



# United States Department of the Interior



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In Reply Refer To:

AA-086376, AA-086377,  
AA-086378, AA-086379,  
AA-086380 (1864) (927)

Memorandum

To: Chief, Branch of Survey Planning and Preparation (927)

From: Jack Frost, Navigable Waters Specialist

Subject: Summary Report for the Navigability of the Water Bodies within the Yukon-Kuskokwim Portage in the Lower Kuskokwim Subregion, Alaska

The State of Alaska (State) filed applications, dated March 10, 2006, for recordable disclaimers of interest for the lands underlying the waterbodies comprising the Yukon-Kuskokwim Portage (Y-K Portage). The State divided the Y-K Portage into five separate applications, described in a northwesterly direction from the Kuskokwim River: Mud Creek and Unnamed Lake #1; Crooked Creek and Johnson River; Kulik Lake and Unnamed Lake #2; Unnamed Lake #3 and Unnamed Lake #4; and the Talbiksok River to the confluence with Portage Slough of the Yukon River. The land descriptions and maps for each waterway applied for can be found in the State's applications.<sup>1</sup>

The State's applications for disclaimers of interest are based on the Equal Footing Doctrine, the Submerged Lands Act of May 22, 1953, the Alaska Statehood Act, the Submerged Lands Act of 1988, or any other legally cognizable reason. The Bureau of Land Management (BLM) may disclaim federal interest in the submerged lands on any of the grounds that apply. Consideration is also given to whether or not the State's application for lands underlying the subject water bodies meets the regulatory requirements (43 CFR Subpart 1864).

In support of its applications, the State submitted the following documents: a United States Army, Corps of Engineers' (Corps) reconnaissance report on the Y-K Portage, dated January 31, 1971;<sup>2</sup> two BLM memoranda addressing the navigability of certain water bodies on the Y-K

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<sup>1</sup> Michael L. Menge to Henri Bisson, BLM, March 10, 2006, files AA-086376, AA-086377, AA-086378, AA-086379, AA-086380 (1864), Alaska State Office, BLM records, Anchorage (hereafter BLM records). The reference documents are also available in these files.

<sup>2</sup> U.S., Department of the Army, Alaska District, Corps of Engineers, "Reconnaissance Report, Section 107 Investigation, Yukon-Kuskokwim Portage, Alaska, January 31, 1971."

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Portage, dated November 8, 1984,<sup>3</sup> and July 8, 1985;<sup>4</sup> and the section titled “Russian Mission Summer Portage” from a 1985 BLM report on the Kuskokwim River Region that specifically documents historical information about the Y-K Portage.<sup>5</sup>

### **Location**

The Y-K Portage is located in western Alaska about 350 miles due west from Anchorage and about 65 miles northeast of Bethel. The Y-K Portage serves as the shortest practical “link” between two major river systems: the Kuskokwim and Yukon rivers. From the Kuskokwim River, the south entrance to the Y-K Portage route begins near Lower Kalskag, at its confluence with Mud Creek, located in Township 16 North, Range 62 West, Seward Meridian (SM), Alaska, and follows a general land and water route northwesterly about 72 miles to the confluence of the Talbiksok River and Portage Slough of the Yukon River, near Russian Mission, located in T. 19 N., R. 66 W., SM. None of the riparian lands were reserved at the time of statehood.

### **Land Status**

The Y-K Portage route is located entirely within the boundary of the Yukon Delta National Wildlife Refuge, established under the Alaska National Interest Conservation Act (ANILCA) (P.L. 96-487) on December 2, 1980. Riparian lands along the south and north end of the Y-K Portage has been conveyed out of federal ownership under the Alaska Native Claims Settlement Act (ANCSA). The lands along the south entrance (from the confluence with the Kuskokwim River and Mud Creek northwesterly to the south boundary of Sec. 20, T. 17 N., R., 62 W., SM) have been conveyed to The Kuskokwim Corporation (Successor in Interest to Upper and Lower Kalskag, Inc.), a village corporation. The lands along the north entrance of the Y-K Portage, along the Talbiksok River in Secs. 27 and 34, T. 19 N., R., 66 W., SM, have been conveyed to the Russian Mission Native Corporation, a village corporation. The subsurface estates for these lands were conveyed to Calista Corporation, a regional corporation.<sup>6</sup>

There are several Native allotments, conveyed under the Native Allotment Act, located along the Y-K Portage route. The State does not have any riparian land along the Y-K Portage route. The remaining lands are managed by the United States Fish and Wildlife Service.

### **Previous Navigability Determinations**

The Corps and the BLM are the only government agencies found to have considered the navigability of the Y-K Portage. The Corps portrayed navigable and nonnavigable sections of the Y-K Portage on a map, dated January 1971, which was an attachment to their Reconnaissance Report. These findings were based on their field investigation to the area in

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<sup>3</sup> DSD for Conveyance Management (960) to Chief, Branch of Conveyance Services (962), November 8, 1984, BLM records. The subject of this memo is “Navigable Waters of the Kuskokwim Region, Alaska.”

<sup>4</sup> James Ducker, Historian, to Chief, Navigability Section, subject: “Water Bodies Determined Navigable in Regional Report Process as of July 10, 1985,” July 8, 1985, BLM records.

<sup>5</sup> Brown, C. Michael, “Alaska’s Kuskokwim River Region: A History.” Unpublished manuscript, BLM Alaska State Office, 1985.

<sup>6</sup> The Kuskokwim Corporation (50-2005-0435); Russian Mission Native Corporation (50-2006-0454); and Calista Corporation (50-2005-0436 and 50-2006-0455).

June 1970. The nonnavigable sections shown on the map included the upper portion of Johnson River and the connection between Kulik Lake and Unnamed Lake #2 in T. 18 N., R. 63 W., SM, and the remainder of the Y-K Portage shown as navigable.

On November 8, 1984, the Deputy State Director for Conveyance Management identified those applied for water bodies, by name (including unnamed lakes), within the Y-K Portage route as navigable. On July 8, 1985, the BLM also identified those water bodies as navigable but not in support of any conveyance action. The BLM has held that those water bodies are navigable, based on travel, trade, and commerce.

Most recently, on July 5, 2000, the BLM included its consideration of the navigability of waters along the Y-K Portage for Native allotments scheduled for survey action. In the memorandum, the BLM cited the findings of the November 8, 1984, memorandum and determined that those water bodies within the Y-K Portage are navigable.<sup>7</sup> Additionally, the 1984 BLM memorandum provided historical evidence of travel, trade, and commerce by documenting the types of craft used, the existence of mail being transported on the route, and the improvements made to the land and water segments in the 1930's.

### **Evidence of Commerce**

In the BLM's regional report, "Alaska's Kuskokwim River Region: A History" (1985), an essay entitled "Russian Mission Summer Portage" provides detailed accounts of the water bodies and land portions on the Y-K Portage, commercial activities that have occurred on the route, and government improvement projects on the Y-K Portage. One reason the Y-K Portage is an important route to the region is that it is one of the shortest practical routes between the Yukon and Kuskokwim rivers. Thus, the Y-K Portage route could provide a relatively short and quick link between two major rivers for travel, trade, and commerce.

The Y-K Portage was used by Native travelers and Russian traders in the early 1800's. In 1842, the Russian-American Company hired Lieutenant L. Zagoskin (Russian naval explorer) to take a fact finding tour of the region. He was instructed to explore the Yukon and Kuskokwim rivers to their sources, locate practicable routes of travel, find the best supply routes between the trading posts, and locate new areas where posts could be established. In the report on his investigations, Zagoskin recommended that the Kuskokwim River trading posts be supplied from the Village of St. Michael. The Russian-American Company adopted the Y-K Portage to transport supplies and trade goods to Kolmakof Redoubt (a trading post upstream of Kalskag on the Kuskokwim River). After the transfer of Alaska to the United States, the Americans quickly learned of the Y-K Portage's existence. Mr. Josiah Edward Spurr (explorer, author, and geologist), in his 1898 United States Geological Survey expedition to the region, noted that the water route to the Yukon River was of great commercial interest in the past and more importantly the future.

The gold rushes to the Innoko and Iditarod region and the later development of hard-rock mining in the Nixon Fork area of the Kuskokwim Mountains had the effect of stimulating prospecting activity in the entire Kuskokwim region. This increased travel between the two major rivers by

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<sup>7</sup> Gust C. Panos, Chief, Branch of Mapping Sciences (AK924) to Chief, Branch of Survey Preparation and Policy Interpretation (AK925), subject: "Navigable Waters in Native Allotments Scheduled for Survey in Window 1283" July 5, 2000, BLM records. This memorandum was found during normal investigation by the writer and was not provided by the State of Alaska in support of its application.

prospectors who sometimes carried large loads of supplies. In 1908, a Nome newspaper quoted an account that two hundred men were using the Y-K Portage and the number was likely to increase due to recent gold strikes in the region.<sup>8</sup>

The Y-K Portage was also used to transport mail to villages in the region for many years, on average about one to two trips per month. Typical loads of mail transported across the Y-K Portage was about 600 pounds per trip and around 4,000 pounds per season. The cost to of transporting the mail was about fifty-one cents per pound per one-way trip.

Because of shallow water and crooked, narrow creeks, travel over the Y-K Portage was difficult; however it did not inhibit its use. Because of the difficulties, many improvements were proposed over the years; and some were implemented. One idea proposed in the early 1900's, but was never implemented, was to build a canal. The Kuskokwim Bay and the Kuskokwim River opened earlier than the Yukon River and Bering Sea, and that route into the Yukon River valley was about 320 miles shorter. With a canal, shipping prices would be reduced and goods would arrive earlier in the season.

Following the construction of the Alaska Railroad from tidewater at Seward to Fairbanks, the Federal Government made improvements to the Y-K Portage, bringing the Kuskokwim's trade to the new railroad. In the 1920's and 1930's, the Alaska Road Commission, the agency then in charge of building roads, trails, and bridges in territorial Alaska, improved access across the Y-K Portage by staking the route, installing trams with flat cars, windlasses, cables, dredging and clearing of vegetation, building a small dam to help navigate the portions where there was shallow water, and constructing two shelter cabins for travelers' safety.

During the 1940's (World War II era), mining in the Kuskokwim basin halted and with the advent of air travel, the Federal Government relied more heavily on transporting mail by plane rather than boat; thus, travel began to decline. During this time, local Natives were the primary users as they traveled from their villages to trapping grounds along the Y-K Portage. Soon, the improvements began to deteriorate, as few, if any, repairs were made.

Since statehood (1959), federal and state government officials have periodically demonstrated interest in the old proposal to improve the Y-K Portage as a canal route. The State legislature passed resolutions in 1959, 1961, and 1971, calling upon the Corps to survey and construct the canal. In 1969, even the U.S. Senate passed a resolution in favor of conducting a preliminary study of the canal project. Also, in 1969, residents of Russian Mission, Upper Kalskag, and Lower Kalskag attempted to rebuild the overland route through Operation Mainstream Program (Department of Labor funding). They repaired one dam and boat lift above Kulik Lake and both sections of tramway.

In June 1970, the Corps sent a team to investigate the Y-K Portage and to meet with the residents of the area concerning any improvements. In its January 31, 1971, report, entitled, "Reconnaissance Report, Section 107 Investigation, Yukon-Kuskokwim Portage, Alaska," the Corps described its history of use, including the types of craft used on the water bodies, its seasonality of use, the possibilities for future transportation of commerce, the residents' desires in improving the route, and the difficulties in navigating the Y-K Portage. The report included

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<sup>8</sup> *Nome Nugget*, December 2, 1908.

plans for improvements on both the land and water sections of the Y-K Portage and an analysis of the benefits and costs associated with the proposed plan. In the end, the proposed plan of improvement was not considered to be economically justified.

Finally, evidence of a boat trip taken on most of the Y-K Portage entitled “A Boat Ride from Bethel to Marshall” was discovered in *The Delta Discovery*, dated July 23, 2003.<sup>9</sup> This article documents the route taken, the current condition, and the effort involved to complete this trip during the summer of 2003. However, it is evident by this article that the route can and is being used today despite its deteriorating physical condition and lack of maintenance of the land improvements.

### **Conclusions/Recommendations**

From the 1800’s, if not earlier, to the 1930’s, the Y-K Portage has served as an important route for travel, trade, and commerce connecting two of the most important river systems in western Alaska. Improvements made by the Federal Government in the 1930’s allowed for easier access, increasing the amount of use for transporting people, goods, and supplies; however, the route was already being used, despite the physical constraints of the water bodies.

The BLM has consistently held that those water bodies comprising the Y-K Portage are navigable, and the State has provided evidence to support that finding. Segments of the Y-K Portage were determined to be navigable and the uplands have been conveyed out of federal ownership.<sup>10</sup>

After reviewing the evidence provided by the State of Alaska, and verifying the factual information presented, I affirm that the following water bodies comprising the Y-K Portage were unreserved and were susceptible to use for travel, trade, and commerce at the time of statehood. Therefore, I recommend that the State’s application for a recordable disclaimer of interest in the Y-K Portage be approved for the lands underlying the following water bodies:

1. Mud Creek from the confluence with the Kuskokwim River upstream to Sec. 26, T. 17 N., R. 62 W., SM;
2. Unnamed Lake #1 in Sec. 22, T. 17 N., R. 62 W., SM;
3. Crooked Creek in Sec. 22, T. 17 N., R. 62 W., SM. and T. 17 N., R. 63 W., SM, downstream to its confluence with Johnson River;
4. Johnson River in Sec. 22, T. 17 N., R. 63 W., SM and T. 18 N., R. 6 W., SM, upstream to Unnamed Lake #2;
5. Unnamed Lake #2 in Secs. 1-4, 9-12, 14-16, and 23-24, T. 18 N., R. 63 W., SM;
6. Kulik Lake in T. 18 N., R. 63 W., SM, and T. 19 N., R. 63 W., SM;
7. Unnamed Lake #3 in Secs. 18-20, T. 19 N., R. 63 W., SM;
8. Unnamed Lake #4 in Secs. 13, 23-24, T. 19 N., R. 64 W., SM; and
9. Talbiksok River in Sec. 13, T. 19 N., R. 64 W., SM downstream to its confluence with the Portage Slough in Sec. 33, T. 19 N., R. 66 W., SM.

<sup>9</sup> The July 23, 2003 article “A Boat Ride from Bethel to Marshall” located in *The Delta Discovery* was found during normal investigation by the writer and was not provided by the State of Alaska in support of its application.

<sup>10</sup> Ann Johnson, Chief, Branch of ANCSA Adjudication, Decision, September 30, 1982, F-14888-A, et al., and F-14871-A, et al., and Ruth Stockie, Chief, Branch of ANCSA Adjudication, July 21, 1983, F-14927, et al., BLM records.