HJR

14

Bradley
3/26/85

Original sponsor: Shultz

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 14 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the navigability of Alaska's rivers and lakes.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Alaska's rivers and lakes have always been a primary means of transportation and access for the people of the state; and

WHEREAS a great many of these same waterbodies have traditionally and historically served as routes for commerce and trade; and

WHEREAS the geographic features of the State of Alaska necessitate the continued use of these rivers and lakes for traditional travel purposes; and

WHEREAS the federal government is not considering several traditional means of transportation used in Alaska, such as [float plane,] jet unit and aluminum river boat, inflatable boats, air boats, and winter use, when determining whether bodies of water in Alaska are navigable; and

WHEREAS all other states have had the opportunity to demonstrate navigability of waterbodies within their boundaries on a much less restrictive basis; and

WHEREAS the State of Alaska has several test cases now in litigation that will help establish a basis for claiming navigability of its waterbodies; and

WHEREAS trade, travel, commerce, subsistence, and recreational activities should continue on a traditional basis on Alaska's navigable rivers and lakes; and

WHEREAS the federal government may propose waterbodies in Alaska for classification as wild and scenic rivers without knowing whether or not

they will be determined navigable; and

WHEREAS such classification may prevent the citizens of this state from continuing their historical and traditional uses of Alaskan waterbodies;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the President of the United States and the Congress to direct the Secretary of the Interior to suspend further classification of Alaskan waterbodies as wild and scenic rivers until such time that a final decision is reached on the issue of navigability, thus allowing historical and traditional activities to continue on the Alaskan waterbodies in dispute or in litigation.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Donald Hodel, Secretary of the Interior; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 26, 1985

The Honorable Bette Cato
Chair, Transportation Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

Thank you for inviting this department's views with regard to HJR 14 (relating to navigability and designation of Wild and Scenic Rivers). The department earlier provided several suggested wording changes which are being incorporated into the Committee Substitute. Those changes provide consistency with terms as they are being used to present the state's position in certain litigation on navigation.

With the passage of ANILCA in December, 1980, Congress designated 26 Alaskan rivers to the list of National Wild and Scenic Rivers. At the same time 12 other rivers were withdrawn from the public domain, subject to valid existing rights, to complete studies on their suitability for inclusion in the system. These studies were to be complete and submitted to the Secretary of the Interior last fall.

Only these 12 rivers would be addressed by this resolution, and three have been administratively determined to be navigable. Thus, its impact may be somewhat limited. Inasmuch as wild and scenic river designation may have consequences upon the uses of the river and its bed, it is desirable to settle the issue of ownership ahead of such designation.

One other suggested change to HJR 14 would be to delete the reference to float planes in the fourth whereas. On February 28, 1985, the Ninth Circuit Court of Appeals found in the Slopbucket Lake case that "... float planes and related incidental watercraft is insufficient as a matter of law to render the lake navigable for purposes of title."

Mike Vediner from our Division of Land and Water Management will be available at the committee hearing to answer questions.

Sincerely,

RD Arnold

Robert D. Arnold
Deputy Commissioner

10-J9LH

WILD AND SCENIC ISSUE

BECAUSE THERE ARE RIVERS IN ALASKA THAT HAVE BEEN DETERMINED AS BEING WILD AND SCENIC WITH OUT A DETERMINATION AS TO THEIR BEING CONSIDERED NAVIGABLE, THERE EXISTS THE DISTINCT POSSIBILITY THAT TRADITIONAL USES ON THESE AND OTHER RIVERS MAY NOT CONTINUE AT HISTORIC LEVELS.

IF A GIVEN WATER BODY IS FOUND TO BE NAVIGABLE, THE STATE WILL HAVE TITLE TO THE LAND UNDER SUCH A BODY THUS ALLOWING LOCAL RESIDENTS, AS CITIZENS OF THE STATE, TO BE IN A STRONGER POSITION TO ARGUE FOR CUSTOMARY AND TRADITIONAL USES BOTH ON THE WATER AS WELL AS ALONG EACH ONE OF IT"S SHORES.

IN TERMS OF ESTABLISHING RESOURCE AND RECREATIONAL PRIORITIES ON OUR ALASKAN WATER BODIES IT ESSENTIAL THAT LOCAL, STATE, AND FEDERAL CONCERNS BE ADDRESSED IN AN ORDER THAT ALLOWS THOSE PEOPLE WHO ARE MOST DIRECTLY AFFECTED TO CONTINUE THEIR CUSTOMARY AND TRADITIONAL USES OF THE RIVER TO THE GREATEST DEGREE POSSIBLE.

TO THAT END IT DOES NOT MAKE SENSE TO ESTABLISH A FEDERAL CLASSIFICATION OF A WATER BODY BEFORE A LOCAL AND STATE PRIORITY SUCH AS NAVIGABILITY IS RESOLVED.

TO HELP ELIMINATE FUTURE CONTROVERSIES I HAVE SUGGESTED VIA THIS RESOLUTION THAT THE FEDERAL GOVERNMENT RECOGNIZE AND ADHERE TO A PRACTICAL POLICY OF WAITING FOR A SOLUTION TO THE NAVIGABILITY ISSUE BEFORE PROCEEDING WITH ANY ADDITIONAL WILD AND SCENIC CLASSIFICATIONS.

IT IS MY HOPE THAT BY ENCOURAGING THE FEDERAL GOVERNMENT TO FOLLOW A MORE PRUDENT PATH, WE MAY INSURE A GREATER DEGREE OF LOCAL CONTROL IN THE LONG TERM USE OF OUR WATERWAYS BY ALASKAN RESIDENTS.

BACKGROUND ON HJR 14

The purpose of this resolution is to request the President and Congress to suspend any further classifications of Alaskan waterbodies as wild or scenic until such time as a final decision is reached on the issue of navigability. This would allow traditional activities to continue on any waterbodies in dispute.

Traditional activities would include subsistence, recreation, trade and commercial use.

Alaska State Legislature

House of Representatives

Committee on Transportation

Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

MEMORANDUM

Date: 26 March 1985

To: Legal Services

From: Rhonda Cargill, Professional Assistant
House Transportation Committee

Re: HJR 14

Please make the following changes to HJR 14 so that we can submit a committee substitute at tomorrow morning's 7:00 House Transportation Committee meeting:

Page/Line	Change
Page 1, Lines 13-14	Delete: [BOTH COMMERCIAL AND NONCOMMERCIAL] Replace with: traditional travel
Page 1, Line 15	Delete: [BUREAU OF LAND MANAGEMENT] Replace with: federal government
Page 1, Line 17	Delete: [FLAT BOTTOM] Replace with: jet unit and aluminum
Page 1, Line 17	Delete: [DOG SLED, AND SNOW MACHINE] Replace with: inflatable boats, air boats, and winter use

Page 1, Line 25 — Insert between "trade," and "commerce": travel

Page 2, Line 3 — Delete: [LEGALLY]

Please note that the committee meets at 7:00 a.m. We would deeply appreciate your giving us a work draft before day's end.

Introduced: 1/23/85
Referred: Transportation and Resources

IN THE HOUSE BY SHULTZ

HOUSE JOINT RESOLUTION NO. 14

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the navigability of Alaska's rivers and lakes.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Alaska's rivers and lakes have always been a primary means of transportation and access for the people of the state; and

WHEREAS a great many of these same waterbodies have traditionally and historically served as routes for commerce and trade; and

WHEREAS the geographic features of the State of Alaska necessitate the continued use of these rivers and lakes for ~~both commercial and noncommercial~~ traditional travel purposes; and

WHEREAS the ~~Bureau of Land Management~~ federal government is not considering several traditional means of transportation used in Alaska, such as float plane, ~~flat-bottom~~ Jet unit and aluminum river boat, inflatable boats, air boats, ~~dog sled, and snow machine~~, and winter use when determining whether bodies of water in Alaska are navigable; and

WHEREAS all other states have had the opportunity to demonstrate navigability of waterbodies within their boundaries on a much less restrictive basis; and

WHEREAS the State of Alaska has several test cases now in litigation that will help establish a basis for claiming navigability of its waterbodies; and

WHEREAS trade, travel, commerce, subsistence, and recreational activities should continue on a traditional basis on Alaska's navigable rivers and lakes; and

WHEREAS the federal government [is now studying] may propose waterbodies in Alaska for classification as wild and scenic rivers without knowing whether or not

they will be determined navigable; and

WHEREAS such classification may prevent the citizens of this state from legally continuing their historical and traditional uses of Alaskan waterbodies;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the President of the United States and the Congress to direct the Secretary of the Interior to suspend further classification of Alaskan waterbodies as wild and scenic rivers until such time that a final decision is reached on the issue of navigability, thus allowing historical and traditional activities to continue on the Alaskan waterbodies in dispute or in litigation.

COMMITTEE REPORT

HOUSE

3/29

(7)

FURTHER: RESOURCES

1/23/85

Date: 27 March 1985

The Committee on TRANSPORTATION has had HJR 14

Relating to the navigability of Alaska's rivers and lakes.

under consideration and recommends:

[X] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for HJR 14 (TRSP) [X] same title [ ] new title

and recommends it do pass

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] Zero Fiscal Note Attached

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Bette Ann Stoltze

Mike Davis

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bette Ann Stoltze
CHAIRMAN

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

FEB 14 1985

POUCH M
JUNEAU, ALASKA 99811
PHONE: 907-465-2400

HJR 14

February 7, 1985

The Honorable Bette Cato
Member, House Resources Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Cato:

As a follow up to Senator Fahrenkamp's question on other states' support for our navigability position, I am enclosing an Amici Curiae brief of several western states for your information. I will provide copies to each member of the Senate and House Resources Committees.

Sincerely,

Esther C. Wunnicke
Commissioner

Enclosure

10-J9LH

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Civil No. 84-3625

STATE OF ALASKA,

Plaintiff/Appellant,

v.

UNITED STATES OF AMERICA ET AL.,

Defendants/Appellees.

DEPARTMENT OF NATURAL RESOURCES
JAN 14 1984
COMMISSIONER'S OFFICE
JUNEAU

Appeal from the United States District Court for the District of Alaska Case No. [illegible]

AMICI CURIAE BRIEF OF THE STATE OF CALIFORNIA, EX REL. STATE LANDS COMMISSION AND THE STATES OF HAWAII, IDAHO, NEVADA, NORTH DAKOTA AND OREGON IN SUPPORT OF THE STATE OF ALASKA

JOHN K. VAN DE KAMP
Attorney General
N. GREGORY TAYLOR
Assistant Attorney General
RICHARD M. FRANK
Deputy Attorney General
State of California
1515 K Street, Suite 511
Sacramento, California 95814

MICHAEL A. LILLY
Attorney General
JOHNSON H. WONG
Deputy Attorney General
State of Hawaii
335 Merchant Street, #214B
Old Federal Building
Honolulu, Hawaii 96813

JIM JONES
Attorney General
State of Idaho
State House
Boise, Idaho 83720

BRIAN McKAY
Attorney General
HARRY W. SWAINSTON
Deputy Attorney General
State of Nevada
Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710

ROBERT E. WEFALD
Attorney General
LAWRENCE BENDER
Assistant Attorney General
State of North Dakota
State Capitol
Bismarck, North Dakota 58505

DAVID B. FROHNMAYER
Attorney General
State of Oregon
100 State Office Building
Salem, Oregon 97310

Attorneys for Amici Curiae

TABLE OF CONTENTS

TABLE OF CASES CITED
(Continued)

TABLE OF CASES CITED

TABLE OF CASES CITED
(Continued)

STATUTES, CODES AND OTHER AUTHORITIES

TABLE OF CASES CITED
(Continued)

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Civil No. 84-3625

STATE OF ALASKA,	)
Plaintiff/Appellant,	)
v.	)
UNITED STATES OF AMERICA ET AL.,	)
Defendants/Appellees.	)

AMICI CURIAE BRIEF OF THE STATE OF CALIFORNIA, EX REL. STATE LANDS COMMISSION AND THE STATES OF HAWAII, IDAHO, NEVADA, NORTH DAKOTA AND OREGON IN SUPPORT OF THE STATE OF ALASKA

This amici curiae brief is respectfully submitted pursuant to Federal Rule of Appellate Procedure 29 [1/] by the State of California ex rel. State Lands Commission [2/] ("California") and the States of Hawaii, Idaho, Nevada, North Dakota and Oregon in support of plaintiff-appellant State of Alaska. As will be demonstrated below, the judgment of the District Court is based on an error of law and should therefore be reversed.

---

1. Rule 29 provides that consent or leave to file an amicus curiae brief shall not be required when the brief is presented by a state.

2. The State Lands Commission is the administrative agency of the State of California having jurisdiction, management and control of public lands held by the State of California, including the beds of navigable lakes and rivers and other sovereign trust lands. (See Cal. Pub. Resources Code, § 6100 et seq.; see esp. § 6301.)

I

INTEREST OF AMICI

Amici's extensive systems of lakes and rivers constitute a vital public resource. The states acquired the beds of their navigable waterways as an incident of sovereignty upon admission to the Union, and hold these lands in trust for the benefit of their citizens. (Montana v. United States, 450 U.S. 544, 551-552 (1981); Martin v. Waddell, 41 U.S. 367, 410 (1842); State of California v. Superior Court (Lyon), 29 Cal.3d 210 (1981) cert. den., 454 U.S. 865 (1981).) These inland waterways have played a crucial role in the historical development of the American West. They continue to furnish the public with substantial commercial, navigational, recreational and ecological benefits. (See, e.g., State of California v. Superior Court (Lyon), supra; State of California v. Superior Court (Fogerty), 29 Cal.3d 240 (1981), 172 Cal.Rptr. 713, cert. den. 454 U.S. 865 (1981).)

The importance of these waterways is matched by their extensive nature. A recent survey in California, for example, reveals that there are approximately 807 miles of shoreline around navigable lakes and 3,046 miles of shoreline along that state's nontidal navigable rivers. (Summary for State-owned Tide and Submerged Lands, Shoreline Mileages, State Lands Division (May 1972).)

Particularly in recent years, substantial attention has focused on the ownership of the beds of

particular inland waterways. This is due in large part to general population increases, migration to previously-undeveloped areas, increased demand for public recreational facilities and the developmental pressures engendered by these other factors. The states, riparian owners and the general public have increasingly turned to the courts to determine their respective rights and obligations concerning Western waterways. A substantial amount of litigation has resulted in both federal and state courts with the principal issue often being who owns the bed of the waterway in question. This, in turn, leads inevitably to the particular lake or river's navigable status. 3/

The decision of the district court, to the extent it signals a departure from that tradition, will prejudice amici's efforts to perfect their own sovereign ownership claims. Based as it is upon a fundamental misperception of applicable law, the ruling could abrogate amici's sovereign interest in these vital resources.

The importance of these sovereign rights has been recognized repeatedly by Congress. In adopting California's Act of Admission, for example, it declared the State's

---

3. In California, for example, see State of California ex rel. State Lands Commission v. Yuba Goldfields, Inc. et al., appeal pending, Ninth Circuit Court of Appeals, Case No. 83-2409 (Yuba River); Brandenberger et al. v. State of California, Nevada County Superior Court No. 21947 (Donner Lake).

navigable waterways to be "common highways, and forever free . . . ." (9 Stat. 452; see also Northwest Ordinance of 1787, 1 Stat. 50, 52.) Moreover, their value has consistently been reflected in federal and state case law. (See, e.g., People of the State of California ex rel. Younger v. Tahoe Regional Planning Agency, 516 F.2d 215 (9th Cir. 1975) cert. den. 423 U.S. 868 (1975); State of California v. Superior Court (Lyon), supra, 29 Cal.3d 210; People v. Gold Run Ditch & Mining Co., 66 Cal. 138 (1884).)

II

STATEMENT OF THE CASE

Amici adopt the statement of the case set forth in appellant State of Alaska's Opening Brief.

III

DECISION BELOW

The decision of the district court below is reported at 563 F.Supp. 1223.

IV

QUESTION PRESENTED

Whether evidence of extensive and longstanding use of a waterway by floatplanes and incidental small boats for a variety of trade and commerce-related purposes is relevant in determining sovereign title to the bed of that waterway.

V

ARGUMENT

This appeal presents the Court with a simple, straightforward legal issue: the legal status of commercial

floatplane operations in litigation where a state is seeking to perfect its sovereign title to the bed of a navigable waterway. Applicable decisions of both this and other federal and state appellate courts indicate that use by floatplane and incidental boating uses are fully relevant in determining navigability for federal title purposes.

A. Longstanding Federal Precedent Establishes That Navigability for Title Purposes is a Broad and Flexible Concept

There is apparently no dispute among the parties and amici as to the general standard to be applied in cases involving the issue of whether a lake or river is navigable for title purposes. That test was first enunciated by the United States Supreme Court in The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870):

> "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."

Although The Daniel Ball was an admiralty case, the seven Supreme Court cases that have directly dealt with

navigability for title purposes 4/ have adopted The Daniel Ball definition as the basic federal test by which to locate those submerged beds to which the states hold title.

The Supreme Court has evolved certain related principles that are applicable to this appeal. For example, it is the capability of use rather than the extent or manner thereof by the public for transportation and commerce that affords the true criteria of navigability. (United States v. Holt State Bank, 270 U.S. 49, 56 (1926).) Susceptibility to navigation is the test. Thus, while actual historical use is not required, such use can constitute evidence of susceptibility to navigation. (The Daniel Ball, supra, 77 U.S. (10 Wall.) at 563; United States v. Utah, 283 U.S. 64, 75 (1931).) The waterway must be susceptible of navigation in its natural and ordinary condition. (United States v. Holt State Bank, supra, 270 U.S. at 56.)

While navigability for title purposes is determined as of the date the particular state was admitted to the Union, more recent history is relevant to the inquiry assuming that the waterway remains in a natural or near-natural condition. (Utah v. United States, supra, 403 U.S. at 9-10; United States v. Utah, supra, 283 U.S. at 82.)

---

4. Utah v. United States, 403 U.S. 9 (1971); United States v. Oregon, 295 U.S. 1 (1935); United States v. Utah, supra, 283 U.S. 64; United States v. Holt State Bank, supra, 270 U.S. 49; Brewer-Elliott Oil & Gas Co. v. United States, 270 U.S. 77 (1922); Oklahoma v. Texas, 258 U.S. 574 (1922); Packer v. Bird, 137 U.S. 661 (1891).

A watercourse may be navigable notwithstanding serious obstructions occasioned by natural barriers such as rapids and sand bars. (The Montello, 87 U.S. (20 Wall.) 441-442 (1874); United States v. Utah, supra, 283 U.S. at 86-87.) Nor is it determinative that a lake or river is not navigable in fact on a year-round basis. (Id., at 87.) The fact that a waterway is not part of an interstate or international commercial highway in no way interferes with the principle of public ownership of its bed. (Utah v. United States, supra, 403 U.S. at 10.)

Finally and most important for purposes of this appeal, navigability does not depend on the particular mode of use. The requisite navigation may be by any "customary method of trade or travel." (The Daniel Ball, supra, 77 U.S. at 563; United States v. Holt State Bank, supra, 270 U.S. at 56.) In Holt State Bank, for example, the Supreme Court held that historic use of a waterway by small boats was adequate to support a finding of navigability for title purposes. (270 U.S. at 56-57.) Operation of lumber rafts has also been found by the Court to constitute meaningful evidence of navigability. (United States v. Utah, supra, 283 U.S. at 79.) Most recently, the Supreme Court found the Great Salt Lake to be navigable on the basis of historical evidence that the lake was used by small craft to transport livestock between the mainland and one or more islands. (Utah v. United States, supra, 403 U.S. 9, 11.)

In State of Oregon v. Riverfront Protective Assn., 672 F.2d 792 (9th Cir. 1982), this Court reversed a district court holding that evidence of commercial logging activities was insufficient as a matter of law to demonstrate navigability for title purposes. Riverfront stands for the proposition that logging, while perhaps not a conventional mode of navigation, satisfies the liberal and expansive title test of navigability.

B. Floatplanes Constitute Proper Evidence of Navigability Under Judicial Precedents, Administrative Decisions Issued by Appellees Themselves, and Federal Statutes and Regulations

As might be expected, the specific issue on appeal has not heretofore been addressed by the federal courts. Yet the relevance of floatplane use to determine a waterway's navigability for sovereign title purposes is mandated by analogous judicial precedents, federal statutes, regulations, the government's own administrative decisions and -- most importantly -- the expansive and flexible nature of the general federal standard of navigability itself.

The antecedents of the current law of navigability go back to the early part of the nineteenth century. Even the earliest Supreme Court cases on the subject stressed that the test of navigability was dynamic in nature. Indeed, the same capacity for growth and accommodation for societal change that has been the hallmark of American constitutional law has formed the touchstone of

the navigability test. The Supreme Court reiterated this fundamental point when it reviewed the first century of navigability jurisprudence in United States v. Appalachian Electric Power Co., 311 U.S. 377, 405-406 (1940):

> "It is obvious that the uses to which the streams may be put vary from the carriage of ocean liners to the floating out of logs; that the density of traffic varies equally widely from the busy harbors of the seacoast to the sparsely settled regions of the western mountains. The test as to navigability must take these variations into consideration.
>
> ". . . Each application of this test . . . is apt to uncover variations and refinements which require further elaboration." (Fns. omitted; emphases added.)

The first navigability cases, which dealt with admiralty rather than title disputes, anticipated that the standard must necessarily be flexible enough to respond to technological and societal changes. The language of The Montello, supra, 87 U.S. (20 Wall.) at 441-442 is prophetic in that regard:

> "If [a waterway] be capable in its natural state of being used for purposes of commerce, no matter in which mode the commerce may be conducted, it is navigable in fact and becomes in law a public river or highway. Vessels of any

kind that can float upon the water . . . are or may become, the mode by which a vast commerce can be conducted, and it would be a mischievous rule that would exclude either in determining the navigability of a river." (Emphases added.)

Later Supreme Court decisions applying the navigability rule to state sovereign title disputes echoed this sentiment:

"The rule long since approved by this court in applying the constitution and laws of the United States is that streams and lakes which are navigable in fact must be regarded as navigable in law . . . and further, that navigability does not depend on the particular mode in which such use is or may be had . . . but on the fact, if it be a fact, that the stream in its natural and ordinary condition affords a channel for useful commerce." (United States v. Holt State Bank, supra, 270 U.S. at 56; emphases added.)

The Court expanded upon this motion in more recent cases upholding Utah's sovereign claims to the beds of its lakes and rivers:

"[A]s the title of a state depends upon the issue, the possibilities of growth and future profitable use are not to be ignored. . . . The question remains one of fact as to the capacity of the rivers in their ordinary condition to meet the

needs of commerce as these may arise in connection with the growth of the population, the multiplication of activities, and the development of natural resources." (United States v. Utah, supra, 283 U.S. at 83.)

And in Utah v. United States, supra, 403 U.S. at 11, the Supreme Court expressly rejected a narrow and formalistic construction of the navigability test proposed by the United States that closely parallel the government's theory here:

> "[I]t is suggested that [the type of historical use of the Great Salt Lake relied upon by Utah] was not the use of the lake as a navigable highway in the customary sense of the word. . . . We think that is an irrelevant detail. The lake was used as a highway and that is the gist of the federal test." (Emphasis added.)

Like The Montello, the instant case concerns a craft, capable of floating upon water, that indisputably forms a vital link of Alaskan commerce. As alluded to in United States v. Utah, floatplanes have developed to serve the state's citizenry in a multitude of ways, and the craft are wholly dependent on waterbodies such as Slopbucket Lake for their operation. Finally, the approach evidenced by the decision below was rejected in Utah v. United States. There is no reasonable dispute that Slopbucket Lake was and is used as a highway for transportation, i.e., for extensive

floatplane operations. The federal title test demands no more.

Notably, the United States has embraced these principles in its own administrative decisions. Appeal of Doyon, Ltd., 86 Interior Dec. 692 (1979) was a decision of the Alaska Native Claims Appeal Board. The board, a part of the United States Department of the Interior, was established to administer the Alaska Native Claims Settlement Act. (43 U.S.C. § 1601 et seq., as implemented in 43 C.F.R. §§ 2650.0-1 - 2650.8 and 43 C.F.R. §§ 4.900-4.913.) Title to the Kandik and Nation Rivers, which are tributaries to the Yukon, was contested. The issue was whether these rivers were navigable. If so, they passed as sovereign lands to Alaska upon its admission to the Union. If non-navigable, the beds of these rivers remained available for federal conveyance to Native tribes or private interests.

In a unanimous decision, the board reversed the prior decision of the Bureau of Land Management, another branch of the Department of the Interior. The board held that the Kandik and Nation Rivers in Alaska are navigable for title purposes and therefore held in trust by the state.

Relying on The Montello, the board first rejected BLM's narrow interpretation of the navigability rule and held that innovative craft capable of travel on these isolated Alaskan rivers "constituted the customary modes of trade and travel in the tributaries of the Middle-Yukon

area, and the use of these watercraft may be appropriately considered in determining whether rivers in this area were used or are susceptible of being used as highways of commerce." (86 Interior Dec. at 705.) The board echoes Utah v. United States, supra, by stating that "to be navigable,a river must be so situated and have such length and capacity as will enable it to accommodate the public generally as a means of transportation." (Id., at 708.) Finally, the board concluded its lengthy decision by spurning BLM's suggestion that it attempt to fashion a blanket standard of navigability:

> "[The board] will not undertake to do what the United States Supreme Court has not attempted, i.e., to define in precise, checklist fashion the requirements for navigability of a body of water. . . . Considerations of factual determinations made in other cases can no more than assist in the process. United States v. Utah, supra, at 87: '. . . Each determination as to navigability must stand on its own facts.'" (Id., at 709.)

Amici suggest that Appeal of Doyon, Ltd. correctly states and applies federal law. If the same reasoning is applied in the present case, it is difficult to see how the ruling below can be sustained.

Turning to those cases which have addressed the question of a waterway's use by floatplane or similar craft, the courts have characterized them as watercraft capable of

navigation. (See, e.g., United States v. Northwest Air Service, Inc., 80 F.2d 804, 805 (9th Cir. 1935) (suggesting in dicta that seaplane, while afloat on navigable waters, a vessel within maritime jurisdiction of United States); Humble Oil & Refining Co. v. Sun Oil Co., 190 F.2d 191 (5th Cir. 1951) (reliance in part on evidence of seaplane use to determine public character of bed of waterway); Nalco Chemical Corp. v. Shea, 294 F.Supp. 479 (E.D. La. 1968), affirmed 419 F.2d 572 (5th Cir. 1969) (operations of seaplane "maritime" in nature so as to trigger application of Longshoremen's and Harbor Workers' Compensation Act); Lambros Seaplane Base, Inc. v. The Batory, 215 F.2d 228 (2d Cir. 1954) (seaplane, when on the water, a marine object subject to maritime law); Hubschman v. Antilles Air Boats, Inc., 440 F.Supp. 829, 840-841 (D.C. Virgin Islands 1977) (seaplane performs commercial functions similar to more conventional "watercraft"); Hark v. Antilles Air Boats, Inc., 355 F.Supp. 683, 685 (D.C. Virgin Islands 1973) (floatplane a vessel for purposes of navigational rules and admiralty jurisdiction); see also United States v. Commodore Park, 324 U.S. 386, 389-392 (1945) (seaplane-connected onshore facilities related to commerce and navigation); Reinhardt v. Newport Flying Services Corp., 232 N.Y. 115, 133 N.E. 371 (1921) (floatplanes "vessels" for purposes of admiralty jurisdiction); cf. Snively v. State, 167 Wash. 385, 9 P.2d 773 (1932).)

A similar approach is reflected in federal statutes and regulations concerning the legal status of such craft. (See, e.g., 33 U.S.C. § 1601(1) (International Navigation Rules Act of 1977); 33 U.S.C. § 2003(a) (Inland Navigation Rules); 43 C.F.R. § 2650.0-5 (BLM regulations implementing Alaska Native Claims Settlement Act defining "major waterway" as one having significant use "by watercraft, including floatplanes . . ."); 36 C.F.R. § 328(a) (requiring that seaplanes while upon water operate in accordance with marine rules for power boats and other vessels; 35 C.F.R. § 111.160 (establishing rules of navigation for seaplanes and related craft on waters within Panama Canal).)

A ruling that floatplanes constitute relevant evidence of navigability for title purposes, therefore, is both mandated under applicable judicial precedents and consistent with analogous federal statutes, regulations and administrative determinations.

C. The District Court's Decision Is Premised on Three Specific Errors of Law

The ultimate holding of the decision below is predicated on three basic legal conclusions -- each of which is legally incorrect. Of critical importance is the fact that this Court has addressed these issues on past occasions, ruling contrary to the district court in each.

1. The Title Test of Navigability is No More Stringent Than the Federal Commerce Clause Standard for Purposes of this Appeal

First, the decision below draws a major distinction between navigability for title purposes and under the Commerce Clause. The lower court strongly suggests that while evidence of floatplane use would be relevant in determining navigability for purposes of federal jurisdiction under the Commerce Clause, it is wholly irrelevant under the title test. This holding results from the court's apparent belief that the latter standard is more stringent than the Commerce Clause test. (563 F.Supp. 1223, 1226-1227.)

This Court specifically rejected that view in State of Oregon v. Riverfront Protective Assn., supra, 672 F.2d 792. There the Court noted that there are but three respects in which the two tests differ. The first two, that navigability under the Commerce Clause may arise after statehood and as a result of reasonable improvements, are wholly irrelevant to the present proceeding. (672 F.2d at 794 (fn. 1); see also United States v. Appalachian Power Co., supra, 311 U.S. at 406-408.) The third is that to support federal regulatory jurisdiction, a waterway must be available for interstate transportation. No such requirement exists under the federal title test. (Ibid.; see also Sierra Pacific Power Co. v. Federal Energy Regulatory Comm., 681 F.2d 1134 (9th Cir. 1982) (Truckee

River non-navigable for Commerce Clause purposes due to lack of navigable interstate link, though probably navigable for title purposes).)

Thus, the district court erred in finding a more stringent standard of navigability to be applicable for federal title test purposes than for Commerce Clause jurisdiction. Established case law demonstrates that the two standards are functionally indistinguishable for purposes of this appeal. Amici concurs in the district court's apparent belief that evidence of floatplane use is relevant in assessing navigability under the Commerce Clause. The same conclusion logically follows regarding the title test of navigability.

2. There is No Requirement that Craft Operate Primarily on Water to Satisfy the Navigability Standard; Rather, the Mode of Transportation Must Simply Rely on Water to Conduct its Operations

The second major flaw in the reasoning of the district court is the determination that the navigability test is ". . . limited to consideration of modes of commerce that operate primarily on water. That is, the mode must be primarily waterborne in nature." (563 F.Supp. at 1227; emphases added.)

Amici is unaware of any prior decision engrafting this requirement upon the federal title test of navigability. Significantly, the lower court cites no authority in support of its novel proposition.

Indeed, it would appear that this holding is inconsistent with prior decisions of this and other appellate courts. The logging cases are particularly instructive. This Court has repeatedly held that the transportation of logs and timber products is sufficient to prove navigability. (State of Oregon v. Riverfront Protective Assn., supra, 672 F.2d 792; Puget Sound Power & Light Co. v. Federal Energy Regulatory Commission, 644 F.2d 785, 788-789 (9th Cir. 1981), cert. den. 454 U.S. 1053 (1981); see also United States v. Appalachian Electric Power Co., supra, 311 U.S. at 405; Wisconsin v. Federal Power Comm., 214 F.2d 334, 336 (7th Cir. 1954), cert. den. 348 U.S. 883 (1954).) Yet waterways were and are commonly used to transport these products for only a portion of their lengthy journey from harvest to market. For example, it is usually necessary to transport logs and timber by land from the logging site to a lake or river. Following water transport, animals or machines have commonly been used to move these resources overland to their ultimate destination.

The holding of the lower court is inconsistent with these and similar rulings, and would severely circumscribe the federal title test of navigability. As the Supreme Court observed 110 years ago:

> "[T]he capability of use by the public for purposes of transportation and commerce affords the true criterion of the navigability of a river, rather than the extent and manner of that use."

(The Montello, supra, 87 U.S. (20 Wall.) at 441; emphases added.)

The fact that floatplanes have utilized Slopbucket Lake as an important and indeed essential part of their operations satisfies the applicable legal standard.

3. The Mere Fact that the States' Title Claims Might "Complicate" Other Administrative Programs is No Reason to Abrogate Amici's Sovereign Trust Rights

Finally, the district court expressly based its ruling on the "absurd result" that "would no doubt occur" if floatplane use were deemed relevant evidence of navigability for title purposes. The court went on to state that a contrary ruling "would severely complicate" the land selection scheme established for federal proprietary lands under two congressional enactments. (563 F.Supp. at 1227 (fn. 5).)

Amici do not desire to belabor the obvious. Yet the above language of the district court completely ignores the fact that waterways such as Slopbucket Lake form a fundamental attribute of state sovereignty. (See Montana v. United States, supra, 450 U.S. at 551; Block v. North Dakota, ___ U.S. ___, 103 S.Ct. 1811, 1826 (O'Connor dissent) (1983); United States v. Aranson, 696 F.2d 654, 663-664 (9th Cir. 1983); Woodruff v. North Bloomfield Gravel Mining Co., 18 F. 753, 785-786 (9th Cir. 1884).) The vital importance of these sovereign lands to the states was observed by the Supreme Court some 50 years ago:

"Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged, in construing either grants by the sovereign of the lands to be held in private ownership or transfer of sovereignty itself." (United States v. Oregon, supra, 295 U.S. at 14.)

The important objectives of the Alaska Native Claims Settlement Act (43 U.S.C. § 1611 et seq.) and similar legislation certainly cannot be ignored. Yet rejection of a state's sovereign title claims to the beds of its waterways should not be rejected merely on the fragile premise that to do so might "complicate" certain statutory programs. (See part V(D), infra.) Such a result would contravene a century and a half of federal law.

D. Important Public Policy Considerations Require That the Sovereign States Not Be Divested of the Beds of Their Vital Waterways Through an Excessively Narrow Interpretation of "Navigability"

Amici have earlier described the extensive nature of the natural resources that will likely be affected by the Court's ruling in this case. Also discussed at length above are the legal principles demonstrating that the district court erred as a matter of law in disregarding evidence of floatplane use in applying the title test of navigability.

Yet what must not be lost in all this are the policy ramifications underlying the issue before the Court.

To rule that evidence of floatplane use is inadequate as a matter of law to establish sovereign title would do a great wrong to the public for whom these lands are held in trust. The waterways of this country represent important commercial arteries and resources, opportunities for recreational diversion in our increasingly hectic society and irreplaceable environmental treasures. These attributes have been repeatedly recognized in case law, statutes and academic studies. (See, e.g., Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892); Genesse Chief v. Fitzhugh, 53 U.S. (12 How.) 443, 454-456 (1851); Coastal Zone Management Act, 16 U.S.C. §§ 1451, 1453-1464; R. Dewsnup, Public Access Rights in Waters and Shorelands (1971).) To fail to recognize the navigability of lakes and rivers for title purposes would be to impose serious restrictions on their use and forego the safeguards of the public trust in which all navigable waters are held. (E.g., Illinois Central Railroad v. Illinois, supra; Woodruff v. North Bloomfield Gravel Mining Co., supra, 18 F. 753.)

Early in our nation's history, the courts perceived that mechanical and rigid views of navigability would have an untoward effect on the public interest. For example, American courts quickly rejected the so-called English common law rule limiting navigable waters to those in which the tide ebbed and flowed. They did so based on the ineluctible view that this country's countless inland navigable waters, encountered and utilized in conjunction

with the nation's westward expansion, made that rule wholly unsuitable here. (See, e.g., Shively v. Bowlby, 152 U.S. 1, 31 et seq. (1893).)

Similar considerations exist in the present case. The importance of the public rights involved mandates a flexible and expansive interpretation of navigability. As one state court noted:

> "We must at this point examine the ultimate fact of navigability under the 'public purposes' test. That we may do so should be unquestioned." (In re Martiny Lakes Product, 381 Mich. 180, 212, 160 N.W.2d 909, 925 (1968); emphasis in original.)

The Supreme Court recognized well over a century ago that sovereign lands represent a most fundamental incident of state sovereignty:

> "To give to the United States the right to transfer to a citizen the title to the shores and the soils under navigable waters, would be placing in their hands a weapon which might be wielded greatly to the injury of state sovereignty and deprive the states of the power to exercise a numerous and important class of police power." (Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 229 (1845).)

The point was similarly made in a California decision handed down earlier in this century:

"To hand over all these lakes to private ownership, under any old or narrow test of navigability, would be a great wrong upon the extent of which cannot, perhaps, be now even anticipated." (Bohn v. Albertson, 107 Cal.App.2d 738 (1951), quoting Lamprey v. State, 52 Minn. 181, 53 N.W. 1139, 1143 (1892).)

For these reasons, the district court's opinion in this case represents unsound policy as well as erroneous legal analysis.

/ / /

/ / /

/ / /

VI

CONCLUSION

This case has important implications for all states seeking to perfect sovereign title to the navigable waterways within their jurisdictions. Amici respectfully submit that longstanding precedents, together with most cogent public policy considerations, require that floatplane use be considered as relevant evidence in determining navigability for title purposes. The decision of the district court is erroneous as a matter of law and should therefore be re ersed.

DATED: July 24, 1984.

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General of the
State of California

N. GREGORY TAYLOR
Assistant Attorney General

By _____
RICHARD M. FRANK
Deputy Attorney General

Attorneys for Amicus Curiae
State of California ex rel.
State Lands Commission

> "To hand over all these lakes to private ownership, under any old or narrow test of navigability, would be a great wrong upon the extent of which cannot, perhaps, be now even anticipated." (Bohn v. Albertson, 107 Cal.App.2d 738 (1951), quoting Lamprey v. State, 52 Minn. 181, 53 N.W. 1139, 1143 (1892).)

For these reasons, the district court's opinion in this case represents unsound policy as well as erroneous legal analysis.

/ / /

/ / /

/ / /

MICHAEL A. LILLY
Attorney General
JOHNSON H. WONG
Deputy Attorney General
335 Merchant Street, #214B
Old Federal Building
Honolulu, Hawaii 96813

JIM JONES
Attorney General
State of Idaho
State House
Boise, Idaho 83720

BRIAN McKAY
Attorney General
HARRY W. SWAINSTON
Deputy Attorney General
State of Nevada
Heroes Memorial Building
Capitol Complex

ROBERT E. WEFALD
Attorney General
LAWRENCE BENDER
Assistant Attorney General
State of North Dakota
State Capitol
Bismarck, North Dakota 58505

DAVID B. FROHNMAYER
Attorney General
State of Oregon
100 State Office Build
Salem, Oregon 97310

Attorneys for Amici Curiae

FIRST READING AND REFERENCE OF SENATE BILLS

SB 52

SENATE BILL NO. 52 by Faiks and Kerttula, entitled:

> "An Act making a special appropriation for the 1985 Iditarod sled dog race; and providing for an effective date."

was read the first time and referred to the Finance Committee.

REPORTS OF STANDING COMMITTEES

CSSB 94(HESS)am

The Health, Education & Social Services Committee has considered COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 94 (HESS)amended (increasing the excise tax on cigarettes; effective date), recommends it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 94 (HESS) (same title) and reports it back as follows: Koponen and Gruenberg (Co-Chairs), Hanley, Thompson and Hurley recommend do pass; Pettyjohn recommends do not pass.

CSSB 94(HESS) was referred to the Finance Committee.

HJR 14

The Transportation Committee has considered HOUSE JOINT RESOLUTION NO. 14 (navigability of Alaska's rivers and lakes), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 14 (Transportation) (same title) and reports it back as follows: Cato (Chairman), Shultz, Herrmann, Davis, Furnace and Pignalberi recomend do pass.

HJR 14 was referred to the Resources Committee.

HB 19

The Finance Committee has considered HOUSE BILL NO. 19 (relating to runaway minors), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 19 (Judiciary) (page 638) and reports it back as follows: Adams (Chairman), Ringstad, Szymanski, Duncan, Larson, Pourchot, Rieger, Frank, Binkley and Cotten recommend do pass; Uehling has no recommendation. A zero fiscal note was attached.

HB 19 appears on today's calendar.

HB 37

The Finance Committee has considered HOUSE BILL NO. 37 (making a special appropriation for payment as a grant to the City of Palmer for the 50th Colony Anniversary Celebration of the Alaska Rural Rehabilitation Corporation; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 37 (Finance) (same title) and reports it back as follows: Adams (Chairman), Ringstad, Duncan, Larson, Frank, Binkley and Cotten recommend do pass; Szymanski, Pourchot, Uehling and Rieger have no recommendation.

HB 37 was referred to the Rules Committee for placement on the calendar.

HB 74

The Finance Committee has considered HOUSE BILL NO. 74 (participation of former BIA administrators in the Teachers' Retirement System), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BIIL NO. 74 (State Affairs) (page 290) and reports it back as follows: Adams (Chairman), Duncan, Larson, Pourchot, Uehling, Frank and Binkley recommend do pass; Szymanski, Ringstad, Rieger and Cotten have no recommendation. A fiscal note with a new analysis was attached.

HB 74 was referred to the Rules Committee for placement on the calendar.

The fiscal note with new analysis appears in House Journal Supplement No. 37.

HB 92

The Judiciary Committee submitted the following corrected letter of intent to replace the letter of intent on page 717 of the journal:

CORRECTED LETTER OF INTENT
FOR CSHB 92(Jud)

"It is the intent of the House Judiciary Committee, in amending AS 09.65.132(h) in sec. 1 of CSHB 92 (JUD), that either party in an income withholding proceeding may be ordered by the court to pay all court costs and that payment of attorney's fees will continue to fall under Civil Rule 82, Alaska Rules of Civil Procedure.

It is the further intent of the Committee that the term "alimony", as used in a number of other states, is included in the meaning of the term "spousal support".

It is also the recommendation of the Committee that the Revisor of Statutes consider placing all of the statutes relating to child and spousal support, presently found in

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 26, 1985

The Honorable Bette Cato
Chair, Transportation Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Cato:

Thank you for inviting this department's views with regard to HJR 14 (relating to navigability and designation of Wild and Scenic Rivers). The department earlier provided several suggested wording changes which are being incorporated into the Committee Substitute. Those changes provide consistency with terms as they are being used to present the state's position in certain litigation on navigation.

With the passage of ANILCA in December, 1980, Congress designated 26 Alaskan rivers to the list of National Wild and Scenic Rivers. At the same time 12 other rivers were withdrawn from the public domain, subject to valid existing rights, to complete studies on their suitability for inclusion in the system. These studies were to be complete and submitted to the Secretary of the Interior last fall.

Only these 12 rivers would be addressed by this resolution, and three have been administratively determined to be navigable. Thus, its impact may be somewhat limited. Inasmuch as wild and scenic river designation may have consequences upon the uses of the river and its bed, it is desirable to settle the issue of ownership ahead of such designation.

One other suggested change to HJR 14 would be to delete the reference to float planes in the fourth whereas. On February 28, 1985, the Ninth Circuit Court of Appeals found in the Slopbucket Lake case that "... float planes and related incidental watercraft is insufficient as a matter of law to render the lake navigable for purposes of title."

Mike Vediner from our Division of Land and Water Management will be available at the committee hearing to answer questions.

Sincerely,

Robert D. Arnold
Deputy Commissioner

10-J9LH

BACKGROUND ON HJR 14

The purpose of this resolution is to request the President and Congress to suspend any further classifications of Alaskan waterbodies as wild or scenic until such time as a final decision is reached on the issue of navigability. This would allow traditional activities to continue on any waterbodies in dispute.

Traditional activities would include subsistence, recreation, trade and commercial use.

Bradley
3/26/85

Original sponsor: Shultz

IN THE HOUSE BY THE TRANSPORTATION COMMITTEE

CS FOR HOUSE JOINT RESOLUTION NO. 14 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

Relating to the navigability of Alaska's rivers and lakes.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS Alaska's rivers and lakes have always been a primary means of transportation and access for the people of the state; and

WHEREAS a great many of these same waterbodies have traditionally and historically served as routes for commerce and trade; and

WHEREAS the geographic features of the State of Alaska necessitate the continued use of these rivers and lakes for traditional travel purposes; and

WHEREAS the federal government is not considering several traditional means of transportation used in Alaska, such as float plane, jet unit and aluminum river boat, inflatable boats, air boats, and winter use, when determining whether bodies of water in Alaska are navigable; and

WHEREAS all other states have had the opportunity to demonstrate navigability of waterbodies within their boundaries on a much less restrictive basis; and

WHEREAS the State of Alaska has several test cases now in litigation that will help establish a basis for claiming navigability of its waterbodies; and

WHEREAS trade, travel, commerce, subsistence, and recreational activities should continue on a traditional basis on Alaska's navigable rivers and lakes; and

WHEREAS the federal government may propose waterbodies in Alaska for classification as wild and scenic rivers without knowing whether or not

they will be determined navigable; and

WHEREAS such classification may prevent the citizens of this state from continuing their historical and traditional uses of Alaskan waterbodies;

BE IT RESOLVED that the Alaska State Legislature respectfully requests the President of the United States and the Congress to direct the Secretary of the Interior to suspend further classification of Alaskan waterbodies as wild and scenic rivers until such time that a final decision is reached on the issue of navigability, thus allowing historical and traditional activities to continue on the Alaskan waterbodies in dispute or in litigation.

COPIES of this resolution shall be sent to the Honorable Ronald Reagan, President of the United States, the Honorable George Bush, Vice-President of the United States and President of the U.S. Senate; the Honorable Thomas P. O'Neill, Jr., Speaker of the U.S. House of Representatives; the Honorable Donald Hodel, Secretary of the Interior; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

HR 8

The Labor & Commerce Committee has considered HOUSE RESOLUTION NO. 8 (establishment of a sister state relationship with Taiwan) and reports it back as follows: Navarre (Chairman), Koponen, Hanley, Pearce and Boucher recommend do pass. Davis has no recommendation.

HR 8 was referred to the Rules Committee for placement on the calendar.

HJR 14

The Resources Committee has considered HOUSE JOINT RESOLUTION NO. 14 (navigability of Alaska's rivers and lakes), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 14 (Transportation) (page 739) and reports it back as follows: Shultz (Co-Chairman), Herrmann, Cato, Jankins and Pearce recommend do pass. Sund, Thompson and Wallis have no recommendation.

HJR 14 was referred to the Rules Committee for placement on the calendar.

HB 31

The Judiciary Committee has considered HOUSE BILL NO. 31 (obstruction or hindrance of lawful hunting, fishing, or trapping) and reports it back as follows: M.M.Miller (Chairman) and Gruenberg have no recommendation. Pettyjohn, Phillips and Taylor recommend do pass. Clocksin recommends do not pass.

Two zero fiscal notes were attached.

HB 31 was referred to the Resources Committee.

HB 147

The Finance Committee has considered HOUSE BILL NO. 147 (creating a division of equal employment opportunity in the Department of Administration), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 147 (Finance):

> "An Act establishing an equal employment opportunity program for the executive branch of state government and creating an office of equal employment opportunity in the Office of the Governor."

HB 147

and reports it back as follows: Adams (Chairman), Szymanski, Duncan, Pourchot, Larson, Binkley, Cotten, Frank and Rieger recommend do pass.

A fiscal note was attached and appears in House Journal Supplement No. 53.

HB 147 was referred to the Rules Committee for placement on the calendar.

HB 191

The Health, Education & Social Services Committee has considered HOUSE BILL NO. 191 (State aid for school construction; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 191 (HESS) (same title) and reports it back as follows: Koponen and Gruenberg (Co-Chairs), Hanley, Thompson, Pettyjohn, Taylor and Hurley recommend do pass.

A fiscal note was attached and appears in House Journal Supplement No. 53.

HB 191 was referred to the Finance Committee.

HB 218

The Judiciary Committee has considered HOUSE BILL NO. 218 (standards of conduct of legislators and legislative employees and to the Select Committee on Legislative Ethics; effective date), recommends it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 218 (Judiciary) (same title) and reports it back as follows: M.M.Miller (Chairman), Sund, Gruenberg, Phillips, Pettyjohn, Clocksin and Taylor recommend do pass.

The Speaker added a Finance referral to this bill. HB 218 was referred to the Finance Committee.

HB 231

The Finance Committee has considered HOUSE BILL NO. 231 (relating to amount of general and temporary relief assistance) and reports it back as follows: Adams (Chairman), Binkley, Duncan and Pourchot recommend do pass. Szymanski, Larson, Cotten, Rieger and Frank have no recommendation.

HB 231 was referred to the Rules Committee for placement on the calendar.