

MARK CREEK NAVIGABILITY DETERMINATIONS

Name	Author	Year	Navigability Determination
Mark Creek	BLM	March 28, 1980	Navigable and Non-Navigable Waters in the Northway Area, Eastern Alaska
	ANCAB	August 5, 1981	Appeal from the Decision of the Alaska State Director, BLM F-14912-A and F-14912-B
	ANCAB	October 30, 1981	Appeal from the Decision of the Alaska State Director, BLM F-19155-20
	BLM	April 15, 1983	Final Navigability Determination for State Selections in the Upper Chisana and Ladue River Drainage Areas
	BLM	October 5, 1983	Amendment to Final Navigability Determination for Mark Creek in T 13 N, R 20 E. Copper River Meridia
	State of Alaska	October 31, 1983	State Letter to BLM regarding Amendment to Nabesna - SS - FY 83 # 4
	BLM	December 8, 1983	BLM Letter answering State of Alaska regarding the Nabesna Report FY 83 # 4
	BLM	June 24, 1994	Navigable waters on Lands Selecteds under ANCSA, The Statehood, or the Native Allotment, mentioned Mark Creek is Navigable



United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

2620 (932)
F-14912-A
F-19155-20

Memorandum

To: State Director, Alaska

From: Chief, Division of Resources

Subject: Navigable and Nonnavigable Waters in the Northway Area,
Eastern Alaska

Attached is a staff analysis of navigable and nonnavigable waters on lands selected by Northway Natives, Inc. and Doyon, Ltd. in the Northway area, Eastern Alaska. On the basis of this report, we recommend that, within the area selected by the corporations, Nabesna River, Mark Creek, Fish Lake, the unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M., and the unnamed lake in Sections 14-15, 22-26, T. 14 N., R. 19 E., C.R.M., be determined navigable. We also recommend that Moose Creek to the unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M., be determined navigable. The Chisana River was determined navigable on March 22, 1979.

No other water bodies in the area selected by the corporations appear to meet the standards of navigability as set forth in Departmental guidelines and the Alaska Native Claims Appeal Board's decision of December 14, 1979, on the navigability of the Nation and Kandik Rivers.

Your concurrence with these recommendations is respectfully requested.

I Concur,

ACTING

3-28-80
State Director

Enclosure

cc: DM-F with enclosure except maps



United States Department of the Interior

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BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

2620 (NAV)(932)
F-14912-A
F-19155-20

Memorandum

To: Chief, Division of Resources (930)

From: Historian

Subject: Navigable and Nonnavigable Waters in the Northway Area,
Eastern Alaska

On March 22, 1979, the State Director, U.S. Bureau of Land Management, determined the upper Tanana River, the Nabesna River to Northway, and the Chisana River to Scottie Creek, to be navigable waterways. Based upon a factual report on the Nabesna and Chisana River basins which was prepared by this office, the State Director's determinations reaffirmed all but one determination made earlier in connection with land conveyances to Northway Natives, Inc. and Doyon, Ltd. Previously, it was determined that the Nabesna River was navigable to Nabesna Village.

Hitherto the State Director's determinations of navigability and nonnavigability were based solely on Departmental guidelines, notably the so-called "Garner Memorandum" of March 16, 1976. The Alaska Native Claims Appeal Board has, however, recently clarified several principles set forth in the "Garner Memorandum" in its decision of December 14, 1979, on the navigability of the Nation and Kandik Rivers.

In accordance with your request to review previous determinations of navigability in the Northway area in light of the Board's decision, we have again analyzed the physical character and historic uses of waterways in the Northway area, specifically those water bodies located in the area selected by Northway Natives, Inc. and Doyon, Ltd. which are the subject of an appeal now before the Board. The result of the analysis leads us to recommend that, within the area of selection, Nabesna River, Moose Creek, Mark Creek, Fish Lake, the unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M., and the unnamed lake in Sections 14-15, 22-26, T. 14 N., R. 19 E., C.R.M., be determined navigable. We have considered all other water bodies in the area of selection, particularly those illustrated on the State of Alaska's Water Delineation Map as navigable waterways, and found that none meet the criteria of navigability.

For your review we have summarized the pertinent facts relating to our recommendations. Our source of information is the factual report,

dated March 16, 1979, on the area which was used in preparing earlier recommendations. A copy of the report is attached to this memorandum for your perusal in determining whether the current recommendations and supporting rationales are warranted. We have moreover attached U.S. Geological Survey maps which illustrate the area selected by the corporations. Water bodies colored dark blue are those recommended by this office to be determined navigable. Water bodies outlined in red are those considered by the State of Alaska to be navigable.

Economic Conditions

Historically, two spheres of economic activity have developed in the upper Tanana River basin. In the headwaters of the Nabesna and Chisana Rivers, hard-rock and placer mining was the dominant economic activity from the late 1890's to the late 1940's when the Nabesna Mine ceased operations. Small-scale placer mining operations continues at Chisana and vicinity to the present day, and recent discoveries of minerals along the Nabesna River may again lead to a revival of hard-rock mining. Big-game hunting and trapping also occur in the area, and is an important source of income to residents along the Nabesna Road.

In the Northway area, where hundreds of small lakes abound, the dominant economic activity for much of the present century was the fur trade. Until the 1940's, local residents derived much of their income by trapping small fur-bearing animals. The fur trade, principally in muskrat and beaver pelts, continues to flourish in the area, but not to the degree as in former days. Local residents are occasionally employed by nearby government offices and mercantile businesses, and some travel to distant towns and cities for summer employment.

Transportation Systems

The development of different resources in the Nabesna and Chisana River basins required different transportation systems. Mining operations in the first stage of development were adequately served by trails extending to Gulkana on the Richardson Highway and McCarthy on the Copper River & Northwestern Railway. Successful mining operations, particularly hard-rock mining, required a large work force, heavy machinery, and most important, year-round access to the ice-free ports of Cordova and Valdez; hence the construction of a truck road from the Richardson Highway to the Nabesna Mine in 1929-33. In addition, airfields were constructed in 1929 at Nabesna and Chisana for the transport of men and light freight by airplane to the mines.

In contrast, the fur trade in the Northway area was based upon a system of water transportation. Fur traders relied upon small steamboats and large wooden riverboats to transport supplies from Fairbanks to trading posts near Nabesna Village and on the Chisana River. With the construction of the Alaska Highway and Northway airfield in the early 1940's, local communities became dependent upon trucks and airplanes for the delivery of all commodities. And the fur traders began to use airplanes to travel to the small villages.

Today, much of the water-based travel in the Northway area is done in light boats and canoes in connection with subsistence activities. In the past, however, miners and fur traders used the waterways as routes of travel in much heavier boats. Steamboats, barges, launches, riverboats, and pole boats were the customary modes of travel, trade, and commerce on the Tanana River, and nearly all of these crafts were operated with varying degrees of success on the Nabesna and Chisana Rivers. Since World War II, however, most travel on the principal waterways has been conducted in aluminum riverboats, light canoes, and to a lesser extent, rubber rafts. Light canoes and boats are used on the creeks and lakes, principally those adjacent to the Chisana River and the Alaska Highway, in order to obtain small fur-bearing animals.

Nabesna River

Next to the Tanana and Chisana Rivers, the Nabesna River has been and is the most important route of summer travel in the area. The absence of summer trails or roads along the river above Northway indicates significantly the degree to which the lower and middle reaches of the river is relied upon for travel. The historic record reveals that in 1905 and again in 1913 miners ascended the Nabesna River in small steamboats, and failed on both occasions to reach the upper reaches of the river in the steamboats. One party succeeded in ascending the Nabesna River some 25 to 35 miles before grounding the boat. In the summer of 1913, some prospectors in the Chisana gold rush ascended the river in poling boats. Despite great difficulties, one party managed to reach Camp Creek with a poling boat.

In more recent times, local residents frequently ascend the river in light motor-powered boats in connection with subsistence activities. The limit of their travel appears to be the Black Hills, or beyond the area selected by the corporations. In addition, an increasing number of recreation float trips are taking place on the river. People have floated down the river from Nabesna to Northway in canoes, rafts, and kayaks.

In view of the historical evidence, it is clear that Nabesna River as far as the Black Hills affords a route of water travel. If there had been a need, small boats like those customarily used on the Tanana River for commercial purposes, could have been successfully operated on the middle and lower stretches of the Nabesna River by experienced navigators and under the right set of river conditions. If the record fails to reveal few instances of commercial boat traffic on the upper river, it is because this stretch of the river was not a suitable route of travel. Hence the rapid extension of the land transportation system in the Copper River region to the upper Nabesna River. The Nabesna Road more than adequately met the needs of miners, hunters, and trappers on the upper Nabesna River.

Moose Creek and Unnamed Lake System

Together, Moose Creek and the unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M., afford another route of water travel. For many years, local residents maintained a spring fish camp on the banks of the unnamed lake and Fish Lake, and used the former lake and Moose Creek as an alternative route of travel to the navigable Chisana River, especially in the years prior to the construction of the Alaska Highway. The route may also have been used by Indians on Chisana River to return to the camps for the fall fishing season. In 1929, it was reported that local fur traders traveled to the spring camps in the area by motorboat. It is entirely possible that the traders used the creek and lake to reach the camps on Fish Lake and the unnamed lake. There is certainly nothing in the physical character of the creek and the lake to prevent navigation. The creek ranges in width from 50 to 75 feet, and has a water depth of two to three feet in low water stages, and four to five feet in high water stages. In the lake, the water is generally one to three feet deep, although there is a channel with three to five feet deep. Clearly, the creek and lake afford a potential highway of commerce.

Beyond Section 21, T. 14 N., R. 19 E., C.R.M., Moose Creek is very narrow and shallow. The creek swings to the south near Northway, and heads in Chindaglekne Creek in the marshlands just north of the Black Hills. Motorboats may be used on the creek a short distance above Section 21 only in high water stages. Canoes may be used on the creek at any time of the open season. Given the fact that the creek is paralleled by the Northway Junction Road to Northway, it is clear that Moose Creek is not a potential highway of commerce. It is highly unlikely that canoe traffic or even motorboat traffic on the creek would ever have satisfied the economic needs of Northway, one of the largest communities in the upper Tanana River area.

In the case of the unnamed lake in Sections 16, 17, 20, and 21, T. 14 N., R. 19 E., C.R.M., which is drained by Moose Creek, we have found no evidence of boat traffic on the lake, and lack detailed information about its physical character. Given our knowledge of other lakes of comparable size in the area, we may safely conclude that the lake has the capacity to float large river boats. Local residents doubtless hunt and fish on the lake in small canoes. Otherwise there is no reason to use the lake as a route of travel. The Master Title Plats do not illustrate any Native allotments on the lake. In view of the small size of the lake, the propinquity of the Northway Junction Road and settlements, the limited resources about and in the lake, and other factors, the lake is clearly not susceptible to navigation.

Fish Lake

One of the largest lakes in the Northway area, Fish Lake is separated from the unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M., by a narrow, low strip of land. Here is located Kathakne Village, where local Indians traditionally gathered in the summer to

catch fish migrating to and from Fish Lake, Moose Creek, and Chisana River. The lake does not form part of known water transportation system; but given the existence of a summer village on its north bank, people could use the lake in boats for commercial purposes.

Historically, people travel about the lake in small, light boats in the course of duck hunting, fishing, and simply for recreation. The lake is shallow in places, but generally has a water depth of three to five feet --- sufficient to carry a wooden riverboat or pole boat. There are no known obstructions to navigation in the lake. While the lake is generally surrounded by marshland, there are firm banks, especially in Sections 32 and 34, upon which homes may be built. Small stands of commercial-size timber are located near the lake. We lack historic evidence of commercial traffic on the lake; but it is clear that commercial boat traffic could develop on the lake if the need arose. Local residents could use large riverboats to transport firewood for sale, or to haul groceries from the Northway Junction Road to the fish camp.

Mark Creek

From a liberal point of view, Mark Creek could be considered an interconnected slough of Chisana River. The creek heads in Chisana River in Section 31, T. 14 N., R. 20 E., C.R.M., and flows in a single, wide channel through a marshy and lake-dotted country to empty into the Chisana River in its rivermile 5. According to local residents, they have traveled on the creek in light boats for the purpose of hunting and trapping. Like other creeks of comparable width and length in the area, the creek has sufficient depth to accommodate large riverboats. Accessible by the Chisana River, the creek is considered to be an alternative route of water travel, and thus a potential highway of commerce.

The closed slough in Section 31, T. 14 N., R. 20 E., C.R.M., does not meet the criteria of navigability. The slough is accessible by boat via Mark Creek and Chisana River. Small boats may be taken up and down the slough; otherwise there is no place to go.

Unnamed Lake and Channel System

In the same vein, the large unnamed lake in Sections 14-15, 22-26, T. 14 N., R. 19 E., C.R.M., might also be considered an interconnected slough of Chisana River and Mark Creek. The U.S. Geological Survey map (Nabesna D-2), based upon aerial photographs taken in 1952 and 1954 and published in 1955, shows the lake to be connected to Mark Creek by a channel and lake system in Sections 23-25. The Master Title Plats indicate, however, that the channel and lake system ends in the NW 1/4 of Section 25. We have no reason to believe that the channel was not interconnected in 1959.

The lake shores support timber, and thus are probably firm. The lake empties into Chisana River through two wide, deep channels in Section

15. According to one report, local residents use the lake, known to them as "Sucker Lake," for muskrat hunting and for fishing. A Native allotment is located on the lake shore in Section 15, adjacent to Mark Creek. Accessible by water from the Chisana River, the lake is considered to be an alternative route of water travel from Chisana River to Mark Creek in existence in 1959. Local resources are sufficient to warrant the location of a seasonal camp on the lake. The lake and interconnecting channels were, therefore, potential highways of commerce in 1959.

The dead-end sloughs in Sections 23 and 26, and in Sections 24 and 25, are not considered to be navigable waterways. The sloughs are doubtless shallow and narrow. Even were it possible for someone to ascend the sloughs in a riverboat, there would be no place for them to go, as the sloughs terminate in an extensive area of marshland and swamp. Seasonal camps are not likely to have been located on the sloughs; and the limited resources near the sloughs do not warrant speculations that camps will ever be established on the sloughs.

Other Water Bodies

While recognizing that each lake in the Northway area is a unique water body, we must recognize too that the word unique is a relative term, subject to varying interpretations, and that to identify the uniqueness of each and every lake, numbering in the hundreds, requires a level of effort well beyond present needs. Therefore, in order to identify those lakes which may be potential highways of commerce, we propose simply to describe, first, the general characteristics which are common to all of the lakes; second, to classify the lakes in terms of shoreline and surrounding terrain conditions, proximity to communities and routes of travel, and historic uses; and finally, to summarize the rationales behind the recommendations for determinations of navigability and nonnavigability for each category of lakes.

Lakes in the Northway area have much in common. First, all lakes were in their natural and ordinary condition on the date of Statehood. We have found no evidence, direct or indirect, of improvements to navigation. Second, all lakes in the area are very small, by most standards. Only a few are more than two miles in length. The vast majority are less than one mile in length and width. Third, the majority of the lakes are landlocked. Even those that have outlets, are for all practical purposes landlocked, the creeks being very narrow and shallow. Fourth, many if not most of the lakes have sufficient depth to float a large wooden riverboat such as those customarily used on the lower Chisana and Nabesna Rivers and on the Tanana River. Fifth, all of the lakes are accessible with varying degrees of difficulty. All may be reached in the winter by snowmachine and dogsled, or on foot. In fact, most overland travel in this area is done in the winter. In the summer, overland access to the lakes ranges from difficult to extremely difficult --- depending upon the location of the lake in question and the mode of travel. It

is to be noted, however, that many of the lakes are of sufficient size to accommodate landings by airplanes equipped with pontoons. Finally, many if not most of the lakes have been used by local residents in canoes for the purpose of hunting waterfowl or muskrats, or for fishing.

In this connection, it is important to remember that the canoe has been the most effective mode of travel in the development of local resources in or near the lakes. Local residents have traditionally hunted muskrats on the lakes in the spring, when the ice has receded from the shoreline, permitting the use of light canoes along the edges of the lake. Canoes are almost always used in hunting muskrat as well as waterfowl on the lakes. Originally covered with birchbark, and later with canvas, the canoes are very light, and thus may be carried a short distance from the navigable waterways to nearby lakes. Setting low in the water and easy to maneuver, the canoes are the most effective modes of travel on the lakes for the purpose of hunting. Aluminum canoes and riverboats may also be used on the lakes, but it is not presently known with what success. Larger crafts, such as wooden riverboats, are too cumbersome and conspicuous to be used on the lakes when hunting small game. Not surprisingly, the historical record fails to reveal instances of riverboat traffic on the lakes.

Lakes 1

In the area northwest of the confluence of the Nabesna and Chisana Rivers, and southwest of the Tanana River, there are a number of lakes which are least likely to be highways of commerce. These lakes --- Big John Lake, Nuziamundcho Lake, Tsilchin Lake, Joe Lake, Tlechegn Lake, Fish Camp Lake, Tlocogn Lake, Long Lake, and numerous smaller unnamed lakes --- are not located near communities or routes of travel; and are virtually inaccessible in the summer owing to their location in an extensive area of marshland, bogs, swamps, and tundra. One of the largest lakes, Nuziamundcho Lake is about two miles long and about 0.5 mile wide, with its length running in an east-west direction. Another of the larger lakes, Big John Lake is irregularly shaped; it is about 1.5 miles long and 1.5 miles wide; it is situated at the base of Big John Hill (elevation 1900') while hills, 30 feet high, border its eastern perimeter. The remaining lakes, including Tlocogn Lake, Fish Camp Lake, and Tlechegn Lake, are circular in shape. Tlocogn Lake is about one mile long and 0.5 mile wide. The others are smaller.

All but two of the lakes in this area are landlocked. Both Fish Camp Lake and Big John Lake have outlets --- small and narrow creeks. The creek draining Fish Camp Lake empties into a slough of the Tanana River. The creek flowing into Big John Lake heads in numerous small lakes located in the marshlands and tundra in the south.

With the exception of Big John Lake and Nuziamundcho Lake, the lakes are bordered by swamp, tundra, or marshland. Big John Lake abuts a wooded area, so it is likely that its northern shoreline is generally

firm. Swamp or marshland prevails on its southern perimeter. Nuziamundcho Lake is bordered by swamp or marshland on its eastern, western, and northern perimeter, and by wooded land interspersed with marshland on its southern perimeter.

For all practical purposes, the lakes are inaccessible by land or water. Each lake is located a considerable distance from the customary routes of travel: the Tanana River and the Alaska Highway. Distances range from less than 0.5 mile in the case of Tlocogn Lake to more than four miles in the case of Big John Lake. Nuziamundcho Lake is located about two miles as the crow flies from the Tanana River.

Very little activity occurs on or near the lakes. The U.S. Geological Survey map (Tanacross A-3) dated 1948 illustrates several cabins on the west bank of Tlechehn Lake. Evidently the cabins are no longer occupied, for the only record of activity in this area concerns one or two people traveling from the Alaska Highway in the winter in order to trap animals. Master Title Plats do not illustrate any Native Allotments or other land uses in this area. Fishing and muskrat hunting may have attracted some people to the lakes in the past. And there is a possibility that timber near Big John Hill may someday be harvested. No other natural resources of commercial value or prospective value are known to exist in this area.

Clearly, none of the lakes in this area affords a potential highway of commerce. There are no known resources of value in the area; or at least none of sufficient value to sustain a community, or seasonal camp. In the event that local resources proved valuable, the lakes would not be critical in the development of the resources. In view of the rugged and wet terrain, development of local resources would require construction of a trail or road from the Tanana River or the Alaska Highway. The construction of a summer road from the Alaska Highway is most unlikely in view of the expense that a bridge over the Tanana River would entail. The alternative would be to travel to this area in the winter. The record indicates that most overland travel in this area is in fact done in the winter. People might reach some of the lakes in the summer by traveling short distances overland from the Tanana River with a light canoe. It is highly unlikely that anyone would portage from the river to the lakes with a heavy riverboat. Even if they did, there is simply nowhere to go on the lake. Riverboat traffic on the lakes has not occurred, and it is not likely to occur in the future.

Lakes 2

Similarly, lakes located in the uplands south of Northway and north of the Black Hills are not likely to be potential highways of commerce. These lakes---Birch Lake, Dog Lake, Hillside Lake, Tushaday Lake, Pullin Lake, Long Lake, Chidek Lake, and various unnamed lakes---are not, with one exception, located immediately adjacent to communities or routes of travel. However, they are accessible by land in the summer and do have shorelines suitable for improvements. Most of the

lakes tend to be long and narrow, trending in a northwest direction. Dog Lake, the largest one in this area, is about 2.5 miles long, and less than 0.5 mile wide. The others are significantly less than two miles long, and all are 0.5 mile or less in width. All but two are landlocked. Dog Lake is drained on its southeast by a small creek which flows northward to empty into Charlieskin Creek. Long Lake is drained on its southeast and by a short creek emptying into Fish Lake.

The lakes are located in a timbered area, and thus are likely to have firm shorelines. Low hills flank the lakes in the southwest. Long Lake is bordered by marshland or tundra only on its southeast perimeter.

Being landlocked, most of the lakes in this area are inaccessible by water. The creeks draining Dog Lake and Long Lake are certainly too shallow for boat traffic. However, most of the lakes are accessible by land from the Northway Junction Road. As a matter of fact, an unimproved road extends from the Northway road to Pullin Lake. There is little in the topography of this area to prevent the construction of a road or trail from the Northway road to the other lakes. Construction of a road or trail from the Nabesna or Chisana Rivers or from the Alaska Highway to this area is highly unlikely, due to extensive marshlands and bog lakes in the east, and the necessity of a bridge over Chisana River. A road or trail from the Nabesna River is even less likely. If a road were constructed, it would most likely be a feeder to the Northway Junction Road. Pullin Lake is about two miles from the road. Dog Lake and Birch Lake are located about five miles and seven miles, respectively, from the Northway road.

Both Hillside Lake and Dog Lake are used by local residents for the purpose of fishing, trapping, and hunting. Other lakes in this area may support similar activities. Several Native allotments are located on Dog Lake; one on Hillside Lake; and one straddles the land separating Pullin Lake and Long Lake. Pullin Lake was once used for recreation purposes, and perhaps as a source of water for military facilities; it was later used as a garbage dump.

Again, none of the lakes in this area affords a potential highway of commerce. Located only a short distance from the Northway Junction Road, the lakes may someday be reached by road, as is Pullin Lake today. Systematic development of resources, whether timber or minerals, in the area would require the construction of a year-round road from Northway. While the lakes may one day support homes on its shores, summer access to the lakes would be dependent upon a road or by airplane on pontoons. The development of local resources would not be dependent upon riverboat traffic on such small lakes. People could drive around and across Dog Lake, for example; otherwise there is no place to go on the lake.

Lakes 3

Lakes near Northway and Northway Village are also unlikely highways of commerce. Including Skate Lake, Hudeuc Lake, Pauline Lakes, Tontethaimund Lake, Cemetery Lake, Andrew Lake, the unnamed lake in Sections 23-26, T. 14 N., R. 18 E., C.R.M., the unnamed lake in Sections 2 and 3, T. 13 N., R. 18 E., Section 35, T. 14 N., R. 18 E., C.R.M., and various other unnamed lakes, the lakes are very small, the majority being 0.5 mile in length and width. The largest lake, Tontethaimund Lake is about 1.75 miles long, and less than 0.5 mile wide.

Bank characteristics vary considerably from one lake to another. More than half of the shoreline of the unnamed lake in Sections 23-26, T. 14 N., R. 18 E., C.R.M., are solid. In the case of Skate Lake, the shores are gradual and solid, the banks being five feet high in some places. In contrast, the banks of Tontethaimund Lake are marshy, solid in a few places only.

Although all are landlocked, the lakes are easily accessible to local residents by road or trail. One may reach Tontethaimund Lake from the Northway Junction Road or from Moose Creek by a short portage. The Pauline Lakes may be reached by portaging from Tontethaimund Lake or from a slough of the Nabesna River. Several of the lakes are within walking distance of Northway Village and Northway.

With communities nearby, much activity occurs on the lakes. Northway Village is virtually located on the banks of Skate Lake; thus it is not surprising to find considerable use of canoes, light motorboats, and floatplanes on this lake. Local residents use small boats to hunt muskrats on Tontethaimund Lake and on the unnamed lake in Sections 23-26, T. 14 N., R. 18 E., C.R.M. Native allotments are numerous in this area. Some are located on the southeast shore of Tontethaimund Lake, adjacent to the Northway Junction Road; on the southwest shore of the north Pauline Lake; on the north and east banks of the unnamed lake in Sections 2 and 3, T. 13 N., R. 18 E., and Section 35, T. 14 N., R. 18 E., C.R.M.; and on the north shore of the unnamed lake in Section 8, T. 14 N., R. 19 E., C.R.M.

Considering all of these factors - the proximity of communities and routes of travel, shoreline characteristics, water depth, local resources, etc., one would at first glance expect the lakes to be highways of commerce. Quite the contrary is true. Local residents may hunt, fish, and play on the lakes, but they do not rely upon the lakes as routes of travel. Rather, the communities rely upon the Northway Junction Road-Alaska Highway system as well as airplanes for travel, trade, and commerce. No amount of riverboat traffic, if it were ever to develop on the lakes, would meet the needs of the local communities. Clearly, none of the lakes in this area are potential highways of commerce.

Lakes 4

Immediately adjacent to Chisana River, Mark Creek, and the Alaska Highway, all established routes of travel, Shashamund Lake, Thadthamund Lake, Eliza Lake, Steve Lake, Yarger Lake, Tenmile Lake, the unnamed lake in Sections 3 and 4, T. 13 N., R. 20 E., C.R.M., the unnamed lake in Sections 33 and 34, T. 14 N., R. 20 E., C.R.M., and numerous unnamed lakes in this area are also unlikely highways of commerce. Shashamund Lake is little more than one mile long, and less than 0.75 mile wide. Eliza Lake, Yarger Lake and Deadman Lake are all less than 1.5 miles long, and about one mile wide. Tenmile Lake is about two miles long, and 0.5 mile wide. Other lakes in this area are smaller. The majority of the lakes are landlocked. Those that are not, are drained by very small creeks.

Shashamund Lake and Thadthamund Lake appear to be bordered by marshlands. It is doubtful that much of their shorelines are solid. The larger lakes located between the Alaska Highway and Chisana River have varying shoreline characteristics. The shorelines are generally firm on the eastern perimeters, and marshy on the western perimeters. In the case of the unnamed lake in Sections 3 and 4, T. 13 N., R. 20 E., C.R.M., the marsh extends five to 40 feet in and around the lake. Marsh also extends 15 to 20 feet in and around the two unnamed lakes in Sections 33 and 34, T. 14 N., R. 20 E., C.R.M. Except on its western shore, where a very narrow strip of solid ground exists, marshland is characteristic of the shore of Tenmile Lake.

Despite a rather steep bank and dense vegetation, lakes adjacent to the Alaska Highway are readily accessible by land from the highway. Unimproved roads extend to campgrounds near Deadman Lake and Yarger Lake, and a road extends to a point near Eliza Lake. These lakes may also be reached from the Chisana River by short portages. The portages to Steve Lake and Eliza Lake are probably less than 100 yards. Access to Deadman Lake, Tenmile Lake, Yarger Lake, and the two large unnamed lakes would be very difficult, as marshland and sloughs would have to be crossed. Shashamund Lake and Thadthamund Lake may be reached by means of portages from the Nabesna River on the Chisana River. The same may also be true for lakes near Mark Creek.

Deadman Lake, Eliza Lake, Steve Lake, and Yarger Lake are subject to moderate amounts of recreation and subsistence activity. Gaining access to the lakes from the roads and campgrounds, people often hunt ducks and fish as well as drive light motorboats on Deadman Lake and Yarger Lake. Lakes adjacent to the Alaska Highway are also subject to muskrat hunting. Local residents may also hunt and fish on Shashamund Lake, Thadthamund Lake, and other lakes immediately west of Chisana River and Mark Creek. One Native allotment is located on Yarger Lake; one on Eliza Lake; one on Steve Lake; and one on Shashamund Lake.

None of the lakes in this area are considered to be potential highways of commerce. Lakes near the Alaska Highway are readily accessible from the road, and the record indicated that these lakes are

customarily reached overland from the highway. The lakes may also be reached from the Chisana River, but only by crossing rough wet terrain. The same is true for lakes immediately adjacent to the Chisana River or Mark Creek. In all cases, it is highly improbable that riverboats would be used on the lakes. The resources are too limited, and the lakes too small, for use in travel, trade, and commerce. In the event that commercial resources were discovered, development would certainly hinge upon the construction of a summer, or more likely, a winter road. With access to Chisana River available from the Chisana River bridge on the Northway Junction Road, it is extremely doubtful that any of the lakes near the Alaska Highway will ever figure in a route of travel to the Chisana River.

C.M. Brown



IN REPLY REFER TO:

United States Department of the Interior

ALASKA NATIVE CLAIMS APPEAL BOARD
P.O. BOX 2433
ANCHORAGE, ALASKA 99510

NORTHWAY NATIVES, INC.

ANCAB VLS 78-57

Decided August 5, 1981

Appeal from the Decision of the Alaska State Director,
Bureau of Land Management F-14912-A and F-14912-B.

Partial Decision; Affirmed in Part; Modified in Part.

1. Alaska Native Claims Settlement Act: Navigable Waters--Alaska: Navigable Waters: Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

- 2. Alaska Native Claims Settlement Act: Administrative Procedure: Decision to Issue Conveyance--
Alaska Native Claims Settlement Act: Administrative Procedure: Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

3. Alaska Native Claims Settlement Act: Alaska Native Claims Appeal Board: Appeals: Dismissal

Absent reasons justifying continuance of an appeal as to a particular issue, an appeal will be dismissed when the appellant before the Board withdraws its appeal of that issue.

APPEARANCES: Peter J. Aschenbrenner, Esq., Aschenbrenner and Savell, and David Wolf, Esq., Keane, Harper, Pearlman and Copeland, for appellant; Elizabeth S. Ingraham, Esq., for Doyon, Limited; M. Francis Neville, Esq., Office of the Regional Solicitor, for Bureau of Land Management;

Shelley J. Higgins, Esq., and Martha T. Mills, Esq.,
Department of Law, for State of Alaska.

OPINION BY ALASKA NATIVE CLAIMS APPEAL BOARD

Summary of Appeal

Appellant asserted as one of the issues appealed, the failure of the Bureau of Land Management to determine that various water bodies were navigable and to exclude the submerged lands of such respective water bodies from the Decision to Issue Conveyance.

The Board held that when the Bureau of Land Management's review of navigability shows a factual basis for redetermining the appealed water bodies to be navigable within established guidelines, the Board will decide that such water bodies are navigable.

The Board accepted appellant's withdrawal of appeal as to the remaining water bodies unaffected by Bureau of Land Management review and redetermination, and as there were no objections, dismissed the appeal as to the issues of navigability.

Jurisdiction

The Alaska Native Claims Appeal Board, pursuant to delegation of authority to administer the Alaska Native Claims Settlement Act, 85 Stat. 688, as amended, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977) (ANCSA), and the implementing regulations in 43 CFR Part 2650 and 43 CFR Part 4, Subpart J, hereby makes the following findings, conclusions and decision.

Procedural Background

Northway Natives, Inc. (Northway), filed village selection applications F-14912-A, as amended, on Oct. 22, 1974, and F-14912-B, as amended, on Dec. 12, 1974, for lands located near the Village of Northway. The applications were filed under the provisions of § 12(b) of the Alaska Native Claims Settlement Act (ANCSA), Dec. 18, 1971 (85 Stat. 688, 701; 43 U.S.C. §§ 1601, 1611(a) (Supp. V, 1975)).

In response to these applications the Bureau of Land Management (BLM) published in 43 FR 28051 (June 28, 1978), its Decision to Issue Conveyance (DIC) of land to Northway. Northway appealed on July 28, 1978. One issue raised by Northway in Statement of Reasons was that the BLM erred in

its June 26, 1978, decision requiring Northway to select the beds of certain water bodies and sua sponte approving said lands for conveyance to Northway.

On Feb. 27, 1980, BLM amended the DIC dated June 26, 1978, by its Decision entitled Decision of June 26, 1978 Recinded [sic] in Part Additional Lands Proper for Village Selection Approved for Interim Conveyance. In this amendment BLM published notice that the following additional water bodies were determined to be nonnavigable and therefore, the lands underlying these water bodies were public lands available for selection pursuant to § 12(a) of ANCSA:

Fish Lake;
 Unnamed lake in NW $\frac{1}{2}$, Sec. 2, T. 13 N., R. 19 E.,
 Copper River Meridian;
 Open Creek and all lakes it flows through;
 Charleskin Creek and all lakes it flows through.

A conference was held Jan. 21, 1980, to set a briefing schedule taking into account difficulties in segregation of numerous unnamed water bodies and possible impact of pending amendments to ANCSA regarding submerged lands. The Board ordered the following action and briefing schedule:

a. BLM, with assistance from Northway and Doyon shall segregate water bodies affected by RLS 77-1, RLS 78-1 and VLS 78-57 within thirty (30) days from the date of this Order.

b. BLM shall have up to sixty (60) days from the date of this Order to review RLS 77-1, RLS 78-1 and VLS 78-57 and to serve upon all parties the basis for determining the water bodies on appeal to be navigable or nonnavigable.

c. Appellants shall have sixty (60) days from the date of service of BLM's response to file on each appeal: (1) a request to suspend action on certain water bodies, as desired, pending passage of the Submerged Lands Amendment; (2) a statement of reasons pertaining to those water bodies remaining in active appeal status; and (3) any other briefs the parties may wish to file.

As directed the BLM filed its Review and Basis for Navigability Determination on Mar. 28, 1980. Upon review the following water bodies were determined to be navigable:

Nabesna River
 Mark Creek
 Fish Lake
 Unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M.
 Unnamed lake in Sections 14-15, 22-26, T. 14 N., R. 19 E., C.R.M.
 Moose Creek to the unnamed lake in Sections 21 and 28, T. 14 N., R. 19 E., C.R.M.
 Chisana River

Of the above-named water bodies, only Fish Lake had been found to be nonnavigable in BLM's amendment of Feb. 27, 1980, to the DIC. No other water bodies in the selection area were determined to be navigable.

The Board by order dated Aug. 21, 1980, approved a stipulation by the parties as follows:

On July 10, 1980, the Bureau of Land Management, State of Alaska and Northway Natives, Inc., filed a Stipulation to allow Northway Natives, Inc. to add to its appeal, concerning whether or not certain lands are under navigable waters, all lands designated by the State of Alaska on its water delineation maps of 1978 and June 25, 1979, which were not included in Northway Natives, Inc.'s original appeal in November of 1978.

The effect of the Board's order was to include in the appeal the status of those water bodies which were not included in the original appeal.

In its Response to ANCAB Order of January 21, 1981, dated Apr. 8, 1981, Northway stated that it "desires to withdraw its appeal on the navigability issues." Northway provides the following basis and condition to the withdrawal:

Its withdrawal of its appeal, however, is based on the understanding that the BLM decisions concerning navigability as set forth in the decision of interim conveyance of June 26, 1978, and as modified by the BLM's decision attached to solicitor's pleading in this matter entitled Review and Basis for Navigability Determinations dated March 28, 1980, are the decisions on which Northway Natives, Inc. will receive its interim conveyance with respect to the navigability issues. Further, by dropping its appeal in this ANCAB proceeding, Northway Natives, Inc. does not waive any rights it has under Section 901 of Public Law 96-487. Northway Natives, Inc. therefore requests that ANCAB issue an order dismissing the navigability issues from this appeal based on the two foregoing understandings of Northway.

Northway's Response at 2-3.

Decision

The appeal record shows that documents upon which Interim Conveyance (IC) would be based consist of the DIC dated June 26, 1978, and the decision of the BLM entitled Decision of June 26, 1978 Recinded [sic] in Part Additional Lands Proper for Village Selection Approved for Interim Conveyance, dated Feb. 27, 1980. The Review & Basis for Navigability Determinations, filed Mar. 28, 1980, is not a decision of the BLM for purpose of IC. Therefore, the Board is not in a position to accept Northway's understanding regarding the effect of the review dated Mar. 28, 1980, without taking final action for the Department.

In Appeal of Bristol Bay Native Corporation, 4 ANCAB 355, 87 I.D. 341 (1980) [VLS 80-2], the Board held that:

Where the BLM has redetermined that water bodies which are the subject of an appeal pending before the Board are navigable, and where the Board finds that the facts in the record upon which BLM made its redetermination meet the essential elements of navigability enunciated in Appeal of Doyon, Ltd., 4 ANCAB 50, 86 I.D. 692 (1979) [RLS 76-2], and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

87 I.D. at 346.

The Board also held that:

[F]or purposes of clarification, * * * redetermination by the BLM of navigability of water bodies while jurisdiction over such water bodies is in the Alaska Native Claims Appeal Board is not a 'decision' of the BLM, and notice is not required to be published pursuant to 43 CFR 2650.7.

87 I.D. at 345.

Here, the BLM's review and resulting redetermination of navigability of certain water bodies listed herein was filed pursuant to the Board's order dated Jan. 22, 1980, while the Board retained jurisdiction over the issue of navigability and lands underlying water bodies affected by Northway's appeal with respect to the issue of navigability.

In this appeal, the Board finds that the record upon which BLM relies for its redetermination of Mar. 28, 1980, presents facts concerning use and susceptibility of use which meet the essential elements of navigability enunciated in Appeal of Doyon, Limited, 4 ANCAB 50, 86 I.D. 692 (1979) [RLS 76-2]. The Board further finds that the record discloses no dispute to the facts alleged in support of a finding of navigability.

Accordingly, the Board finds Nabesna River, Mark Creek, Fish Lake, the unnamed lake in Secs. 21 and 28, T. 14 N., R. 19 E., C.R.M., the unnamed lake in Secs. 14-15, 22-26, T. 14 N., R. 19 E., C.R.M., Moose Creek to the

unnamed lake in Secs. 21 and 28, T. 14 N., R. 19 E., C.R.M., and the Chisana River to be navigable. The BLM is hereby Ordered to exclude these water bodies from conveyance under ANCSA to Northway and Doyon. The Board has authority under 43 CFR 4.1(b)(5) to "consider and decide finally for the Department appeals to the head of the Department." Such finding by the Board is not a decision of the BLM, and notice thereof is not required to be published pursuant to 43 CFR 2650.7. However, the Board's finding does govern the interim conveyance to be issued to Northway.

[1] Where the BLM has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the BLM made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

[2] Redetermination by the BLM of navigability of water bodies while jurisdiction over the subject water bodies is in ANCAB, is not a "decision" of the BLM, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

The Board's finding of the navigability of certain water bodies, based on BLM's determination, requires that the affected submerged lands of these water bodies will be excluded from the interim conveyance. The Board must now examine Northway's withdrawal of its appeal of navigability as to the remaining water bodies. The Board accepts Northway's above-referenced response filed on Apr. 10, 1981, as withdrawing from this appeal the issue of navigability of the remaining water bodies within the selected lands.

Acceptance of Northway's voluntary withdrawal of the remaining issues of navigability provides the basis for the Board to dismiss those issues from the appeal. (See Appeal of Kenneth Arndt, 3 ANCAB 127 (1979) [VLS 78-34]; Appeal of Al L. Weathers, 3 ANCAB 165 (1979) [VLS 79-1].).

The Board notes Northway's reference to provision of § 901(b) of the Alaska National Interest Lands Conservation Act, P.L. 96-487, 94 Stat. 2371 (1980) (ANILCA), which states:

No agency or board of the Department of the Interior other than the Bureau of Land Management shall have authority to determine the navigability of water covering a parcel of submerged land selected by a Native Corporation or Native Group pursuant to the Alaska Native Claims Settlement Act unless a determination by the Bureau of Land Management that the water

covering a parcel of submerged land is not navigable was validly appealed to such agency or board prior to the date of enactment of this Act. The execution of an interim conveyance or patent (whichever is executed first) by the Bureau of Land Management conveying a parcel of submerged land to a Native corporation or Native Group shall be the final agency action with respect to a decision by the Secretary of the Interior that the water covering such parcel is not navigable, unless such decision was validly appealed prior to the date of enactment of this Act to an agency or board of the Department of the Interior other than the Bureau of Land Management. [Emphasis added.]

No question has been raised as to the Board's jurisdiction over the appealed navigability issues in this appeal, or as to the fact that, without a timely appeal by Northway, BLM's DIC would become final for the Department under 43 CFR 2650.8.

This appeal predates the passage of ANILCA. Therefore, the appeal is properly within the jurisdiction of the Alaska Native Claims Appeal Board.

There are no other appellants in this appeal and no parties of record before this Board have opposed the appellant's withdrawal of its appeal as to the issues of navigability. No reasons justifying further proceedings on the navigability issues are apparent from the record.

[3] Absent reasons justifying continuance of an appeal as to a particular issue, an appeal will be

dismissed when the appellant before the Board withdraws its appeal of that issue.

Based upon the above findings and conclusions, Northway's request to withdraw the remaining issues of navigability from this appeal is granted. The Board hereby dismisses this appeal from BLM's determination of navigability of water bodies within lands selected under Northway's above-referenced applications in the DIC except as modified by the Board's decision herein.

The following water bodies within Northway's selection are found to be navigable based on the BLM's decision of June 26, 1978, and the Board's findings in this decision:

1. Tanana River and all its interconnecting sloughs.
2. Chisana River and all its interconnecting sloughs.
3. Nabesna River.
4. Mark Creek.
5. Fish Lake.
6. Unnamed lake in Secs. 21 and 28, T. 14 N., R. 19 E., C.R.M.
7. Unnamed lake in Secs. 14-15, 22-26, T. 14 N., R. 19 E., C.R.M.
8. Moose Creek to the unnamed lake in Secs. 21 and 28, T. 14 N., R. 19 E., C.R.M.

No other water bodies in the Northway selection area are found to be navigable.

This appeal record shows that all issues raised by the appellant, other than the four mentioned below, have been resolved by Board action, stipulation or withdrawal of appealed issues by the appellant. A review of the record shows that the following have been considered and were resolved:

(1) The Native allotment NAF-027296 Parcel A is resolved as part of the broader issue of U.S. Survey No. 2630 by the Board's decision of Feb. 26, 1981, which excluded the Native allotment.

(2) The easement issues in this appeal were considered to be mooted by the BLM's Modification of the Decision of June 26, 1978, to conform easements and Appeal of Northway Natives, Inc., ANCAB EC 79-1.

(3) The issue of Rejection of Selections Bordering Tanana River was withdrawn by stipulation between the BLM and Northway, filed Apr. 2, 1979. Item 6 of the Stipulation and Report on Status of Negotiations reads:

The BLM and Northway agree that the DIC under appeal did not affect the Northway selections bordering

the Tanana River appealed in Section VII of the Statement of Reasons. No adjudication of these selections has been made by the BLM. Northway therefore withdraws its appeal regarding these selections.

(4) On Aug. 1, 1979, Northway identified the issue of valid existing rights as one of eight outstanding issues and stated:

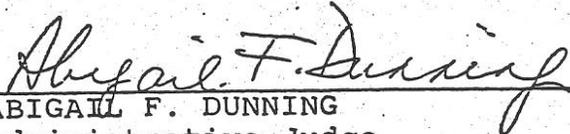
8. VALID EXISTING RIGHTS.

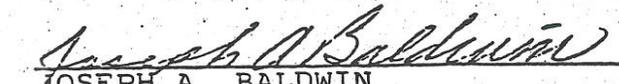
Northway has requested that ANCAB enter an order stating that the BLM has listed all valid existing rights known to it and to include in the order the list of valid existing rights. Also, Northway asked whether or not the State considered the road from the Alaska Highway to the airport at Northway and from the airport to the village site was a valid existing right to the State of Alaska. The State of Alaska has come forward and said that it is and Northway requests that ANCAB order that it be listed as a valid existing rights.

The roadway identified in this appeal has been acknowledged by a stipulation approved by the Board as a valid existing right.

It appears that all issues raised in this appeal have been resolved, and the appeal should be finally dismissed. However, in recognition of the number and complexity of issues raised by this appeal, the dismissal will not be effective until thirty (30) days from the date of this decision. During that period, the parties may advise the Board

of any issues raised on appeal which they believe have not been decided.


ABIGAIL F. DUNNING
Administrative Judge


JOSEPH A. BALDWIN
Administrative Judge

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2620/2651/75.4 (961)
F-030188 etc. (1)
F-14912-A
F-14912-B
F-14912-EE

State office
555 Cordova Street, Pouch 7-512
Anchorage, Alaska 99510

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 26 1978

*RB 6/16/78
MAD 6/19/78
RB 6/23/78
HRU*

DECISION

State of Alaska	:	F-030188, F-028020
Division of Lands	:	F-028021, F-028022
323 East Fourth Avenue	:	F-028023
Anchorage, Alaska 99501	:	State Selections
	:	
Northway Natives Incorporated	:	F-14912-A
P.O. Box 441	:	F-14912-B
Northway, Alaska 99764	:	Village Selections
	:	
Doyon, Limited	:	
First and Hall Streets	:	
Fairbanks, Alaska 99701	:	

State Selection Application Rejected in Entirety
State Selection Applications Rejected in Part
Village Selection Application Rejected in Part
Lands Proper for Village Selection
Approved for Interim Conveyance or Patent

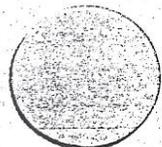
I. STATE SELECTION APPLICATION REJECTED IN ENTIRETY
STATE SELECTION APPLICATIONS REJECTED IN PART

The State of Alaska filed general purposes selection applications F-028020, F-028021, F-028022 and F-028023, all as amended, on June 23, 1961, pursuant to section 6(b) of the Alaska Statehood Act; and community grant selection application F-030188 on August 1, 1962, pursuant to section 6(a) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 340; 48 U.S.C. Ch. 2, secs. 6(a) and 6(b) (1970)). These applications selected lands near the Native village of Northway.

The lands encompassed in U.S. Survey 2781 and U.S. Survey 4063 are under Public Land Order 1732, dated September 17, 1958, which withdrew and reserved lands for use as an administrative

I. F-028020, F-028021, F-028022, F-028023

*ADP-2
esb*



site and therefore were unavailable at the time of selection by the State of Alaska. Accordingly, State selection application F-030188 must be and is hereby rejected, as to the following described lands:

STATE SELECTION F-030188

14N19E U.S. Survey No. 2781, Alaska, Alaska Fire Control Service Administrative Site, situate on the northeasterly side of Northway Airport Road about 1/6 mile southwesterly of the intersection with the Alaska Highway at Mile 1265.

Containing 1.43 acres.

4 U.S. Survey No. 4063, Alaska, situated at the junction of the Alaska Highway and the Northway Airport Road.

Containing 13.53 acres.

Lots 2 and 3 of U.S. Survey 4375 were withdrawn for military purposes under Public Land Orders 1139 and 765, respectively, at the time of selection by the State of Alaska and were therefore unavailable. These Public Land Orders were subsequently revoked by Public Land Order 5458 and withdrawn for Native selection. Accordingly, State selection application F-030188 must be and is hereby rejected as to the following described lands:

STATE SELECTION F-030188

14N19E Lots 2 and 3 of U.S. Survey No. 4375, Alaska, located on both sides of the Alaska Highway at the junction of Northway Airport Road and the Alaska Highway at Mile 1265.

Containing 9.36 acres.

On December 18, 1971, section 11 of the Alaska Native Claims Settlement Act (85 Stat. 688, 696; 43 U.S.C. 1601, 1610 (Supp. V, 1975)), withdrew the lands surrounding the village of Northway, including the lands in the subject State selections, for Native selection.

The following described lands, which are State selected, have been properly selected under village selection application F-14912-B as set forth in part II of this decision. Accordingly, State selection applications F-030188, F-028020,

F-028021, F-028022 and F-028023 must be and are hereby rejected, as to the following described lands:

State Selection F-030188

14N19E

Lot 1 of U.S. Survey No. 4375, Alaska, located on both sides of the Alaska Highway at the junction of Northway Airport Road and the Alaska Highway at Mile 1265.

Containing 130.68 acres.

14N19E

U.S. Survey No. 2782, Alaska, embracing lots 1 and 2, situated on the northerly side Alaska Highway at junction of Northway Airport Road and Alaska Highway at Mile 1265.

Containing 5.00 acres.

STATE SELECTIONS F-028020 AND F-028021

Copper River Meridian, Alaska (Unsurveyed)

T. 13 N., R. 20 E.

- Sec. 1, excluding U.S. Survey 4019;
- Sec. 2, excluding U.S. Survey 4019 and Native allotment F-12952 Parcel C;
- Sec. 3, all;
- Secs. 4 and 5, excluding Chisana River;
- Secs. 6, 7 and 8, all;
- Sec. 9, excluding Native allotment F-12957 Parcel A and Chisana River;
- Sec. 10, excluding U.S. Survey 4288 and Chisana River;
- Sec. 11, excluding U.S. Survey 4019 and Native allotments F-12117 Parcel A and F-12952 Parcel C;
- Sec. 12, excluding U.S. Survey 4019 and Native allotment F-12117 Parcel A;
- Secs. 13 and 14, all;
- Sec. 15, excluding Chisana River and its interconnecting slough;
- Sec. 16, excluding Native allotments F-12947 Parcel A and F-12957 Parcel A, Chisana River and its interconnecting sloughs;
- Secs. 17 to 20, inclusive, all;
- Sec. 21, excluding Chisana River and its interconnecting sloughs;
- Sec. 22, excluding the interconnecting slough of the Chisana River;
- Sec. 23, all;

Sec. 24, excluding U.S. Survey 3685;
 Secs. 25, 26 and 27, all;
 Secs. 28 and 29, excluding Chisana River and its inter-
 connecting sloughs;
 Sec. 30, all.

Containing approximately 18,287[✓] acres.

STATE SELECTIONS F-028022 AND F-028023

14N20E
 U.S. Survey No. 2785, Alaska, embracing lots 1, 2 and
 3, situate on the westerly side Alaska Highway at
 Mile 1257.2, excluding Native allotment F-14765
 Parcel C.

Containing approximately 6.00 acres.

Copper River Meridian, Alaska (Unsurveyed)

T. 14 N., R. 20 E.

Secs. 4 to 9, inclusive, all;
 Sec. 16, all;
 Sec. 17, excluding Native allotment F-12945;
 Sec. 18, excluding U.S. Survey 4373 and Native allotments
 F-13566, F-13068 and F-013580 Parcel B;
 Sec. 19, excluding U.S. Survey 4177 and Native allotments
 F-014914 Parcel A, F-013580 Parcel B, F-13068 and
 Chisana River;
 Sec. 20, excluding U.S. Survey 4145B (Native
 allotment F-12145 Parcel 2), and Native
 allotments F-12945 and F-15052;
 Sec. 21, excluding U.S. Survey 3338, U.S. Survey 3338A
 and Native allotment F-15052;
 Secs. 22, 26 and 27, all;
 Sec. 28, excluding U.S. Survey 3338, U.S. Survey 3338A,
 U.S. Survey 3130, U.S. Survey 4145B (Native
 allotment F-12145 Parcel 2), U.S. Survey 3686,
 U.S. Survey 4360, U.S. Survey 5563 (Native
 allotment F-9632 Parcel A), Public Land
 Order 3689 and Native allotment F-12117
 Parcel B;
 Sec. 29, excluding U.S. Survey 4145B (Native
 allotment F-12145 Parcel 2) and Native
 allotment F-14765 Parcel B;
 Secs. 30 and 31, excluding Chisana River and its interconnecting
 sloughs;
 Sec. 32, excluding Native allotment F-14765 Parcels A
 and B, and Chisana River;
 Sec. 33, excluding U.S. Survey 2784, U.S. Survey 2785,

U.S. Survey 4360, Public Land Order 3689 and
Native allotment F-14765 Parcel C and Chisana
River;
Secs. 34, 35 and 36, all.

Containing approximately 13,876[✓] acres.

Aggregating approximately 32,329 acres of which approximately 32,305 acres were properly selected by the State of Alaska prior to the lands being withdrawn by the Alaska Native Claims Settlement Act. When this decision becomes final, State selection application F-030188, rejected in its entirety, will be closed of record. Further action on State selection applications F-028020, F-028021, F-028022 and F-028023, as to those lands not rejected herein, will be taken at a later date.

II. VILLAGE SELECTION APPLICATION REJECTED IN PART
LANDS PROPER FOR VILLAGE SELECTION
APPROVED FOR INTERIM CONVEYANCE OR PATENT

Northway Natives Incorporated filed village selection applications F-14912-A, as amended, on October 22, 1974, and F-14912-B, as amended, on December 12, 1974, under the provisions of section 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (Supp. V, 1975)), for lands located near the village of Northway, including all of Public Land Order (PLO) 3689.

On June 16, 1965, PLO 3689 withdrew 21.48 acres of land (the Lakeview Pumping Station) for use of the Department of the Army in connection with the Alaska Petroleum Pipeline System. Notice of intent to relinquish this facility was filed on August 22, 1973, by the Army Corps of Engineers and was reported to General Services Administration for disposal as property on November 21, 1974. As of December 18, 1974, the deadline for filing village selection applications, the lands in PLO 3689, containing 21.48 acres, were withdrawn for the military and unavailable for selection. Section 12(a)(1) of the Alaska Native Claims Settlement Act provides that village selections shall be made from lands withdrawn by section 11(a).

Section 11(a)(1) withdrew certain lands in Alaska for village selection, excepting from such withdrawal:

. . . lands withdrawn or reserved for national defense purposes. . . .

By decision of March 25, 1975, village selection application F-14912-B was rejected as to "U.S. Survey 2784, lot 1; U.S.

Survey 4360. Containing 18.85 acres." These U.S. surveys are within the boundaries of PLO 3689. This decision was not appealed and is final.

Therefore, PLO 3689, containing 21.48 acres, remains withdrawn for military purposes and is entirely unavailable for selection. Since the Native village of Northway was rejected only as to the 18.85 acres within the aforementioned U.S. surveys, village selection application F-14912-B must be and is hereby rejected as to:

Those lands withdrawn for PLO 3689 and outside of U.S. Survey 4360 and lot 1 of U.S. Survey 2784.

Containing approximately 2.63 acres.

Section 11(a)(2) withdrew for possible selection by the Native corporation those lands that have been selected by but not yet patented to the State under the Alaska Statehood Act. Section 12(a)(1) further provides that no village may select more than 69,120 acres from lands withdrawn by section 11(a)(2).

As to the lands described below, the applications, as amended, submitted by Northway Natives Incorporated are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

This decision approves approximately 32,305 acres of State selected lands for conveyance to Northway Natives Incorporated, for a cumulative total of 32,305 acres, which does not exceed the 69,120 acres permitted under section 12(a)(1).

In view of the foregoing, the surface estate of the following described lands, selected pursuant to section 12(a), aggregating approximately 107,648 acres, is considered proper for acquisition by Northway Natives Incorporated, and is hereby approved for conveyance pursuant to section 14(a) of the Alaska Native Claims Settlement Act:

U.S. Survey No. 2630, Alaska. Nabesna (Northway) Air Navigation Site. Situate on the right bank of Nabesna River, approximately one mile southeast of Nabesna Village, excluding: Air Navigation Site 162, Public Land Order 4349, Quitclaim Deed dated June 1, 1966, Native allotment F-027296 Parcel A, Revocation and Restoration application F-025129, and Alaska Native Claims Settlement Act section 3(e) application F-36063.

Containing approximately 312 acres.

U.S. Survey No. 4375, Alaska, embracing lots 1 through 3 located on both sides of the Alaska Highway at the junction of Northway Airport Road and the Alaska Highway at Mile 1265.

Containing 140.04 acres.

U.S. Survey No. 2782, Alaska, embracing lots 1 and 2, situated on the northerly side Alaska Highway at junction of Northway Airport Road and Alaska Highway at Mile 1265.

Containing 5.00 acres.

U.S. Survey No. 3125, Alaska, Situated On the Northerly Side of the Alaska Highway At Mile 1264.

Containing 84.26 acres.

U.S. Survey No. 2785, Alaska, embracing lots 1, 2, and 3, situate on the westerly side Alaska Highway at Mile 1257.2, excluding Native allotment F-14765 Parcel C.

Containing approximately 6.00 acres.

Aggregating approximately 547.30 acres.

Copper River Meridian, Alaska (Unsurveyed)

T. 14 N., R. 17 E.

Sec. 1, all;
 Sec. 2, excluding Native allotment F-12951;
 Secs. 3, 9 and 10, excluding F-20518 (Tetlin Reserve);
 Secs. 11 to 14, inclusive, all;
 Secs. 15, 16 and 22, excluding F-20518 (Tetlin Reserve);
 Secs. 23, 24 and 25, all;
 Secs. 26, 27 and 35, excluding F-20518 (Tetlin Reserve);
 Sec. 36, all.

Containing approximately 9,370 acres.

T. 14 N., R. 18 E.

Sec. 1, excluding Native allotments F-13035 and F-13069 and Nabesna River;
 Sec. 2, excluding Native allotments F-13035 and F-13069;
 Secs. 3 to 10, inclusive, all;
 Sec. 11, excluding Native allotments F-13035 and F-13069 and Nabesna River;
 Sec. 12, excluding Native allotments F-13035 and F-13069, Nabesna River and its interconnecting slough;

- Sec. 13, excluding Native allotments F-030056 and F-12955 Parcel A, Nabesna River and its interconnecting slough;
- Sec. 14, excluding Nabesna River and its interconnecting sloughs;
- Secs. 15 to 21, inclusive, all;
- Sec. 22, excluding that portion of Nabesna River adjacent to and downstream of Nabesna village;
- Sec. 23, excluding U.S. Survey 4027, U.S. Survey 2630, Native allotment F-12952 Parcel A and that portion of Nabesna River downstream of Nabesna village;
- Sec. 24, excluding U.S. Survey 5091 and Native allotment F-030056;
- Sec. 25, excluding U.S. Survey 5091, U.S. Survey 4017, and U.S. Survey 2630;
- Secs. 26 and 27, excluding U.S. Survey 2630;
- Secs. 28 to 33, inclusive, all;
- Sec. 34, excluding U.S. Survey 4167, U.S. Survey 2630 and Native allotment F-027304;
- Sec. 35, excluding U.S. Survey 4157, U.S. Survey 2630, and Native allotments F-027304 and F-027296 Parcel A;
- Sec. 36, excluding U.S. Survey 2630, Public Land Order 1444 and Public Land Order 4349.

Containing approximately 19,427 acres.

T. 15 N., R. 18 E.

- Secs. 1 to 4, inclusive, all;
- Secs. 11, 12 and 13, all;
- Sec. 14, excluding Native allotment F-13046 Parcel A;
- Sec. 22, excluding Tanana River and its interconnecting sloughs;
- Sec. 23, excluding Native allotment F-12956, Tanana River and its interconnecting slough;
- Sec. 24, excluding Native allotment F-12956 and Tanana River;
- Secs. 25 and 26, excluding Tanana River and its interconnecting sloughs;
- Sec. 27, excluding Tanana River;
- Secs. 34 and 35, all;
- Sec. 36, excluding Nabesna River.

Containing approximately 10,015 acres.

T. 16 N., R. 18 E.

- Sec. 18, all;
- Sec. 19, excluding U.S. Survey 5135;
- Secs. 20, 29 and 30, all;
- Secs. 32 and 33, all.

Containing approximately 4,358 acres.

T. 13 N., R. 19 E.

- Sec. 1, all;
- Secs. 10 to 14, inclusive, all;
- Sec. 15, excluding Native allotments F-013592 Parcel B and F-12115 Parcel B;
- Sec. 22, all;
- Sec. 23, excluding Native allotments F-12115 Parcel C and F-13046 Parcel B;
- Secs. 24 and 25, all;
- Sec. 26, excluding Native allotment F-13046 Parcel B;
- Sec. 27, all.

Containing approximately 8,085 acres.

T. 14 N., R. 19 E.

- Sec. 1, excluding Native allotment F-12109;
- Sec. 2, excluding U.S. Survey 3125 and Native allotment F-12109;
- Sec. 3, excluding U.S. Survey 3125;
- Sec. 4, excluding Native allotments F-12977 and F-12110 and Chisana River;
- Sec. 5, excluding Native allotment F-12958 Parcel B;
- Sec. 6, excluding Native allotment F-12961 and Nabesna River;
- Secs. 7 and 8, all;
- Sec. 9, excluding U.S. Survey 2781, U.S. Survey 4375, U.S. Survey 4063, Public Land Order 1732, Native allotment F-12110, Chisana River and its interconnecting slough;
- Sec. 10, excluding U.S. Survey 2781, U.S. Survey 4063, U.S. Survey 4375, U.S. Survey 2782, U.S. Survey 3793, U.S. Survey 3125, U.S. Survey 3226, U.S. Survey 3226A, Public Land Order 1732, Chisana River and its interconnecting slough;
- Sec. 11, excluding U.S. Survey 3125, U.S. Survey 3226, U.S. Survey 3226A, U.S. Survey 5204; Native allotments F-12109, F-027035 Parcel A and F-12962; Homesite application F-855; and Chisana River;
- Sec. 12, excluding Native allotments F-12964, F-12962, F-12109 and F-027035 Parcel A;
- Sec. 13, excluding U.S. Survey 4373, Native allotments F-12241, F-13068, F-13566 and F-12962 and Chisana River;
- Sec. 14, excluding Chisana River;
- Sec. 15, excluding U.S. Survey 4371, Native allotment F-13044, Chisana River and its interconnecting sloughs;
- Sec. 16, excluding U.S. Survey 4371 and Chisana River;
- Sec. 17, all;
- Sec. 18, excluding Native allotment F-030056;
- Sec. 19, all;

- Sec. 20, excluding U.S. Survey 4102 (Native allotment F-013580 Parcel A) and Native allotment F-013592 Parcel A;
- Sec. 21, excluding U.S. Survey 4371 and Native allotment F-024675;
- Sec. 22, excluding the interconnecting slough of the Chisana River;
- Sec. 23, all;
- Sec. 24, excluding Native allotment F-13068 and Chisana River;
- Sec. 25, excluding the interconnecting sloughs of the Chisana River;
- Sec. 26, excluding Native allotment F-014914 Parcel B and the interconnecting slough of the Chisana River;
- Sec. 27, excluding the interconnecting slough of the Chisana River;
- Sec. 28, excluding Native allotment F-024675;
- Sec. 29, excluding U.S. Survey 4299, U.S. Survey 5094, U.S. Survey 4119 and Native allotments F-013592 Parcel A, F-014916 Parcel A and F-12948 Parcel A;
- Sec. 30, excluding U.S. Survey 2630, U.S. Survey 5094, Native allotments F-17780 and F-13043;
- Sec. 31, excluding Public Land Order 4349 and Native allotment F-13043;
- Secs. 32, 33 and 34, all;
- Sec. 35, excluding Native allotments F-12149 and F-12145 Parcel 1;
- Sec. 36, excluding Native allotment F-13045 and the interconnecting slough of the Chisana River.

Containing approximately 19,758 acres.

T. 15 N., R. 19 E.

- Secs. 19 and 20, all;
- Sec. 28, excluding military withdrawal application F-22389, Public Land Order 5164 and Native allotment F-14781;
- Sec. 29, excluding U.S. Survey 2911, Native allotments F-12950 and F-14316 Parcel B, Chisana River, Nabesna River and Tanana River;
- Sec. 30, excluding Native allotment F-12950, Tanana River, Nabesna River and Chisana River;
- Sec. 31, excluding Native allotment F-12961, Nabesna River, Tanana River and Chisana River;
- Sec. 32, excluding Native allotments F-12961 and F-12949, Chisana River and Nabesna River;
- Sec. 33, excluding Native allotments F-12949, F-12947 Parcel B and F-14316 Parcel C and Chisana River.

Containing approximately 3,925 acres.

T. 13 N., R. 20 E.

- Sec. 1, excluding U.S. Survey 4019;
 Sec. 2, excluding U.S. Survey 4019 and Native allotment F-12952 Parcel C;
 Sec. 3, all;
 Secs. 4 and 5, excluding Chisana River;
 Secs. 6, 7 and 8, all;
 Sec. 9, excluding Native allotment F-12957 Parcel A and Chisana River;
 Sec. 10, excluding U.S. Survey 4288 and Chisana River;
 Sec. 11, excluding U.S. Survey 4019 and Native allotments F-12952 Parcel C and F-12117 Parcel A;
 Sec. 12, excluding U.S. Survey 4019 and Native allotment F-12117 Parcel A;
 Secs. 13 and 14, all;
 Sec. 15, excluding Chisana River and its interconnecting slough;
 Sec. 16, excluding Native allotments F-12957 Parcel A, F-12947 Parcel A, Chisana River and its interconnecting sloughs;
 Secs. 17 to 20; inclusive, all;
 Sec. 21, excluding Chisana River and its interconnecting sloughs;
 Sec. 22, excluding the interconnecting slough of the Chisana River;
 Sec. 23, all;
 Sec. 24, excluding U.S. Survey 3685;
 Secs. 25, 26 and 27, all;
 Secs. 28 and 29, excluding Chisana River and its interconnecting sloughs;
 Sec. 30, all.

Containing approximately 18,287 acres.

T. 14 N., R. 20 E.

- Secs. 4 to 9, inclusive, all;
 Sec. 16, all;
 Sec. 17, excluding Native allotment F-12945;
 Sec. 18, excluding U.S. Survey 4373 and Native allotments F-13566, F-13068 and F-013580 Parcel B;
 Sec. 19, excluding U.S. Survey 4117 and Native allotments F-13068, F-013580 Parcel B, F-014914 Parcel A and Chisana River;
 Sec. 20, excluding U.S. Survey 4145B (Native allotment F-12145 Parcel 2) and Native allotments F-12945 and F-15052;
 Sec. 21, excluding U.S. Survey 3338, U.S. Survey 3338A and Native allotment F-15052;
 Secs. 22, 26 and 27, all;

- Sec. 28, excluding U.S. Survey 3338, Survey 3338A, U.S. Survey 4145B (Native allotment F-12145 Parcel 2), U.S. Survey 3686, U.S. Survey 3130, U.S. Survey 5563 (Native allotment F-9632 Parcel A), U.S. Survey 4360, Public Land Order 3689 and Native allotment F-12117 Parcel B;
- Sec. 29, excluding U.S. Survey 4145B (Native allotment F-12145 Parcel 2) and Native allotment F-14765 Parcel B;
- Secs. 30 and 31, excluding Chisana River and its inter-connecting sloughs;
- Sec. 32, excluding Native allotment F-14765 Parcels A and B, and Chisana River;
- Sec. 33, excluding U.S. Survey 4360, U.S. Survey 2784, U.S. Survey 2785, Public Land Order 3689, Native allotment F-14765 Parcel C and Chisana River;
- Secs. 34, 35 and 36, all.

Containing approximately 13,876 acres.

Aggregating approximately 107,101 acres.

Total aggregated acreage, approximately 107,648 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. A right-of-way, F-025907, for a Federal aid material site, located in the $W\frac{1}{2}$ of section 18, T. 14 N., R. 20 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
2. A right-of-way, F-025905, for a Federal aid material site, located in the $E\frac{1}{2}$ of section 29, T. 15 N., R. 19 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
3. A right-of-way, F-025926, for a Federal aid material site, located in the $NW\frac{1}{4}$ of section 4, T. 15 N., R. 18 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
4. A right-of-way, F-025909, for a Federal aid material site, located in the $W\frac{1}{2}$ of section 28, T. 14 N., R. 20 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.

5. A right-of-way, F-025923, for a Federal aid material site, located in the N $\frac{1}{2}$ of section 11, T. 14 N., R. 19 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
6. A right-of-way, F-025900, for a Federal aid material site, located in the W $\frac{1}{2}$ of section 12, T. 13 N., R. 20 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
7. A right-of-way, F-025791, for a Federal aid material site, located in the NW $\frac{1}{4}$ of section 10, T. 14 N., R. 19 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
8. A right-of-way, F-033056, for a Federal aid material site, located in the SW $\frac{1}{4}$ of section 32, T. 16 N., R. 18 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
9. A right-of-way, F-437, for a Federal aid highway (tourist turnout), located in the SE $\frac{1}{4}$ of section 13, T. 13 N., R. 20 E., Copper River Meridian. Act of August 27, 1958, as amended, 23 U.S.C. 317.
10. That Haines to Fairbanks pipeline right-of-way, F-010143, 50 feet in width, and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents or employees to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.
11. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (Supp. V, 1975)).
12. Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file F-14912-EE, are reserved to the United States and subject to further regulation thereby:
 - a. (EIN 5 L, C5) An easement for an existing access trail fifty (50) feet in width from the Alaska

Highway easterly to the south fork of the Ladue River drainage and public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

- b. (EIN 14 L, C5) An easement for an existing access trail twenty-five (25) feet in width from the Alaska Highway northerly to public lands in the Damundtali Lake area. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- c. (EIN 19 M, C5) A one (1) acre site easement upland of the ordinary high water mark in sections 9 and 10, T. 14 N., R. 19 E., Copper River Meridian, on the Chisana River at the Northway Road bridge. The site is for camping, staging and vehicle use.
- d. (EIN 19a M, C4) An easement for an existing access trail twenty-five (25) feet in width from site EIN 19 M, C5 on the Northway Road, northerly along the left bank of the Chisana River to the mouth of Moose Creek. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- e. (EIN 27 D9, C3, C5) An easement for an existing access trail fifty (50) feet in width from the Northway airport southerly to public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- f. (EIN 28 D1) An easement sixty (60) feet in width for an existing road from Northway village to the Northway airport. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- g. (EIN 29 D9) A site easement upland of the ordinary high water mark in section 21, T. 14 N., R. 19 E., Copper River Meridian, at the outlet of Fish Lake where it crosses an existing road between Northway and the Alaska Highway. The site is four (4) acres in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The site is for camping, staging, and vehicle use.

- h. (EIN 39 D1, C3, C5) An easement sixty (60) feet in width for an existing road from the Alaska Highway to an existing state campground on Deadman Lake. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- i. (EIN 41 C4, D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable Tanana River throughout the selection area. Purpose is to provide for public use of waters having highly significant present recreational use.
- j. (EIN 42 C4, D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable Nabesna River from its mouth to the village site of Nabesna in section 22, T. 14 N., R. 18 E., Copper River Meridian. Purpose is to provide for public use of waters having highly significant present recreational use.
- k. (EIN 43 C4, D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable Chisana River through the village selection. Purpose is to provide for public use of waters having highly significant present recreational use.
- l. (EIN 45 C4, D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the Nabesna River from the Nabesna village site in section 22, T. 14 N., R. 18 E., Copper River Meridian, upstream through selected lands to public lands. Purpose is to provide for public use of waters having highly significant present recreational use.
- m. (EIN 46 I) An easement one hundred (100) feet in width for an existing road from the Northway airport southerly to the FAA TACAN site in section 36, T. 14 N., R. 18 E., Copper River Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

- n. (EIN 47 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other land survey purposes is reserved, together with the right to do all things necessary in connection therewith.
- o. (EIN 49b K) An easement one hundred (100) feet in width for an existing road and utility line from Beaver Creek Radio Relay Site to the AFTAC site in section 21, T. 15 N., R. 19 E., Copper River Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- p. (EIN 50 K) An easement one hundred (100) feet in width for an existing road from the Alaska Highway northerly to the Beaver Creek Radio Relay Site for access between the highway and the relay site. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- q. (EIN 51 K) An easement fifty (50) feet in width, twenty-five (25) feet on each side of the centerline of the cable, for an existing communications cable, from the ACS pole line along the Alaska Highway northerly to the Beaver Creek Radio Relay Site.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation Calista, et al v. Andrus and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;
2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to

the complete enjoyment of all rights, privileges, and benefits thereby granted to him;

3. A temporary use permit, SP8-009, issued to Alaska Gateway School District on December 12, 1977, for removal of no more than 660 cubic yards of gravel from Federal aid material site (F-025791) located in the NW $\frac{1}{4}$ of section 10, T. 14 N., R. 19 E., Copper River Meridian;
4. The easement as established by Public Land Order 1613 (23 F.R. 2376), pursuant to the Act of August 1, 1956 (70 Stat. 898), for highway purposes, including appurtenant protective, scenic and service areas;
5. Requirements of section 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43 U.S.C. 1601, 1613(c) (Supp. V, 1975)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and
6. The terms and conditions of the agreement dated April 28, 1978, between the Secretary of the Interior; Doyon, Limited; and Northway Natives Incorporated. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Northway Natives Incorporated, serialized F-14912-EE. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

There is excepted and reserved any element of ownership from the lands hereby conveyed, including but not restricted to any estate or interest in property, or permit, or other right, transferred by the United States pursuant to the Alaska Communications Disposal Act approved November 14, 1967 (81 Stat. 441-444; 40 U.S.C. 771-792).

Northway Natives Incorporated is entitled to conveyance of 115,200 acres of land selected pursuant to section 12(a) of the Alaska Native Claims Settlement Act. To date approximately 107,648 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 7,552 acres will be conveyed at a later date.

Pursuant to section 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described

above shall be granted to Doyon, Limited when conveyance is granted to Northway Natives Incorporated for the surface estate, and shall be subject to the same conditions as the surface conveyance.

Only the following water bodies within the described lands are considered to be navigable:

Tanana River and all of its interconnecting sloughs;
Chisana River and all of its interconnecting sloughs; and
Nabesna River and all of its interconnecting sloughs; from its mouth to the village site of Nabesna in sec. 22 of T. 14 N., R. 18 E., Copper River Meridian.

Enclosed are copies of current status plats showing the lands approved for conveyance along with maps showing the easements to be reserved.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.
2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until MAY 28 1978 to file an appeal.
3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

If an appeal is taken, the adverse parties to be served with a copy of the notice of appeal are:

Northway Natives Incorporated
Box 441
Northway, Alaska 99764

Doyon, Limited
First and Hall Streets
Fairbanks, Alaska 99701

State of Alaska
Division of Lands
323 East Fourth Avenue
Anchorage, Alaska 99501

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. (See enclosed ASO Form 2650-4.)

/s/ Sue A. Wolf

Chief, Selections and
Leasable Minerals Section

Enclosures:
ASO Form 2650-4
Cy 43 CFR Part 4, Subpart J
Plats
Maps
Legend

cc:

Joint Federal-State Land Use Planning
Commission for Alaska
733 West Fourth Avenue
Anchorage, Alaska 99501
(w/maps)

Interior Village Association
211 Cushman Street
Fairbanks, Alaska 99701
(w/maps)

Mr. George G. Moen (NPARE-PC) (CM-RRR)
Chief, Real Estate Division
Alaska District, Corps of Engineers
P.O. Box 7002
Anchorage, Alaska 99510
(w/maps)

Mr. L. D. Snell, Chief (CM-RRR)
Realty and Utility Branch, AAL-58
Federal Aviation Administration
U.S. Department of Transportation
632 West Sixth Avenue
Anchorage, Alaska 99501
(w/maps)

General Services Administration (CM-RRR)
Region 10
Auburn, Washington 98002
(w/maps)

Northway Village Council
P.O. Box 411
Northway, Alaska 99764

DM-F (202)
(w/maps)

F-010143 (2800)

F-025907 (2800)

F-025905 (2800)

F-025926 (2800)

F-025909 (2800)

F-025791 (2800)

F-025923 (2800)

F-025900 (2800)

F-033056 (2800)

F-437 (2800)

LBlack:rdm:pd 6/13/78

F-14912-B (2651)
✓ F-14912-EE (75.4)
(961)

LB 2/20/80

FEB 27 1980

LB 2/27/80

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

Northway Natives Incorporated : F-14912-B
Box 441 : Village Selection
Northway, Alaska 99764 :
:
Doyon, Limited :
First and Hall Streets :
Fairbanks, Alaska 99701 :

Decision of June 26, 1978 Recinded in Part
Additional Lands Proper for Village Selection
Approved for Interim Conveyance

By Decision to Issue Conveyance (DIC) dated June 26, 1978, certain lands in the vicinity of Northway were determined proper for village selection and approved for conveyance to Northway Natives Incorporated pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(a) (1976)) (ANCSA).

On July 26, 1978, Northway Natives Incorporated appealed the DIC of June 26, 1978, to the Alaska Native Claims Appeal Board (ANCAB).

On August 20, 1979, a decision was issued modifying the DIC of June 26, 1978, as to the conformance of easements. This decision was appealed on September 20, 1979.

On December 26, 1978, ANCAB issued an "Order Approving Stipulation," which became final January 10, 1980, ordering the Bureau of Land Management to:

1. Vacate the DIC dated June 26, 1978, insofar as it approves for interim conveyance Sections 27 and 34, T. 15 N., R. 18 E., Copper River Meridian;
2. Approve for interim conveyance to Northway Natives Incorporated Sections 2 and 3, T. 13 N., R. 19 E., Copper River Meridian; and
3. Amend the Modification Decision conforming easements, dated August 20, 1979, to delete the reservation of easements designated EIN 29 D9; EIN 53 C4, C5, E and EIN 53a C4, C5, E.

This decision is being issued to comply with the above-mentioned ANCAB order to:

1. Vacate the DIC of June 26, 1978, as to certain lands;
2. Approve additional lands for interim conveyance; and
3. Delete 3 easements reserved to the United States from the Modification Decision conforming easements, dated August 20, 1979.

Therefore, the June 26, 1978, DIC is hereby vacated as to the following described lands:

Copper River Meridian, Alaska (Unsurveyed)

T. 15 N., R. 18 E.
 Sec. 27, excluding the Tanana River;
 Sec. 34, all.

Containing approximately 1,270 acres.

Also, the Easement Conformance Decision of August 20, 1979, is modified to delete the following:

- a. (EIN 29 D9) A one (1) acre site easement, upland of the ordinary high water mark, in Sec. 21, T. 14 N., R. 19 E., Copper River Meridian, on the right bank of Moose Creek. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the stream along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site.
- b. (EIN 53 C4, C5, E) A site easement, upland of the ordinary high water mark, in Sec. 34, T. 14 N., R. 19 E., Copper River Meridian, on the south shore of Fish Lake. The site is one (1) acre in size with an additional twenty-five (25) foot wide easement on the bed of the lake along the entire waterfront of the site. The uses allowed are those listed above for a one (1) acre site.
- c. (EIN 53a C4, C5, E) An easement for a proposed access trail, twenty-five (25) feet in width, from trail EIN 53 C4, C5, E in Sec. 34, T. 14 N., R. 19 E., Copper River Meridian, southerly to public land. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

Except as modified by this decision, the decisions of June 26, 1978, and August 20, 1979, stand as written.

On December 12, 1974, Northway Natives Incorporated, for the Native village of Northway, filed selection application F-14912-B, as amended, under the provisions of Sec. 12 of ANCSA, for the surface estate of certain lands in the vicinity of Northway.

Northway Natives Incorporated, in its application, excluded the following water bodies as being navigable:

Fish Lake;
 Unnamed lake in NW $\frac{1}{4}$, Sec. 2, T. 13 N., R. 19 E.,
 Copper River Meridian;
 Open Creek and all lakes it flows through;
 Charleskin Creek and all lakes it flows through.

Because these water bodies have been determined to be nonnavigable, they are considered to be public lands withdrawn under Sec. 11(a)(1) and available for selection by the village pursuant to Sec. 12(a) of ANCSA.

Section 12(a) and 43 CFR 2651.4(b) and (c) provide that the village corporation shall select all available lands within the township or townships within which the village is located, and that additional lands selected shall be compact and in whole sections. The regulations also provide that the area selected will not be considered reasonably compact if it excludes other lands available for selection within its exterior boundaries.

As to the lands described below, the application, as amended, is properly filed and meets the requirements of ANCSA and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 1,280 acres, is considered proper for acquisition by Northway Natives Incorporated and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Copper River Meridian, Alaska (Unsurveyed)

T. 13 N., R. 19 E.
Secs. 2 and 3, all.

Containing approximately 1,280 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)).

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)).

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;
2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g)), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and
3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Northway Natives Incorporated is entitled to conveyance of 115,200 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 107,658 acres. The remaining entitlement of approximately 7,542 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued to Doyon, Limited, when the surface estate is conveyed to Northway Natives Incorporated, and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

Enclosed is a copy of the current status plat showing the lands approved for conveyance.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest

in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.
2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until APR 2 1980 to file an appeal.
3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. (See enclosed ASO Form 2650-4.)

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

Northway Natives Incorporated
Box 441
Northway, Alaska 99764

Doyon, Limited
First and Hall Streets
Fairbanks, Alaska 99701

/s/ JUDITH KAMMINS ALBIETZ,

Chief, Division of ANCSA Operations

Enclosures:
ASO Form 2650-4
Cy 43 CFR Part 4, Subpart J
Plat
Map

cc: (without enclosures unless noted)

Mr. Earle Williams (flp)
17th Coast Guard District
P.O. Box 3-5000
Juneau, Alaska 99801
(w/map)

Patrick P. Ryan, Deputy Commissioner
Maintenance and Operations
Department of Transportation
and Public Facilities
Pouch 6900
Anchorage, Alaska 99502
(w/map)

Robert W. Ward, Commissioner
Department of Transportation
and Public Facilities
Pouch Z
Juneau, Alaska 99801
(w/map)

Regional Solicitor
Office of the Solicitor
510 L Street, Suite 408
Anchorage, Alaska 99501
(w/map)

Alaska Native Claims Appeal Board
P.O. Box 2433
Anchorage, Alaska 99510
(w/map)

Doyon, Limited
Attn: Legal Department
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Fairbanks, Alaska 99701
(w/map)

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420 L Street, Suite 302
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(w/map)

State of Alaska
Office of Attorney General
Shelly J. Higgins, Esq.
420 L Street, Suite 100
Anchorage, Alaska 99501
(w/map)

General Services Administration
Vincent Crivella
Chief, Counsel, Real Property Area
Room 40313, GSA Building
18th and F Streets
Washington, D.C. 20405
(w/map)

General Services Administration
Region 10
Auburn, Washington 98002
(w/map)

Mr. Ron Swanson
Land Management Officer
State of Alaska
Department of Natural Resources
Division of Research and Development
323 East Fourth Avenue
Anchorage, Alaska 99501
(w/map)

941 Chief, Branch of Lands

922 Chief, Branch of Office Engineering

DM-F (200)

AM-(270)

DM-F (242)

961*LBlack*bjn*11-7-79*5766
BARB2*J pd*01/29/80
pd*02/05/80



IN REPLY REFER TO:

United States Department of the Interior

ALASKA NATIVE CLAIMS APPEAL BOARD
P.O. BOX 2433
ANCHORAGE, ALASKA 99510

DOYON, LIMITED

ANCAB RLS 78-1

Decided October 30, 1981

Appeal from the Decision of the Alaska State Director,
Bureau of Land Management F-19155-20.

Partial Decision; Reversed in Part.

1. Alaska Native Claims Settlement Act: Navigable Waters--Alaska: Navigable Waters: Generally

Where the Bureau of Land Management has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the Bureau of Land Management made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

2. Alaska Native Claims Settlement Act: Administrative Procedure: Decision to Issue Conveyance--Alaska Native Claims Settlement Act: Administrative Procedure: Publication

Redetermination by the Bureau of Land Management of navigability of water bodies while jurisdiction over the subject water bodies is in the Alaska Native Claims Appeal Board is not a "decision" of the Bureau of Land Management, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

APPEARANCES: James Q. Mery, Esq., for Doyon, Limited; M. Francis Neville, Esq., Office of the Regional Solicitor, for Bureau of Land Management; Shelley J. Higgins, Esq., Department of Law, for State of Alaska (listing limited to persons addressing the issue decided).

OPINION BY ALASKA NATIVE CLAIMS APPEAL BOARD

Summary of Appeal

Appellant asserted, as one of several bases of appeal, that the Bureau of Land Management erred in determining that three water bodies excluded from Doyon, Limited's selection application were nonnavigable and in considering selected, and approving for conveyance, the submerged lands underlying such water bodies.

Upon review of its navigability determinations, the Bureau of Land Management changed its position on two of the water bodies and found them to be navigable.

The Board holds that when the Bureau of Land Management's review of navigability shows a factual basis for redetermining the appealed water bodies to be navigable within established guidelines, the Board will decide that such water bodies are navigable.

Jurisdiction

The Alaska Native Claims Appeal Board, pursuant to delegation of authority to administer the Alaska Native Claims Settlement Act, 85 Stat. 688, as amended, 43 U.S.C. §§ 1601-1628 (1976 and Supp. I 1977) (ANCSA), and the implementing regulations in 43 CFR Part 2650 and 43 CFR Part 4, Subpart J, hereby makes the following findings, conclusions and decision.

Procedural Background

On Apr. 2, 1975, pursuant to § 12(c) of ANCSA, Doyon, Limited (Doyon) filed selection application F-19155-20 for lands located near the Native village of Northway. In response the Bureau of Land Management (BLM) issued, on June 23, 1978 and June 26, 1978, two decisions to issue conveyance of land to Doyon. Each decision concerned a portion of the lands selected by Doyon.

Doyon appealed the above-designated decisions of the BLM in a single appeal filed on July 27, 1978. One issue raised by Doyon was that the BLM erred in considering the Nabesna River, Fish Lake, and Lake Nuziamundcho, the beds of which water bodies had been excluded from Doyon's selection application, to be nonnavigable and the underlying submerged lands to have been selected by Doyon.

A conference was held Jan. 21, 1980, to establish a schedule for further briefing and possibly to set a hearing

date on the issue of navigability. On Jan. 22, 1980, following the conference, the Board ordered the following action and briefing schedule:

a. BLM, with assistance from Northway and Doyon shall segregate water bodies affected by RLS 77-1, RLS 78-1 and VLS 78-57 within thirty (30) days from the date of this Order.

b. BLM shall have up to sixty (60) days from the date of this Order to review RLS 77-1, RLS 78-1 and VLS 78-57 and to serve upon all parties the basis for determining the water bodies on appeal to be navigable or nonnavigable.

c. Appellants shall have sixty (60) days from the date of service of BLM's response to file on each appeal: (1) a request to suspend action on certain water bodies, as desired, pending passage of the Submerged Lands Amendment; (2) a statement of reasons pertaining to those water bodies remaining in active appeal status; and (3) any other briefs the parties may wish to file.

Following the granting of an extension of time, the BLM filed its Review and Basis for Navigability Determinations on Mar. 28, 1980. Upon review, the Nabesna River and Fish Lake were determined by BLM to be navigable. The BLM affirmed its earlier determination that Lake Nuziamundcho is nonnavigable.

Decision

In Appeal of Bristol Bay Native Corporation, 4 ANCAB 355, 87 I.D. 341 (1980) [VLS 80-2], the Board held that:

Where the BLM has redetermined that water bodies which are the subject of an appeal pending before the Board are navigable, and where the Board finds that the facts in the record upon which BLM made its redetermination meet the essential elements of navigability enunciated in Appeal of Doyon, Ltd., 4 ANCAB 50, 86 I.D. 692 (1979) [RLS 76-2], and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

87 I.D. at 346.

The Board also held that:

[F]or purposes of clarification, * * * redetermination by the BLM of navigability of water bodies while jurisdiction over such water bodies is in the Alaska Native Claims Appeal Board is not a 'decision' of the BLM, and notice is not required to be published pursuant to 43 CFR 2650.7.

87 I.D. at 345.

Here, the BLM's navigability review and resulting redetermination of navigability of Fish Lake and the Nabesna River were performed pursuant to the Board's order dated Jan. 22, 1980, while the Board retained jurisdiction over the issue of navigability and over the submerged lands underlying the subject water bodies.

The Board finds that the record upon which BLM relies for its redetermination of Mar. 28, 1980, presents facts concerning use and susceptibility of use which meet the essential elements of navigability enunciated in Appeal of Doyon, Limited, 4 ANCAB 50, 86 I.D. 692 (1979) [RLS 76-2]. The Board further finds that the record discloses no dispute to the facts alleged in support of a finding of navigability.

[1] Where the BLM has redetermined that water bodies which are the subject of an appeal are navigable, and where the Board finds that the facts in the record upon which the BLM made its redetermination meet the essential elements of navigability, and where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable.

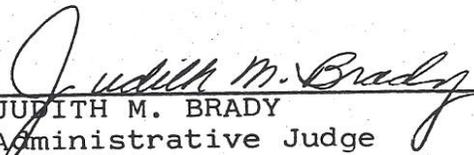
Accordingly, the Board finds the Nabesna River and Fish Lake to be navigable. The BLM is hereby Ordered to exclude these water bodies from conveyance under ANCSA to Doyon.

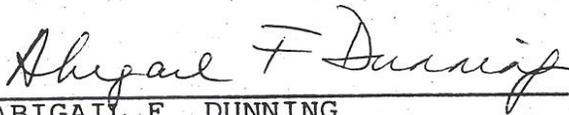
The Board has authority under 43 CFR 4.1(b)(5) to "consider and decide finally for the Department appeals to the head of the Department." The above finding by the Board that the Nabesna River and Fish Lake are navigable is not a decision of the BLM, and notice thereof is not required to be published pursuant to 43 CFR 2650.7. However, the Board's finding does govern the conveyance to be issued to Doyon.

[2] Redetermination by the BLM of navigability of water bodies while jurisdiction over the subject water bodies is in the Board is not a "decision" of the BLM, and notice thereof is not required to be published pursuant to 43 CFR 2650.7.

The portion of this appeal relating to the navigability of Lake Nuziamundcho will be resolved by future action of the Board.

This represents a unanimous decision of the Board.


JUDITH M. BRADY
Administrative Judge


ABIGAIL F. DUNNING
Administrative Judge


JOSEPH A. BALDWIN
Administrative Judge

DISTRIBUTION:

Doyon, Limited
James Q. Mery, Esq.
Doyon Building - Third Floor
201 First Avenue
Fairbanks, Alaska 99701

Bureau of Land Management
Office of the Regional Solicitor
M. Francis Neville, Esq.
510 L Street, Suite 100
Anchorage, Alaska 99501

Department of Law
Office of the Attorney General
Shelley J. Higgins, Esq.
420 L Street, Suite 100
Anchorage, Alaska 99501

courtesy copy:

State Director, Bureau of Land Management
State of Alaska, Dept. of Natural Resources, Div. of Research
and Development

2652/75.4 (961)
F-19155-20
F-21779-20

State Office
555 Cordova Street, Pouch 7-512
Anchorage, Alaska 99510

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 23 1978
JB 6/16/78
Ypb 6/15/78

DECISION

Doyon, Limited : F-19155-20
First and Hall Streets : Regional Selection
Fairbanks, Alaska 99701 :

** 6/23/78*
Ypb

Lands Proper for Regional Selection
Approved for Interim Conveyance

On April 2, 1975, Doyon, Limited filed selection application F-19155-20, as amended, under the provisions of section 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(c) (Supp. V, 1975)), for the surface and subsurface estates of certain lands withdrawn pursuant to section 11(a)(1) for the Native village of Northway.

As to the lands described below, selection application F-19155-20, as amended, submitted by Doyon, Limited pursuant to section 12(c) of the Alaska Native Claims Settlement Act, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entries perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to section 12(c), aggregating approximately 115,009 acres, are considered proper for acquisition by Doyon, Limited, and are hereby approved for conveyance pursuant to section 14(e) of the Alaska Native Claims Settlement Act:

Copper River Meridian, Alaska (Unsurveyed)

T. 12 N., R. 18 E.
Secs. 1 to 36, inclusive, all.

Containing approximately 22,806 acres.

T. 13 N., R. 17 E.

Sec. 1, all;
 Secs. 2, 10 and 11, excluding F-20518 (Tetlin Reserve);
 Sec. 12, all;
 Secs. 14, 15 and 22, excluding F-20518 (Tetlin Reserve);
 Secs. 27 and 34, excluding F-20518 (Tetlin Reserve);
 Sec. 36, all.

Containing approximately 4,010 acres.

T. 13 N., R. 19 E.

Secs. 5 to 9, inclusive, all;
 Sec. 16, excluding Native allotment F-013592 Parcel B;
 Secs. 17 to 21, inclusive, all;
 Secs. 28 to 34, inclusive, all;
 Secs. 35 and 36, excluding U.S. Survey 4372.

Containing approximately 12,721 acres.

T. 15 N., R. 17 E.

Secs. 1 and 2, all;
 Secs. 7 and 8, excluding F-20518 (Tetlin Reserve);
 Secs. 10 to 16, inclusive, all;
 Secs. 17 to 20, inclusive, excluding F-20518
 (Tetlin Reserve);
 Secs. 21 to 27, inclusive, all;
 Secs. 28 and 29, excluding F-20518 (Tetlin Reserve);
 Secs. 33 and 34, excluding F-20518 (Tetlin Reserve);
 Secs. 35 and 36, all.

Containing approximately 15,225 acres.

T. 15 N., R. 19 E.

Secs. 1 to 13, inclusive, all;
 Secs. 14 and 15, excluding Public Land Order 5164;
 Secs. 16, 17 and 18, all;
 Sec. 21, excluding Public Land Order 5164
 and Alaska Native Claims Settlement Act
 section 3(e) application F-21785;
 Secs. 22 and 23, excluding Public Land Order 5164;
 Secs. 24, 25 and 26, all;
 Sec. 27, excluding Public Land Order 5164;
 Secs. 35 and 36, all.

Containing approximately 16,821 acres.

T. 16 N., R. 16 E.

Sec. 1, excluding F-20518 (Tetlin Reserve);
 Secs. 11 and 12, excluding F-20518 (Tetlin Reserve) and
 Tanana River;

Sec. 13, excluding Tanana River and its interconnecting sloughs;
 Sec. 14, excluding F-20518 (Tetlin Reserve), Tanana River and its interconnecting sloughs;
 Secs. 15 and 22, excluding F-20518 (Tetlin Reserve), and Tanana River;
 Sec. 23, excluding F-20518 (Tetlin Reserve), Tanana River and its interconnecting sloughs;
 Sec. 24, excluding the interconnecting slough of the Tanana River;
 Secs. 25 and 26, excluding F-20518 (Tetlin Reserve).

Containing approximately 2,790 acres.

T. 16 N., R. 18 E.

Secs. 1 to 17, inclusive, all;
 Secs. 21 to 28, inclusive, all;
 Secs. 34, 35 and 36, all.

Containing approximately 17,834 acres.

T. 16 N., R. 20 E.

Secs. 1 to 36, inclusive, all.

Containing approximately 22,802 acres.

Aggregating approximately 115,009 acres.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservation to the United States:

Pursuant to section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V, 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file F-21779-20, are reserved to the United States and subject to further regulation thereby:

- a. (EIN 2 C5) An easement for a proposed access trail twenty-five (25) feet in width from Sec. 36, T. 16 N., R. 17 E., Copper River Meridian, southeasterly through Sec. 1, T. 15 N., R. 17 E., Copper River Meridian, to Sec. 6, T. 15 N., R. 18 E., Copper River Meridian, between public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

- b. (EIN 5 L, C5) An easement for an existing access trail fifty (50) feet in width from the Alaska Highway easterly to the south fork of the Ladue River drainage and public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- c. (EIN 14 L, C5) An easement for an existing access trail twenty-five (25) feet in width from the Alaska Highway northerly to public lands in the Damundtali Lake area. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- d. (EIN 40 C4) An easement for a proposed access trail fifty (50) feet in width from Sec. 36, T. 16 N., R. 19 E., Copper River Meridian southeasterly to Sec. 6, T. 15 N., R. 20 E., Copper River Meridian, between public lands. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.
- e. (EIN 41 C4, D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks of the navigable Tanana River throughout the selection area. Purpose is to provide for public use of waters having highly significant present recreational use.
- f. (EIN 47 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other land survey purposes is reserved, together with the right to do all things necessary in connection therewith.
- g. (EIN 49b K) An easement one hundred (100) feet in width for an existing road and utility line from Beaver Creek Radio Relay Site to the AFTAC site in Sec. 21, T. 15 N., R. 19 E., Copper River Meridian. The usage of roads and trails will be controlled by applicable State or Federal law or regulation.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation Calista, et al. v. Andrus and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;
2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him; and
3. The terms and conditions of the agreement dated April 28, 1978, between the Secretary of the Interior, Doyon, Limited and Northway Natives Incorporated. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is located in the Bureau of Land Management easement case file for Doyon, Limited, serialized F-21779-20. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State office, 555 Cordova Street, Anchorage, Alaska 99501.

To date 411,859 acres of land, selected pursuant to section 12(c) of the Alaska Native Claims Settlement Act, have been approved for conveyance to Doyon, Limited.

Only the following water body within the described land is considered to be navigable:

Tanana River and all of its interconnecting sloughs.

Enclosed are copies of current status plats showing lands approved for conveyance along with maps showing the easements to be reserved.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy

served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.
2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until JUL 28 1978, to file an appeal.
3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

If an appeal is taken, the adverse party to be served with a copy of the notice of appeal is:

Doyon, Limited
First and Hall Streets
Fairbanks, Alaska 99701

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. (See enclosed ASO Form 2650-4.)

/s/ Sue A. Wolf

Chief, Selections and
Leasable Minerals Section

Enclosures:

ASO Form 2650-4
Cy 43 CFR Part 4, Subpart J
Plats
Maps
Legend

cc:

Joint Federal-State Land Use
Planning Commission for Alaska
733 West Fourth Avenue
Anchorage, Alaska 99501
(w/maps)

State of Alaska
Division of Lands
323 East Fourth Avenue
Anchorage, Alaska 99501
(w/maps)

Northway Natives Incorporated
Box 441
Northway, Alaska 99764

DM-F (200)
(w/maps)

LBlack:cm 06/08/78

2652/75.4 (961
F-19155-20
F-21779-20

State Office
555 Cordova Street, Pouch 7-512
Anchorage, Alaska 99510

JB 6/23/78
YPM
6/23/78

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

JUN 26 1978

Doyon, Limited : F-19155-20
First and Hall Streets : Regional Selection
Fairbanks, Alaska 99701 :

Lands Proper for Regional Selection
Approved for Interim Conveyance

On April 2, 1975, Doyon, Limited filed selection application F-19155-20, as amended, under the provisions of Section 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611(c) (Supp. V, 1975)), for the surface and subsurface estates of certain lands withdrawn pursuant to Section 11(a)(1) for the Native village of Northway. The application excluded several water bodies as being navigable. As these are considered nonnavigable and as Section 12(c)(3) and 43 CFR 2652.3(c) require the region to select all available lands within the township, these water bodies are considered selected.

As to the lands described below, selection application F-19155-20, as amended, submitted by Doyon, Limited pursuant to Section 12(c) of the Alaska Native Claims Settlement Act, is properly filed and meets the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entries perfected under or being maintained in compliance with Federal laws leading to acquisition of title.

In view of the foregoing, the surface and subsurface estates of the following described lands, selected pursuant to Section 12(c), aggregating approximately 7,490 acres, are considered proper for acquisition by Doyon, Limited, and are hereby approved for conveyance pursuant to Section 14(e) of the Alaska Native Claims Settlement Act.

Copper River Meridian, Alaska (Unsurveyed)

✓ T. 13 N., R. 17 E.

Sec. 13, all;

Sec. 23, excluding F-20518 (Tetlin Reserve);

Secs. 24 and 25, all;

Sec. 26, excluding F-20518 (Tetlin Reserve);

Sec. 35, all.

Containing approximately 3,815 acres.

✓ T. 13 N., R. 19 E.

Sec. 4, all.

Containing approximately 640 acres.

✓ T. 15 N., R. 17 E.

Secs. 3 and 4, all;

Sec. 5, excluding F-20518 (Tetlin Reserve);

Sec. 9, all.

Containing approximately 2,410 acres.

✓ T. 15 N., R. 19 E.

Sec. 34, excluding Native allotment F-12947 Parcel B.

Containing approximately 625 acres.

Aggregating approximately 7,490 acres.

The conveyance issued for the surface and subsurface estates of the lands described above shall contain the following reservations to the United States:

- ✓ 1. That Haines to Fairbanks pipeline right-of-way, F-010143, fifty (50) feet in width, and all appurtenances thereto, constructed by the United States through, over, or upon the land herein described and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.
2. Pursuant to Section 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b) (Supp. V. 1975)), the following public easements, referenced by easement identification number (EIN) on the easement maps in case file F-21779-20, are reserved to the United States and subject to further regulation thereby:

- a. (EIN 45 C4, D9) A streamside easement twenty-five (25) feet in width upland of and parallel to the ordinary high water mark on all banks and an easement on the entire bed of the Nabesna River from the Nabesna village site in Sec. 22, T. 14 N., R. 18 E., Copper River Meridian, upstream through selected lands to public lands. Purpose is to provide for public use of waters having highly significant present recreational use.
- b. (EIN 47 C) The right of the United States to enter upon the lands hereinabove granted for cadastral, geodetic, or other land survey purposes is reserved, together with the right to do all things necessary in connection therewith.

These reservations have not been conformed to the Departmental easement policy announced March 3, 1978. Conformance is contingent upon resolution of the litigation Calista, et al. v. Andrus and implementation of the Secretary's new easement policy.

The grant of lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;
2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Section 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges, and benefits thereby granted to him; and
3. The terms and conditions of the agreement dated April 28, 1978, between the Secretary of the Interior; Doyon, Limited; and Northway Natives Incorporated. A copy of the agreement shall be attached to and become a part of the conveyance document and shall be recorded therewith. A copy of the agreement is

located in the Bureau of Land Management easement case file for Doyon, Limited, serialized F-21779-20. Any person wishing to examine this agreement may do so at the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501.

To date 419,349 acres of land, selected pursuant to Section 12(c) of the Alaska Native Claims Settlement Act, have been approved for conveyance to Doyon, Limited.

There are no inland water bodies considered to be navigable within the selected area.

Enclosed are copies of current status plats showing lands approved for conveyance along with maps showing the easements to be reserved.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 555 Cordova Street, Pouch 7-512, Anchorage, Alaska 99510 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501; also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.
2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until JUL 28 1978 to file an appeal.
3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

If an appeal is taken, the adverse party to be served with a copy of the notice of appeal is:

Doyon, Limited
First and Hall Streets
Fairbanks, Alaska 99701

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. (See enclosed ASO Form 2650-4.)

/s/ Sue A. Wolf

Chief, Selections and Leasable
Minerals Section

Enclosures:
ASO Form 2650-4
Cy 43 CFR Part 4, Subpart J
Plats
Maps
Legend

cc:

Joint Federal-State Land Use
Planning Commission for Alaska
733 West Fourth Avenue
Anchorage, Alaska 99501
(w/maps)

State of Alaska
Division of Lands
323 East Fourth Avenue
Anchorage, Alaska 99501
(w/maps)

Northway Natives Incorporated
Box 441
Northway, Alaska 99764

DM-F (202)
(w/maps)

✓F-010143 (2800)

LBlack:pd:imp 6/12/78

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

AUG 04 1983

DECISION

F-19155-20 Regional Selection	: : : : : :	Doyon, Limited Land Department Doyon Building 201 First Avenue Fairbanks, Alaska 99701
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Decision of June 26, 1978, Modified in Part
 Decision of August 24, 1979, Modified in Part

On June 26, 1978, a Decision to Issue Conveyance (DIC) was issued to Doyon, Limited for lands selected in the vicinity of Northway. The DIC was published in the Federal Register (43 F.R. 28048-28049) on June 28, 1978. There were no inland water bodies considered to be navigable within the selected area.

The DIC was appealed to the Alaska Native Claims Appeal Board (ANCAB) (RLS 78-1) and on January 22, 1980, BLM was ordered to submit its basis for determining the waterbodies to be navigable or nonnavigable. BLM filed its Review and Basis for Navigability Determinations on March 28, 1980. Upon review, the Nabesna River and Fish Lake were determined to be navigable. On October 30, 1981, ANCAB issued a decision finding the Nabesna River and Fish Lake to be navigable. Therefore, the DIC dated June 26, 1978, is hereby modified by changing the second sentence in the first paragraph of the published decision on page 28048, column 3, to read, "The application excluded Nuziamundeho Lake as being navigable."

On page 28049, column 2, the paragraph stating, "There are no inland water bodies considered to be navigable within the selection area," is deleted.

The DIC of June 26, 1978, approved for conveyance the surface and subsurface estate of the beds of the Nabesna River and Fish Lake to Doyon, Limited. As these water bodies are now considered navigable, the submerged lands beneath them are not public lands and are not available for conveyance to the Native corporation under the Alaska Native Claims Settlement Act (43 CFR 2650.0-5(g)). Therefore, the DIC of June 26, 1978, approving the submerged lands of the above-described water bodies for conveyance to Doyon, Limited, is hereby modified to exclude those lands. The approximate total acreage is changed from 122,499 acres to 121,414 acres.

Those water bodies determined to be navigable are identified on the attached navigability maps, the originals of which will be found in easement case file F-21779-20.

F-19155-20 (2652)
 ✓ F-21779-20 (75.4)
 (961)

Call
am

This modified decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

On June 23, 1978 and June 26, 1978, DIC's were issued to Doyon, Limited and published in the Federal Register (43 F.R. 28048-28051) on June 28, 1978. These DIC's reserved easements which had not been conformed to the Departmental easement policy announced March 3, 1978. On December 20, 1978, ANCAB remanded the easements to BLM for determination in accordance with the new Departmental easement regulations.

Accordingly, a decision was issued to conform easements on August 24, 1979, and published in the Federal Register (44 F.R. 49795), the same date, in which the following easement was reserved:

(EIN 14 C5, L) An easement for an existing access trail twenty-five (25) feet in width from the Alaska Highway in Sec. 11, T. 14 N., R. 19 E., Copper River Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

On December 17, 1982, the Interior Board of Land Appeals modified easement EIN 14 C5, L to only allow "travel by foot, dogsled, [and] animals," "Northway Natives, Inc., Doyon, Limited, 69 IBLA 219, 244 (1982). It now reads as follows:

(EIN 14 C5, L) An easement for an existing access trail twenty-five (25) feet in width from the Alaska Highway in Sec. 11, T. 14 N., R. 19 E., Copper River Meridian, northerly to public lands. The uses allowed are travel by foot, dogsled and animals.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the Federal Register and once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Except as modified by this decision, the decisions of June 26, 1978, and August 24, 1979, stand as written.

/s/ B. L'Vollis Black

Section Chief, Branch of
ANCSA Adjudication

Enclosures:
Maps
Legend

cc:

State of Alaska (CM-RRR)

Department of Natural Resources

Division of Land and Water Management

Pouch 7-005

Anchorage, Alaska 99510

(w/maps)

Northway Natives Incorporated
Box 441
Northway, Alaska 99764
(w/maps)

DM-F (242)

DM-F (200)

(w/maps)

AM-Y (280)

(w/maps)

Chief, Branch of ANCSA Adjudication (961)

Chief, Branch of Easement Identification (963)
(w/maps)

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MMO 48*W



Unit States Department of the Interior

IN REPLY REFER TO
(10) (10) (10) (10) (10) (10) (10) (10) (10) (10)

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

Nabesna-SS-83-04
FF-044624 1/
2628 (962) (NAV)

APR 15 1983

Memorandum

To: Acting Chief, Division of ANCSA and State Conveyances (960)
From: Acting Assistant to the State Director for Conveyance Management (913)
Subject: Final Navigability Determination for State Selections in the Upper Chisana and Ladue River Drainage Areas

This is the final navigability determination for water bodies on lands located within the twenty townships identified on the Navigability Report title page.

The attached report is based on a review of available maps and recorded material, as well as interviews.

Based on the information in the previous navigability reports and this Navigability Report, I determine the Chisana River, Mark Creek, and the lower reaches of Scottie Creek in T. 11 N., R. 22 E., Copper River Meridian, to be navigable. All other named and unnamed water bodies in the subject townships are nonnavigable.

/s/ Robert W. Faithful IV

cc: State of Alaska
Navigability Project
Pouch 7-005, 555 Cordova Street
Anchorage, Alaska 99510

1/ FF-043709, FF-044625, FF-043710, F-028021, FF-079631, FF-079647, F-028023,
FF-079616, FF-079632, FF-079648, FF-079602, FF-079617, FF-079633,
FF-079649, FF-079589, FF-079603, FF-079618, FF-079634, FF-079650

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Navigation Report
Nabesna-SS-83-04

I. INTRODUCTION

1. Policy Guidelines

- a. Memorandum from Hugh C. Garner, Solicitor's Office, Washington, D.C. to Director, Bureau of Land Management, "Title to Submerged Lands for Purposes of Administering ANCSA," March 16, 1976.
- b. Regional Solicitor's letter dated February 25, 1980, Kandik, Nation Decision on Navigability.
- c. Instruction Memorandum No. AK-81-78, Change 1.

II. LOCATION

The report area is comprised of all available lands located within the twenty (20) townships shown on the Navigability Report title page. The report area is adjacent to the Canadian border and is located about 400 miles southeast of Fairbanks.

III. DEVELOPMENT

Development within the report area is limited and is confined to those areas near or adjacent to the Alaska Highway. A few roadhouses and campgrounds appear within the area. A pipeline from Haines to Fairbanks parallels the road while passing through the report area. A couple of cabins designated High Cache on U.S. Geological Survey maps are located near Scottie Creek just south of the report area.

IV. LAND STATUS (MTP'S)

Portions of T. 13 N., R. 20 E., T. 14 R. 20 E., and T. 16 N., R. 20 E., Copper River Meridian have been selected by village and/or regional corporations. As expected the MTP's show most patented land to be near or adjacent to the Alaska Highway. A Native allotment is located at the confluence of Chisana River and Scottie Creek. Other allotments are located within the report area but most of these are near the highway. Several mining claims are shown in T. 14 N., R. 23 E., Copper River Meridian in the headwaters of the McArthur Creek. Several townships especially those to the north have no recorded claims.

V. ACCESS

Access to the report area could be by the Alaska Highway or by floatplane to some of the larger lakes. A trail leaving the Alaska Highway in the southeast corner of T. 12 N., R. 22 E., provides access to a few cabins located north of the highway. A trail south from the Alaska Highway to High Cache is also shown on the USGS quadrangles. Access and egress to Scottie Creek may be possible from the Alaska Highway. According to the USGS quadrangles, no designated airstrips are located within the report area. The nearest airstrips are located at Riverside Lodge, Tetlin, Tok Junction, and Northway.

VI. MAPS

USGS Quadrangles (scale 1:250,000) Nabesna (1956-minor revisions 1967) and Tanacross (1960) were utilized while preparing this report. The appropriate 1:63,360 quadrangles were also reviewed to determine gradients. Given the dates of the quadrangles, additional development, especially along the highway, has probably occurred.

VII. PREVIOUS DETERMINATIONS

By memo dated March 22, 1979, the State Director determined as follows:

- a. The Chisana River from its mouth to Scottie Creek be determined navigable on the basis of susceptibility. It is further recommended that the Chisana River from Scottie Creek to its head and all tributaries of Chisana River be determined nonnavigable.
- b. All other lakes and creeks affected by Northway Natives, Inc., selection applications F-14912 A and B under the Alaska Native Claims Settlement Act be determined nonnavigable.

By memo dated March 28, 1980, the State Director amended the previous determination and found Mark Creek to be navigable. Accordingly within the Chisana drainage area portion of this report area, the Chisana River and Mark Creek are navigable and all other named and unnamed water bodies are nonnavigable. After reviewing the available information the author of this report agrees with all previous determinations except for that of Scottie Creek (Chisana Drainage).

This report, therefore, will not discuss, other than Scottie Creek, use information on water bodies within the Chisana Drainage area but will rather focus on all other water bodies (i.e., Upper Ladue River drainage area).

VIII. WATER BODIES

The report area is split between two drainage areas. The Chisana (Tanana) drainage lies in the southern portion and the headwaters of the Ladue (White River and Yukon via Canada) drainage lies in the northern portion

260 N 11 E
T 12 N R 22 E
MNRK CREEK
SCOTTIE CREEK

of the report area. The Ladue River and all tributaries of the Chisana are nonglacial whereas the Chisana has a glacial origin. Physical descriptions of all named water bodies within the report area is as follows.

<u>Lakes</u>	<u>Length (mile)</u>	<u>Area (acres)</u>
*Island	1	300
*Deadman	1.3	340
*Tenmile	2	400
*Yarger	1.2	500
*Eliza	1	500
*Damundtali	.25	40

<u>Streams</u>	<u>Width (feet)</u>	<u>Gradient (feet/mile)</u>
*Chisana River	+80	6
*Scottie Creek	±80	3
*Desper Creek	-80	3 to 17
*Yellow Water Creek	-80	25
*Gardiner Creek	-80	6 to 33
*Tenmile Creek	-80	50
*Silver Creek	-80	50
*Mark Creek	-80	5
*Beaver Creek	-80	100
South Fork Ladue River	-80	20 to 100
McArthur Creek	-80	16 to 50

*Previous State Director Determination

Numerous small unnamed lakes are located within the Chisana drainage portion of the report area. Many of these are land locked as there is no apparent surface outlet. Several small unnamed streams are also located within the report area. These typically are narrower and steeper than any of the named streams.

IX. USE INFORMATION

The Chisana River and Mark Creek were previously found navigable so no attempt was made to gather use information on these water bodies.

Except for Scottie Creek, the AEIDC contract material contained no information regarding watercraft use on streams within this report area. Information was provided on a few of the streams but it had to do with highway bridges or waysides. A few of the lakes, especially those close to the Alaska Highway or campgrounds, were noted for their recreational use. Ladue River was noted by Robert A. McKennan, who traversed the upper Tanana region in 1929-1930 to study the Tanana Indians, as being one of the more generally used trails for trade from the Tanana overland to Ladue River and then down the Ladue and White rivers to the Yukon. A map prepared by U.S. Coast and Geodetic Survey-Yukon River, Alaska (date June 1898) was reviewed and indicated that a trail leading from the Tanana near

Tetlin joined the Ladue River about ten miles east of Longitude 142°. The portion of the Ladue that was apparently used as a route of trade is located downstream from the tributaries of the Ladue that are located within this report area.

Scottie Creek according to McKennan was a lesser used route (travel and trade) from the Tanana to White River. An account taken from page 30 of The Upper Tanana Indians by Robert A. McKennan (published by the Department of Anthropology, Yale University, 1959) is provided below:

All the older Indians recount tales of their early journeys to the white man's stores on the Yukon, and the names of "Jock" McQuesten and Joe Ladue were mentioned many times to me. Several trails lead to the Yukon, one by the way of Scottie Creek and the White River, but those more generally used simply struck north from the Tanana and then down either Fortymile or Ladue creeks.

INTERVIEW SEE CONCLUSIONS

X. CONCLUSIONS

The Chisana River and Mark Creek are navigable per previous State Director determinations. All other water bodies within the Chisana Drainage area portion of this report area have been determined non-navigable. The author of this report agrees with all the previous nonnavigable determinations except for that of Scottie Creek. Additional information leads this author to believe that Scottie Creek is navigable. Although it is known that travel and trade occurred via Scottie Creek, it is not clear if it was during the summer or winter (or both) or whether it was overland or by boat. Transport by boat on Chisana River and Scottie Creek as far upstream as practical and then overland to White River and downstream by boat on White River seems the more likely summer route and sleds or snowshoes over the frozen water bodies seems the more likely winter route. According to BLM Fortymile Resource Area personnel, canoe, kayaks, and small flat-bottomed river boats do use the creek downstream of the Alaska Highway bridge. This use is primarily for access to hunting and fishing areas. In addition, they thought that trappers used the river during the fall in boats to haul in supplies and build and maintain line cabins for winter trapping by snowmobiles. In addition, access and egress to Scottie Creek may be possible from the Alaska Highway. Lastly, the author feels that High Cache may have been a trading point and/or Native village. Boats may have been taken up the Chisana and Scottie Creek to High Cache when traders bartered for furs.

Scottie Creek's headwaters are in Alaska. The creek loops into Canada and returns to Alaska and joins the Chisana River just south of the report area. The physical characteristics of the upper reaches of Scottie Creek are markedly different than those of the lower reaches. The upper reaches are less than 80 feet in width and gradient exceeds 25 feet/mile whereas in the lower reaches the river is greater than 80 feet in width and gradient is only about 3 feet/mile. The author feels that practical navigability ends at some point in Canada; thus the lower reaches of Scottie Creek are navigable and the upper reaches are nonnavigable.

Although it seems that the mainstream of the Ladue River is navigable up to some point in Alaska, the tributaries of the Ladue (South Fork and McArthur Creek) are felt to be well upstream of that point. There is no available information regarding use of these water bodies by any type of watercraft.

The absence of use information coupled with the physical characteristics leads the author to believe that all other water bodies are nonnavigable. It is felt that many of the streams and lakes are used in their frozen state as they afford the easiest winter pathway into roadless areas. In addition, floatplanes probably land on many of the larger lakes and recreational boating may occur on some of the streams and lakes within the report area.

However, under existing criteria recreational use, floatplane use and frozen state use by themselves do not lead to a determination of navigability.

XI. REPORT AREA RECOMMENDATIONS

Based on previous State Director determinations dated March 22, 1979 and March 28, 1980 (Northway Area-F-14912-A), the Chisana River and Mark Creek are navigable. Based on either this report or the previous determinations, I recommend that the lower reaches of Scottie Creek in T. 11 N., R. 22 E., Copper River Meridian be determined navigable and that all other water bodies in the subject twenty townships be determined non-navigable.

Prepared by C. M. Wheeler
Mac Wheeler

Date 11 Apr. 83

Reviewed by /s/ C. Michael Brown

Date APR 11 1983

Reviewed by /s/ Sherman F. Berg

Date APR 11 1983



United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

Amendment to Nabesna-
SS-FY'83-#4
F-028021
2628 (NAV)(962)

OCT 05 1983

Memorandum

To: Assistant Deputy State Director for Conveyance Management (960)

From: Deputy State Director for Conveyance Management (960)

Subject: Amendment to Final Navigability Determination for Mark Creek
in T. 13 N., R. 20 E., Copper River Meridian

By report Nabesna #4 - FY'83 dated April 15, 1983, Mark Creek in the subject township was determined to be navigable. The basis for this determination was an earlier report prepared by the ASO staff that was misinterpreted by the author of Nabesna #4 - FY'83. The earlier report recommended that Mark Creek in the subject township be determined nonnavigable. The State Director concurred on March 28, 1980. Therefore, the amended determination for water bodies within T. 13 N., R. 20 E., Copper River Meridian, is that the Chisana River and all interconnecting sloughs are navigable and all other water bodies are nonnavigable. Cadastral Survey will determine at the time of survey whether Mark Creek in the subject township is in fact an interconnected slough of the navigable Chisana River.

/s/ Robert W. Arndorfer

cc:

Title Administration
Division of Technical Services
Alaska Department of Natural Resources
Pouch 107035
Anchorage, Alaska 99510-7035

Retained Lands Unit - Navigability
Division of Land and Water Management
Alaska Department of Natural Resources
Pouch 7-005
Anchorage, Alaska 99510

RECEIVED
OCT 11 1983
TITLE ADMINISTRATION

October 31, 1983

5103.03(F)(5)
Mark Creek
and
5103.03(F)(4)
Nebesna Quad

Mr. Bob Arndorfer
Deputy State Director for
Conveyance Management
Bureau of Land Management
701 "C" Street, Box 13
Anchorage, Alaska 99513

RE: Amendment to Nebesna - SS - FY 83 #4

Dear Mr. Arndorfer:

The referenced decision has confused the issue of whether Mark Creek is navigable or non-navigable.

The March 28, 1980, memorandum mentioned in this latest decision specifically recommends that Mark Creek be determined navigable and you, as Acting State Director, concurred on the date of that decision.

The report that accompanied the decision memo states:

From a liberal point of view, Mark Creek could be considered an interconnected slough of Chisana River. The creek heads in Chisana River in Section 31, T. 14 N., R. 20 E., C.R.M., and flows in a single, wide channel through a marshy and lake-dotted country to empty into the Chisana River in its rivermile five. According to local residents, they have traveled on the creek in light boats for the purpose of hunting and trapping. Like other creeks of comparable width and length in the area, the creek has sufficient depth to accommodate large riverboats. Accessible by the Chisana river, the creek is considered to be an alternative route of water travel, and thus a potential highway of commerce.

Page 2 of 2
October 31, 1983
Mr. Bob Arndorfer
Deputy State Director for
Conveyance Management

This use by trappers is precisely the type of activity contemplated by the Kandik-Nation decision. BLM appropriately applied the principles in that decision by finding Mark Creek navigable and we urge you to void this amendment to Nebesna - SS - FY 83 #4 and allow the administrative decision of March 28, 1980, to stand whereby Mark Creek is designated navigable.

Thank you.

Sincerely,



Ron Swanson, Head
Retained Lands Unit

cc: Mike Brown, BLM

RS/DPD/dpj



United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513

Nabesna-SS-Fy'83-#4
F-028021 (2620)
F-14912-A (2628)
F-19155-20 (2628)
(962) (NAV)

*Reviewed
Jan 11, 84
no comment
DPO*

DEC 08 1983

Mr. Ron Swanson
Retained Lands Unit - Navigability
Division of Land and Water Management
Alaska Department of Natural Resources
Pouch 7-005
Anchorage, Alaska 99510

Dear Mr. Swanson:

Your letter of October 31, 1983, to Mr. Robert Arndorfer was referred to this office for a reply. We appreciate you calling our attention to an apparent problem with our report entitled Nabesna #4-FY'83 concerning the navigability determination of Mark Creek.

On March 28, 1980, the BLM determined Mark Creek where double-lined on USGS maps in the Northway Natives, Inc. and Doyon Ltd. conveyance areas to be navigable. Where single-lined in these areas, the creek was determined to be nonnavigable. USGS maps reflecting these determinations were submitted to ANCAB on March 28, 1980. We have attached a map delineating in black that section of Mark Creek determined in 1980 to be navigable. Our determination of October 5, 1983 applied to single-lined Mark Creek in T. 14 N., R. 19 E., and 20 E., Copper River Meridian, and thus simply reconfirmed our 1980 determinations.

As depicted in red on the map, the closed sloughs in Section 31, T. 14 N., R. 20 E., Copper River Meridian (B to C on map), and Section 36, T. 14 N., R. 19 E., Copper River Meridian (Point A to D on map), are nonnavigable. The closed slough in Section 31, T. 14 N., R. 20 E., Copper River Meridian, does not meet the criteria of navigability. The slough is accessible by boat via Mark Creek and Chisana River. Small boats may be taken up and down the slough; otherwise there is no place to go. Cadastral Survey will determine the extent of navigable waters for these sloughs at the time of survey.

If you have any information about the nonnavigable sections of Mark Creek as depicted on the map, please contact us at your earliest convenience.

Sincerely yours,

C. M. Brown

Chief, Navigability Section



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

F-14912 A (265)



Nabesna-GS-FY'94
Tanacross-GS-FY'94
F-17780 (2561)
F-013580 (2561)
F-024675 (2561)
F-43709 (2620)
F-79556 (2620)
F-79565 (2620)
F-88517 (2620)
F-14912 (75.4)

At 6-24-94

June 24, 1994

Memorandum

To: Chief, Branch of Survey Preparation and Contracts (923)

From: Chief, Navigability Section (924)

Subject: Navigable Waters in Survey Window 1212 (Group Surveys 117 and 242)

This memorandum identifies navigable waters below the meanderable size in 48 townships comprising survey window 1212 (Northway). These water bodies are on lands selected under the Alaska Native Claims Settlement Act (ANCSA), the Statehood Act, or the Native Allotment Act, and not reserved at the time of statehood. In addition, the memo identifies navigable water bodies excluded from land conveyances under ANCSA or the Statehood Act.

The report area is located in the headwaters of the Tanana River in eastern Alaska. Besides the Tanana River, the principal rivers in the area are the Nabesna and Chisana rivers.

After researching the conveyance actions and considering the water bodies' physical character and the evidence of use, we identified the following water bodies (all below the meanderable size) in the report area as navigable:

1. Moose Creek to the unnamed lake in Secs. 21 and 28, T. 14 N., R. 19 E., CRM, and in Native allotments F-17780 and F-013580.
2. Mark Creek in T. 14 N., R. 19 E., CRM.

cc:

State of Alaska
Department of Natural Resources
Division of Land
State Interest Determinations Unit
P.O. Box 107005
Anchorage, Alaska 99510-7005

State of Alaska
Department of Natural Resources
Division of Land
Title and Contract Section
3601 C Street, Suite 960
Anchorage, Alaska 99503

State of Alaska
Department of Natural Resources
Division of Water
P.O. Box 107005
Anchorage, Alaska 99510-7005

Doyon, Limited
Doyon Building
201 First Avenue
Fairbanks, Alaska 99701

Northway Natives Incorporated
P.O. Box 441
Northway, Alaska 99764

Tetlin National Wildlife Refuge
P.O. Box 779
Tok, Alaska 99780

U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99503
Attn: Sharon Janis

✓ Chief, Branch of Doyon/Northwest Adjudication (964)

Chief, Branch of Field Surveys (921)

Chief, Branch of Examination and Records (922/Attn: Records)

Chief, Mapping Section (924)

Appendix I

Navigable Waters Bodies Below the Meanderable Size on Lands
Selected under ANCSA, Alaska Statehood Act, or Native Allotment Act
in Survey Window 1212, Group Surveys 117 and 242 (Northway),
by Township

Copper River Meridian

Tps. 15-17 N., R. 16 E.

None.

Tps. 12-16 N., R. 17 E.

None.

Tps. 12-17 N., R. 18 E.

None.

Tps. 12-13 N., R. 19 E.

None.

T. 14 N., R. 19 E. (See Site Plot map.)

Moose Creek in Secs. 9 and 16 and to the lake in the SW¼ of Sec. 21 and in Native allotments F-17780 and F-013580.

Mark Creek.

Tps. 15-17 N., R. 19 E.

None.

Tps. 12-13 N., R. 20 E.

None.

T. 14 N., R. 20 E.

Mark Creek.

Tps. 15-17 N., R. 20 E.

None.

Tps. 12-17 N., R. 21 E.

None.

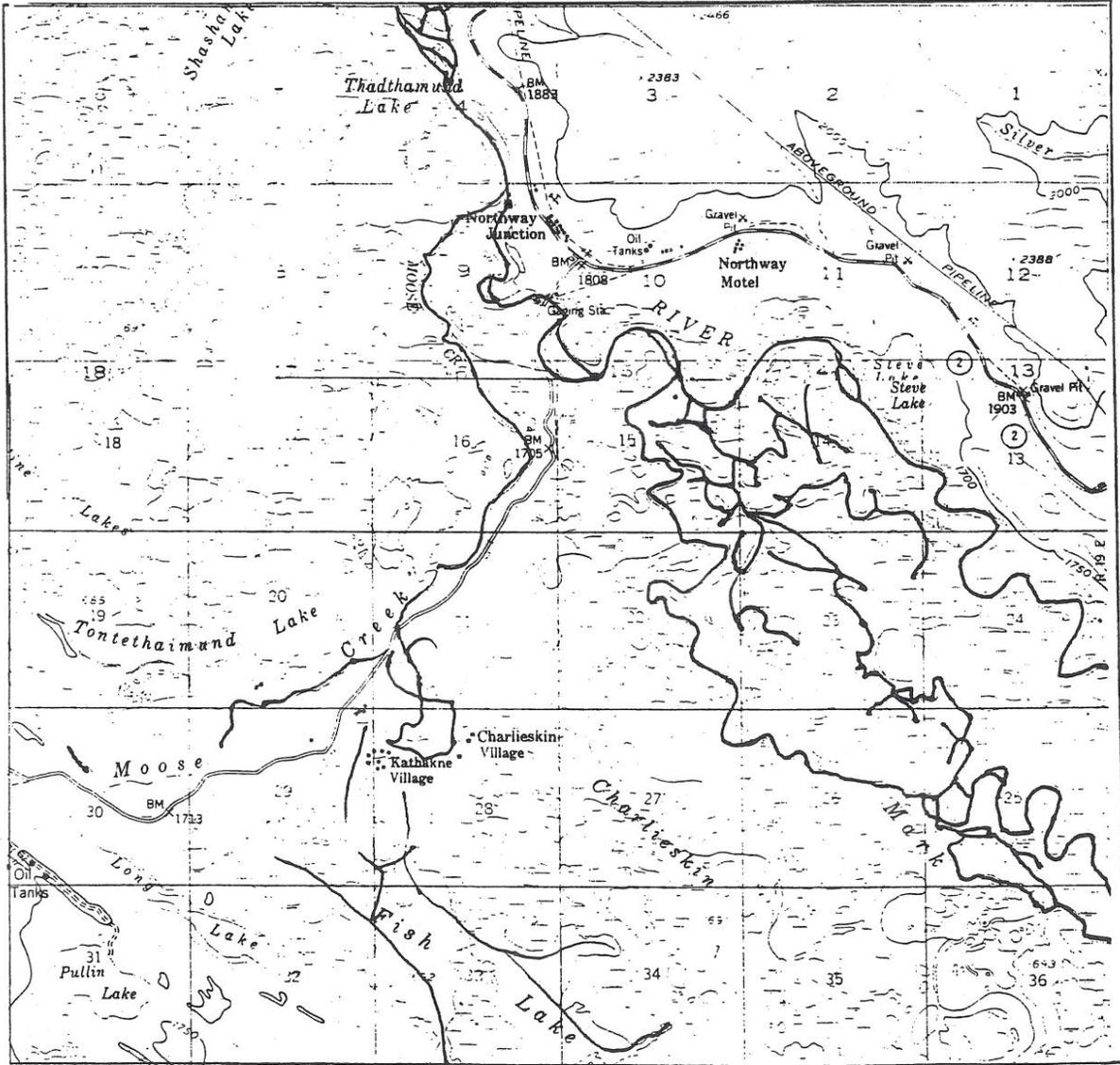
Tps. 10-11 N., R. 22 E.

None.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NAVIGABILITY MAP (PPP WINDOW 1212, Group Surveys 117 and 242 Nabesna)

T.14 N., R. 19 E., Copper River Meridian



SCALE: 1" = 1 Mile

USGS MAPS	AERIAL PHOTOS	ICs
Nabesna D-2, Tanacross A-2	CIR 60, roll 21, frame 410, July 1978	364, Secs.1-8, 13-36; 664, Secs. 9, 10; 964 Secs. 2, 4-36.