where stream locations have been rerouted or channelized, Defendants have used old air photos to draw property lines based on stream locations at the time of statehood. Defendants then claim that these areas were part of Alaska's Statehood land grant in 1959. These newly-drawn lines can and do cut across developed property, including buildings.

Defendants' actions have placed a cloud on Named Plaintiffs' property and the property of similarly situated property owners throughout the state. Moreover, Defendants' actions have

opened Named Plaintiffs and those similarly situated to untold liability in those instances where Named Plaintiffs have sold affected property and issued warranty deeds. Named Plaintiffs are challenging Defendants' written policy, and implementation and enforcement practices and procedures (hereinafter collectively "Challenged Policy"), that result in Defendants' claim to privately-owned streambeds under the guise of navigability.

Accordingly, Named Plaintiffs, Lacano Investments, LLC, Nowell Avenue Development, and Ava L. Eads, on behalf of themselves and the class they seek to represent, hereby file this Complaint against the above-named Defendants, and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331, because the matter in controversy arises under the laws of the United States, including, but not limited to: (a) the Submerged Lands Act ("SLA"), 43 U.S.C. § 1301, *et seq.*, and (b) section 6 of the Alaska Statehood Act. 72 Stat. 339, 343 (1958). Named Plaintiffs' claims also arise under federal law because they are based on patents issued by the United States prior to Alaska statehood. *See Samuel C. Johnson 1988 Trust v. Bayfield County, Wis.*, 649 F.3d 799, 801 (7th Cir. 2011) (where plaintiff's suit was based on the terms of original federal grants, the suit may be said to arise under federal law).

2. Venue rests properly in this judicial district, pursuant to 28 U.S.C. § 1391(b), because, *inter alia*, Named Plaintiffs and Defendants reside in Alaska, the property that is the subject of this action is situated within this judicial district, and the claims arose in this district.

PARTIES

3. Plaintiff Lacano Investments, LLC (“Lacano”) is a limited liability company organized under the laws of the State of Alaska and is currently in good standing. The Managers of Lacano are Robert S. Lafavour and Douglas Trucano. Lacano is the successor in title to land underlying a non-navigable stream, Lemon Creek, in Juneau, Alaska, that was patented by the United States in 1913. Lacano has also sold and issued Statutory Warranty Deeds for several parcels of land that include portions of the bed of Lemon Creek. Defendants have asserted ownership of Lacano’s land, pursuant to the Challenged Policy, causing injury to Lacano.

4. Plaintiff Nowell Avenue Development (“Nowell”) is a partnership owned by Douglas Trucano and Jeff Trucano. Nowell is also a successor in title to lands patented by the United States in 1913. A portion of this land underlies Lemon Creek. Defendants have asserted ownership of Nowell’s land, pursuant to the Challenged Policy, causing injury to Nowell.

5. Plaintiff Ava L. Eads (“Eads”) is successor in title to land patented by the United States in 1916 underlying Salmon Creek, near Seward, Alaska. Defendants, through the Challenged Policy, have claimed ownership of Eads’ property, causing injury to Eads.

6. Defendant, Dan Sullivan is the Commissioner of the Alaska Department of Natural Resources. In that capacity, Defendant Sullivan is responsible for the management of Alaska’s state-owned land, water, and natural resources, except for fish and game, on behalf of the State of Alaska. Defendant Sullivan is currently unlawfully implementing the Challenged Policy complained of in this action. Defendant Sullivan is sued in his official capacity.

7. Defendant, Brent Goodrum is the Director of the Division of Mining, Land & Water, Alaska Department of Natural Resources. In that capacity, Defendant Goodrum is responsible for the management of Alaska’s state-owned land and water, subject to the

supervision of Defendant Sullivan. Defendant Goodrum is currently unlawfully implementing the Challenged Policy complained of in this action. Defendant Goodrum is sued in his official capacity.

STATUTORY AND REGULATORY BACKGROUND

8. The Land Ordinance of 1785 established the public land survey system by which the majority of land that is privately owned in the western United States was eventually surveyed and sold/transferred into private ownership. The Ordinance was extended to the Territory of Alaska by the Act of March 3, 1899. 43 U.S.C. 751(a).

9. Shortly after the adoption of the 1785 Land Ordinance, Congress appointed a Surveyor General, who was responsible for directing rectangular surveys for the entire country. In 1812, Congress established the GLO within the Treasury Department. The GLO, which eventually was made a part of the Department of the Interior, assumed responsibility for public land surveys.

10. In 1855, the GLO issued the first Manual of Instruction for the Survey of the Public Lands. This Manual was approved by Congress on May 30, 1862. 12 Stat. 409–10. In fact, Congress expressly provided that 1855 Surveying Manual shall be taken and deemed to be part of every contract for surveying the public lands of the United States.” *Id.* at 409. Subsequent editions of the Surveying Manual were issued in 1871, 1881, 1890, 1894, 1902, 1930, 1947, 1973, and 2009. By its own terms, the Surveying Manual “describes how cadastral surveys of the public lands are made in conformance to statutory law and its judicial interpretation.” *E.g.*, 1973 Surveying Manual, § 1-1.10

11. Since its creation, the Surveying Manual and its various editions have had the force and effect of law and the surveys done thereunder have established property rights

throughout the country. Indeed, decisions of both the federal courts and the Department of the Interior have recognized the binding legal effect of the Surveying Manual, including the specific provisions that certain water bodies be segregated from the lands surveyed. *United States v. Otley*, 127 F.2d 988, 1000 (9th Cir. 1942) (surveyor meandered Malheur Lake in accordance with the Land Department survey regulations contained in the 1894 manual and the correctly meandered lakebed passed with the uplands by virtue of riparian rights); *Appeal of Smith*, 18 L.D. 135, 137 (1894) (streams must be meandered according to the Manual, since “the Manual of Surveying has been legalized by act of Congress and has the force and effect of law.”); *Victor A. Johnson*, 33 L.D. 593 (1905) (“your office finds from the record that the lake is a permanent body of water, possessing the characteristics which, under paragraphs 153–172 of the . . . [1902 Manual], will require the meander thereof.”); *Appeal of Levinson and Sigfrid*, 78 I.D. 30, 34 (1971) (“the Duren resurvey . . . was conducted in accordance with the established rules of survey as set forth in the . . . Manual”).

12. The 1902 Surveying Manual, which was in use when the Named Plaintiffs’ lands at issue in this case were surveyed, required that all navigable rivers and tide-water streams of any size be meandered when surveyed. 1902 Manual, §§ 157–158. Prior and subsequent editions of the manual by the GLO included substantially similar instructions.

13. The reason for the requirement that navigable water bodies be segregated from the surveys is made clear in later iterations of the Surveying Manual. As stated in the 1973

Surveying Manual:

The beds of navigable bodies of water are not public domain and are not subject to survey and disposal by the United States. The sovereignty is in the individual states. Under the laws of the United States the navigable waters have always been and shall forever remain common highways. This includes all tidewater streams, and other important permanent bodies of water whose natural and normal

condition at the date of the admission of a state into the Union was such as to classify the same as navigable water.

Id. § 4; *see also* 1973 Surveying Manual, § 1-12.

14. The SLA was passed in 1953 in response to the Supreme Court's decision in *United States v. California*, 332 U.S. 19 (1947), which established federal ownership of offshore submerged lands and raised questions as to whether the United States or the States held title to inland submerged lands. The SLA settled the question in favor of the States, and acts as a quitclaim of all unreserved federal interests in submerged lands, both offshore and inland. The SLA is essentially a codification and clarification of the equal footing doctrine. The SLA provides:

It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof

43 U.S.C.A. § 1311.

15. For purposes of the SLA the term “lands beneath navigable waters” includes:

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which formerly were lands beneath navigable waters, as hereinabove defined. . . .

43 U.S.C. § 1301(a).

16. Excluded from the definition of “lands beneath navigable waters” are:

[T]he beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams *were not meandered in connection with the public survey* of such lands under the laws of the United States *and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person*

43 U.S.C. § 1301(f) (emphasis added).

17. Section 6(m) of the Alaska Statehood Act incorporated the SLA and granted “lands beneath navigable waters” as that term is defined in the SLA to the new state of Alaska upon entry into the Union. Public Law 85-508, 72 Stat. 339, 343 (1958).

18. In accordance with the Alaska Statehood Act and the SLA, Alaska law recognizes the rights of property owners who received lands from the United States prior to statehood:

Except as otherwise provided herein, the State of Alaska, by virtue of the Submerged Lands Act of 1953, 43 U.S.C. 1301 (67 Stat. 29), Public Law 85-303 (71 Stat. 623) and Public Law 85-508 (72 Stat. 339), reserves and has succeeded to all right, title, and interest of the United States, including lands, improvements, reclaimed lands, or title to lands and natural resources it had to all lands permanently or periodically covered by tidal waters up to the line of mean high tide and seaward to a line three geographical miles distant from the coast line or further as may be allowed; *provided, however, that those lands and rights therein lawfully vested in others by Acts of Congress prior to January 3, 1959 shall not be infringed upon.*

Alaska Admin. Code tit. 11, § 62.020 (emphasis added).

19. Title to the lands at issue in this case was conveyed in federal patents, prior to statehood. It is well established that a federal patent “not only ‘operates to pass the title, but is in the nature of an official declaration by that branch of government to which the alienation of the

public lands, under the law, is intrusted [sic], that all the requirements preliminary to its issue have been complied with.” *Burke v. S. Pac. R. Co.*, 234 U.S. 669, 689–90 (1914) (quoting *St. Louis Smelting & Ref. Co. v. Kemp*, 104 U. S. 636, 640 (1881)). Thus,

It is not doubted that a patent appropriates land. Any defects in the preliminary steps which are required by law are cured by the patent. It is a title from its date, and has always been held conclusive against all those whose rights did not commence previous to its emanation. . . . If the patent has been issued irregularly, the government may provide means for repealing it; but no individual has a right to annul it, to consider the land as still vacant, and to appropriate it to himself.

Id. at 692–93 (quoting *Hoofnagle v. Anderson*, 20 U.S. (7 Wheat.) 212, 214–15 (1822)).

20. Defendants have issued a “State Policy on Navigability” (“written policy”) for allegedly “identifying and protecting the state’s title to the beds of navigable waters.” ALASKA DEPARTMENT OF NATURAL RESOURCES, STATE POLICY ON NAVIGABILITY, http://dnr.alaska.gov/mlw/nav/nav_policy.htm (last visited December 18, 2012). Exhibit 1. Defendants implement their written policy through practices and procedures that allow them to claim title to privately-owned streambeds based on navigability criteria of Defendants’ choosing that are different than those applied by the GLO surveyors at the time of patent. Defendants assert such claims to privately-owned streambeds through “navigability determinations” or when property owners seek to exercise their property rights.

21. In cases where stream locations have been rerouted or channelized, Defendants have used old air photos to draw property lines based on stream locations at the time of statehood. Defendants then claim that these areas were part of Alaska’s Statehood land grant in 1959. These newly-drawn lines can and do cut across developed property, including buildings.

22. Defendants’ actions have placed a cloud on Named Plaintiffs’ property and the property of similarly situated property owners throughout the state. Moreover, Defendants’

actions have opened Named Plaintiffs and those similarly situated to untold liability in those instances where they have sold affected property and issued warranty deeds. Named Plaintiffs are challenging Defendants' written policy, and implementation and enforcement practices and procedures (hereinafter collectively "Challenged Policy"), that result in Defendants' claim to privately-owned streambeds under the guise of navigability.

23. Through the Challenged Policy, Defendants have unlawfully claimed ownership of streambeds, title to which was lawfully patented or conveyed by the United States into private ownership prior to statehood based upon surveys conducted by the GLO in accordance with the Surveying Manual. Without declaratory and injunctive relief, Defendants will continue to unlawfully claim ownership of private property.

CLASS ACTION ALLEGATIONS

24. This is a class action brought by the Named Plaintiffs on their own behalf and on behalf of others similarly situated, pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class that the Named Plaintiffs seek to represent consists of those persons and entities who own, or have warranted title, to lands within the State of Alaska that:

1. formerly constituted part of the public lands of the United States;
2. were patented by the United States prior to Alaska's statehood based upon one or more public surveys; and
3. include one or more streams that were not meandered in conjunction with the public survey(s).

25. The exact number of individuals in the class is not known to the Named Plaintiffs, but is believed to be in the thousands. Therefore, the class is so numerous that joinder of all members of the class is clearly impracticable. *See* Fed. R. Civ. P. 23(a)(1).

26. The claims of the Named Plaintiffs are common to those of the class and raise common issues of fact and law, including, among others: whether Defendants' Challenged Policy, as applied to lands traceable to pre-statehood patents, violates section 2(f) of the SLA, and whether Defendants' Challenged Policy, as applied to these lands, violates sections 6(m) and 6(a) of the Alaska Statehood Act. *See* Fed. R. Civ. P. 23(a)(2).

27. Named Plaintiffs' allegations that Defendants have claimed title to their privately owned property in violation of the SLA and Alaska Statehood Act are typical of the claims of other members of the class who have had, or will have, their similarly situated property claimed by Defendants. *See* Fed. R. Civ. P. 23(a)(3).

28. Named Plaintiffs will fairly and adequately protect the interests of the class because they suffer from dispossessions identical to those of the class members and have been denied the same private property interests and statutory protections that they seek to enforce on behalf of class members, many of whom are unable to pursue claims on their own behalf as a result of their lack of knowledge and/or their limited financial resources. Significantly, members of the proposed class may be unwilling to pursue litigation against Defendants for fear of retribution. Named Plaintiffs' interests in obtaining injunctive relief for the violations of their legal rights and privileges are consistent with and not antagonistic to those of any person within the class. *See* Fed. R. Civ. P. 23(a)(4).

29. Named Plaintiffs' lead counsel are from a nationally known, nonprofit, public interest legal foundation. These attorneys are experienced in representing private property owners in federal court in cases involving federal land grants and are well qualified to represent the proposed class.

30. Defendants, through their Challenged Policy, have acted or refused to act on grounds generally applicable to all members of the class. *See* Fed. R. Civ. P. 23(b)(2). For example, through implementation of their Challenged Policy, Defendants have issued “navigability determinations” that claim title to certain stretches of privately owned streambeds. Defendants have also enforced their Challenged Policy by allowing various regulatory permitting processes to trigger their claim to privately owned property under the auspices of Alaska’s statehood land grant. Defendants’ Challenged Policy, as applied, has placed a cloud on the title of the Named Plaintiffs’ affected property as well as property owned and/or warranted by members of the class.

31. Based upon Named Plaintiffs’ knowledge, information, and belief formed after an inquiry reasonable under the circumstances and after a reasonable opportunity for further investigation or discovery, Defendants have failed, and will continue to fail, to give due consideration to the validity of pre-statehood grants from the United States. Therefore, declaratory and injunctive relief with respect to the entire class is appropriate.

FACTUAL ALLEGATIONS

32. The Named Plaintiffs and the members of the class they seek to represent are owners and/or warrantors of lands within the State of Alaska that were surveyed by the GLO and granted to private parties by the United States prior to Alaska’s statehood in 1959. The GLO surveyors were instructed to meander the boundaries of all navigable and tidal streams and exclude them from the grants made to Named Plaintiffs’ predecessors in title. Accordingly, the GLO surveyors determined that some small streams on the Named Plaintiffs’ lands were not navigable or tidal and did not meander them in the surveys. Named Plaintiffs’ predecessors in title paid the United States for these lands and were issued patents that included the streambeds.

Since that time, the owners of these grants have treated the streambeds as their fee simple property and developed, paid taxes on, sold, and/or warranted, them accordingly.

33. Plaintiff Lacano is the fee simple owner of record of a part U.S. Survey No. 204, specifically, Tract F, CBJ Parcel #5B1301190000, which includes a portion of the bed of Lemon Creek. Lacano's title is traceable to Patent No. 314853, issued on February 12, 1913, pursuant to the Homestead Act of 1862, 43 U.S.C. § 43 U.S.C. §§ 161–284 (repealed 1976). Exhibit 2. Lemon Creek was not meandered as part of U.S. Survey No. 204. Lemon Creek was also not meandered as part of U.S. Mineral Survey No. 609, through which the adjacent land and streambed of Lemon Creek was conveyed into private ownership pursuant to the Mining Law. 30 U.S.C. § 22 *et. seq.*

34. Lacano is also predecessor in title and issuer of Statutory Warranty Deeds to certain lots in the JRM subdivision (Plat 2006-15, Juneau Recording District) that include portions of Lemon Creek and are traceable to Patent No. 314853.

35. Plaintiff Nowell is the fee simple owner of record of a part of U.S. Survey No 204, designated Lot 8A as shown on Plat 2009-29 of the Juneau Recording district. Exhibit 2. This land is designated further as Parcel #5B1201060180 by the City and Borough of Juneau. Lot 8A includes a portion of Lemon Creek. Nowell's title is also traceable to Patent No.314583. Exhibit 2. Lemon Creek was not meandered as part of U.S. Survey 204.

36. Plaintiff Eads is the fee simple owner of Lot 4A, a subdivision of Lot 4, Stewart Subdivision of Ole Martin Homestead under Plat filed August 17, 1916, in Book 4 at Page 344, located in the West one-half of Section 26, Township 1 North, Range 1 West, Seward Meridian. Eads' title is traceable to Patent No. 526486, issued April 26, 1916, pursuant to the Homestead Act of 1862, and acts supplemental thereto. Exhibit 3. The legal description of the land granted

in Patent No. 526486 is based upon the GLO's survey of Township 1 North, Range 1 West, Seward Meridian, Alaska, approved June 16, 1914. Eads' property includes a portion of Salmon Creek, which was not meandered by the GLO in preparing the Survey approved June 16, 1914.

37. Prior to Statehood, the conveyance of public land into private ownership required a public survey conducted by the GLO or its successor, the Bureau of Land Management.

38. Public surveys were done according to instructions set forth in Manuals published by the GLO.

39. For example, "Manual of Surveying Instructions for the Survey of the Public Lands of the United States and Private Land Claims, By United States Commissioner of the General Land Office, January 1, 1902", sections 157 and 158, direct that all navigable rivers and tidal streams of any size be meandered when surveyed. Prior and subsequent instructions by the GLO included substantially similar instructions.

40. The GLO Surveying Instructions required the GLO surveyor to make a determination of whether a stream was navigable or tidal and record the boundaries of navigable and tidal streams on the survey in the form of meander lines.

41. Plaintiff Lacano has an agreement with Trucano Construction, Inc. ("Trucano"), to mine gravel on its property. In 2010, Trucano sought a Clean Water Act section 404 dredge and fill permit from the Army Corps of Engineers. As part of the application process, Trucano provided notice to the State of Alaska regarding its intention to mine gravel from Lemon Creek. Defendants, through their Challenged Policy, responded by claiming ownership of the portion of streambed that Lacano holds title to and seeks to mine. Exhibit 4. Defendants' claim of ownership through their Challenged Policy prevents Lacano from engaging in its planned mining

operations. Thus, Lacano has Article III standing to raise its claims against Defendants' Challenged Policy. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

42. Depending on the scope of Defendants' ownership claim, Plaintiff Lacano may also be liable to those purchasers who relied on warranty deeds issued by Lacano for other subdivided properties on Lemon Creek.

43. Defendants have informed Plaintiff Nowell that they claim title to the portion of Plaintiff Nowell's property underlying Lemon Creek. Nowell plans to develop and sell its property on Lemon Creek and cannot proceed until this controversy is resolved. Thus, Nowell has Article III standing to raise its claims against Defendants' Challenged Policy. *Defenders of Wildlife*, 504 U.S. at 560–61.

44. Defendants have claimed ownership to Plaintiff Eads' property pursuant to their Challenged Policy as evidenced by the navigability determination issued by Defendants for Salmon Creek near Seward. Exhibit 5. Defendants' navigability determination and subsequent ownership claim have placed a cloud on Eads' title. Moreover, Defendants have limited Eads' ability to conduct flood mitigation to protect the upland portion of her property by demanding large royalty sums for the removal of sand and gravel from Salmon Creek. Thus, Eads has Article III standing to raise its claims against Defendants' Challenged Policy. *Defenders of Wildlife*, 504 U.S. at 560–61.

CLAIM FOR RELIEF

45. Named Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

46. This action is brought pursuant to 28 U.S.C. § 1331 to establish that Defendants' Challenged Policy is in contravention of the rights acquired by Named Plaintiffs and other class members in property conveyed by the United States to the predecessors of Named Plaintiffs and

other class members' prior to Alaska's statehood. In accordance with the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, this Court may issue declaratory and injunctive relief regarding the rights and other legal obligations and relations of the parties pursuant to the laws of the United States.

47. An actual case or controversy within the jurisdiction of this Court exists. Defendants' assertion of title, through their Challenged Policy, to property owned by Named Plaintiffs and other class members and Defendants' intent to continue to enforce the Challenged Policy against other similarly situated property owners presents a live case and controversy.

48. Named Plaintiffs and class members cannot make full use and enjoyment of their property until this case is resolved.

49. Under the SLA, “[t]he term ‘lands beneath navigable waters’ does not include the beds of streams in lands now or heretofore constituting a part of the public lands of the United States if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the beds of such streams was lawfully patented or conveyed by the United States or any State to any person.” 43 USC § 1301(f).

50. Defendants' claim to title to land beneath navigable waters is set forth in section 6(m) of the Alaska Statehood Act. Section 6 refers to the SLA and this defines the extent of Defendants' claim. Defendants have no greater claim under the Equal Footing Doctrine.

51. Section 6(a) of the Alaska Statehood Act is a savings clause that protects pre-existing rights, including lands patented prior to Statehood. This clause provides: “That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or

shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.”

52. Title to streambeds not meandered in public surveys conducted prior to statehood were granted to private parties prior to statehood and are not part of the State of Alaska’s statehood land grant. Defendants’ assertion of title to these streams is contrary to and a violation of section 2(f) of the SLA, 43 U.S.C. § 1301(f) and sections 6(a) and 6(m) of the Alaska Statehood Act.

53. Defendants’ claim to Named Plaintiffs’ property also controverts the basic principle that a federal patent appropriates land and “has always been held conclusive against all those whose rights did not commence previous to its emanation.” *Burke*, 234 U.S. at 692-693.

54. Accordingly, this Court should declare that Defendants have no title to streambeds that were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to such streambeds was lawfully patented or conveyed by the United States prior to Statehood.

55. Because Named Plaintiffs and other class members have no adequate remedy at law, injunctive relief against Defendants’ Challenged Policy is appropriate. Therefore, in furtherance of Named Plaintiffs’ request for declaratory relief, and for the protection of the broader class Named Plaintiffs seek to represent, Named Plaintiffs are entitled to preliminary and permanent injunctive relief prohibiting Defendants from claiming title to streambeds if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to such streambeds was lawfully patented or conveyed by the United States prior to statehood.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiffs Lacano, Nowell, and Eads, on behalf of themselves and the class they seek to represent, respectfully request the following relief:

A. Entry of judgment declaring that Defendants' Challenged Policy is contrary to and a violation of section 2(f) of the SLA, 43 U.S.C. § 1301(f) and sections 6(a) and 6(m) of the Alaska Statehood Act;

B. Entry of judgment declaring that Defendants have no title to streambeds if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the streambeds was lawfully patented or conveyed by the United States prior to Statehood based upon the public survey;

C. Entry of a preliminary and/or permanent injunction against Defendants prohibiting them from claiming title to streambeds if such streams were not meandered in connection with the public survey of such lands under the laws of the United States and if the title to the streambeds was lawfully patented or conveyed by the United States prior to Statehood based upon the public survey; and

D. Award Named Plaintiffs and class members their costs, expenses, and attorneys' fees in accordance with law, including Federal Rule of Civil Procedure 23(h).

DATED this 20th day of December 2012

Respectfully submitted,

s/ Steven J. Lechner

Steven J. Lechner, CO Bar No. 19853

(*pro hac vice* application pending)

Jessica J. Spuhler, CO Bar No. 41833

(*pro hac vice* application pending)

MOUNTAIN STATES LEGAL FOUNDATION

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Attorneys for Plaintiffs and the class they seek to
represent

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December 2012, I filed the foregoing document using the Court's CM/ECF system. I also served the foregoing document on all the parties by sending true and accurate copies via first class U.S. Mail, postage prepaid, and addressed as follows:

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s/ Steven J. Lechner _____
Steven J. Lechner, Esq.