



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

AA-8097-10 (2652)
AA-21710, etc. 1/ (26)
AA-6669-A thru J (26)
AA-6669-EE (75.4)
(961)

DEC 5 1979

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DECISION

State of Alaska	:	AA-21710
Department of Natural Resources	:	AA-21725
Division of Research and Development	:	AA-21726
323 East Fourth Avenue	:	AA-21740
Anchorage, Alaska 99501	:	AA-21741
	:	State Selections
Igiugig Native Corporation	:	AA-6669-A thru
Igiugig, Alaska 99613	:	AA-6669-J
	:	Village Selections
Bristol Bay Native Corporation	:	AA-8097-10
P.O. Box 198	:	Regional Selection
Dillingham, Alaska 99576	:	

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

On March 19 and October 31, 1974, Igiugig Native Corporation, for the Native village of Igiugig, filed selection applications AA-6669-A through AA-6669-J under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)) (ANCSA), for the surface estate of certain lands in the Igiugig area.

The Bristol Bay Native Corporation filed regional selection application AA-8097-10 pursuant to Sec. 12(c) of ANCSA on December 5, 1975 for the surface and subsurface estates of certain lands within T. 10 S., R. 40 W., Seward Meridian. Igiugig Native Corporation properly selected Secs. 17 through 20 in village selection application AA-6669-I on October 31, 1974. Departmental regulation 43 CFR 2651.4(d) states:

Village corporation selections within sections 11(a)(1) and (a)(3) areas shall be given priority over regional corporation selections for the same lands.

1/ AA-21725, AA-21726, AA-21740, AA-21741

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 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;
3. Airport lease, A-058405 Tract II Parcel B and Tract III, containing approximately 19.5 acres, located in Secs. 7 and 8, T. 10 S., R. 39 W., Seward Meridian, issued to the State of Alaska, Department of Transportation and Public Facilities, under the provisions of the act of May 24, 1928 (45 Stat. 728-729; 49 U.S.C. 211-214); and
4. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 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.

Igiugig Native Corporation is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of the Alaska Native Claims Settlement Act. To date, approximately 65,592 acres of this entitlement have been approved for conveyance; the remaining entitlement of approximately 3,528 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of the Alaska Native Claims Settlement Act, conveyance to the subsurface estate of the lands described above shall be granted to Bristol Bay Native Corporation when conveyance is granted to Igiugig Native Corporation 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:

Iliamna Lake;
Kvichak River.



BUREAU OF LAND MANAGEMENT

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

AA-21755 (2627)
(964)

SEP 04 1984

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RETURN RECEIPT REQUESTED

DECISION

State of Alaska	:	AA-21755 5-3165
Title Administration	:	
Division of Technical Services	:	
Department of Natural Resources	:	
3601 C Street, Suites 900-984	:	General Purposes Grant
Anchorage, Alaska 99503	:	State Selection

Selection Application Rejected in Part
Lands Found Proper for Selection

On November 14, 1978, the State of Alaska filed general purposes grant selection application AA-21755 under the provisions of Sec. 6(b) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339), as amended, for all available lands in T. 11 S., R. 42 W., Seward Meridian.

These lands are in Block P of the State's FY-84 tentative approval priority map, as amended by the State's letter of June 28, 1984.

The selected lands were not available for selection on the date of filing as they were withdrawn by Public Land Order (PLO) 5179 of March 9, 1972, for possible inclusion in the National Park, National Forest, National Wildlife Refuge, or National Wild and Scenic River systems.

On November 17, 1978, PLO 5653 further withdrew T. 11 S., R. 42 W., Seward Meridian, from all forms of appropriation in order to protect resource values therein. On December 2, 1980, the Alaska National Interest Lands Conservation Act (ANILCA) (94 Stat. 2371) rescinded PLO 5653. Section 1203(f) of ANILCA further withdrew the lands addressed herein for a period of three years, to provide for preparation and implementation of a cooperative management plan for the Bristol Bay Cooperative

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Region. The State's topfiling of October 29, 1981, pursuant to Sec. 906(e), made this selection valid on December 2, 1983, when the three year withdrawal period expired.

Prior to the date of the State's filing, Parcel A of Native allotment A-054752, containing approximately 5 acres, was approved on February 28, 1963, pursuant to the requirements of the Act of May 17, 1906 (34 Stat. 197), as amended. Section 6(b) of the Alaska Statehood Act of July 7, 1958, provides that the State may select vacant, unappropriated, and unreserved public lands in Alaska. Because the Native allotment was a prior valid right, State selection application AA-21755 is hereby rejected as to the lands but not as to the reserved oil and gas, in Native allotment application A-054752, Parcel A, presently shown in Sec. 5, T. 11 S., R. 42 W., Seward Meridian.

Native allotment application AA-6374, Parcel B, appears to be located partially within Sec. 12, T. 11 S., R. 42 W., Seward Meridian. Pursuant to Sec. 905(a) of ANILCA, the application was legislatively approved on June 1, 1981. Therefore, State selection application AA-21755 is hereby rejected as to approximately 40 acres of land in that portion of Native allotment application AA-6374-B which appears to be in Sec. 12, T. 11 S., R. 42 W., Seward Meridian, but not as to the reserved oil and gas.

On June 1, 1981, Native allotment application AA-6467, Parcel A, which appears to be located in Sec. 3, T. 11 S., R. 42 W., Seward Meridian, was legislatively approved under the provisions of Sec. 905(a) ANILCA. Therefore, State selection application AA-21755 is hereby rejected as to these lands, containing approximately 80 acres, but not as to the reserved oil and gas.

The total acreage rejected by this decision aggregates approximately 125 acres.

The Bureau of Land Management has administratively determined that the Kvichak River is the only navigable water body within this selection.

The remaining lands in selection application AA-21755 are proper for selection and will be tentatively approved at a later date.

The chargeable acreage within this selection will not include lands beneath water bodies which meet the criteria for meanderability set forth in the "Establishment of Policy" as defined on page 54483 of the December 5, 1983, Federal Register.



United States Department of the Interior

IN REPLY REFER TO

BUREAU OF LAND MANAGEMENT

Dillingham-GS-FY'86-4
AA-6678-EE (75.4)
(962)

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

JUN 02 1986

Rec'd 6-9-86

Memorandum

To: Deputy State Director for Cadastral Survey (920)
From: Deputy State Director for Conveyance Management (960)
Subject: Navigable Waters in Group Survey 331 (Levelock)

This memorandum identifies navigable nonmeanderable water bodies in eighteen townships comprising Group Survey 331 in the Levelock Village area. The specific townships are described in table 1.

The principal water bodies in the report area are as follows:

1. Kvichak River;
2. Unnamed creeks emptying into the Kvichak from the north in Section 19, T. 11 S., R. 43 W., Seward Meridian;
3. An unnamed stream or slough emptying into the Kvichak from the east in Section 1, T. 12 S., R. 44 W., Seward Meridian;
4. An unnamed stream or slough emptying into the Kvichak from the south in Section 11, T. 12 S., R. 44 W., Seward Meridian;
5. An unnamed creek emptying into the Kvichak from the north in Section 4, T. 12 S., R. 44 W., Seward Meridian (hereafter referred to as Yellow Creek);
6. Yellow Creek (hereafter referred to as Charlie Jensen Creek);
7. A slough flowing from the Kvichak in Section 28, T. 12 S., R. 45 W., Seward Meridian, and emptying into the Kvichak in Section 1, T. 13 S., R. 46 W., Seward Meridian;
8. Union Creek;

9. Hallersville Creek;
10. Bear Creek;
11. An unnamed creek emptying into Bear Creek from the southwest in Section 26, T. 13 S., R. 46 W., Seward Meridian;
12. Squaw Creek;
13. Alagnak River;
14. A slough flowing from the Alagnak in Section 12, T. 13 S., R. 44 W., Seward Meridian, and emptying into the Alagnak in Section 10, T. 13 S., R. 44 W., Seward Meridian;
15. An unnamed creek emptying into the Alagnak from the south in Section 10, T. 13 S., R. 44 W., Seward Meridian; and
16. An unnamed slough flowing from the Alagnak in Section 30, T. 13 S., R. 44 W., Seward Meridian, and emptying into the river in Section 26, T. 13 S., R. 45 W., Seward Meridian.

The BLM no longer has jurisdiction over many of these water bodies, the submerged lands having been interim conveyed to Levelock Natives, Limited. These include the water bodies referenced above as 2, 3, 4, 5, 7, 8, 9, 11, 14, and 15. See table 2 for a more detailed description of the submerged land status. Therefore, these water bodies need not be discussed further.

On September 28, 1979, the BLM declared Squaw Creek to be nonnavigable. However, the BLM excluded the creek bed in Secs. 24 and 25, T. 14 S., R. 47 W., Seward Meridian, from lands conveyed to Paug-Vik Incorporated, Limited (South Naknek), by Interim Conveyance 265 of November 27, 1979. The submerged lands were excluded on the basis of a decision that "tidal influence" extended up the creek to the western boundary of Sec. 24, T. 14 S., R. 47 W., Seward Meridian. The remainder of the creek bed in the township was conveyed. Since there is little doubt that the unconveyed portion of the creek bed falls within the line of mean high tide and since much of the remainder of the creek bed is either conveyed or not susceptible to navigation due to its shallow character and steep gradient, we shall not discuss this creek further.

The Kvichak and Alagnak rivers are navigable through the report area. On April 5, 1979, the BLM determined the lower reaches of both rivers navigable, and subsequently excluded the submerged lands from lands conveyed to Levelock Natives, Limited by Interim Conveyance 193, dated May 24, 1979. In line with a BLM determination that the Alagnak was navigable in

Sections 34, 35, and 36, T. 12 S., R. 43 W., Seward Meridian, the BLM excluded the riverbed from the lands conveyed to the corporation by IC 387. Four years later, on February 4, 1985, a U.S. District Court Judge in Alaska declared the Alagnak navigable in its entirety (A82-201 Civ.). (See decisions dated April 5, 1979, and November 17, 1980, file AA-6678-EE.)

For this report, C. Michael Brown of the BLM's Navigability Section conducted telephone interviews with the following persons: John Apokadak (287-3040) and his brother Peter Apokadak (287-3006) of Levelock; Richard Russell (246-3340) of the Alaska Department of Fish and Game in King Salmon; Henry Hermann (246-4471) of Naknek; Stosh Anderson of Levelock (287-3015); and Ron Hayes of Alaska Rainbow Lodge (248-2880). Russell was unable to provide substantive information.

Yellow Creek

Unnamed on the USGS Dillingham A-2 (1952, minor revisions 1973) and B-2 (1954, minor revisions 1981) quadrangles, this creek empties into the Kvichak in Sec. 4, T. 12 S., R. 44 W., Seward Meridian, from the north. The creek is double-lined on the quadrangles from its mouth to Section 10, T. 11 S., R. 44 W., Seward Meridian, where it receives the waters of two single-lined creeks. George Wilson's Native allotment (AA-6074) is situated on the right bank of the creek just below the confluence of these two creeks, in Section 15, T. 11 S., R. 44 W., Seward Meridian.

The BLM conveyed the bed of Yellow Creek to Levelock Natives, Limited; however, portions of the two single-lined tributaries currently are in the BLM's jurisdiction. On April 5, 1979, the BLM determined the creek to be nonnavigable and subsequently conveyed the creek bed in Tps. 11 and 12 S., R. 44 W., Seward Meridian, to Levelock Natives, Limited, by Interim Conveyance 193. In T. 10 S., R. 44 W., Seward Meridian, the BLM conveyed that portion of the creek's tributary in Section 34. The remainder of the tributary in the subject township as well as the western tributary in the township were not conveyed. That part of the western tributary in Section 5, T. 11 S., R. 44 W., Seward Meridian, also was not conveyed.

The unconveyed tributaries of Yellow Creek are not suitable for navigation by the BLM's smallest commercial boat. According to John and Peter Apokadak of Levelock, Yellow Creek is suitable for flat-bottomed skiffs with jet units. John said he ascended the creek in 1985 in such a craft to a point five or six miles past Wilson's allotment. He did not believe he could have traveled farther except at high water stages. Unlike Peter Apokadak and Ron Hayes, John Apokadak did not believe the BLM's smallest commercial boat could be used on this creek as it was quite shallow. Peter Apokadak believed that such a craft could be taken up the creek as far as Wilson's allotment under the

right conditions, that is, during the high water stages following the spring breakup or a heavy rainfall. He doubted that the BLM's craft could be used on the creek this spring. The creek is very shallow due to the fact that little snow fell in the area during the winter. Ron Hayes said that his company regularly used sixteen-foot boats (propeller and jet units) carrying four or five people on the creek. Occasionally, his guides used a twenty-foot boat with a propeller on the first five or six miles of the creek. Hayes was confident that the BLM's smallest commercial boat could be operated on the first ten miles of Yellow Creek; he stated that operators would encounter difficulties due to shallow water. Stosh Anderson of Levelock remarked that the creek was suitable for the BLM's smallest commercial boat, but he did not provide details. John and Peter Apokadak stated that the tides run up the creek; Peter estimated two or three miles.

Charlie Jensen Creek

Depicted as Yellow Creek on the USGS Dillingham A-3 quadrangle, this creek empties into the Kvichak from the north in Section 31, T. 11 S., R. 44 W., Seward Meridian. In 1979 the BLM determined the creek nonnavigable and conveyed most of the creek bed to Levelock Natives, Limited. However, that portion of the creek at its mouth, included in Native allotment A-54751, was excluded from the conveyance. The creek is not segregated on the survey plat for the Native allotment. The surveyor indicated that the creek is two chains (132 feet) wide, however.

John and Peter Apokadak, Ron Hayes, and John Woods stated that this creek is not suitable for navigation by the BLM's smallest commercial boat. All stated the creek is too shallow. John added that the creek is narrow and has more sweepers than other creeks discussed in this report. All stated that local residents seldom, if ever, boated the creek. Peter Apokadak and Ron Hayes said the tide runs up the creek about a half mile; John Apokadak, one to two miles.

Bear Creek

This creek empties into the Kvichak from the northwest in T. 13 S., R. 46 W., Seward Meridian. Upstream of Section 26, T. 13 S., R. 46 W., Seward Meridian, the creek is located in an area selected by the State of Alaska under AA-21775 and by Levelock Natives, Limited. In 1979, the BLM determined the creek nonnavigable and did not exclude the first mile of the creek in Sections 26 and 35, T. 13 S., R. 46 W., Seward Meridian, from lands conveyed to Levelock Natives, Limited. However, the BLM has not yet determined the mean high tide line for this creek. Upon survey, this stretch of the creek may fall below the mean high tide line. If this proves to be the case, the submerged lands are owned by the State of Alaska.

Until the 1980's, the BLM's records were virtually silent about this creek. John C. Moores of the Bristol Bay Native Corporation wrote in 1975: "Bear Creek is only navigable to travel approximately three miles from the Kvichak River (SW4, Section 15, T 13 S, R 46 W, S.M.). Beyond this, Bear Creek is nonnavigable." (John C. Moores to Sue A. Wolf, January 8, 1975, file AA-6678-EE.) Then, in August 1982, BLM employees Rick Lytle and Jan Sosnowski, during an examination of Native allotment claim A-54755 in NW4, Section 22, T. 13 S., R. 46 W., Seward Meridian, made a helicopter overflight of most of the creek's length. In his report, Lytle described the creek up to George Setuk's allotment as thirty to thirty-five feet wide and two to three feet deep, the water slow-moving, and the banks ten to fifteen feet high. He characterized the lower reaches as swampy. Upstream of Setuk's allotment, Lytle wrote, the creek is ten to fifteen feet wide and shallower. With Lytle and Sosnowski at the time of the allotment examination, George Setuk's brother, Dave, reportedly stated that George ordinarily traveled to the allotment by snowmachine. He stated too that George may occasionally travel by skiff to his allotment.

Most local residents who were contacted by the BLM believed that the BLM's smallest commercial boat could be taken up Bear Creek as far as George Setuk's Native allotment on most incoming tides. Henry Hermann, Peter Apokadak, and John Woods emphasized, however, that such a boat must leave the creek with the tide; otherwise it would be left high and dry. Hermann stated that several times he ascended the creek a mile and a half to two miles in a twenty-three- to twenty-four-foot boat. He recalled that a Finn who had a cabin on the creek used to travel to the cabin in a seventeen- or eighteen-foot dory. Peter Apokadak estimated the tides run up the creek a distance of two to three miles; John Woods estimated three to four miles. Woods pointed out that the tide forces the creek's water to back up, thereby raising the water level.

John Apokadak stated the creek was navigable for the BLM's smallest commercial boat, but he did not believe that such a craft could be taken as far as Setuk's allotment. In fact, he doubted that one could get such a boat beyond Section 27, T. 13 S., R. 46 W., Seward Meridian. He said the creek is too shallow and marshy.

Unnamed Slough of Alagnak River

This interconnecting slough of the Alagnak traverses Section 30, T. 13 S., R. 44 W., and Section 25, 26, and 35, T. 13 S., R. 45 W., Seward Meridian. The slough may be an integral part of the Alagnak River, hence navigable by reason of lateral extent; however, such a determination by Cadastral Survey has not yet been made. If, in fact, the slough is not an integral part of the Alagnak River, the BLM has conveyed portions of the slough's bed to Levelock Natives, Limited. The

slough was not specifically excluded from lands conveyed in Section 30, T. 13 S., R. 44 W., Seward Meridian and Section 26, T. 13 S., R. 45 W., Seward Meridian, by Interim Conveyance 193.

That portion of the slough located in Sections 25 and 35, T. 13 S., R. 45 W., Seward Meridian, is located on State-selected lands (AA-21774). On February 19, 1985, the BLM declared the slough on these lands to be navigable. The determination was based in part upon a BLM's photo-interpreter's opinion that the slough carried as much water as the navigable Alagnak River.

Other Water Bodies

The remaining nonmeanderable water bodies are not suitable for navigation by the BLM's smallest commercial boat. The creeks are shallow and narrow. The lakes are small and drained by small, shallow creeks. Many lakes are landlocked.

Determinations

The BLM's navigability determinations are based on criteria described in the memorandum dated March 16, 1976, from the Associate Solicitor, Division of Energy and Resources, to the Director, Bureau of Land Management, subject "Title to submerged lands for purposes of administering ANCSA"; the Alaska Native Claims Appeal Board's (ANCAB) decision (RLS 76-2) of December 14, 1979 on the navigability of the Nation and Kandik rivers; and the Regional Solicitor's February 25, 1980 interpretation of the ANCAB decision. These determinations apply only to lands currently under Federal jurisdiction. Cadastral Survey will determine the line of mean high tide for tidal bodies and the ordinary high water mark for nontidal navigable streams at the time of survey.

I affirm past determinations that the Kvichak and Alagnak rivers through the report area and the unnamed slough of the Alagnak River in Sections 25 and 35, T. 13 S., R. 45 W., Seward Meridian, are navigable. In addition, I determine Bear Creek to be navigable to the north boundary of Section 22, T. 13 S., R. 46 W., Seward Meridian. To the best of my knowledge, all these streams were in their natural and ordinary condition at the time of Statehood. According to certain local residents, most incoming tides tend to dam Bear Creek, resulting in a rise in water levels. During these times, people may ascend the creek in boats similar to, and even larger than, the BLM's smallest commercial boat (an eighteen-foot wooden boat with a propeller and a thousand-pound load) to George Setuk's Native allotment claim in the NW4, Section 22, T. 13 S., R. 46 W., Seward Meridian. Henry Hermann of Naknek stated that he ascended the creek in a twenty-three- or twenty-four-foot boat several miles and knew that a Finn used to transport his supplies and equipment up the creek to his cabin (precise location unknown) in a seventeen- or eighteen-foot dory. One

local resident did not believe that the BLM's smallest commercial boat could ascend the creek as far as Setuk's allotment. The creek's physical character and the statements of other local residents are given more weight here.

I determine all other nontidal, nonmeanderable water bodies in the report area to be nonnavigable. The streams are too shallow, and the lakes are too small and isolated, to be considered navigable bodies.

/s/ Robert W. Arno

cc:

State Interest Determinations
Division of Land and Water Management
Alaska Department of Natural Resources
Pouch 7-005
Anchorage, Alaska 99510

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

Levelock Natives, Limited
General Delivery
Levelock, Alaska 99625

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Table 1
BLM Navigability Determinations for Nonmeanderable
Water Bodies for Survey Group 331, by Township
Seward Meridian, Alaska

Townships

T. 10 S., R. 43 W.

All nonmeanderable water bodies are nonnavigable.

T. 11 S., R. 43 W.

Kvichak River is navigable. All nonmeanderable water bodies are nonnavigable.

T. 12 S., R. 43 W.

Alagnak River is navigable. All other nonmeanderable water bodies are nonnavigable.

T. 10 S., R. 44 W.

All nonmeanderable water bodies are nonnavigable.

Tps. 11 and 12 S., R. 44 W.

Kvichak River is navigable. All other nonmeanderable water bodies are nonnavigable.

T. 13 S., R. 44 W.

Alagnak River is navigable. All other nonmeanderable water bodies, including that part of the interconnecting slough of the Alagnak in Section 30, is nonnavigable.

T. 14 S., R. 44 S.

All nonmeanderable water bodies are nonnavigable.

T. 11 S., R. 45 W.

All nonmeanderable water bodies are nonnavigable.

T. 12 S., R. 45 W.

Kvichak River is navigable. All other nonmeanderable water bodies are nonnavigable.

T. 13 S., R. 45 W.

Kvichak and Alagnak rivers are nonnavigable. That part of the Alagnak's interconnecting slough in Sections 25 and 35 is navigable. All other nonmeanderable water bodies, including the interconnecting slough in Section 26, are nonnavigable.

T. 14 S., R. 45 W.

All nonmeanderable water bodies are nonnavigable.

Tps. 11 and 12 S., R. 46 W.

All nonmeanderable water bodies are nonnavigable.

T. 13 S., R. 46 W.

Bear Creek is navigable in Sections 21, 22, and 27. Kvichak River is navigable. All other nonmeanderable water bodies are nonnavigable.

T. 14 S., R. 46 W.

All nonmeanderable water bodies are nonnavigable.

T. 13 and 14 S., R. 47 W.

All nonmeanderable water bodies are nonnavigable.

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Submerged Land Status for Principal Water Bodies in Group Survey 331 as of May 8, 1986

Name	Map	Twp	Rng	M	Status	Det. Date	Remarks
KVICHAK RIVER	DILA2	11S	43W	S	IC 193	4/5/79	NAVIGABLE
UNNAMED #2	DILA2	11S	43W	S	IC 193	4/5/79	NONNAVIGABLE/SEC 18, 19
ALAGNAK RIVER	DILA2	12S	43W	S			SCENIC RIVER IN SEC 25
ALAGNAK RIVER	DILA2	12S	43W	S	IC 387	11/17/80	NAVIGABLE IN SEC 34, 35, 36
UNNAMED #3	DILA2	12S	43W	S	VACANT		SEC 6
UNNAMED #5	DILB2	10S	44W	S	IC 193	4/5/79	SEC 34
UNNAMED #5	DILB2	10S	44W	S	VACANT		REMAINDER
KVICHAK RIVER	DILA2	11S	44W	S	IC 193	4/5/79	NAVIGABLE
UNNAMED #5	DILA2	11S	44W	S	IC 193	4/5/79	NONNAVIGABLE
YELLOW CREEK	DILA2	11S	44W	S	SELECTED		NA A054751 & VS AAG678-C ENCOMPASS MOUTH
KVICHAK RIVER	DILA2	12S	44W	S	IC 193	4/5/79	NAVIGABLE
UNNAMED #5	DILA2	12S	44W	S	IC 193	4/5/79	NONNAVIGABLE
UNNAMED #3	DILA2	12S	44W	S	IC 193	4/5/79	NONNAVIGABLE
UNNAMED #4	DILA2	13S	44W	S	IC 193	4/5/79	NAVIGABLE
ALAGNAK RIVER	DILA2	13S	44W	S	SELECTED		SEC 3/AA6678-A2
ALAGNAK RIVER	DILA2	13S	44W	S	IC 193	4/5/79	NONNAVIGABLE/SEC 10, 11, 12
UNNAMED #14	DILA2	13S	44W	S	IC 193	4/5/79	NONNAVIGABLE/SEC 30
UNNAMED #16	DILA2	13S	44W	S	IC 193	4/5/79	NONNAVIGABLE/SEC 10
UNNAMED #15	DILA2	13S	44W	S	IC 193	4/5/79	NONNAVIGABLE IN SEC 25, 26, 36
YELLOW CREEK	DILA3	11S	45W	S	IC 193	4/5/79	REMAINDER
YELLOW CREEK	DILA3	11S	45W	S	VACANT		NONNAVIGABLE/SEC 28, 33
UNNAMED #7	DILA3	12S	45W	S	IC 193	4/5/79	NONNAVIGABLE
UNION CREEK	DILA3	12S	45W	S	IC 193	4/5/79	NAVIGABLE
ALAGNAK RIVER	DILA2	13S	45W	S	IC 193	4/5/79	NONNAVIGABLE/SEC 26
UNNAMED #16	DILA2	13S	45W	S	IC 193	4/5/79	NAVIGABLE
UNNAMED #16	DILA2	13S	45W	S	SELECTED		NAV SEC 25, 35/DILLINGHAM-SS-85-4/AA21774
HALLERSVILLE CREEK	DILA3	13S	45W	S	IC 193	4/5/79	NONNAVIGABLE/SEC 6, 7, 16, 18
HALLERSVILLE CREEK	DILA3	13S	45W	S	SELECTED		NONNAV/SEC 8, 9/DILLINGHAM-SS-85-4/AA21774
HALLERSVILLE CREEK	DILA3	13S	45W	S	IC 193	4/5/79	NAVIGABLE
ALAGNAK RIVER	DILA3	13S	45W	S	IC 193	2/19/85	NONNAV SEC 8, 9/DILLINGHAM-SS-85-4/AA21774
HALLERSVILLE CREEK	DILA3	13S	45W	S	SELECTED		NONNAVIGABLE/SEC 26, 25
BEAR CREEK	DILA3	13S	46W	S	IC 193	4/5/79	AA21775 & AAG678-A2
BEAR CREEK	DILA3	13S	46W	S	SELECTED		NAVIGABLE
KVICHAK RIVER	DILA3	13S	46W	S	IC 193	4/5/79	NAVIGABLE
SQUAM CREEK	NAKD4	14S	47W	S	IC 265	9/28/79	NONNAVIGABLE

GLOSSARY OF TABLE ABBREVIATIONS

- DTLDILLINGHAM QUADRANGLE
- RRIVER
- SSEWARD MERIDIAN, SOUTH
- SECSECTION(S)
- TTOWNSHIP
- NAKNAKNEK QUADRANGLE
- WWEST
- NANATIVE ALLOTMENT
- VSVILLAGE SELECTION
- SSSTATE SELECTION



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

2620 (NAV) (962)

OCT 19 1982

Memorandum

To: Chief, Branch of Conveyance Support (962)

From: Sherman F. Berg, Realty Specialist (962)

Subject: Navigability Recommendations, Dillingham - SS - FY83, #1

I. Primary Policy Guidelines

- A. Memorandum from Hugh C. Garner, Solicitor's Office, Washington D.C., to Director, BLM, "Title to Submerged Lands for Purposes of Administering ANCSA", March 16, 1976.
- B. Regional Solicitor's memorandum of February 25, 1980, discussing the impacts of the Nation - Kandik Decision on Navigability.

II. Sources of Information

- A. USGS Dillingham 1:250,000 quadrangle
- B. Master Title Plats (MTP's)
MTP's were reviewed to determine land status regarding ownerships, withdrawals, settlement claims, applications, etc.
- C. Previous BLM work
BLM has already completed much work on navigability recommendations in connection with the selections made by the village corporations for Koliganik, Levelock, Ekwok, New Stuyakok and Aleknagik, and in connection with other State selections in this area.
- D. AEIDC Contract
The University of Alaska's Arctic Environmental Information and Data Center (AEIDC), under contract to the BLM, researched historic information relevant to many water bodies in Alaska. The contract result is a computer printout and is available for review at the BLM's Navigability Section, Branch of Conveyance Support, Division of ANCSA and State Conveyances, new Federal Building, Anchorage, Alaska, and the BLM's District Office at Fairbanks and Alaska.

Other:

Due to the large amount of work done in this area, which has resulted in navigability determinations by BLM for the major water bodies in the selected areas, primary research on minor named or unnamed waterways was primarily made by the use of the AEIDC contract data.

A review of the MTP's for the townships under selection had shown only 4 claims or applications outside areas already conveyed by Interim Conveyance to Native corporations or in the process of being conveyed.

The four claims or applications were two Native allotments in T. 6 S., R. 50 W., Seward Meridian, a portion of a Native allotment (on land available to the State) in Sec. 18, T. 9 S., R. 50 W., Seward Meridian, and an application for a microwave site in T. 10 S., R. 53 W., Seward Meridian.

Water bodies previously determined navigable:

- 1) Kvichak River - This river was determined to be navigable in connection with the Levelock village selection. It traverses lands in T. 12 S., R. 44 W., Seward Meridian and T. 13 S., R. 46 W., Seward Meridian.
- 2) Nushagak River - This river was determined to be navigable in connection with the Ekwok, New Stuyakok and Koliganik selections. It traverses lands in T. 3 S., R. 47 W., Seward Meridian; T. 13 S., R. 50 W., Seward Meridian; T. 13 S., R. 53 W., Seward Meridian, and T. 13 S., R. 54 W., Seward Meridian.
- 3) Muklung River - This river, a tributary to the Wood River, may be tidally influenced. It traverses Tps. 10 and 11 S., R. 54 W., Seward Meridian. The extent of tidal influence will have to be determined at time of survey.
- 4) Kokwok River - In work done on the Ekwok village selection some time ago, the Kokwok River was recommended to be considered administratively nonnavigable. In subsequent work, reported in ADO Reports Dillingham #1, FY-82 and Dillingham #1, FY-82 Supplemental, it was recommended that the Kokwok River be considered navigable based on data obtained subsequent to the work on the Ekwok selection. The State Director has concurred in recommendations for the Kokwok River in townships discussed in the ADO reports. Based on this, the Kokwok River should be determined to be navigable.

Conclusions as to navigability of other water bodies:

Review of the AEIDC data did not reveal any additional data on the many small named and unnamed streams and lakes in the selection area.

The lower portions of many of these streams were considered on the work done on village corporation selections and were found nonnavigable.

The upper areas present in these selections are, in most instances, in higher elevations and have steeper gradients or are narrower, and presumably, shallower.

The extreme sparsity of Native allotments or other settlement claims in the areas of the subject townships available for conveyance to the State of Alaska tends to support my belief that the lineal waterways are not navigable.

No additional data was found that would indicate any of the relatively small lakes that are in the area are navigable. A few of the larger lakes would probably support floatplane use.

Conclusions

A review of earlier work done on village selections and State selections in this area was made prior to an additional review of the AEIDC contract data.

No additional data was found that would either change the earlier recommendations or add to the list of navigable waters previously made, except that work done on the Kokwok River.

Recommendations

I recommend that only those waterways previously found to be navigable in connection with Native selections or State selections be considered navigable.

These waterways, listed in the attached summary of recommendations as they have an impact on specific townships, are:

- 1) Kvichak River
- 2) Nushagak River
- 3) Muklung River (if tidally affected)
- 4) Kokwok River

Chasman F. Berry



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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

Iliamna-SS-FY'85-#3
AA-21695 (2620)
2628 (962)(NAV)

FEB 22 1985

rec'd 2/25/85

Memorandum

To: Chief, Branch of State Adjudication (964)
From: Deputy State Director for Conveyance Management (960)
Subject: Final Navigability Determination for a State Selection
on the Iliamna Quadrangle

This is the final navigability determination for all water bodies on on the following State-selected lands:

Seward Meridian

T. 6 S., R. 31 W. Sections 13, 23-27, and 34-36.

T. 7 S., R. 31 W. Sections 1-4 and 8-12.

The lands are located on the south side of Iliamna Lake approximately fourteen miles southeast of the village of Iliamna. Principal water bodies in the area are Iliamna Lake and Tommy Creek. A number of unnamed small lakes and creeks are located on the lands. These lands and water bodies are depicted on USGS Iliamna C-4 and C-5 (1954) quadrangles.

Navigability determinations have been made in the past for at least six Native corporations which included land abutting on Iliamna Lake. In all cases, the lake was found to be navigable. (See, e.g., case files AA-6673-EE and AA-6670-EE.) On May 6, 1981, the BLM determined Tommy Creek to be nonnavigable and by Interim Conveyance No. 402 conveyed title to the bed from its mouth upstream for approximately one mile to Iliamna Natives Limited. (See case file AA-6670-EE.)

Tommy Creek has a gradient of approximately 110 feet per mile (fpm), and the unnamed creeks have gradients in the 275-400 fpm range. According to a citation in the "BLM Historical Notes on Alaskan Waterbodies," the average width of the creek is 20 feet

and the average depth 12 inches. The lower two miles of the river runs through a broad flat covered with cottonwood, and above this is a steep, stream-cut canyon. The BLM's June 23, 1978 Notice of Proposed Easements for Iliamna Village states that the creek is visited by sport fishermen and guides. Several Native allotments are located at or near the creek's mouth. None of the lakes appears large enough to support safe float plane operations.

The following determination is based on the criteria contained in a memorandum of March 16, 1976, from the Associate Solicitor, Division of Energy and Resources to the Director, BLM, subject "Title to submerged lands for purposes of administering ANCSA"; the ANCSA Nation-Kandik decision; and Instruction Memorandum AK-81-78, Change 1. The determinations apply only to water bodies or segments of water bodies currently under Federal jurisdiction.

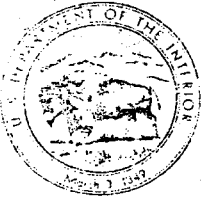
I affirm that Iliamna Lake is navigable. I find that all other water bodies on the selected lands are nonnavigable because they are not physically capable of being used by commercial boats customarily used in the area as of the date of Statehood. The creeks are too narrow and steep and the lakes are too small to be used by boats as highways of commerce. The smallest commercial boats in common use in the area at the date of Statehood were flat-bottomed wooden boats, 18 to 30 feet in length, powered by outboard motors, and capable of carrying in excess of 1,000 pounds.

/s/ Robert W. Arndorfer

cc:

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

Title Administration
Division of Technical Services
Alaska Department of Natural Resources
3601 C Street, Suites 900-984
Anchorage, Alaska 99503



*File
Navigability*

IN REPLY REFER TO:

United States Department of the Interior 2650.55/0180 (910)
MINERALS BRANCH DATE: *[Signature]*

BUREAU OF LAND MANAGEMENT

Noted by Branch Chief *[Signature]*

State Office
555 Cordova Street
Anchorage, Alaska 99501

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

Mr. Joe Upicksoun, President
Arctic Slope Regional Corporation
P.o. Box 556
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 that 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

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, 250 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

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,

/s/ Curtis V. McVee
State Director

Enclosure 1

Encl. 1 - Inland Waters Listing

cc:

Mr. Roger Lang, President
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Mr. Andrew P. Rollins, Jr., Authorizing Officer
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Office of the Authorizing Officer
Alaska Pipeline Office
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^w
Mr. Burton F. Silcock,
Federal Chairman
Joint Federal-State Land Use
Planning Commission for Alaska
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Mr. F. J. Keenan, Director
State of Alaska
Division of Lands
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Please see attached sheet

Identical letters were sent to:

Mr. Robert Newlin, President
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P.O. Box 49
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Mr. Jerome Trigg, President
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Mr. John Sackett, President
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Mr. Ray Christianson, President
Calista Corporation
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Mr. Harvey Samuelsen, President
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Unalaska, AK 99685

Inland Navigable Waters of Alaska

<u>River or Lake</u>	<u>Approximate Miles</u>	<u>Remarks</u>
Aleknagik Lake	20	Navigable full length. Head of 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.

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 Kushkokwim 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.