



*File
Navigability*

IN REPLY REFER TO:

United States Department of the Interior 2650.55/9180 (910)
MINERALS BRANCH DATE: 5/13/74

BUREAU OF LAND MANAGEMENT Noted by Branch Chief

State Office
555 Cordova Street
Anchorage, Alaska 99501

Dowling..... Jarrett
Secretary.....Assigned.....
Route in Branch.....
May 13, 1974

4.61

Mr. Joe Upicksoun, President
Arctic Slope Regional Corporation
P.o. Box 566
Barrow, Alaska 99723

Dear Mr. Upicksoun:

Since you are all aware of the problems that could be encountered relating to the navigability issue in Alaska, we wish to take this opportunity to clarify the Bureau of Land Management's position. We hope the following discussion will be helpful in your deliberations on land selections.

Unfortunately, there is no black and white answer for the numerous situations that exist. However, we believe our position can best be explained by discussing a few previous legal opinions and court decisions relative to navigable waters.

We do not question the navigability, in fact, of the Yukon and other large rivers in Alaska. The navigability of such rivers that have been so used or are susceptible of useful commerce is evident. It is, of course, questionable that even a large river or stream bed than can serve no "useful purpose" even prospectively in commerce could qualify. Our position in these cases is that such rivers do not qualify as navigable.

For example, many large rivers in the State are merely wide braided stream beds. The Colville River would fit that description and it is one which we consider to be non-navigable.

In the report prepared by the Bureau of Reclamation in 1952, published as House Document 197, 82nd Congress, First Session (Congressional V Serial 1523) "Alaska", it is said in part, "Many rivers are rendered non-navigable at present by rapids and shoals. Large areas of the interior could maintain a movement of river freight if dams and locks were placed on some rivers at strategic places." This factual

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statement, taken with the legal requirements that navigability in law is inextricably linked with use or susceptibility of use of a river in its natural state, would preclude the assumption of navigability for most rivers in Alaska.

The Department's Opinion M-36596 Navigable Waters in Alaska, March 15, 1960 provides a guide for us to follow when an administrative decision is to be made as to navigability. Quoting from that opinion it is said "...When the question is who owns the water beds, the courts have uniformly required that to be navigable the water must be used or usable for travel, trade, and commerce." Underlining and double underlining added.

To be determined navigable lakes must fit the above commerce qualification. The great majority of the lakes in the State do not meet this criterion. Notwithstanding what we consider to be the essential ingredient in determining navigability, namely "commerce", we would accept as a minimum those lakes with an acreage of 10 square miles or more as navigable. Most of these are listed in Geological Survey Circular 476. This criterion does not, of course, deprive the State of the ownership of the bed of any lake subsequently found to be navigable by the courts.

Some large lakes might qualify as navigable by virtue of the number of the villages bordering them and the assumption that commerce of some kind, even now, takes place between them. We question, however, the situation where an overland portage is necessary to reach one lake from another. This would defeat the use of these lakes in commerce. Therefore, they cannot qualify as to having a capacity, either actual or prospective, for use in commerce.

We do not attach any significance to the use of iced-over lakes for sleds or even wheeled vehicle travel as an indication of commerce and as proof of navigability. Many tractor trails cross lakes and rivers in the winter months and, in fact, many winter tractor trails use the ice almost exclusively.

In our opinion, the use of float planes or convertible ski planes for landings on lakes any more than rivers cannot be used as an argument for navigability. Note the argument above against accepting winter trails across ice as an indication of potential navigability.

It should be noted that in discussing navigability it is said in the Department's Opinion that, "A lake customarily used for landing freight and passengers by such a plane (hydroplane) might qualify." However, that question appears to us to have been settled in the criteria as to navigability laid down in Brewer-Elliott Oil Co. v. United States, 260 U.S. 77. There it is said that a water body is only navigable or usable if used "in its ordinary condition, as a highway for commerce over

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which trade and travel are or may be conducted in the customary modes of trade or travel over water." Underlining and double underlining added. Consequently, the Bureau takes the position that the use of waters for the landing of planes alone is not enough in itself to constitute navigability.

The Bureau of Land Management intends to utilize a system that essentially follows past practices. The use of the existing criteria has the further advantage of having stood the test of time for State selections. The attempted use of new criteria would result in a job of years duration with no assurance that our decision would stand. Any determination would still be subject to litigation.

We have attached a partial listing of inland waters that probably fit our definition of navigability. It is not intended as a complete list since other water bodies in the State may support commercial navigation. Please use it only as a guide.

Sincerely,

7/5/Curtis V. McVee
State Director

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Enclosure 1
Encl. 1 - Inland Waters Listing

cc:
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Please see attached sheet

Identical letters were sent to:

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Inland Navigable Waters of Alaska

<u>River or Lake</u>	<u>Approximate Miles</u>	<u>Remarks</u>
Aleknagik Lake	20	Navigable full length. Head Wood River.
Andreafsky River	*	Tributary of Yukon River.
Aniak River	*	Tributary of Kuskokwim River.
Becharof Lake	43	Empties into Egegik River.
Big Lake	4.5	Drainage to tidal waters not considered navigable.
Black River	*	Tributary to Porcupine River.
Chandalar Lake	9.5	Located on the North Fork Chandalar River.
Chandalar River	*	100 miles long, tributary of Yukon River.
Chena River	6	Navigable to Cushman St. Bridge, tributary of Tanana River.
Lake Clark	45	1 to 3.5 miles wide, connects with Lake Iliamna via Newhalen River. Newhalen not navigable.
Eek River	*	Tributary of Kuskokwim River.
Holitna River	*	Tributary of Kuskokwim River.
Iditarod River	340	Holy Cross to Dikeman.
Iliamna Lake	70	Heads Kvichak River. Navigable full length.
Innoko River	*	Tributary of Yukon River.
John River	*	Tributary of Koyukuk River.
Kantishna River	*	Tributary of Tanana River.

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Kasilof River	6	Navigable by shallow draft launch. Total drains Tustamena Lake.
Kenai Lake	20	Navigable full length. Heads the Kenai River.
Kenai River	*	Brages dock at cannery at high water 1.5 miles upstream.
Kobuk River	200	Small vessels travel to mines.
Koyukuk River	*	Navigable partly on freshets. Tributary of Yukon River.
Kuskokwim River	400	McGrath is head of river navigation at mile 400. River is 500 miles long, empties into Kuskokwim Bay.
Kuzitrin River	15	Shallow draft vessels travel to Shelton. Empties into Imuruk Basin.
Kvichak	20	Cannery tenders of 10-foot draft go 22 miles upstream to Alaganik River. Launches continue to the head of the river at Lake Iliamna.
Louise, Lake	8	4 miles wide. Headwater of Susitna R.
Mulchatna River	*	Tributary of Nushagak River
Naknek River	20	The mouth is head of deep draft navigation in Kvichak Bay.
Noatak River	*	Empties into Kotzebue Sound.
Noyes Slough	*	Tributary of Chena River.
Nushagak River	30	Ocean-going vessels go to mouth of Wood River; small vessels continue on.
Paxon Lake	10	On course of Gulkana River, tributary of the Copper River.
Porcupine River	225	Tributary of Yukon River.
Selawik Lake	31	20 miles wide.

Sheenjak River	*	Tributary of Porcupine River.
Skilak Lake	12.6	On Kenai River.
Stikine River	30	Navigable length shown is in Alaska.
Stony River	*	Tributary of Kuskokwim River.
Susitna River	75	Head of ocean-going navigation is mouth of river. Sternwheelers have gone to confluence of Talkeetna' River 75 miles.
Takotna River	*	Tributary of Kuskokwim River.
Tannana River	250	275 miles navigable by river steamers; remainder by launches. City of Nenana 250 miles above confluence of Yukon River is transfer point of supplies from Alaska Railroad to the river.
Tustemena Lake	23	Head of Kasilof River
Ugashik River	13	Cannery wharf 13 miles upstream has 14 foot depth at high tide and is dry at half tide.
Wood River	*	
Yentna River	*	Flows into Susitna River.
Yukon River	1430	Mileage to Canadian border.

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BUREAU OF LAND MANAGEMENT

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

2628 (962) (NAV)

APR 21 1983

Memorandum

To: Acting Chief, Division of ANCSA and State Conveyances (960)

From: Acting Assistant to the State Director for Conveyance Management (913)

Subject: Navigability Determinations for Certain Waters in the Upper Yukon Region

This is the final determination of navigability for certain water bodies in the Upper Yukon region. It is based on information contained in the draft Upper Yukon region report sent to interested parties for comment on November 24, 1982. No determinations of nonnavigability are made here in order to provide interested parties more time to bring forth pertinent information and to allow them to comment on an addendum to the regional report issued March 17, 1983. By mid-June another set of determinations of navigability will be made for other water bodies or other segments of the water bodies here determined navigable. This second draft will also determine some other water bodies nonnavigable. After the issuance of the final regional report there will be a third set of determinations similar to the second on streams and lakes not addressed in the first two decision memoranda.

The present determinations do not include water bodies which the BLM State Director has already determined to be navigable for their entire extent in connection with the ANCSA and State land conveyance programs. These determinations also do not include the Yukon, Kandik, and Nation rivers, which previously have been determined navigable to the International Boundary; Black River, which was covered in a special navigability report concurred in by the State Director on March 28, 1980; the Fortymile River for which the Fairbanks District Office is currently drafting recommendations; or the Tatonduk River, the recommendation for which is under review by the Native corporations. Also, it is to be understood that the present determinations apply only to water bodies or segments of water bodies currently under Federal jurisdiction.

I determine the following water bodies to be navigable:

- | | |
|---------------------------------|--|
| 1. Seventymile River | To Barney Creek |
| 2. Charley River | To Bear Creek |
| 3. Porcupine River | To the International Boundary |
| 4. Coleen River | To Lake Creek |
| 5. Sheenjek River | To Thluickohnjik Creek |
| 6. Chandalar River
Main Stem | To the confluence of the North
and West forks |

- | | |
|--|--|
| 7. Birch Creek | Lower Mouth and main stem to the Steese Highway bridge in T. 10 N., R. 16 E., Fairbanks Meridian. |
| 8. Twin Island Lake
and a slough
and lake system
to Birch Creek | Entire Twin Island Lake. Inter-connected lake and slough system in Secs. 1-3, and 10-13, T. 16 N., R. 9 E., Fairbanks Meridian and Secs. 33 and 34, T. 17 N., R. 9 E., Fairbanks Meridian. |
| 9. Beaver Creek | To an unnamed left bank tributary entering in Sec. 31, T. 7 N., R. 1 W., Fairbanks Meridian. |
| 10. Hodzana River | To Pitka Fork |
| 11. Ray River | To the western boundary of the NE $\frac{1}{4}$, Sec. 1, T. 13 N., R. 14 W., Fairbanks Meridian. |
| 12. Hess Creek | To the confluence of the North and South forks. |

Following is the rationale for these determinations. The criteria used are found in the "Garner Memorandum," the Regional Solicitor's comments on ANCAB's Kandik - Nation decision, and Instruction Memorandum No. AK-81-78, Change 1. The following generalizations are accepted in applying the criteria:

Ordinary Conditions: All of the navigable water bodies for which recommendations are being made were at the date of Statehood and remain today in their ordinary condition.

Commercial Craft: Poling boats and wooden riverboats were the customary commercial craft on Yukon River tributaries at the date of Statehood. Propeller, not jet, motors were the standard boat engines at that time. Miners and trappers supplied their claims and headquarter sites in the Upper Yukon by poling boats beginning before 1900. These narrow, tapered boats were constructed of whipsawed lumber, measured twenty to thirty feet long with a two-and-one-half-to three-foot beam at the gunwales, and could carry as much as a ton. Riverboats were eighteen to twenty-four feet long and four to five feet wide with a flat bottom and square bow. They were constructed from wooden planks.

Accessibility: All of the water bodies are accessible from the Yukon River or a navigable tributary.

- | | |
|--|----------------------------|
| 1. Seventymile River
(Eagle and Charley
River Quadrangles) | Navigable to Barney Creek. |
|--|----------------------------|

Highway of Commerce: From the 1890s to at least the 1920s, miners supplied claims along the Seventymile River by boat as well as by trail. Some boated above Barney Creek, but this was done infrequently. According to the U.S. Geological

Survey in 1905 the river "generally [was] navigable for small boats nearly to Barney Creek." There is no readily available description of these boats. At least one man who used the river indicated that both canoes and boats traveled the river. That observers did not feel it necessary to indicate anything out of the ordinary about the boats used on the Seventymile, suggests that the watercraft were similar to those used on other rivers in the area. Boat access to the mines seems to have ceased in the 1930s. It was replaced by trail and later plane travel. Nevertheless, the Seventymile River was still susceptible to boat travel at the date of Statehood.

Seasonal Variation: Boat travel took place on the Seventymile River through most, if not all, of the summer.

2. Charley River
(Charley River
and Eagle
Quadrangles)

Navigable to Bear Creek.

Highway of Commerce: While no documented evidence of commercial water travel on Charley River has been found, its resource potential and physical character indicates that such traffic was possible below Bear Creek in 1959. Cabins, most if not all of which date from before Statehood, are reported to have existed at Bonanza, Sylvia, Drayham, Highland, Essie, Hosford, and Copper creeks. At least some of these have been determined to be trappers' or prospectors' cabins.

In 1903 a geologist with the U.S. Geological Survey packing across the drainage stated that the river "is said to be navigable for small boats" for 100 miles. Personnel of the U.S. Bureau of Outdoor Recreation (BOR) in the 1970s stated that jet boats reportedly ascended to Copper Creek, well above Bear Creek, at high water and that even in sheep hunting season boats have reached Crescent Creek. Break-up can raise water levels on Copper Creek and the upper Charley ten feet and rainstorms (usually two in both June and July and one in August) cause the river to rise six inches to several feet. Although storm waters can make the river dangerous in its upper stretches, those who canoed or kayaked the river in a storm had little if any trouble below Bear Creek. Bureau of Outdoor Recreation employees stated in the 1970s that although riverboats could ascend farther, "usually water level and prudence" limited motorized boat travel to the Bear Creek area. The BOR noted that the current

is from six to eight miles per hour above Bear Creek, but three to five miles per hour below.

Seasonal Variation: Break-up causes headwater stream levels to rise six to ten feet. Only with high water can jet boats ascend to Copper Creek.

3. Porcupine River
(Coleen, Black
River, and Fort
Yukon Quadrangles)

Navigable to the International Boundary.

Highway of Commerce: Natives, Hudson's Bay traders at Fort Yukon, and shippers destined for Old Crow, Yukon Territory, and Chalkyitsik have been the primary commercial users of the Porcupine River. Craft similar to the larger vessels on the Yukon traveled the Porcupine into Canada, including thirty- and forty-foot Hudson's Bay boats carrying four to five tons, the steamboats Pauline and Vidette, and barges operated by at least three firms in the 1950s and 1960s.

Seasonal Variation: Although some steamboats had difficulty with seasonally low water near the border, this did not prove to be an obstruction to navigation.

4. Coleen River
(Coleen and Table
Mountain Quadrangles)

Navigable to Lake Creek.

Highway of Commerce: Although the explorer Gerald FitzGerald stated that trappers took "loaded river boats" 100 miles upriver, he did not take his Peterborough canoe up the river more than ten or twenty miles above Owens Cabin (rivermile 55), situated near Lake Creek. Except for an Eskimo's home "not on navigable water" reported by Hudson Stuck in the winter of 1916-17, there is no evidence of any habitations above Owens Cabin.

Seasonal Variation: FitzGerald's report indicated that the trappers' trips up the Coleen usually took place "in the early spring or during high water."

5. Sheenjek River
(Christian, Table
Mountain, Coleen,
and Fort Yukon
Quadrangles)

Navigable to Thluickohnjik Creek.

Highway of Commerce: The Sheenjek basin is a well known and still productive trapping area. In the 1910s and early 1920s James Carroll reached his trapping cabin approximately seventy miles upriver by various watercraft including a poling boat and a thirty-foot, shovel-nose boat with an outboard motor. He occasionally boated up to

another trapper's cabin at the foot of or somewhat upriver of Outlook Mountain. The owner of this cabin also traveled by boat. In one year Carroll stated that he took his thirty-foot boat twenty-five miles still farther upriver to cache trapping supplies. Although Carroll's and his neighbor's cabins were below Thluickohnjik Creek, this cache almost certainly was above it. USGS maps dated 1956 also indicated four cabins at the mouth of Thluickohnjik Creek.

Seasonal Variation: Although the Sheenjek's water level fluctuates markedly, the fact that trappers boated to their cabins in the fall, indicates the river's general susceptibility to travel.

6. Chandalar River
Main Stem
(Chandalar,
Christian, and
Fort Yukon
Quadrangles)

Navigable to the confluence of the North and West forks.

Highway of Commerce: Prior to, during, and for at least four years after the gold rush to the Chandalar Lake area, poling boats were used to transport mail and miner's supplies up the Chandalar from the Yukon River to the confluence of the North and West forks. The mining area and the town of Caro was supplied in this way. In 1907 a steamboat came within fifteen miles of Caro. After 1911 supplies entered this area by a road built by the Alaska Road Commission. By the 1950s this route was abandoned, except for winter use south of Caro. It is at least conceivable that had there been a need for summer travel to this region at the time of Statehood, boats would and could have been used on the Chandalar. On April 22, 1981 the State Director determined the river in T. 27 N., Rs. 1-4 W., Fairbanks Meridian to be navigable.

Seasonal Variation: There is no indication of marked seasonal hinderances to boat travel on the Chandalar River.

7. Birch Creek
(Circle and Fort
Yukon Quadrangles)

Lower Mouth and main stem navigable to the Steese Highway bridge in T. 10 N., R. 16 E., Fairbanks Meridian.

Highway of Commerce: In conveying lands to Native corporations and the State, the State Director declared Birch Creek navigable in all townships between T. 7 N., R. 17 E., Fairbanks Meridian and the southern two-thirds of T. 13 N.,

R. 16 E., Fairbanks Meridian, inclusive. While the Lower Mouth has been used by vessels as large as barges to supply the village of Birch Creek, there is little evidence of boat use in supplying mines, trapping headquarters, or other locales of economic activity between the village and the Steese Highway bridge in T. 10 N., R. 16 E., Fairbanks Meridian. There is at best evidence suggestive of such use above the bridge. Yet this evidence is relevant since it suggests that the water body is susceptible to boat travel. The history of mining on the tributaries of Birch Creek southwest of Circle demonstrates that miners could use boats on the stream even though it proved impractical to do so. During the initial stages of the Circle District gold rush in 1894, prospectors poled boats from the end of the portage from Circle (near the Steese Highway bridge) at least to Crooked Creek. However, this mode of transport was almost immediately abandoned as the district developed. It was replaced by summer and winter trails and, by the 1920s, the Steese Highway. There is no available evidence of miners reaching the gold placers by traveling up Birch Creek from its mouth. In the 1970s recreational boaters could ascend at least thirty miles above the highway. There is no evidence that Birch Creek or its Lower Mouth are less boatable below the Steese Highway than above it. Indeed, there is every reason to believe the opposite to be true since this segment of the stream is entirely within the Yukon Flats.

The primary, if not only, use of Birch Creek between the Steese Highway bridge and Birch Creek Village has been trapping. As early as 1910, fur-gatherers on Preacher Creek reportedly rafted out with their winter catch. In the 1970s Circle residents were said to hunt and trap in the area. The Yukon Resource Area stated that the creek also provided inter-village access. Thus, although there is no direct evidence of boat traffic on this stretch of Birch Creek at the date of Statehood, the physical character of the stream combined with its trapping resources indicate its susceptibility to use as a highway of commerce to the Steese Highway.

Seasonal Variation: There is no indication that riverboats experience seasonal impediments to travel below T. 10 N., R. 16 E., Fairbanks Meridian during the summer.

8. Twin Island Lake
and an inter-
connected slough
and lake system
to Birch Creek

(Fort Yukon
Quadrangle)

Navigable.

Highway of Commerce: Birch Creek Village residents regularly trap and hunt muskrat about Twin Island Lake, reaching it in boats as long as thirty feet. There are campsites but no cabins on the lake because of its ready accessibility to the village. Had the village been farther away, cabins may well have appeared on the lake. And if the area's population increases, more permanent homes could appear and their inhabitants gain access to the outside by boating to Birch Creek Village.

Seasonal Variation: During low water only twelve-foot boats can be taken to Twin Island Lake; at high water thirty-foot boats can make the trip.

9. Beaver Creek
(Livengood, Circle,
Fort Yukon, and
Beaver Quadrangles)

Navigable to an unnamed left bank tributary entering in Sec. 31, T. 7 N., R. 1 W., Fairbanks Meridian.

Highway of Commerce: In 1904 prospectors rushing to a gold strike on Victoria Creek poled up Beaver Creek from the Yukon or floated downstream from unspecified points after portaging from the Chatanika River. In the 1930s and 1940s a trapping family ascended Beaver Creek in a thirty-five foot boat possibly to above Victoria Creek. In 1958 the Corps of Engineers stated that thirty-foot launches could navigate the stream with difficulty to the large bend in Sec. 31, T. 7 N., R. 1 W., Fairbanks Meridian. Three years later another investigator stated that although difficult and inferior to other forms of access to the area near Fossil Creek, small outboard-powered boats could use Beaver Creek. In 1972 there were at least two trapping cabins between the large bend and Colorado Creek. The owner of one of these cabins in T. 7 N., R. 1 W., Fairbanks Meridian has been in the region since at least 1961. Therefore, although there is little direct evidence of boat traffic above Victoria Creek prior to Statehood, the available information about the use of launches to the bend and the fur resources of the region indicate that the use of commercial waterborne craft to the bend was possible and even probable.

On June 19, 1981 the State Director determined Beaver Creek to be nonnavigable in T. 9 N., R. 1 W., Fairbanks Meridian, which is below what this report finds to be the upper limit of navigability.

Seasonal Variation: Although low water can make boat travel difficult below the big bend, there is no indication that it becomes impossible.

10. Hodzana River
(Beaver Quadrangle)

Navigable to Pitka Fork.

Highway of Commerce: The Hodzana Valley has long been a prime trapping area for residents of Beaver. In 1920 cabins were located at least as far upstream as "Mudbank Cabin". A trapper stated he poled up to "The Narrows", where he had a cabin which also dated from 1920. Another trapper stated that he and his partner regularly poled up to Pitka Fork. This mode of transporting supplies to trapping cabins was still common in 1958, according to the Corps of Engineers.

Seasonal Variation: Most, if not all, of the trappers poled upriver in the fall. They occasionally had to stop and wait for higher water to complete their journey.

11. Ray River
(Tanana, Bettles,
and Livengood
Quadrangles)

Navigable to the western boundary of the NE $\frac{1}{4}$, Sec. 1, T. 13 N., R. 14 W., Fairbanks Meridian.

Highway of Commerce: In the spring of 1905 a Rampart resident attempted to take supplies to the Ray River Hot Springs in a pole boat. He was unable to proceed farther than the river's canyon in Sec. 1, T. 13 N., R. 14 W., Fairbanks Meridian. Later that year he poled up to the canyon and portaged the supplies and a canvas boat around the canyon and continued on to Ray River Hot Springs. A chicken ranch at least briefly existed at the hot springs.

Seasonal Variation: That the Ray River Hot Springs developer made two trips to the canyon in one summer suggests that peak water levels were not required for a successful ascent.

12. Hess Creek
(Livengood
Quadrangle)

Navigable to the confluence of the North and South Forks.

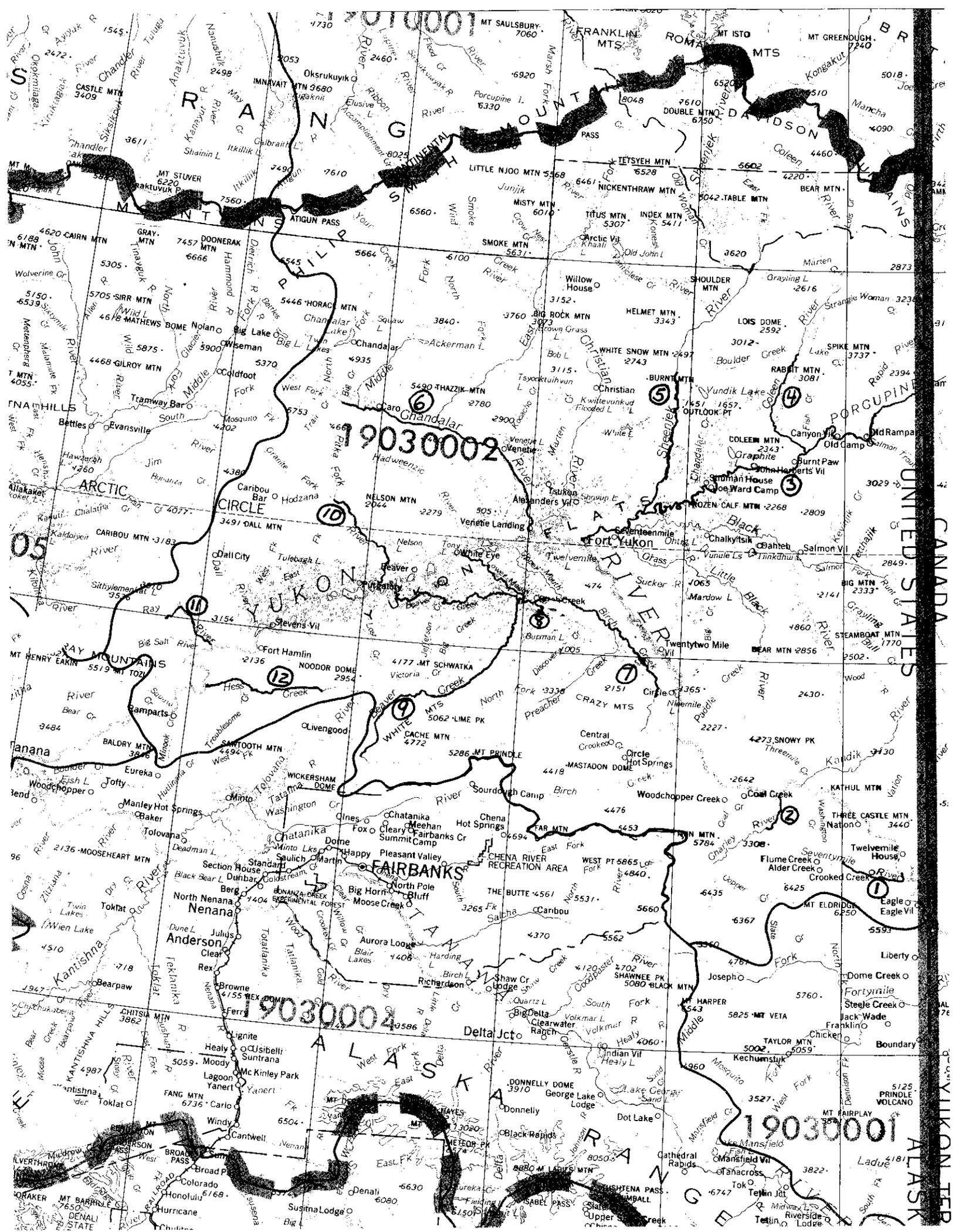
Highway of Commerce: During the Tolovana gold rush, pole boats were taken above the lower portions of Hess Creek. In 1915 prospectors brought supplies up the creek in pole boats to within fifteen miles of the new mining area on the Tolovana River. Based on this information,

the State Director determined Hess Creek navigable in T. 10 N., R. 4 W., Fairbanks Meridian to the confluence of the North and South forks.

Seasonal Variation: The impact of seasonal fluctuations in water flow on navigation on Hess Creek is uncertain.

Enclosure:
Map

Robert W. Southford IV



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NENANA

ANDERSON

DELTA

19030001