ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672
8709 HOUSE RESOURCES

12/2/94 TABLE 1. ARCTIC RESEARCH BUDGETS OF FEDERAL AGENCIES (dollars in thousands)

AGENCY		RESEARCH	PROGRAM		FY94	FY95	FY96
Dept/Bureau	Program Name	CATEGORY	AREA		actual	budget	proposed
DOD	Arctic Engineering	NASC	MULTI	*	2,976	3,547	3,632
DOD	Permafrost/Frozen Ground	NASC	MULTI	*	1,245	1,124	1,194
DOD	Snow and Ice Hydrology	NASC	MULTI	*	7,181	6,718	6,097
DOD	Oceanography	NASC	MULTI	*	8,665	8,000	7,997
DOD	Lower Atmosphere	NASC	MULTI	*	397	134	129
DOD	Upper Atmosphere	NASC	MULTI	*	2,500	2,250	2,250
DOD	Medical and Human Engr	NASC	MULTI	*	2,262	1,880	1,884
DOD	Arctic Contamination Studies	NASC	MULTI	*	10,000	10,000	0
DOD	total.....			*	35,226	33,653	23,183
DOI/MMS	Technology Assessment/Research	ETEC	MARA	*	2,820	3,320	3,320
DOI/MMS	Environmental Studies	ENVR	MARA	*	1,900	1,810	1,810
DOI/USGS	Energy and Minerals	ENVR	MARA	*	6,500	4,500	4,500
DOI/USGS	Natural Hazards	ENVR	MARA	*	3,500	3,500	3,500
DOI/USGS	Global Change	CLCH	MARA	*	2,000	1,500	2,500
DOI/USGS	Marine and Coastal Geology	ENVR	MARA	*	1,000	1,000	1,000
DOI/USGS	Geomagnetism	ENVR	MARA	*	250	250	250
DOI/USGS	Ice and Climate	ENVR	MARA	*	480	480	480
DOI/USGS	Hydrology	ENVR	MARA	*	130	130	130
DOI/USGS	Mapping	ENVR	MARA	*	1,000	1,070	1,070
DOI/NBS	Marine Mammals	ENVR	MARA	*	1,600	1,660	1,660
DOI/NBS	Migratory Birds	ENVR	MARA	*	2,560	2,390	2,390
DOI/NBS	Fisheries Research	ENVR	MARA	*	360	360	360
DOI/NBS	Cooperative Research	ENVR	MARA	*	330	330	330
DOI/NBS	Terrestrial Ecology	ENVR	MARA	*	1,130	1,130	1,130
DOI/NBS	Park Research	ENVR	MARA	*	1,140	1,140	1,140
DOI/BLM	Minerals (ANWR)	ENVR	MARA	*	10	0	0
DOI/BLM	Natural Ecology	ENVR	MARA	*	1,175	1,180	1,500
DOI/BLM	Cultural Resources	ENVR	MARA	*	168	200	250
DOI/BLM	Pipeline Monitoring	ENVR	MARA	*	500	500	500
DOI/BLM	Fire Control	ENVR	MARA	*	350	350	350
DOI/BLM	Mining Administration	ENVR	MARA	*	250	250	250
DOI/NPS	Cultural Resources	HHIP	MARA		850	790	790
DOI/NPS	Natural Ecology	ENVR	MARA		1,400	1,650	1,650
DOI/BIA	Cultural	ENVR	MARA	*	1,500	600	600
DOI/BIA	Subsistence	FSTY	MARA	*	850	1,050	1,250
DOI/BOM	Mineral Resource Assessments	ENVR	MARA	*	3,637	1,362	1,000
DOI/BOM	Mining/Reclamation Technology	ETEC	MARA	*	383	0	0
DOI/BOM	Mining/Reclamation Technology	ETEC	TDVD	*	211	175	175
DOI	total.....				37,984	32,677	33,885
NSF	Atmospheric Sciences	CLCH	BASR	*	7,000	7,140	7,140
NSF	Ocean Sciences/Ship Support	ENVR	BASR	*	3,200	3,264	3,264
NSF	Biological Sciences	ENVR	BASR	*	5,800	5,916	5,916
NSF	Glaciology	ENVR	BASR	*	3,200	3,264	3,264
NSF	Earth Sciences	ENVR	BASR	*	2,500	2,550	2,550
NSF	Arctic Systems Science	CLCH	BASR	*	14,400	14,200	14,200
NSF	Engineering	ETEC	BASR	*	200	204	204
NSF	Social Science/Education	HHIP	BASR	*	1,700	1,734	1,734
NSF	Coordination	EDTR	BASR	*	270	275	275
NSF	Arctic Research Commission	EDTR	BASR	*	560	570	590
NSF	total.....			*	38,830	39,117	39,137

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Dept/ Agency	Program Name				FY94 actual	FY95 budget	FY96 proposed
NASA	Polar Ocean/Ice Sheets	CLCH	BASR	*	17,000	16,000	13,000
NASA	Land Processes	ENVR	BASR	*	2,700	1,900	1,800
NASA	Solid Earth Science	ENVR	BASR	*	1,200	1,200	1,200
NASA	Atmospheric Sciences	ENVR	BASR	*	1,000	1,500	1,500
NASA	Arctic Ozone	ENVR	BASR	*	1,500	1,500	1,500
NASA	Sounding Rocket Program	CLCH	BASR	*	6,750	3,750	4,500
NASA	Ops/Maint Poker Flat Range	ENVR	BASR	*	1,500	1,500	1,500
NASA	Poker Flat Range Upgrades	ENVR	BASR	*	5,000	0	0
NASA	Sub-orbital Science	ENVR	BASR	*	1,400	1,250	1,250
NASA	Iono/Thermo/Mesospheric SR&T	ENVR	BASR	*	1,290	1,300	1,300
NASA	FAST Auroral Snapshot	ENVR	BASR	*	800	4,200	4,000
NASA	Magnetospheric SR&T	ENVR	BASR	*	1,000	1,000	1,000
NASA	Solar Terrestrial Theory	ENVR	BASR	*	420	420	420
NASA	total.....			*	41,560	35,520	32,970
DOC/NOAA	Arctic Haze	CLCH	BASR	*	50	0	0
DOC/NOAA	Solar Terrestrial	ENVR	BASR	*	201	201	204
DOC/NOAA	Atmos Trace Constituents	CLCH	BASR	*	185	185	185
DOC/NOAA	Environmental Prediction	ENVR	BASR	*	950	950	950
DOC/NOAA	Fisheries Assessment	ENVR	MARA	*	2,478	2,476	2,476
DOC/NOAA	Marine Mammal Assessment	ENVR	MARA	*	1,200	1,200	1,200
DOC/NOAA	Coastal Hazards	ENVR	BASR	*	42	44	44
DOC/NOAA	Ocean Assessment	ENVR	MARA	*	112	102	0
DOC/NOAA	Stratospheric Ozone	CLCH	BASR	*	150	200	200
DOC/NOAA	Satellites/Data Management	ENVR	BASR	*	800	800	800
DOC/NOAA	Human Resources	ENVR	BASR	*	569	617	617
DOC/NOAA	Aircraft/Vessels	CLCH	BASR	*	2,500	2,500	2,500
DOC/NOAA	Climate and Global Change	CLCH	BASR	*	784	720	720
DOC/NOAA	Arctic Ice	ENVR	BASR	*	315	475	500
DOC/NOAA	total.....			*	10,336	10,470	10,396
DOE/EM	Environ Monitoring/Assessment	ERGY	MARA	*	1,150	1,150	1,150
DOE/EML	Environmental Measurements	ERGY	MARA	*	20	20	20
DOE/ER	Nat Inst Global Env Change	ERGY	BASR	*	300	300	300
DOE/ER	Response to Carbon Dioxide	ERGY	BASR	*	60	0	0
DOE/ER	Atmos Radiation/Planning	ERGY	BASR	*	500	500	500
DOE/ER	Magnetosphere Research	ERGY	BASR	*	140	0	0
DOE	total.....			*	2,170	1,970	1,970
DHHS	Indian Health Service	HHIP	MARA	*	250	250	250
DHHS	National Institutes of Health	HHIP	BASR	*	3,932	4,348	4,525
DHHS	Communicable Disease Con. Ctr.	HHIP	MARA	*	2,057	2,051	2,063
DHHS	HCFA	HHIP	MARA	*	200	100	0
DHHS	total.....				6,439	6,749	6,838
SMITHSONIAN	Anthropology	HHIP	BASR	*	630	500	600
SMITHSONIAN	Arctic Biology	HHIP	BASR	*	75	50	75
SMITHSONIAN	total.....			*	705	550	675
DOT/USCG	Test and Evaluation	ETEC	TDVD	*	800	500	0
DOT/USCG	Arctic Science Support Equipment	ETEC	MARA	*	702	719	719
DOT/USCG	Extramural Support	EDTR	BASR	*	35	25	25
DOT/FHA	Stream Crossings/Hydrological	TRAN	TDVD		375	100	100
DOT/FHA	Pavement Problems	TRAN	TDVD		1,000	800	800
DOT/FHA	Soils/Subbases (Permafrost)	TRAN	MARA		80	50	50
DOT/FHA	Weather Monitoring/Storm Forcast	TRAN	MARA	*	90	140	140
DOT/FHA	Snow Control/Pavement Treatment	TRAN	ENGD	*	374	330	330
DOT	total.....				3,456	2,664	2,164

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

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NASA	Poker Flat Range Upgrades	ENVR	BASR	*	5,000	0	0
NASA	Sub-orbital Science	ENVR	BASR	*	1,400	1,250	1,250
NASA	Iono/Thermo/Mesospheric SR&T	ENVR	BASR	*	1,290	1,300	1,300
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DOE/ER	Atmos Radiation/Planning	ERGY	BASR	*	500	500	500
DOE/ER	Magnetosphere Research	ERGY	BASR	*	140	0	0
DOE	total.....			*	2,170	1,970	1,970
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EPA	Arctic Contaminants	ENVR	MARA	*	925	0	0
EPA	Climate Change	CLCH	MARA	*	200	150	150
EPA	Radionuclide Contamination (DOD)	ENVR	MARA	*	0	0	0
EPA	Comparative Risk Assessment	ENVR	MARA	*	75	0	0
EPA	Region 10 EMAP (Alaska)	ENVR	MARA	*	0	250	250
EPA	Reliable Assessments	ENVR	MARA	*	0	0	1,000
EPA	total.....			*	1,200	400	1,400
AGRICULTURE	Forest Service - Environment	ENVR	MARA	*	959	912	912
AGRICULTURE	Forest Service - Climate Change	CLCH	BASR	*	441	488	488
AGRICULTURE	Agricultural Research Service	CLCH	MARA	*	730	0	0
AGRICULTURE	Cooperative State Res - Environ	ENVR	MARA	*	722	725	725
AGRICULTURE	Cooperative State Res - Food/Saf	FSTY	MARA	*	790	793	793
AGRICULTURE	Soil Conservation S - Environ	ENVR	MARA	*	1,102	1,040	1,040
AGRICULTURE	Soil Conservation S - Climate C	CLCH	BASR	*	276	260	260
AGRICULTURE	total.....			*	5,020	4,218	4,218
STATE	Arctic Environmental Research	ENVR	BASR	*	500	350	350
STATE	MAB: Arctic Directorate	ENVR	BASR	*	200	200	200
STATE	total.....			*	700	550	550
GRAND TOTALS					183,626	168,538	157,386

Appendix B: Arctic Research and Policy Act, As Amended

PUBLIC LAW 98-373 - July 31, 1984; amended as
PUBLIC LAW 101-609 - November 16, 1990

An Act

To provide for a comprehensive national policy dealing with national research needs and objectives in the Arctic.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

TITLE 1-ARCTIC RESEARCH AND POLICY

SHORT TITLE

SEC. 101. This title may be cited as the "Arctic Research and Policy Act of 1984, as amended".

FINDINGS AND PURPOSES

SEC. 102(a) The Congress finds and declares that--

(1) the Arctic, onshore and offshore, contains vital energy resources that can reduce the Nation's dependence on foreign oil and improve the national balance of payments;

(2) as the Nation's only common border with the Soviet Union, the Arctic is critical to national defense;

(3) the renewable resources of the Arctic, specifically fish and other seafood, represent one of the Nation's greatest commercial assets;

(4) Arctic conditions directly affect global weather patterns and must be understood in order to promote better agricultural management throughout the United States;

(5) industrial pollution not originating in the Arctic region collects in the polar air mass, has the potential to disrupt global weather patterns, and must be controlled through international cooperation and consultation;

(6) the Arctic is a natural laboratory for research into human health and adaptation, physical and psychological, to climates of extreme cold and isolation and may provide information crucial for future defense needs;

(7) atmospheric conditions peculiar to the Arctic make the Arctic a unique testing ground for research into high latitude communications, which is likely to be crucial for future defense needs;

(8) Arctic marine technology is critical to cost-effective recovery, and transportation of energy resources and to the national defense;

(9) the United States has important security, economic, and environmental interests in developing and maintaining a fleet of icebreaking vessels capable of operating effectively in the heavy ice regions of the Arctic;

(10) most Arctic-rim countries, particularly the Soviet Union, possess Arctic technologies far more advanced than those currently available in the United States;

(11) Federal Arctic research is fragmented and uncoordinated at the present time, leading to the neglect of certain areas of research and to unnecessary duplication of effort in other areas of research;

(12) improved logistical coordination and support for Arctic research and better dissemination of research data and information is necessary to increase the efficiency and utility of national Arctic research efforts;

(13) a comprehensive national policy and program plan to organize and fund currently neglected scientific research with respect to the Arctic is necessary to fulfill national objectives in Arctic research;

(14) the Federal Government, in cooperation with State and local governments, should focus its efforts on the collection and characterization of basic data related to biological, materials, geophysical, social, and behavioral phenomena in the Arctic;

(15) research into the long-range health, environmental, and social effects of development in the Arctic is necessary to mitigate the adverse consequences of that development to the land and its residents;

(16) Arctic research expands knowledge of the Arctic, which can enhance the lives of Arctic residents, increase opportunities for international cooperation among Arctic-rim countries, and facilitate the formulation of national policy for the Arctic; and

(17) the Alaskan Arctic provides an essential habitat for marine mammals, migratory waterfowl, and other forms of wildlife which are important to the Nation and which are essential to Arctic residents.

(b) The purposes of this title are--

(1) to establish national policy, priorities, and goals and to provide a Federal program plan for basic and applied scientific research with respect to the Arctic, including natural resources and materials, physical, biological and health sciences, and social and behavioral sciences;

(2) to establish an Arctic Research Commission to promote Arctic research and to recommend Arctic research policy;

(3) to designate the National Science Foundation as the lead agency responsible for implementing Arctic research policy; and

(4) to establish an Interagency Arctic Research Policy Committee to develop a national Arctic research policy and a five year plan to implement that policy.

ARCTIC RESEARCH COMMISSION

SEC. 103(a) The President shall establish an Arctic Research Commission (hereinafter referred to as the "Commission").

(b)(1) The Commission shall be composed of seven members appointed by the President, with the Director of the National Science Foundation serving as a nonvoting,exofficiomember. The members appointed by the President shall include--

(A) four members appointed from among individuals from academic or other research institutions with expertise in areas of research relating to the Arctic, including the physical, biological, health, environmental, social and behavioral sciences;

(B) one member appointed from among indigenous residents

of the Arctic who are representative of the needs and interests ofArctic residents and who live in areas directly affected by Arctic resource development; and

(C) two members appointed from among individuals familiar with the Arctic and representative of the needs and interests of private industry undertaking resource development in the Arctic.

(2) The President shall designate one of the appointed members of the Commission to be chairperson of the Commission.

(c)(1) Except as provided in paragraph (2) of this subsection, the term of office of each member of the Commission appointed under subsection (b)(1) shall be four years.

(2) Of the members of the Commission originally appointed under subsection (b)(1)–

(A) one shall be appointed for a term of two years;

(B) two shall be appointed for a term of three years; and

(C) two shall be appointed for a term of four years.

(3) Any vacancy occurring in the membership of the Commission shall be filled, after notice of the vacancy is published in the Federal Register, in the manner provided by the preceding provisions of this section, for the remainder of the unexpired term.

(4) A member may serve after the expiration of the member's term of office until the President appoints a successor.

(5) A member may serve consecutive terms beyond the member's original appointment.

(d)(1) Members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. A member of the Commission not presently employed for compensation shall be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code, for each day the member is engaged in the actual performance of his duties as a member of the Commission, not to exceed 90 days of service each year. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims), a member of the Commission shall not be considered an employee of the United States for any purpose.

(2) The Commission shall meet at the call of its Chairman or a majority of its members.

(3) Each Federal agency referred to in section 107(b) may designate a representative to participate as an observer with the Commission. These representatives shall report to and advise the Commission on the activities relating to Arctic research of their agencies.

(4) The Commission shall conduct at least one public meeting in the State of Alaska annually.

DUTIES OF THE COMMISSION

SEC. 104(a) The Commission shall--

(1) develop and recommend an integrated national Arctic research policy;

(2) in cooperation with the Interagency Arctic Research Policy Committee established under section 107, assist in establishing a national Arctic research program plan to implement the Arctic research policy;

(3) facilitate cooperation between the Federal Government and State and local governments with respect to Arctic research;

(4) review Federal research programs in the Arctic and recommend improvements in coordination among programs;

(5) recommend methods to improve logistical planning and support for Arctic research as may be appropriate and in accordance with the findings and purposes of this title;

(6) recommend methods for improving efficient sharing and dissemination of data and information on the Arctic among interested public and private institutions;

(7) offer other recommendations and advice to the Interagency Committee established under section 107 as it may find appropriate;

(8) cooperate with the Governor of the State of Alaska and with agencies and organizations of that State which the Governor may designate with respect to the formulation of Arctic research policy;

(9) recommend to the Interagency Committee the means for developing international scientific cooperation in the Arctic; and

(10) not later than January 31, 1991, and every 2 years thereafter, publish a statement of goals and objectives with respect to Arctic research to guide the Interagency Committee established under section 107 in the performance of its duties.

(b) Not later than January 31 of each year, the Commission shall submit to the President and to the Congress a report describing the activities and accomplishments of the Commission during the immediately preceding fiscal year.

COOPERATION WITH THE COMMISSION

SEC. 105(a)(1) The Commission may acquire from the head of any Federal agency unclassified data, reports, and other nonproprietary information with respect to Arctic research in the possession of the agency which the Commission considers useful in the discharge of its duties.

(2) Each agency shall cooperate with the Commission and furnish all data, reports, and other information requested by the Commission to the extent permitted by law; except that no agency need furnish any information which it is permitted to withhold under section 522 of title 5, United States Code.

(b) With the consent of the appropriate agency head the Commission may utilize the facilities and services of any Federal agency to the extent that the facilities and services are needed for the establishment and development of an Arctic research policy, upon reimbursement to be agreed upon by the Commission and the agency head and taking every feasible step to avoid duplication of effort.

(c) All Federal agencies shall consult with the Commission before undertaking major Federal actions relating to Arctic research.

ADMINISTRATION OF THE COMMISSION

SEC. 106. The Commission may--

(1) in accordance with the civil service laws and subchapter III of chapter 53 of title 5, United States Code, appoint and fix the compensation of an Executive Director and necessary additional staff personnel, but not to exceed a total of seven compensated personnel;

(2) procure temporary and intermittent services as authorized by section 3109 of title 5, United States Code;

(3) enter into contracts and procure supplies, services and personal property;

(4) enter into agreements with the General Services Administration for the procurement of necessary financial and

administrative services, for which payment shall be made by reimbursement from funds of the Commission in amounts to be agreed upon by the Commission and the Administrator of the General Services Administration; and

(5) appoint, and accept without compensation the services of, scientists and engineering specialists to be advisors to the Commission. Each advisor may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code. Except for the purposes of chapter 81 of title 5 (relating to compensation for work injuries) and chapter 171 of title 28 (relating to tort claims) of the United States Code, an advisor appointed under this paragraph shall not be considered an employee of the United States for any purpose.

LEAD AGENCY AND INTERAGENCY ARCTIC RESEARCH POLICY COMMITTEE

SEC. 107(a) The National Science Foundation is designated as the lead agency responsible for implementing Arctic research policy, and the Director of the National Science Foundation shall insure that the requirements of section 108 are fulfilled.

(b)(1) The President shall establish an Interagency Arctic Research Policy Committee (hereinafter referred to as the "Interagency Committee").

(2) The Interagency Committee shall be composed of representatives of the following Federal agencies or offices:

(A) the National Science Foundation;
(B) the Department of Commerce;
(C) the Department of Defense;
(D) the Department of Energy;
(E) the Department of the Interior;
(F) the Department of State;
(G) the Department of Transportation;
(H) the Department of Health and Human Services;
(I) the National Aeronautics and Space Administration;
(J) the Environmental Protection Agency; and
(K) any other agency or office deemed appropriate.

3) The representative of the National Science Foundation shall serve as the Chairperson of the Interagency Committee.

DUTIES OF THE INTERAGENCY COMMITTEE

SEC. 108(a) The Interagency Committee shall--

(1) survey Arctic research conducted by Federal State, and local agencies, universities, and other public and private institutions to help determine priorities for future Arctic research, including natural resources and materials, physical and biological sciences, and social and behavioral sciences;

(2) work with the Commission to develop and establish an integrated national Arctic research policy that will guide Federal agencies in developing and implementing their research programs in the Arctic;

(3) consult with the Commission on--

(A) the development of the national Arctic research policy and the 5-year plan implementing the policy;

(B) Arctic research programs of Federal agencies;

(C) recommendations of the Commission on future Arctic research; and

(D) guidelines for Federal agencies for awarding and administering Arctic research grants;

(4) develop a 5-year plan to implement the national policy, as provided in section 109;

(5) provide the necessary coordination, data, and assistance for the preparation of a single integrated, coherent, and multiagency budget request for Arctic research as provided for in section 110;

(6) facilitate cooperation between the Federal Government and State and local governments in Arctic research, and recommend the undertaking of neglected areas of research in accordance with the findings and purposes of this title;

(7) coordinate and promote cooperative Arctic scientific research programs with other nations, subject to the foreign policy guidance of the Secretary of State;

(8) cooperate with the Governor of the State of Alaska in fulfilling its responsibilities under this title;

(9) promote Federal interagency coordination of all Arctic research activities, including-

(A) logistical planning and coordination; and

(B) the sharing of data and information associated with Arctic research, subject to section 552 of title 5, United States Code; and

(10) provide public notice of its meetings and an opportunity for the public to participate in the development and implementation of national Arctic research policy.

(b) Not later than January 31, 1986, and biennially thereafter, the Interagency Committee shall submit to the Congress through the President, a brief, concise report containing-

(1) a statement of the activities and accomplishments of the Interagency Committee since its last report; and

(2) a statement detailing with particularity the recommendations

of the Commission with respect to Federal interagency activities in Arctic research and the disposition and responses to those recommendations.

5-YEAR ARCTIC RESEARCH PLAN

SEC. 109(a) The Interagency Committee, in consultation with the Commission, the Governor of the State of Alaska, the residents of the Arctic, the private sector, and public interest groups, shall prepare a comprehensive 5-year program plan (hereinafter referred to as the "Plan") for the overall Federal effort in Arctic research. The Plan shall be prepared and submitted to the President for transmittal to the Congress within one year after the enactment of this Act and shall be revised biennially thereafter.

(b) The Plan shall contain but need not be limited to the following elements:

(1) an assessment of national needs and problems regarding the Arctic and the research necessary to address those needs or problems;

(2) a statement of the goals and objectives of the Interagency Committee for national Arctic research;

(3) a detailed listing of all existing Federal programs relating to Arctic research, including the existing goals, funding levels for each of the 5 following fiscal years, and the funds currently being expended to conduct the programs;

(4) recommendations for necessary program changes and other proposals to meet the requirements of the policy and goals as set forth by the Commission and in the Plan as currently in effect; and

(5) a description of the actions taken by the Interagency Committee to coordinate the budget review process in order to

ensure interagency coordination and cooperation in (A) carrying out Federal Arctic research programs, and (B) eliminating unnecessary duplication of effort among these programs.

COORDINATION AND REVIEW
OF BUDGET OF BUDGET REQUESTS

SEC. 110(a) The Office of Science and Technology Policy shall-

(1) review all agency and department budget requests related to the Arctic transmitted pursuant to section 108(a)(5), in accordance with the national Arctic research policy and the 5-year program under section 108(a)(2) and section 109, respectively; and

(2) consult closely with the Interagency Committee and the Commission to guide the Office of Technology Policy's efforts.

(b)(1) The Office of Management and Budget shall consider all Federal agency requests for research related to the Arctic as one integrated, coherent, and multiagency request, which shall be reviewed by the Office of Management and Budget prior to submission of the President's annual budget request for its adherence to the Plan. The Commission shall, after submission of the President's annual budget request, review the request and report to Congress on adherence to the Plan.

(2) The Office of Management and Budget shall seek to facilitate planning for the design, procurement, maintenance, deployment and operations of icebreakers needed to provide a platform for Arctic research by allocating all funds necessary to support icebreaking operations, except for recurring incremental costs associated with specific projects, to the Coast Guard.

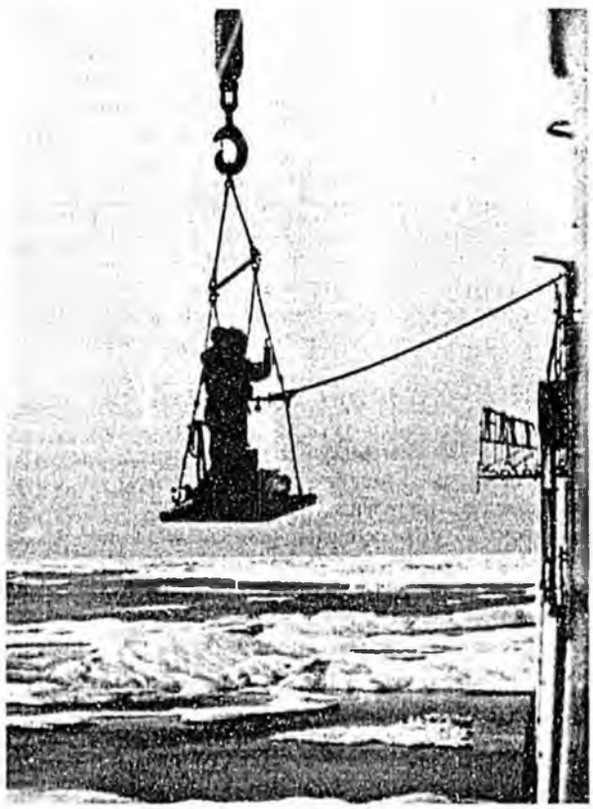
AUTHORIZATION OF APPROPRIATIONS;
NEW SPENDING AUTHORITY

SEC. 111(a) There are authorized to be appropriated such sums as may be necessary for carrying out this title.

(b) Any new spending authority (within the meaning of section 401 of the Congressional Budget Act of 1974) which is provided under this title shall be effective for any fiscal year only to such extent or in such amounts as may be provided in appropriation Acts.

DEFINITION

SEC. 112. As used in this title, the term "Arctic" means all United States and foreign territory north of the Arctic Circle and all United States territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all conntiguous seas, including the Arctic Ocean and the Beaufort, Bering and Chukchi Seas; and the Aleutian chain.



Scientists being put on arctic sea ice from the U.S. Coast Guard icebreaker Polar Star in 1993 to collect sediment samples of continental shelf origin entrained in the sea ice. (Courtesy of Dr. Arthur Grantz, USGS.)

☆U.S. GOVERNMENT PRINTING OFFICE: 1994-0-516-924

MAJOR MINING PROJECT

4/19/95

HOUSE RESOURCES COMMITTEE
Roll Call and Members' Bill Votes

* (indicates first public hearing)

Room 124, Capitol Bldg. Mon. (Wed.), Fri.

Date: 4-19-95

Tape# 95-51 Joint

Time: 8:10 am/pm Time Adjourned: am/pm

ROLL CALL:	PRES	ABS	TIME AR			
Rep. Joe Green	✓					
Rep. Bill Williams	✓					
Rep. Scott Ogan	✓					
Rep. Alan Austerman	✓					
Rep. Ramona Barnes						
Rep. John Davies						
Rep. Pete Kott	✓					
Rep. Eileen MacLean						
Rep. Irene Nicholia			8:17			

Other Legislators Present

AGENDA:

Bill No.	Short Title	Action Taken
HB 256	FREE SPORT FISHING DAYS	
PRESENTATION ON	MAJOR MINING PROJECTS	

OTHER

LEGISLATIVE REFERENCE LIBRARY

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3808
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 400
Juneau, Alaska 99801-2105

Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House Resources
4-19-95 8:10 am
Tape # 95-51
Presentation on Major Mining Projects

HOUSE RESOURCES COMMITTEE

Alaska State Legislature
House of Representatives

SUBJECT OF MEETING:
HB 256 - FREE SPORT FISHING DAYS
PRESENTATION ON MAJOR MINING PROJECTS

DATE: 4/19/95

PLACE: ROOM 124

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
John Burke	ADF&G	HQ's/Sport Fish			465-6187	Y	N	HB 256
Steve Boneel	Alaska [illegible]	501 W. Nth Ave			276-0347	Y	N	—
Paul Valenti	USMX	Mining - Ill[illegible] Corp	Denver	?	985-4665	Y	N	
JERRY BOOTH	CIRI	2525 C Street Anch AK				Y	N	
Charlotte Mackay	Comincol Alaska	Red Dog Kotzebue				Y	N	
Bill Jeffers	Fairbanks Gold.	- Fairbanks				Y	N	
Tom Crafford.	NPMC	2525 C Street Anch AK				Y	N	
	North Pacific Mining Co.					Y	N	
						Y	N	
						Y	N	
						Y	N	

ALASKA MINERS ASSOCIATION, INC.

April 12, 1995

ALASKA SUCCESS FROM AIRBORNE GEOPHYSICAL MAPPING

By Steve Borell

In 1993 and 1994 the Alaska State Legislature funded Airborne Geophysical Mapping at selected locations around the state. The State Division of Geological & Geophysical Surveys (DGGS) managed the work and now has the completed maps and data (including on CD) available for sale to the public.

These investments by the State have already been a catalyst for significant new private industry investments. In some areas DGGS worked with mining companies and private landowners and obtained their assistance and confidential data which was used by DGGS to increase the coverage and accuracy of the mapping. Some of the highlights of this program and its impact follow.

The State's 1993 Airborne Geophysical Mapping program surveyed portions of the **Nome, Nyac, Valdez Creek and Circle Mining Districts**. The 1994 program surveyed areas in the **Fairbanks and Richardson Mining Districts.**

The maps and data for the **Nome Mining District** were released in February of 1994 and during that summer one major mining company staked 120 new mining claims and another major company nearly doubled its intended exploration budget for the area. Other individual prospectors and miners, as well as other major mining companies, obtained the DGGS data and did varying amounts of exploration and claim staking in the area.

The maps and data for the **Circle Mining District** were released in April of 1994 and one major company dedicated an exploration crew for the entire summer for exploring targets identified from the maps. Also, several local prospectors and miners concluded agreements with junior mining companies that will result in more intense work during 1995.

FAIRBANKS DISTRICT BOOMING

The impact that the 1994 Airborne Geophysical Mapping program has had in the Fairbanks District has been phenomenal!

The maps and data for the **Fairbanks and Richardson Mining Districts** were released February 7, 1995. On that very day the DGGS collected more than $5,000 as the result of its sales of that material. This is three times the amount that any previous publication had elicited. That same week about 200 order forms were handed out to interested prospectors and companies at the

annual Cordilleran Roundup held in Vancouver, B.C. Additionally, DGGS is now sending notification of the maps to the 4,000 companies and individuals on its mailing list.

Regarding work in the field, between November 1, 1994 and March 8, 1995 a total of **80.81 square miles** of mining claims and upland prospecting sites were staked in the Fairbanks Mining District. Although some of the claims predated the release of the geophysical data, company geologists say that much of the staking was done to establish a land position in anticipation of the data.

One company has just announced that it staked 16,131 acres over a resistivity anomaly, identified from the new geophysical survey data, that was very similar in expression to that covering the company's existing property. On the first day of staking, one of their geologists collected a sample of float containing coarse gold that assayed 0.247 ounces per ton gold. Another major mining company has been busy staking claims and even drilling (in the winter) in the Fairbanks area, partly in response to the information on the new geophysical maps.

In 1994 approximately $31 million was invested in mineral exploration in Alaska, up slightly from 1993. Of this 1994 amount a good share was focused on Interior Alaska, mostly in the Fairbanks area. An even greater increase is expected for 1995 and the years to come.

The Alaska Legislature is now in session so neither the amount of money for further airborne geophysical surveys nor the decision on exactly where the new surveys will be flown is yet determined. What we do know is that very little of the State has been surveyed with new modern techniques and that these surveys are creating a tremendous amount of interest in mineral exploration on State and adjacent Native-owned lands.

For more information on obtaining the airborne geophysical maps and data on any of these six Mining Districts contact: Laurel Burns, Division of Geologic & Geophysical Surveys, 794 University Avenue, Suite 200, Fairbanks, AK 99709-3645, phone (907) 451-5021, FAX (907) 451-5050.

[Steven C. Borell is the Executive Director of the Alaska Miners Association which represents all aspects of the mining industry in Alaska. For more information contact the Alaska Miners Association, 501 W. Northern Lights #203, Anchorage, AK 99503, (907) 276-0347, FAX (907) 278-7997.]

Illinois Creek Gold-Silver Mine

Project Summary

March 22, 1995

Location

The proposed Illinois Creek project would be an open pit gold and silver mine located in the Kaiyuh Mountains in northwest central Alaska. It is approximately 320 miles west of Fairbanks, 57 miles southwest of Galena, 28 miles southeast of Kaltag, and 23 miles east of the Yukon River (see map).

Developer

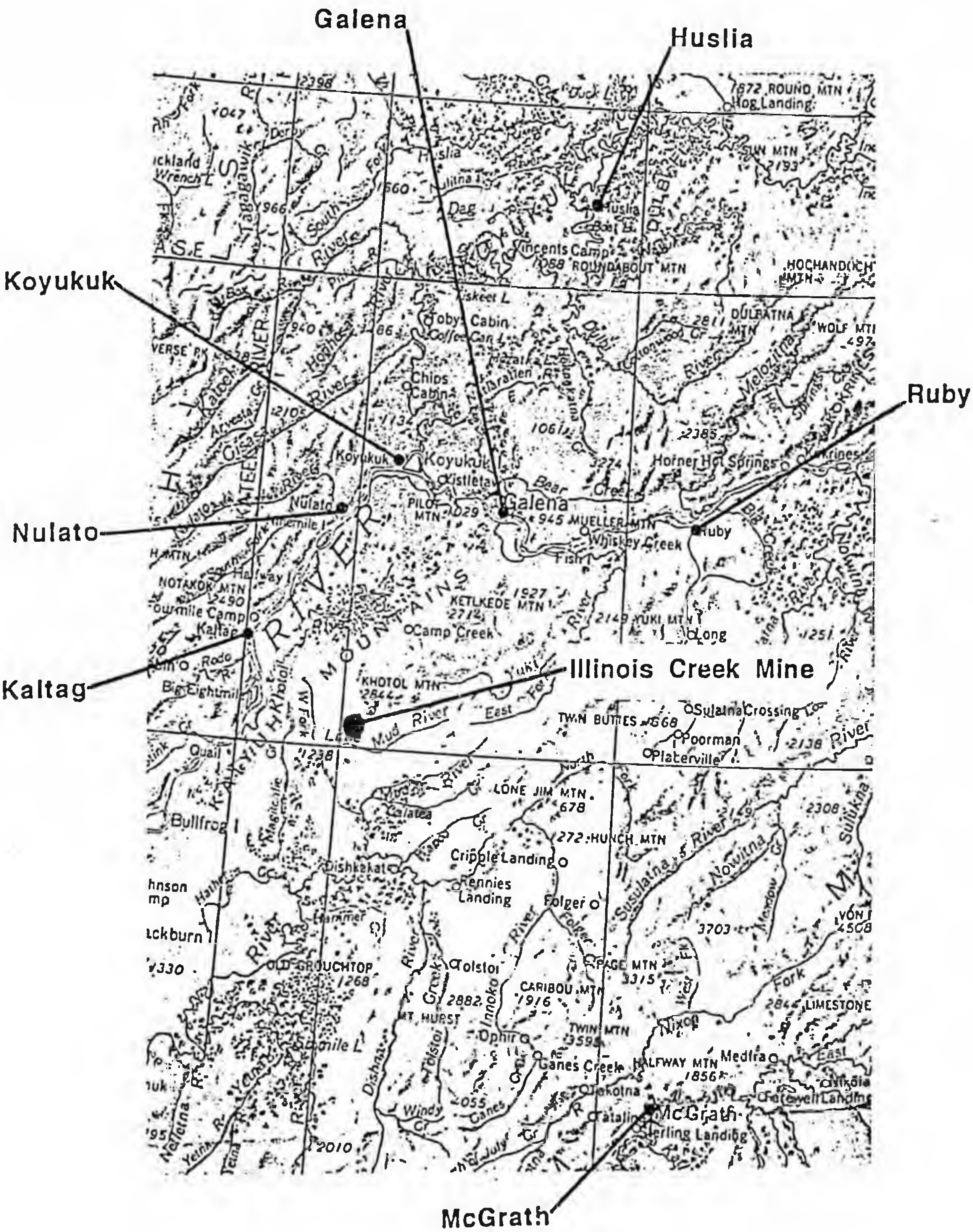
The project would be developed on a State of Alaska mining lease wholly owned by North Pacific Mining Corporation (NPMC), a subsidiary of Cook Inlet Region, Inc. (CIRI). The developer would be USMX, Inc., a Denver-based mining company formed in 1979 that is involved in exploration, development, and production of mineral properties in the U.S. and Latin America. In 1994 USMX produced over 35,000 ounces of gold.

Reserve

The Illinois Creek gold-silver deposit has to date defined a minable reserve of approximately 5 million tons of ore averaging 0.069 ounces/ton gold and 1.7 ounces/ton silver. At full operation, the project would produce approximately 50,000 ounces of gold and 400,000 ounces of silver annually. Potential to expand the reserve through additional exploration is considered good.

Access

The mine site presently has a 4,500-ft Hercules airstrip that would serve to move personnel to and from the site. Transport of consumables, fuel, and other supplies would be by aircraft. Large equipment and some bulk supplies would be moved seasonally by barge to a laydown site on the Yukon River, and then by winter cat train over a temporary 25-mile snow/ice trail to the mine site. Consideration is also being given to utilizng aircraft to transport equipment and bulk supplies.



Location of Illinois Creek Mine

Infrastructure

The site presently has a small exploration camp which is currently being upgraded to provide adequate accommodations and water and wastewater facilities for 1995 exploration activities. Development would include offices, process plant, mechanical shop, electrical generators, satellite communications system, water supply, sewage treatment system, and solid waste disposal site.

Mining Operations

Topsoil would be stripped from over the orebodies and stored in piles nearby for reclamation purposes (see mine layout figure). Overburden would then be stripped and disposed of in two large waste rock stockpiles. The ore would be blasted loose in the two or three open pits, loaded into trucks by front end loaders, and hauled to the 60-acre leach pad ("heap") where it would be dumped for processing.

Ore Processing

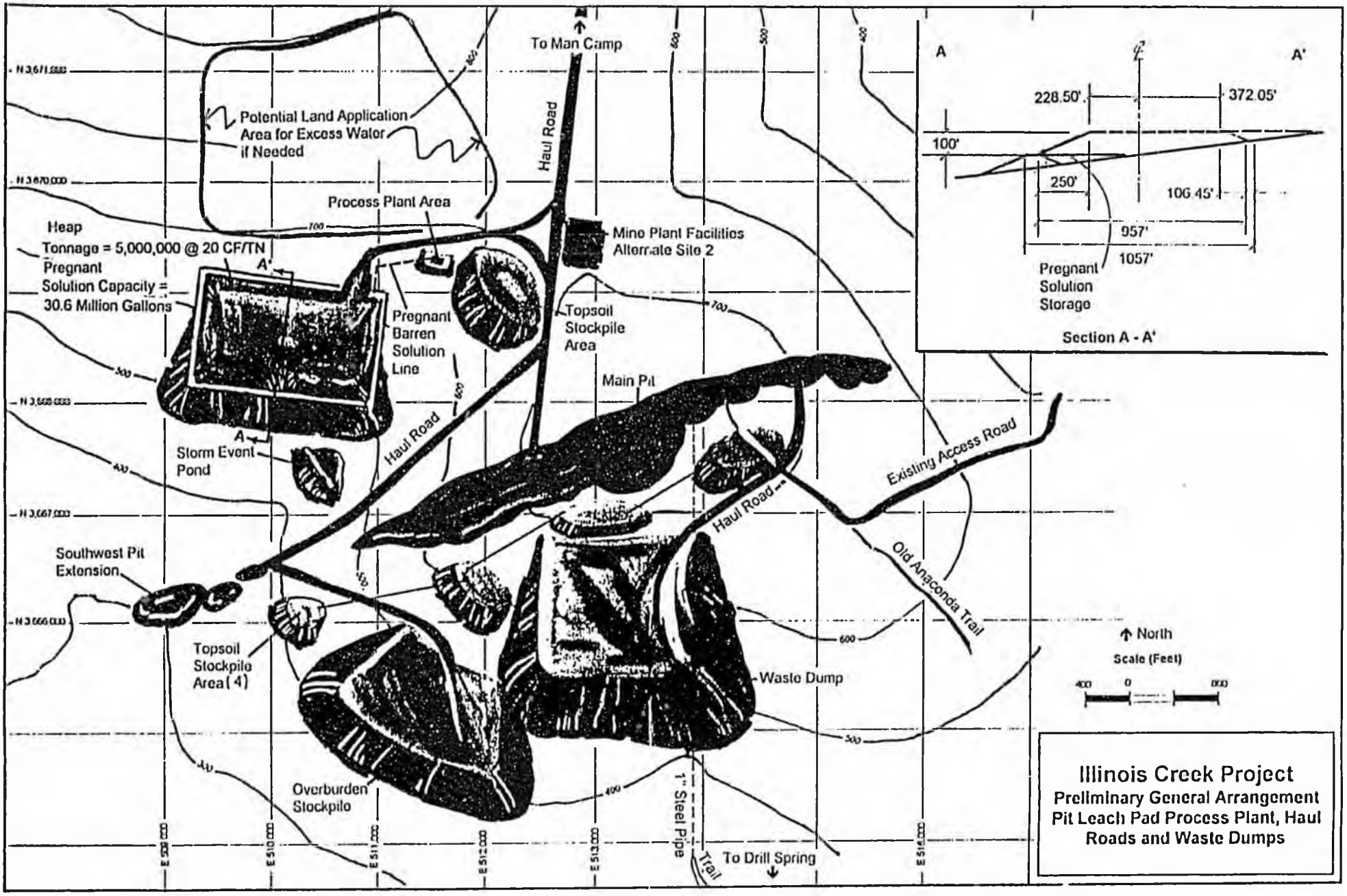
A dilute sodium cyanide solution would be sprinkled or dripped onto the ore to dissolve the gold into solution. The entire heap would be underlain by a double-lined, impervious system that would collect the gold-bearing "pregnant" solution. The solution then would be pumped to a processing plant where the gold would be removed, and the now "barren" solution would be recycled back to the heap to begin the leaching process again. Because of the closed nature of this system, there would be no discharge of water from the project.

Operations Schedule

Mining would occur during the summer months, approximately 150 to 200 days per year, while processing would occur year around.

Project Life

Based on current ore reserves, the mine has an expected life of approximately 5 years, with an additional 3 years for continued gold recovery, treatment of process solutions and the heap (to meet drinking water standards), decommissioning, and final reclamation. If new ore reserves were discovered, project life could be extended.


To Man Camp
Potential Land Application Area for Excess Water if Needed
Haul Road
Process Plant Area
Heap
Tonnage = 5,000,000 @ 20 CF/TN
Pregnant Solution Capacity = 30.6 Million Gallons
Mine Plant Facilities Alternate Site 2
Pregnant Barren Solution Line
Topsoil Stockpile Area
Main Pit
Storm Event Pond
Haul Road
Existing Access Road
Haul Road
Old Anaconda Trail
Southwest Pit Extension
Topsoil Stockpile Area (4)
Waste Dump
Overburden Stockpile
1" Steel Pipe
Trail
To Drill Spring
A
A'
228.50'
372.05'
100'
250'
106.45'
957'
1057'
Pregnant Solution Storage
Section A - A'
North
Scale (Feet)
400
0
800
Illinois Creek Project
Preliminary General Arrangement
Pit Leach Pad Process Plant, Haul Roads and Waste Dumps

Environmental Safeguards

Environmental safeguards would be built into the project through specific operational management practices and monitoring programs. Management practices would include minimizing surface disturbance, early definition of potential mine waste treatment requirements, intercepting natural surface runoff and routing it around project facilities, retaining mine drainage in the open pits and treating as necessary, zero discharge of process solutions, and contingency facilities for capture, treatment and disposal of unexpected excess process water.

Specific monitoring programs would include surface water volume and quality, leach pad leak detection (leaks would be recovered in the the secondary containment system for reuse), groundwater quality, aquatic biology and fish, wildlife, air quality, and reclamation success. Many of these programs would be specifically required by state permits. In total, approximately 50 to 60 permits and authorizations must be obtained before the project would become operable.

Reclamation

Reclamation would return the disturbed areas to a stabilized and productive condition following mining activities to ensure long-term protection of land and water resources. Reclamation would occur during three project stages: post construction, concurrently with mining, and after final closure. Post-construction and concurrent reclamation would stabilize disturbed areas on an annual basis, particularly to mitigate short-term soil erosion and sedimentation.

Final reclamation would include decommissioning and removing structures, neutralization and metals detoxification of the heap and recontouring it to optimize drainage, recontouring and regrading the mine pit and waste rock piles, soil fertilization and mulching as needed, and permanently revegetating disturbed areas. These measures would be laid out in reclamation management and monitoring plans that would become part of specific state permits, and would be guaranteed by a reclamation bond.

Employment

At full operation during the summer season, the project would employ approximately 102 workers in addition to camp support personnel. Approximately 50 of these positions would be mining-related and performed by a contractor; the remaining approximately 52 workers would be associated with leachate processing, management, and administration, and would be USMX employees. During the non-mining winter months, employment would drop to approximately 30 to 35 workers, mainly in processing.

Shift lengths and rotation schedules likely would vary depending on the type of job. No decisions on shift/rotation schedules have been made yet. An example for mill process workers, however, might be one 12-hr shift per day with two weeks on and two weeks off. For mine workers it might be one 10-hour shift per day with four weeks on and two weeks off, or two weeks on and one week off.

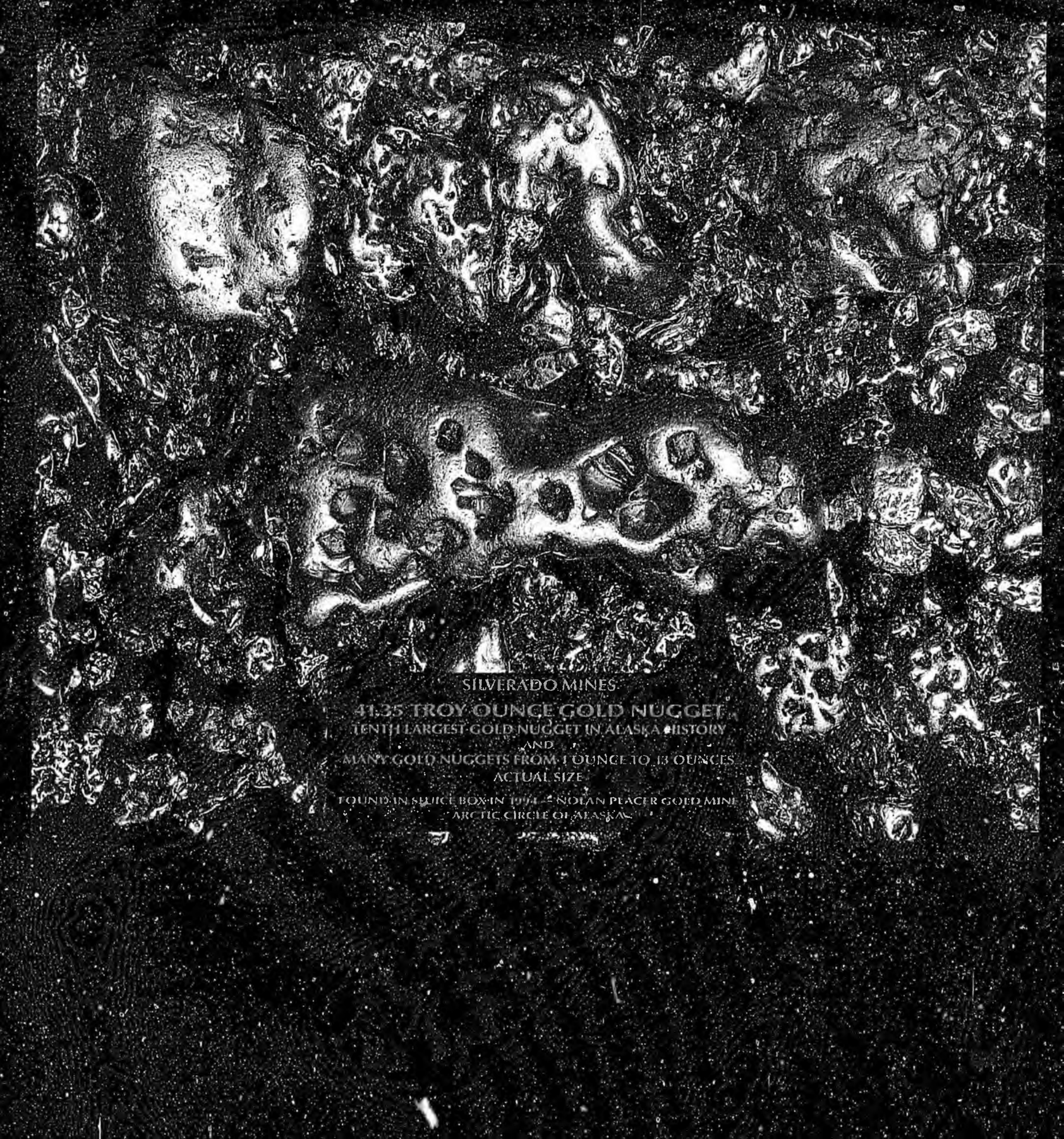
USMX is committed to hiring locally qualified workers, and will be working with representatives of local villages and the Tanana Chiefs Conference, as appropriate, to develop a pool of properly trained qualified workers. Because of the isolated nature of the project, USMX expects that it would provide air transportation, where practical, for workers to and from the mine site.

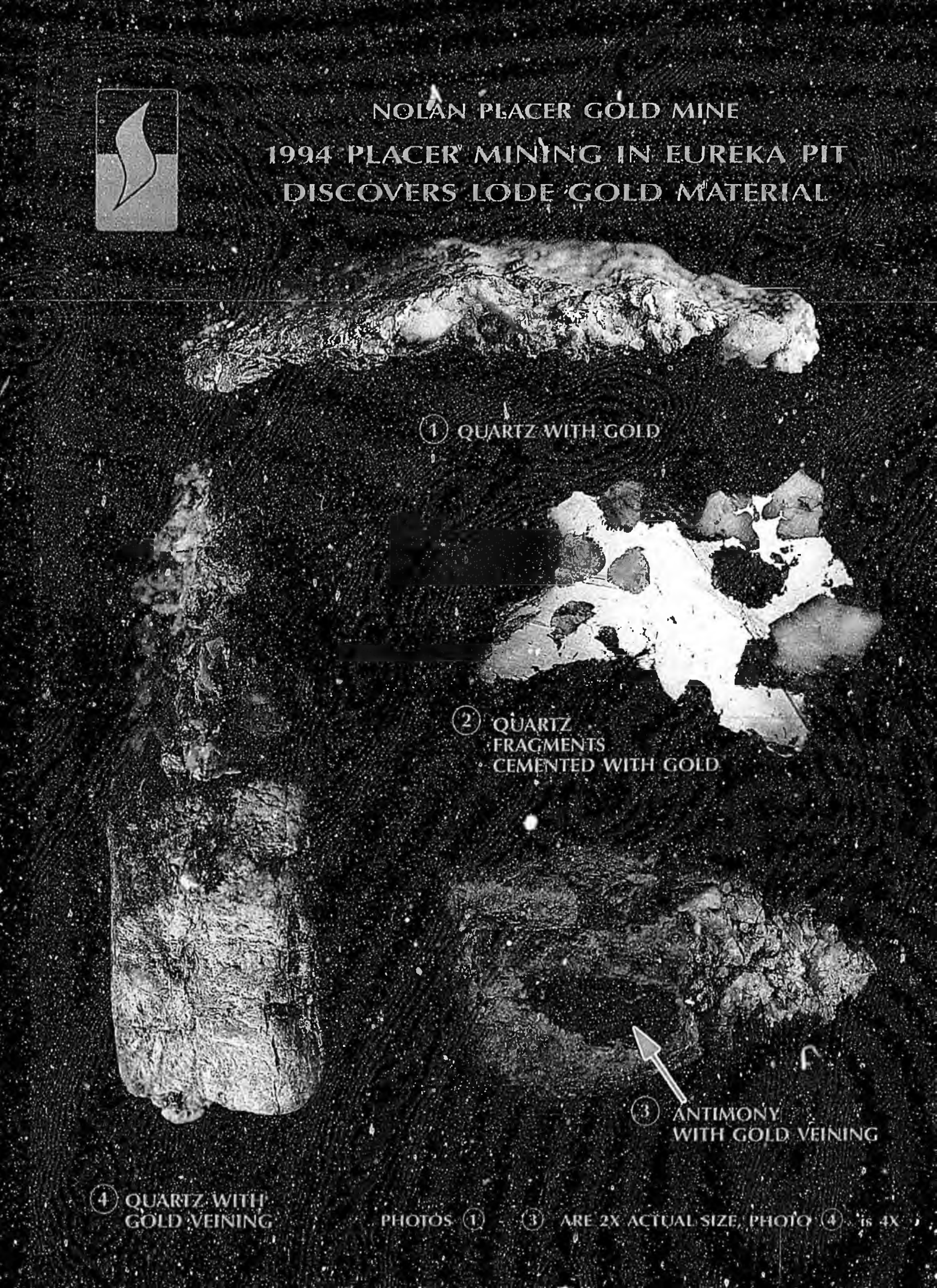
Development Schedule

Exploration drilling program	June through September 1995, and ongoing
Baseline studies	October 1994 through October 1996
Permitting	January 1995 through May 1996
Final decision for development	January 1996
Equipment move	Late winter 1996
Commence construction	May 1996
Commence mining operations	July 1996
Commence processing operations	September 1996

It is important to bear in mind that a final decision by USMX to proceed with the project will not be made until January 1996. The results of the 1995 exploration drilling program, baseline studies, permitting progress, development costs, and the price of metals will all bear on that decision.

For additional information, please contact Mike Smith (Ph/FAX: 907-346-2551)


SILVERADO MINES
41.35 TROY OUNCE GOLD NUGGET
TENTH LARGEST GOLD NUGGET IN ALASKA HISTORY
AND
MANY GOLD NUGGETS FROM 1 OUNCE TO 13 OUNCES
ACTUAL SIZE
FOUND IN SLUICE BOX IN 1994 - NOLAN PLACER GOLD MINE
ARCTIC CIRCLE OF ALASKA

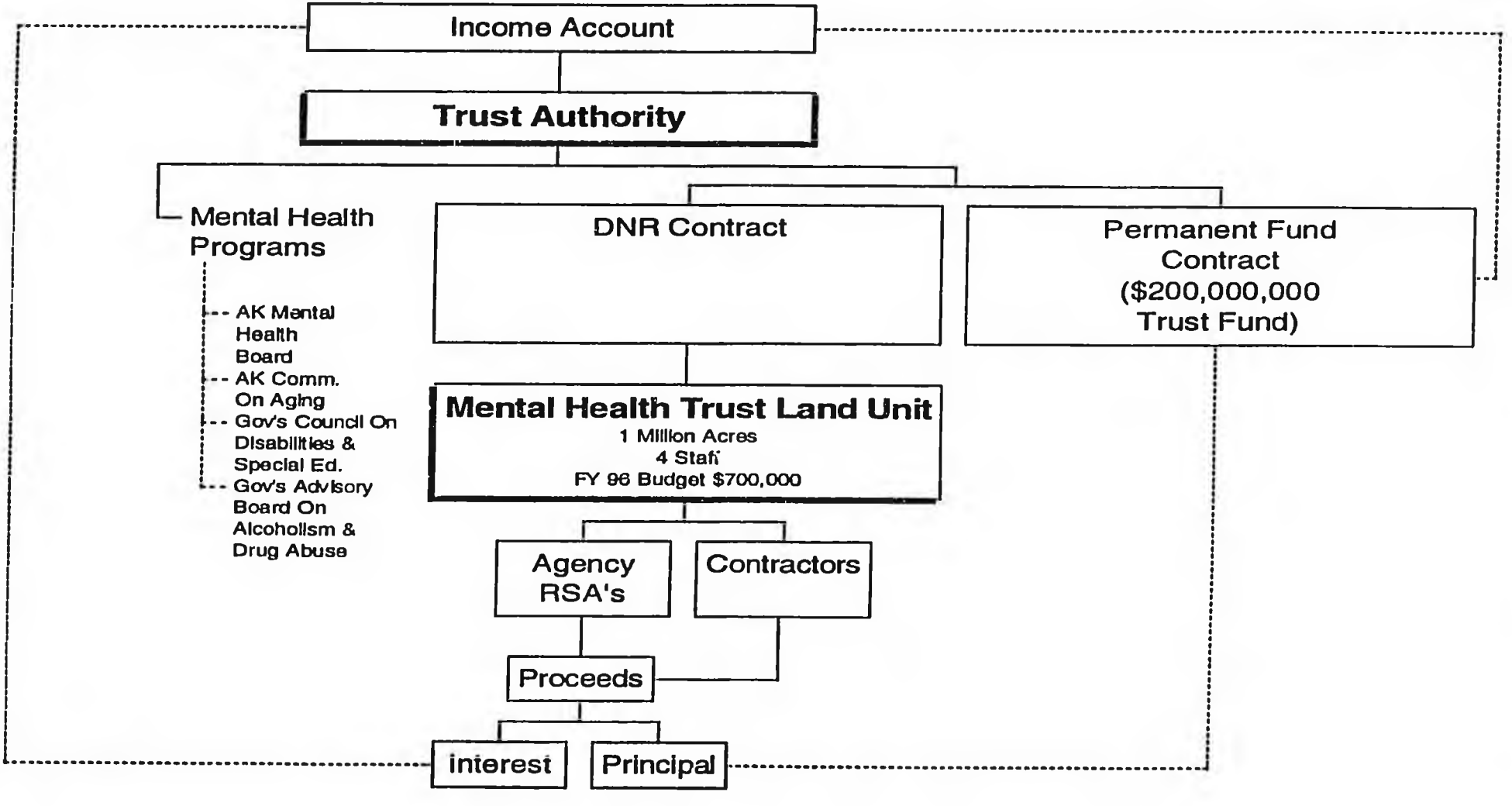

NOLAN PLACER GOLD MINE
1994 PLACER MINING IN EUREKA PIT
DISCOVERS LODE GOLD MATERIAL
1 QUARTZ WITH GOLD
2 QUARTZ FRAGMENTS CEMENTED WITH GOLD
3 ANTIMONY WITH GOLD VEINING
4 QUARTZ WITH GOLD VEINING
PHOTOS 1 - 3 ARE 2X ACTUAL SIZE, PHOTO 4 is 4X

MENTAL HEALTH TRUST LANDS

4/5/95

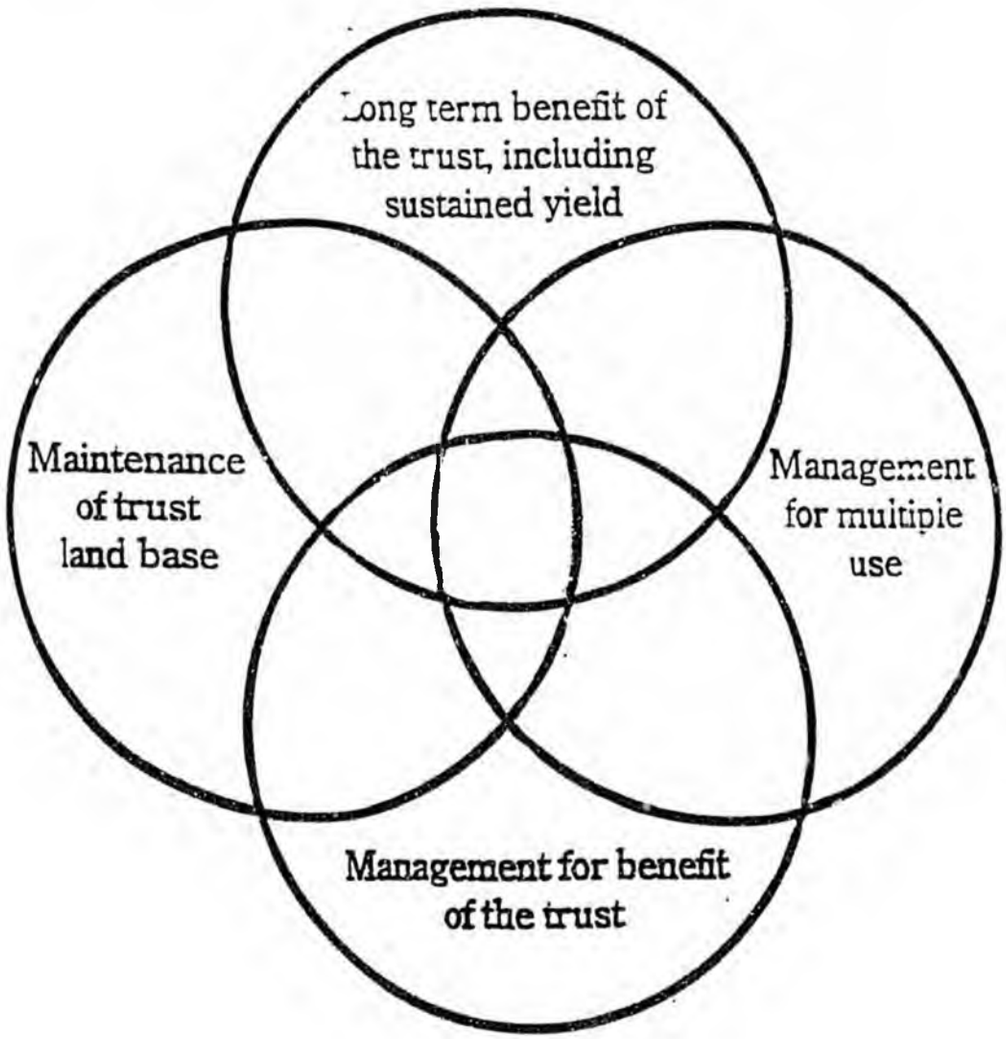
ATTACHMENT A

MENTAL HEALTH TRUST LAND UNIT
Organization Framework



ATTACHMENT B

TRUST LAND MANAGEMENT PRINCIPLES



Other Guiding Principles

- Positive Market Place Reputation
- Dollar Saved Goes to the Beneficiaries
- Keep Trust Activities Separate From General State Land Activities
- Effective Working Relationship within DNR
- Listen, Learn and Improve

ATTACHMENT C

Portfolio Description

	Acreage	Original Trust Land	Other State Land
Total Acreage	994,258	570,932	423,326
Fee Estate	547,410	435,176	112,234
Mineral Estate	340,948	55,736	285,212
ME: Hydrocarbon	105,900	80,020	25,880

Primary Resource Value	Approximate Acreage	Estimated Values (M)
Surface Land	326,500	$322.84
Hydrocarbon	105,900	50.4
Mineral	365,100	793.91
Forestry	19,250	25.0
Coal	157,200	N/A

Distribution by Primary Resource Value

Surface Land:

SE: Skagway, Haines, Juneau, Sitka, Wrangell, Petersburg, Ketchikan, Prince of Wales Isl, Cape Yakataga

SC: Anchorage, MatSu Valley, Kenai Peninsula, Valdez

NO: Fairbanks, Salcha, Delta Junction, Nenana

Forest:

SE: Cape Yakataga, Prince of Wales Isl.

Hydrocarbon:

SC: Kenai Peninsula and MatSu Valley w/i Cook Inlet Basin

Mineral:

SE: Haines

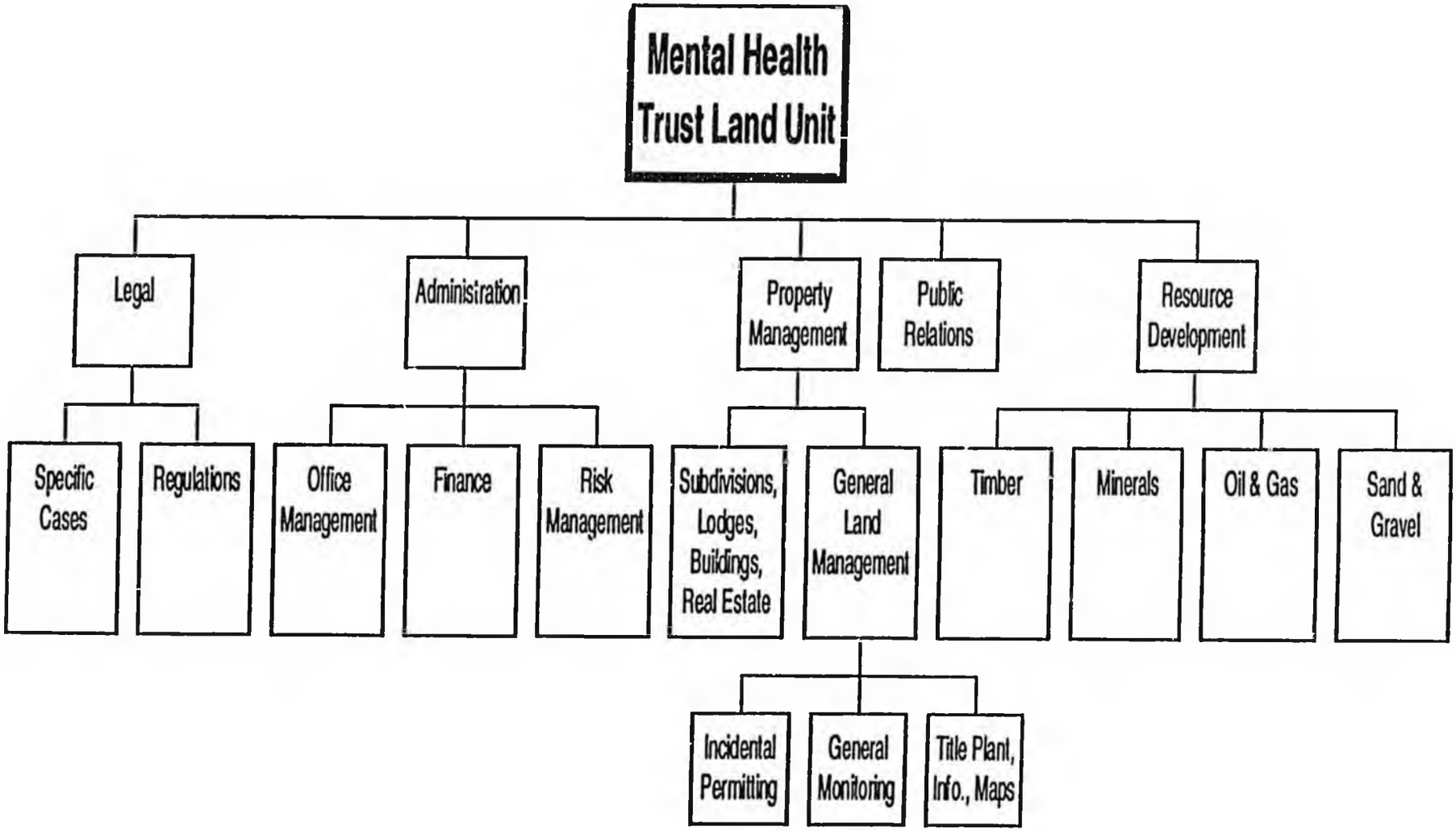
NO: Salcha, Fairbanks (Ft. Knox), Livengood, Ophir

Coal:

SC: MatSu Valley Moose Range, Tyonek

ATTACHMENT D

MENTAL HEALTH TRUST LAND UNIT
Program Responsibilities



THE FOLLOWING DOCUMENT
HAS NOT BEEN FILMED
BUT IS AVAILABLE IN THE
ORIGINAL FILE

STATE OF ALASKA

RECONSTITUTION OF THE MENTAL HEALTH TRUST AND CONFIRMATION AND RATIFICATION OF CONVERSION OF CERTAIN ORIGINAL MENTAL HEALTH LAND TO GENERAL GRANT LAND

Statewide Index Map
Current as of September 28, 1994
0 100 miles

- Original Mental Health Land To Be Designated As Mental Health Trust Land, April 28, 1994 list and September 28, 1994 amendments.
- Original Mental Health Land Not To Be Returned To Mental Health Trust Land, April 28, 1994 list and September 28, 1994 amendments.
- Both of the above are found within this section.
- Other State Land To Be Designated As Mental Health Trust Land, April 28, 1994 list and September 28, 1994 amendments.
- Mineral Rights Only.
- Hydrocarbon Rights Only.

The categories of Original Mental Health Land and other state land are depicted hierarchically, by entire section. For example, if one acre in a section is "Original Mental Health Land to be Designated As Mental Health Trust Land," then the entire section will be shown as Original Mental Health Land, regardless of whether the remainder of the section is Other State Land or not.

This is only an index map to those lands involved in the Mental Health Land Settlement as referenced in Chapter 5 FSSLA 1994, dated June 23,1994, and Chapter 1, SSSLA 1994, dated September 28, 1994. Detailed maps (USGS 1:63,360 quadrangles) portraying parcel boundaries are available for review at the following Department of Natural Resources Public Information Centers: Anchorage - 3601 C Street, Suite 200; Juneau - 400 Willoughby Avenue, 4th floor; Fairbanks - 3700 Airport Way.

Source: Alaska Department of Natural Resources, Division of Land, Mental Health Settlement Project, September 28, 1994.

Department of Natural Resources
Land Records Information Section
Date Printed: December 20, 1994

Eagle
Fairbanks
Tok
McGrath
Glenallen
Valdez
Anchorage
Cordova
Kenai
Seward
Homer
Kodiak
Haines
JUNEAU
Sitka
Ketchikan
GULF OF ALASKA

STATE OF ALASKA

RECONSTITUTION OF THE MENTAL HEALTH TRUST AND CONFIRMATION AND RATIFICATION OF CONVERSION OF CERTAIN ORIGINAL MENTAL HEALTH LAND TO GENERAL GRANT LAND

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Current as of September 28, 1994

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Eagle
Fairbanks
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Valdez
Anchorage
Cordova
Kenai
Seward
Homer
Kodiak
Haines
JUNEAU
Sitka
Ketchikan

mat/denali/denali/mental/state_em_ver6.aml 6.1 D.Mortensen

NAVIG-ABILITY CLAIMS

NAVIGABLE WATERS HEARING

HOUSE RESOURCES COMMITTEE

POTENTIAL QUESTIONS

2/21/96

UPDATED: 2/20/96 - #2

QUESTIONS OF DEPARTMENT OF NATURAL RESOURCES

1. PLEASE EXPLAIN THE PROCESS REQUIRED FOR ASSERTING NAVIGABILITY?

2. PLEASE EXPLAIN THE PROCESS REQUIRED FOR CLAIMING TITLE TO TIDE AND SUBMERGED LANDS?

3. HOW MANY ACRES OF LAND ARE ESTIMATED TO BE TIDE AND SUBMERGED LANDS?

4. ON JULY 26, 1996 COMMISSIONER SHIVELY DISTRIBUTED A LETTER TO MANY DEPARTMENTS WHICH STATED:

   > "WITH THE ELIMINATION OF THE DEPARTMENT BUDGET FOR NAVIGABILITY ASSERTIONS, ALL WORK ON A SYSTEMATIC STREAM OR WATERBODY OWNERSHIP PROGRAM HAS BEEN SUSPENDED."
   >
   > "WE ARE PREPARING A SUPPLEMENT TO DEPARTMENT ORDER # 125 THAT PLACES RESPONSIBILITY FOR DETERMINATION OF SUBMERGED OWNERSHIP WITH THE APPROPRIATE STATE OFFICIAL HAVING JURISDICTION OVER A PENDING ACTION WHERE A STATE APPROVAL OR PERMIT IS DEPENDENT UPON STATE OWNERSHIP."

   EXPLAIN WHY THE DEPARTMENT INDICATED THIS PROGRAM WAS ELIMINATED WHEN THE PROGRAM WAS ACTUALLY SHIFTED TO ANOTHER SECTION WITHIN DNR?

   HAS THE SUPPLEMENT TO DEPARTMENT ORDER # 125 BEEN ADOPTED?

   EXPLAIN HOW DNR IS APPROACHING THE ISSUE OF NAVIGABILITY DETERMINATIONS AND TITLE TO TIDE AND SUBMERGED LANDS SINCE THIS MEMO WAS WRITTEN?

DO YOU THINK ASSERTING TITLE TO NAVIGABLE WATERBODIES IS A PUBLIC TRUST RESPONSIBILITY?

DOES THIS PROCESS MEET THE STATE GOVERNMENT'S TRUST RESPONSIBILITIES UNDER THE STATE CONSTITUTION? IS THIS PROCESS WORKING?

NOTE: ASK THE DEPARTMENT OF LAW AND DEPARTMENT OF FISH AND GAME FOR THEIR OPINION ON THAT ISSUE.

5. WAS THE GOVERNOR CONSULTED BEFORE DNR ISSUED THIS DIRECTIVE TO OTHER AGENCIES?

6. WHY DIDN'T THE GOVERNOR REQUIRE THE DEPARTMENT'S INVOLVED IN ASSERTION OF NAVIGABILITY AND TITLE TO TIDE AND SUBMERGED LANDS TO COOPERATE FINANCIALLY IN MAINTAINING THIS CRITICAL STATE FUNCTION RATHER THAN CREATING A PROCESS THAT WAS DOOMED TO FAIL?

7. WHAT ARE THE ISSUES AND CONFLICTS ASSOCIATED WITH NAVIGABILITY AND OWNERSHIP OF TIDE AND SUBMERGED LANDS?

ASK BOTH ADF&G AND DEPARTMENT OF LAW IF THEY AGREE WITH THE ANSWER.

NOTE: RECOMMEND MOVING TO DEPARTMENT OF LAW

8. IN DECEMBER 1994, THE SECRETARY OF INTERIOR'S REPRESENTATIVE IN ALASKA COORDINATED WITH THE STATE OF ALASKA TO ESTABLISH A TASK FORCE TO DEAL WITH "NAVIGABILITY " ASSERTIONS. THE PURPOSE OF THE NAVIGABILITY TASK FORCE WAS TO ESTABLISH A PROCESS AND TO PROCEED WITH THE STATE'S RECEIVING QUIET TITLE TO NAVIGABLE WATERWAYS WITHOUT THE USUAL LITIGATION.

PLEASE EXPLAIN HOW THIS TASK FORCE HAS FUNCTIONED.

9. DNR HAS A CENTRALIZED NAVIGABILITY DATA BASE. IS THAT DATA BASE CURRENT?

10. WHY DO YOU GIVE THIS TRUST RESPONSIBILITY SUCH A LOW PRIORITY WITHIN YOUR DEPARTMENT?

11. ASSUMING THAT ASSERTION OF NAVIGABILITY IS IMPORTANT TO THE STATE, DID YOU INCLUDE FUNDS IN YOUR FY 97 BUDGET FOR THE PROGRAM?

12. DO YOU HAVE A STATEWIDE STRATEGY FOR PROTECTING THE STATE'S INTERESTS IN ASSERTION OF NAVIGABLE WATERS AND IN ACQUIRING TITLE TO ALL TIDE AND SUBMERGED LANDS BELONGING TO THE STATE?

13. AT ONE POINT, THE STATE OF ALASKA GAVE NOTICE OF IT'S INTENT TO FILE QUIET TITLE TO NEARLY 200 STREAM IN ALASKA. WHAT IS BEING DONE IN THESE CASES?

14. DO YOU THINK YOUR DECISION TO DISTRIBUTE RESPONSIBILITIES FOR NAVIGABILITY DETERMINATIONS TO OTHER STATE DEPARTMENT'S WILL RESULT IN MORE GOVERNMENT EFFICIENCY OR LESS EFFICIENCY?

15. ARE ALL TITLE OR NAVIGABILITY ASSERTIONS DEPOSITED WITH BLM BEING REVIEWED BY THE STATE?

16. HOW DOES THE DEPARTMENT PRIORITIZE THOSE ASSERTIONS WHICH SHOULD BE CHALLENGED?

17. IS THERE ANY ASSOCIATION WITH THE DETERMINATION OF NAVIGABILITY AND THE ESTABLISHMENT OF 17 (b) EASEMENTS?

    ASK FISH AND GAME AND DEPARTMENT OF LAW IF THEY HAVE ANYTHING TO ADD

18. IN A FEBRUARY 7, 1996 MEMO FROM DIRECTOR TILESTON, HE INDICATED THAT "NAVIGABILITY DETERMINATIONS ARE ROUTINELY MADE AS PART OF A LAND TRANSFER FROM THE FEDERAL GOVERNMENT. I ASSUME THAT MEANS TO THE STATE OR TO THIRD PARTIES SUCH AS REGIONAL OR VILLAGE CORPORATIONS. IF THIS IS BEING DONE ROUTINELY, DOES DNR MONITOR ALL OF THESE TRANSFERS AND NAVIGABILITY DETERMINATIONS?

19. ACCORDING TO THE FEBRUARY 7, 1996 MEMO FROM DIRECTOR TILESTON, DNR WOULD CONTINUE TO PROVIDE SOME SUPPORT "WHEN THERE ARE SIGNIFICANT PUBLIC USE OR RESOURCES AT RISK." WHO DETERMINES WHAT IS "SIGNIFICANT?" ARE OTHER DEPARTMENTS CONSULTED?

20. APPARENTLY THE "GULKANA" CASE HELPED ESTABLISH CRITERIA FOR DETERMINING NAVIGABILITY. WERE THERE ANY ERRONEOUS NON-NAVIGABLE DETERMINATIONS MADE BY BLM PRIOR TO THE DECISION ON THE "GULKANA" CASE? IF THERE WAS, SHOULDN'T THE STATE GO BACK AND ASSERT NAVIGABILITY AND TITLE?

QUESTIONS OF DEPARTMENT OF LAW

1. EXPLAIN THE LEGAL CRITERIA FOR DETERMINING NAVIGABILITY.

2. COMMISSIONER SHIVELY TESTIFIED AT THE SENATE FINANCE COMMITTEE OVERVIEW OF DNR THAT THE STATE NEED NOT WORRY ABOUT NAVIGABILITY AND TITLE BECAUSE THERE IS NO STATUTE OF LIMITATION FOR THE STATE FILING ITS CLAIMS. IS THAT TRUE?

   DESPITE YOUR ANSWER, DOES FURTHER DELAY IN ASSERTING TITLE PREJUDICE THE STATES' ABILITY TO DO SO IN OTHER WAYS?

   IF A THIRD PARTY RECEIVED TITLE TO LAND, INCLUDING SUBMERGED LANDS UNDER BLM DETERMINED NON-NAVIGABLE WATERS, AND THE STATE DOES NOT EXERCISE ITS RIGHT TO ASSERT NAVIGABILITY, THEN THE STATE CAN EXERCISE THAT RIGHT 30 YEARS LATER WHEN THE PARTY IS EXTRACTED GRAVEL FROM THE STREAM AND HAS SUCCESSFULLY DRILLED FOR OIL AND GAS?

   ISN'T A PARTY FREE TO PURSUE ANY LEGAL USE OF HIS PROPERTY AS LONG AS THE STATE DOESN'T OBJECT OR ASSERT NAVIGABILITY?

3. EXPLAIN BRIEFLY WHAT LITIGATION THE STATE IS INVOLVED WITH CONCERNING NAVIGABILITY AND TITLE TO TIDE AND SUBMERGED LANDS?

4. IS THE DEPARTMENT OF LAW RECEIVING THE SUPPORT IT NEEDS FROM THE VARIOUS DEPARTMENT'S TO DEFEND THE STATE'S POSITION IN THIS LITIGATION?

5. AS A RESULT OF THE NINTH CIRCUIT COURT OF APPEALS DECISION IN THE KATIE JOHN CASE, FEDERAL AGENCIES COULD ATTEMPT TO EXERT MANAGEMENT AUTHORITY OVER SOME NAVIGABLE AND NON-NAVIGABLE WATERS. HOW ARE THE STATE'S INTERESTS BEING PROTECTED? IS THE DEPARTMENT OF LAW GETTING THE TECHNICAL SUPPORT IT NEEDS IN THIS CASE?

6. WE REALIZE THAT THE STATE IS APPEALING THE KATIE JOHN CASE. HOWEVER, WILL THE STATE CONTEST IN COURT ATTEMPTS BY THE FEDERAL AGENCIES TO EXTEND THEIR JURISDICTION INTO STATE NAVIGABLE AND NON-NAVIGABLE WATERS ?

NOTE: RECOMMEND MOVING TO DEPARTMENT OF FISH AND GAME

7. CAN YOU EXPLAIN THE DEPARTMENT OF LAWS INVOLVEMENT IN ESTABLISHING STATE POLICIES TOWARD THE ASSERTION OF NAVIGABILITY AND TITLE?

8. CAN YOU EXPLAIN WHAT STRATEGY THE DEPARTMENT OF LAW HAS ESTABLISHED IN ORDER TO GUARANTEE STATE'S INTERESTS ARE PROTECTED IN THE ASSERTION OF NAVIGABILITY AND TITLE?

9. WHAT RESOURCES HAS THE DEPARTMENT COMMITTED TO THE NAVIGABILITY AND TITLE TO TIDE AND SUBMERGED LANDS ISSUE?

10. WHY ARE THE KANDIG, NATION AND BLACK RIVER CASES SO IMPORTANT?

QUESTIONS OF DEPARTMENT OF FISH AND GAME

1. ON SEPTEMBER 14, 1995, THE REGIONAL STAFF IN ANCHORAGE SENT A MEMO TO COMMISSIONER RUE EXPRESSING MAJOR CONCERNS WITH THE DEPARTMENT OF NATURAL RESOURCES DECISION TO TERMINATE THE NAVIGABILITY DETERMINATION PROJECT. CAN YOU HIGHLIGHT SOME OF THOSE CONCERNS AND EXPLAIN WHAT ACTIONS HAVE BEEN TAKEN BY DNR AND YOUR DEPARTMENT TO ADDRESS THEM?

2. DOES YOUR DEPARTMENT HAVE THE EXPERTISE TO ASSUME A LEAD ROLE IN ASSERTING NAVIGABILITY AND PREPARING FOR QUIET TITLE ACTIONS?

3. ISN'T A DETERMINATION OF NAVIGABILITY IMPORTANT FROM THE STANDPOINT OF TITLE AS WELL AS OTHER STATE INTERESTS SUCH AS ACCESS AND JURISDICTION?

4. YOUR DEPARTMENT HAS RAISED THE ISSUE OF ACCESS ON NAVIGABLE WATERS FOR THE PURPOSES OF HUNTING AND FISHING. AS I UNDERSTAND, MANY ALASKANS ARE BEING DENIED ACCESS OR PERMITS FOR ACCESS PURPOSES BY FEDERAL AGENCIES TO MAJOR STREAMS IN ALASKA. COULD YOU GIVE ME SOME EXAMPLES? (KISARALIK LAKE AND RIVER, AROLIK, RIVER, EAGLE RIVER, KARLUK RIVER, SITUK RIVER AND PLACER RIVERS)

   WHAT IS THE STATE DOING TO PROTECT THE PUBLIC'S INTERESTS?

5. I UNDERSTAND THAT THE NATIONAL PARK SERVICE HAS ALSO BEEN RESTRICTING USE OF PUBLIC ACCESS ILLEGALLY. CAN YOU GIVE US SOME EXAMPLES? (ALSEK RIVERS)

   WHAT IS THE STATE DOING TO PROTECT THE PUBLIC'S INTERESTS?

6. THERE HAS BEEN CONSIDERABLE CONFUSION AND CONCERN OVER NAVIGABILITY DETERMINATIONS ON THE RUSSIAN RIVER ON THE KENAI PENINSULA. BECAUSE OF THE IMPORTANCE OF THIS STREAM FOR PUBLIC RECREATION, PRIMARILY FISHING. CAN YOU EXPLAIN HOW THE STATE IS PROTECTING THE PUBLIC ACCESS INTERESTS TO THIS RIVER?

   IN A FEBRUARY 7, 1996 MEMO FROM DIRECTOR TILESTON, IT INDICATES THAT DNR IS ASSERTING NAVIGABILITY ON ONLY THE "LOWER RUSSIAN RIVER." DO YOU AGREE WITH THAT ASSERTION?

7. IF THE STATE DOES NOT ASSERT NAVIGABILITY, CAN THIS HURT THE STATES CASE CONCERNING MANAGEMENT OF FISHERIES RESOURCES? WHERE?

8. IS IT POSSIBLE THAT THE RIGHTS OF THE PUBLIC RELATED TO PUBLIC ACCESS AND USE OF FISH AND WILDLIFE CAN BE PLACED AT RISK IF STATE ASSERTIONS OF NAVIGABILITY AND TITLE ARE NOT MADE? GIVE EXAMPLES.

9. HAVE YOU OR YOUR STAFF WORKED WITH THE NAVIGABILITY DATA BASE REFERRED TO BY DNR AND WOULD YOU SAY THE DATE BASE IS COMPLETE AND UP-TO-DATE?

10. WHAT RESOURCES DOES YOUR DEPARTMENT COMMIT TO THE STATE'S EFFORTS IN ASSERTION OF NAVIGABILITY AND TITLE TO TIDE AND SUBMERGED LANDS?

FEB 20 1996

MEMORANDUM

Dept. of Natural Resources

State of Alaska

Division of Mining & Water Mgmt.

TO: Nico Bus
Acting Director
Division of Support Services

Date: February 7, 1996

Telephone: 269-8625
Fax: 562-1384

From: Jules V. Tileston
Director

Subject: Navigability Program

At Commissioner Shively's recent appearance on the department budget, supplemental information was requested on the navigability program as it existed in this Division until it was eliminated from the FY 96 budget. The following describes the former program. Based on our experiences over the past year on handling important navigability issues having regional and statewide implications, I am also outlining the concepts of a navigability program that is both in balance with realistic long-term budget expectations and assuring a continuing and timely ability to resolve and pursue federal court actions to quiet title for all significant issues impacting ultimate ownership and management of resources associated with inland water bodies in Alaska.

Budget-FY96 submitted by the Knowles Administration for the navigatibility project:

Personnel Services:	$122.5
Travel:	$3.0
Contractual Services:	$5.0
Supplies	$2.0
Equipment:	$0.0
TOTAL:	**$132.5 General Funds**

These FY 1996 funds were intended to:

1. Continue systematic assertions on and provide technical support in defense of the state's title to submerged lands that are held in trust by the federal government for the future State of Alaska. It is estimated that there are over 14,000,000 acres of submerged lands associated with inland navigable waters and another 65,000,000 acres of coastal submerged lands.

2. Assemble and maintain a centralized factual and historical data base on the use, physical characteristics and court decisions influencing ownership of and access to Alaskan water bodies.

3. Work with federal agencies through pro-active partnerships and joint state-federal cooperative management agreements to identify navigable waters in Alaska. This includes collecting and exchanging information and data between state and federal land managing agencies. The primary objectives of this effort are threefold; (a) reach agreement on factual and historical data applicable to specific waterbodies, (b) reach agreement on which waterbodies clearly are or are not navigable, those waterbodies where the available data are inconclusive, and those waterbodies where the interpretation of the data are of a nature that only the federal court can resolve and, (c) reduce the necessity for water body by water body litigation. Sometimes, the interest of the federal and state governments differ and the state must be prepared to timely assert and follow through with appropriate action to protect the public's interest.

4. During FY 95, the Navigability Project resulted in navigability determinations for airport improvement projects at Chisana, Kongnignanohk, and Kwigillingok to resolve ownership questions associated with airport improvements by the Alaska Department of Transportation and

Public Facilities. Navigability determinations were made for potential gravel sources for roads, dikes, and power plant construction projects at the Kotsina, Scott, Sheridan, Makushin. Information was provided the Alaska Department of Transportation and Public Facilities and the U.S. Coast Guard both for ownership and for the type of boat traffic in support of highway bridge projects throughout the state.

5. Provide continued technical assistance to the orderly development of mineral deposits located in inland waters. This included a detailed evaluation of available hydrologic and use information and an aerial inspection of the watershed flowing out of the recent addition to the Denali National Park and Preserve. This was in direct response to an administrative appeal hearing held to collect currently available information about the prospective navigation condition of a stream at Kantishna where the ownership of the stream bed for the purposes issuing a state mining permit. The administrative record was reviewed in anticipation of litigation being filed if the state did not issue the permit. In addition, the records were reviewed to validate previous navigatible assertions on parts of the bed of the Fortymile wild and scenic river where federal agencies are attempting to extend federal jurisdiction to state ownerships expressly excluded from conservation systems created by ANILCA.

During FY 96, the Commissioner approved minor reprogramming of funding in the Division to complete several tasks to assure that the state's interest in asserting ownership of inland navigable water bodies. This included :

1. Development of a policy allowing each state entity to make navigability determinations when a permit, lease, or sale of public land or public projects, follow standard guidelines that currently applied to Alaska. The standards and criteria were distributed to state agencies and to federal land managing agencies with a request for comment. Comments were recently received from the Alaska Department of Fish and Game and a final revision to the existing Department Order is underway.

2. Developed a standardized, user-friendly electronic format for easy input to the centralized navigability data base files in the division.

3. At the request of the Alaska Department of Fish and Game, the division reviewed the hydrology and use information in the files associated with a pending transfer of the lower Russian River to private ownership. Based on this review and an onsite visit, a report asserting the Russian River was in state ownership because of its navigable condition was prepared and distributed. ADFG also identified a second river that the department should reexamine as a result of pending BLM land transfers in the Tyonek area.

4. Developed, in close coordination with the Attorney General's office, a strategy to collect information needed to defend the state's assertion in federal court that the Kandik, Nation, and Black rivers are in state ownership because they are navigable. This quiet title action was started several years ago and vigorously fought by the federal government as an issue that was not ripe for federal court action. The 9Th Circuit Court recently rejected that position and directed that quiet title action proceed. After discovery by the AG's office, the division will provide a technical analysis of the information being used by the federal government. A field inspection will be scheduled in late summer to validate hydrologic data that has broad application to a large number of non-glacial streams and small rivers in Interior, Southcentral, and Southwest Alaska. A preliminary inquiry has been made of the Department of the interior to see if they would join in the field examination to share costs and to share data. The primary objective is to collect hydrologic data for each of the disputed stream reaches in a manner that can be stipulated in court as acceptable to both the state and the federal governments.

Current status:

Navigability determinations are routinely made as part of a land transfer from the federal government. These federal determinations are made in order to keep track of acreage entitlements since if the state

already owns the land under a water body (regardless of size) the acreage does not count against acreages specified in the Alaska Statehood Act, the Alaska Native Claims Settlement Act, and other federal entitlements to the state. To date the state has received title (either as Tentative Approval or Patent) to approximately 89 million acres; whereas, Alaskan Native Corporations have received approximately 30 million acres as Interim Conveyance or Patent. For those lands conveyed to the state, the people of the state own all lands and water. The only question is "Do specific acreages count against entitlements?" For the remaining lands pending transfer to Native Corporations, we understand that BLM is applying the "Gulkana" standard in determining whether certain water bodies are or are not to be counted against a Corporation's entitlement. Most of the remaining acreages to Native Corporations are closely associated with prior conveyances where BLM had already made a determination and acreage charges to many of the same waterbodies.

The Kandik-Nation-Black final determination will provide a supplemental set of criteria for determining ownership of land beneath inland waters.

Under Department Order 125, Revision No. 5, the ownership assertion process would continue, but the cost associated with a navigability determination would be responsibility of the agency or party making the request for a use dependent upon state ownership. DNR would still have the overall responsibility to provide technical assistance to the Attorney General and other state departments in resolving, avoiding, or litigating state/federal/private disputes, and preparation of assertions when there are significant public use or resources at risk.

Accordingly, the present policy of the Commissioner to reprogram from available funds seems appropriate for projects that can be done within existing funds. However, we reserve the option to request project funding for a specific project where the work exceeds the capability of available funding and technical staff. The only major work that is not being done that should be seriously considered is the pro-active program between the federal government and the state to reduce water body by water body litigation. At this time it is not known whether there is sufficient funding or commitment at the federal level to re-establish the program that was terminated when the Navigability Project became an unfunded mandate.

cc: J. Shively, M. Rutherford

TONY KNOWLES, GOVERNOR

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

SUPPORT SERVICES DIVISION

400 WILLOUGHBY AVENUE
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PHONE: (907) 465-2406
FAX: (907) 465-2492

February 14, 1996

The Honorable Rick Halford
Chairman of Senate Finance Committee
State Capitol, Room 508
Juneau, AK 99801

Dear Senator Halford,

At the Senate Finance Committee Overview of the DNR budget three issues came up for which we would like to provide you with additional information. They are:

1. **Navigability** - Current policy compared to what was proposed in the FY96 budget.

Attached is a memo from Jules Tileston addressing this issue.

2. **Parks funding history** - General funds vs. Program receipts.

We have attached a table with graph showing the FY86-FY97 funding history for the Division of Parks. The total funding request in FY97 is less than the general funds for the program in FY86, yet we have more park units and more visitors.

3. **Land Status GIS automation project** - status report.

This project is on schedule and should be 80% complete at the end of this fiscal year. There will be two more years of effort left to have this completed, when funded at the Governor's request level of $350.0. Attached is a write-up showing the status of this project.

I hope this additional information is helpful to you. If you have any further questions please feel free to contact me.

Sincerely,

Nico Bus

Nico Bus
Acting Director

10-J9LH

Attachments:
Memo Jules Tileston February 7, 1996
State Park GF funding history FY86-FY97
Land Status GIS project status report

cc: Senator Steve Frank, Chairman DNR Senate Finance Subcommittee
Representative Gene Therriault, Chairman DNR House Finance Subcommittee
Members of DNR's House and Senate Finance Subcommittees
Commissioner John Shively
Deputy Commissioner Marty Rutherford
Director Jim Stratton
Director Jules Tileston
Chief LRIS Rich McMahon

RUSSIAN RIVER NAVIGABILITY ISSUE

Under Section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), Native regional corporations are authorized to receive ownership of valid cemetery and historical sites. Prior to the December 31, 1976 deadline, Cook Inlet Region Incorporated (CIRI) filed four applications for three specific sites at, or near, the Kenai and Russian rivers. The three original site applications were: 1) 120 acres at the Russian River campground; 2) 10 acres at the mouth of the Russian River on the south shore; and 3) 5 acres between the Kenai River and the Sterling Highway. In 1979 and again in 1988, the Bureau of Indian Affairs (BIA) certified additional sites in the area. To date, CIRI is claiming about 1,800 acres along the Kenai and Russian rivers, and is requesting that additional adjacent lands be investigated for 14(h)(1) conveyance. Both the U.S. Fish and Wildlife Service (USFWS) and the U.S. Forest Service (USFS) have questioned the original selections and the corporation's ability to amend their original applications to such an extent.

The lands selected are all within the boundaries of the Kenai National Wildlife Refuge (KNWR) and the Chugach National Forest. The boundary between the Refuge and Forest is the center of the Russian River.

On May 24, 1995, a meeting was held to discuss various issues relating to the CIRI selections. One issue was whether the state had standing to participate in the negotiations (CIRI was opposed). It was the state's position that as owners of navigable waterbodies (i.e. the Kenai and Russian rivers) we should be participants. Terry Hassett, Bureau of Land Management (BLM) stated that the federal government believed that the Kenai River was navigable from Kenai Lake to the outlet, but that the state could own only that portion outside of the refuge boundary. The Russian River has not been formally evaluated by BLM for navigability.

Because of the high value of the Russian River for sport fishing and habitat, the Department of Fish and Game initiated its own evaluation of the river for navigability. On August 1, 1995 staff from Sport Fish and H&R divisions, met with representatives from DNR, BLM and the USFWS, to walk the banks of the Russian River and document its physical characteristics. It was the position of all state representatives that the river is navigable. On October 10, 1995, staff from Sport Fish Division, accompanied by representatives from BLM and the USFS, took a commercial float trip on the Russian River from Lower Russian Lake to the Ferry Crossing on the Kenai River. The conclusion by the state was the same, the river is navigable. To date, the BLM has not issued a finding of navigability.

If the BLM finds the Russian River navigable, there is still the question as to the ownership of that portion of the river within the KNWR. The same question exists along the Kenai River. Conversely, if BLM finds the Russian River to be non-navigable, the state would have to litigate the finding to avoid the potential loss of public use and access if the uplands are conveyed to CIRI. (It has been the practice of BLM to convey the bed of non-navigable waterbodies to the surrounding upland owner.)

Recommendation - The Alaska Land Managers Task Force could help to resolve the Russian River navigability issue by requesting BLM and the state to make a technical finding of

navigability. It is likely that the Russian River meets the state's criteria for navigability. Issues of ownership could then be resolved based on the facts of the KNWR withdrawal and validity of CIRI's 14(h)(1) claims. At any rate, public access on the Russian River would benefit from a positive determination of navigability.

Prepared by: Robin Willis, Habitat Biologist III
November 24, 1995

DNR BUDGET OVERVIEW

SENATE FINANCE COMMITTEE

JANUARY 31, 1996

DISCUSSION OF NAVIGABILITY

Senator Frank: Opened discussion by expressing concern about deletion of navigability section in DNR and subsequently blaming legislature. Indicated that navigability should be high priority. Really concerned.

Comm. Shively: Doesn't mean he will not determine navigability. Only place navigability can be determined is in federal court. Many body of waters there will be no argument. Some bodies will contested. His strategy is to look at where conflicts take place. Three rivers ripe for determination. DNR will provide support and DOL has been asked to pursue those. May be river on Kenai and west side of Cook Inlet where there may be a dispute and DNR will support those. DNR will not generate litigation for litigation sake. It is an endless hole to pour money. No one is going to litigate the Yukon River but there are small lakes and rivers where there will be disagreements. DNR will concentrate on these.

Senator Frank: We have a document saying you will not be doing navigability.

Comm. Shively: Doesn't say exactly that. Will concentrate on three rivers conflicts.

Senator Frank: Are there other areas being disposed by the federal government where there are potential losses of navigability.

Comm: Shively: No statute of limitation on navigability. Navigability is determined at statehood.

Senator Frank: What were the two people doing – $130,000.

Comm. Shively: I don't know.

Senator Frank: Need to get back and discuss this more fully. Legislature is extremely concerned.

Commissioner Shively: State interest only goes when state interest is being challenged.

Sen. Reiger: Has any body of water been determined as being non-navigable this past year. In other words has any state interests been lost?

Commissioner Shively: Not to my knowledge.

Sen. Reiger: No statute of limitation.

Comm. Shively: State cannot stipulate away. No administrative procedure for determining navigability. We can agree not to litigate.

Sen. Reiger: Has that happened?

Comm. Shively: Not to my knowledge.

Sen. Halford: Asked about language included in BLM transfer documents which acknowledges that navigable waters belong to state - in title patent to third parties. You stopped that effort.

Comm. Shively: No. The bulk of those land transfers to native people has taken place. I don't know the answer.

Sen. Halford: Is your position that the transfer documents should contain language that navigable waters belong to state?

Comm. Shively: I believe it would be a good idea. I don't believe it would make any difference, however.

Sen. Halford: Isn't that the reservation that was in the patent?

Comm. Shively: I don't know the answer to that. Federal government cannot transfer away something it does not own.

Sen. Frank: The difference is who is going to litigate - a private party or is the state going to protect its interest. The state doesn't want to back away from asserting its interest in navigable waters.

Comm. Shively: An it shouldn't, if that interest is being directly challenged.

Sen. Frank: Get back to us. We need to understand this issue better.

Sen. Halford: One of highest priorities of Department.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

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July 26, 1995

Addressees Below

The enclosed memo summarizes the availability and location of information and provides suggested guidance for criteria used to determine ownership of submerged inland waters of Alaska. With the elimination of the department budget for navigability assertions, all work on a systematic stream or waterbody ownership program has been suspended.

It is recognized that there will be specific situations where disputed ownership of submerged land involve very important public policy and the issues in dispute have regional or statewide implications. When this situation appears to exist, we can make our technical expertise on navigability standards available. These instances, because of the zero budget, must be confined to challenges to state ownership by a federal or private interest where there is a real potential for the waterbody in question to be declared navigable.

We are preparing a supplement to Department Order No. 125 that places responsibility for determination of submerged ownership with the appropriate state official having jurisdiction over a pending action where a state approval or permit is dependant upon state ownership. For example, the division of oil and gas will make any necessary determinations associated with an upland lease and the division of lands would take similar action in response to removal of gravel from sources defined as submerged lands or for access to public lands involves stream crossings where a land use authorization is required. This division will make the necessary decision associated with mining claims. Other state entities, such as the Department of Transportation and Public Facilities for road and airport projects involving submerged lands under inland waters will be responsible for making and supporting ownership issues. This decentralization of the responsibility for asserting inland submerged land ownership makes it very important that the Attorney General's Office be consulted when there is a possibility that an assertion or acceptance of a federal agency determination of ownership may adversely damage the state's long-term capability to achieve successful quite title action in federal court.

Enclosed for you information is a current copy of Department Order No. 125 and a fact sheet titled "Ownership and Management of Navigable and Public Water." Please distribute this information to those within your organization that will have the basic responsibility for and/or are interested in navigability determinations.

Sincerely,

John Shively
Commissioner

Enclosures (3)

10:J9LH

Addressees:
William L. Hensley, Commissioner, Alaska Department of Commerce and Economic Development
Mike Irwin, Commissioner, Alaska Department of Community and Regional Affairs
Frank Rue, Commissioner, Alaska Department of Fish and Game
Joseph L. Perkins, Commissioner, Alaska Department of Transportation and Public Facilities
Marilyn Heiman, Office of the Governor
Deborah Williams for the Department of Interior
Larry Hudson, Regional Forester, for the Department of Agriculture
Julie Kitka, President, Alaska Federation of Natives

MEMORANDUM
Department of Natural Resources

State of Alaska
Div. of Mining & Water Mgmt.

TO: Navigability Information & Data Users and DNR Directors

DATE: June 30, 1995

TELEPHONE NO: 762-2573

THRU:

SUBJECT: Navigability Files

FROM: Jules Tileston
Director of Mining and Water Management

This memo is to inform users of navigability information and data users where file material can be obtained after we shut the Navigability Section down as of June 30, 1995. Files will be maintained by Division of Mining and Water Management, Suite 800, Frontier Building, 3601 C Street, Anchorage. The files contain the following:

1. Historical information on the past court actions that DNR has filed in federal court. This includes Slopbucket Lake and Gulkana River files.

2. Historical information gathered by DNR and BLM historians

3. Copies of most BLM and State navigability determinations filed by quad sheets.

4. Individual River files containing information on use, hydrology, and other river related research material.

5. Other litigation files such as Moose Creek in the Kantishna.

These files will be kept in a secure location that can be accessed by DNR employees, other agencies and the public for in building uses.

The navigability maps contain the Quads with navigability overlays. These are important for planning and other purposes. Historical reports and other supporting information for present and past litigation are kept in binders.

We have also been asked to put together information so that each Division in DNR and other agencies can make their own navigability determinations. I would suggest that they use the information in DO #125 and the fact sheet titled "Ownership and Management of Navigable and Public Water".

We suggest the following guidelines that may be used by agencies or individuals:

- A water body that is obviously navigable would be a lake or stream with a size, shape, depth and gradient that is capable of floating at least 1000 pounds. This would include rivers such as the Susitna, Kuskokwim, Copper, and Tanana, will also include rivers such as the Sixmile, Placer and Resurrection. For reference a 19 foot square stern canoe is rated by the manufacturer to carry 1000 pounds and a 13.5-foot Avon Adventure is rated by the manufacturer to carry 1700 pounds.

- Streams that are obviously not navigable would be streams that have excessive gradients (generally in excess of fifty feet per mile) or insufficient flows to carry water borne traffic.

- Streams that fall between these extremes will have to be evaluated using the guidelines in Department Order #125 and may require the collection of additional hydrological, historical, and physical characteristic data to support a navigability finding. Once a determination is made the agency may want to run the finding by the Attorney General's Office to ensure that they are not setting precedence that the State cannot defend or that may weaken the State's claim to submerged lands. These are policy issues that the Department will need to address.

These guidelines do not cover many issues associated with ownership of inland submerged lands, such as, prior and current litigation, pre-statehood withdrawals and management agreements.

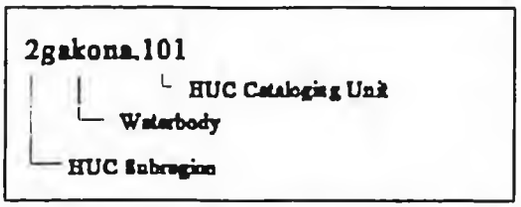

Figure 1. File Naming Convention

There are three primary sources of digital data containing information about the navigability status of Alaska's' waterways. A WordPerfect directory, [navrpt] of navigability library sheets; a Foxpro database, [dailylog.dbf], which tracts navigability inquiries and the states response to them; and a Foxpro database compilation of different databases, [waterbod.dbf], which includes navigability work done on Mental Heath Trust Land and some of the independent statewide work prior of navigability adjudicators. These source of information are described in more detail below.

WordPerfect Reports

A directory of WordPerfect files containing library sheets that summarize work done by the state in recent years on specific waterbodies. These documents were intended to be dynamic as they were continually being updated with new information by the navigability staff. Brief notes as to the known physical characteristics, historical use, contemporary use, fisheries resources, and navigability determinations are included in these documents. The directory is not comprehensive of all navigability work done in Alaska, but it does provide a valuable overview of the waterbodies contained therein.

Access to these reports are on the GIS network at /net/water/water/navrpt/ directory. These reports are indexed by one of six Hydrologic Unit Code (HUC) subregions within the state. The first number in the file name corresponds to the number of the hydrologic unit subregion where the waterbody is located. A Hydrologic Unit Map can be obtained from the Division of Mining and Water Management to identify the HUC for the area of interest. The file naming convention is designed to eliminate confusion and potential

errors caused by waterbodies with duplicate names. For example, the file 2gakona.101 is a report for the Gakona River located in Hydrologic Unit Subregion '2' and is within cataloging unit 101, See Figure 1. The cataloging unit is a further subdivision of the hydrologic unit.

Foxprow2.6 Databases.

The Foxprow database, [waterbod.dbf] is located on the GIS network at water\water\nav_db\waterbod.dbf. The database lists 534 waterbodies with pertinent navigability information. The database was compiled from the electronic records of adjudicators no longer employed by DNR and some of the work done for Mental Health Trust Lands. The data is not audited and should only be used as a guide or supplemental information.

The Foxprow database [Dailylog.dbf] is located on the GIS network at water\water\nav_db\dailylog.dbf. This database consist of a daily log of many of the requests for navigability determinations to DNR since January 1992 to June 30, 1995. The log includes: the name of the requestor, name of the waterbody, and the States' response to the request. This raw data is not audited and should only be used as an information trail.

An additional Foxprow database in the \net\water\water\nav_db\ directory is the [streams4.dbf] database. This is an excerpt of the ARID database maintained the AK Hydrologic Survey. It does not have any information about navigability determinations but it does contains physical characteristics data about many streams in the state. This information is helpful when making navigability determinations.

MEMORANDUM

Department of Natural Resources

State of Alaska

Office of the Commissioner

TO: Deputy Commissioners
Division Directors
Special Assistants

DATE: December 2, 1994

FILE NO: 0.012

TELEPHONE NO: 465-2400
Fax No: 465-3886

FROM: Harry A. Noah
Commissioner

SUBJECT: Department Order No. 125

POLICIES AND PROCEDURES ON
OWNERSHIP AND MANAGEMENT OF
NAVIGABLE AND PUBLIC WATERS

State ownership of the beds of navigable waters is an inherent attribute of state sovereignty protected by the United States Constitution. Utah v. United States, 482 U.S. 193 (1987). Under the doctrine that all states enter the Union on an equal footing with respect to sovereign rights and powers, title to the beds of navigable waters in Alaska vested in the newly formed State of Alaska in 1959. In addition, under the Alaska Constitution and the public trust doctrine, all waters in the state are held and managed by the state in trust for the use of the people, regardless of navigability and ownership of the submerged lands under the Equal Footing Doctrine.

The purpose of this paper is to describe the State of Alaska's policies and procedures for identifying and protecting the state's title to the beds of navigable waters. In addition, this paper outlines the legal and policy considerations which guide the ownership and management of submerged lands and public waters.

I. IDENTIFYING AND PROTECTING STATE TITLE TO THE BEDS OF NAVIGABLE WATERS

Identification and management of the beds of navigable waters is an important policy of the State of Alaska. In 1980, the state established a comprehensive navigability program to respond to federal land conveyances and land management activities under the Alaska Statehood act, the Alaska Native Claims Settlement Act

(ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA). Pursuant to the provisions of those acts, the federal government has issued navigability determinations for thousands of lakes, rivers and streams throughout the state in an effort to determine whether the state or federal government owns the submerged lands. Navigability determinations are also made prior to many state land disposals to insure that adequate public use easements are reserved.

The basic purpose of the state's program is to protect the public rights associated with navigable waters, including in particular the state's title to the submerged lands. Because state and Native land selections and federal conservation units blanket the state, navigability questions have arisen for rivers, lakes and streams throughout Alaska. The navigability of many of those waterbodies has already been established. There are hundreds of others, however, where navigability is not yet determined.

To help resolve these navigability disputes, a major goal of the state's navigability program is to identify the proper criteria for determining title navigability in Alaska and to gather sufficient information about the uses and physical characteristics of individual waterbodies so that accurate navigability determinations can be made as disputes arise. Other important aspects of the program include monitoring federal land conveyance and management programs to identify particular navigability disputes, seeking cooperative resolution of navigability problems through negotiations and legislation, and preparing for statewide navigability litigation.

RIPARIAN RIGHTS AND STATUTE OF LIMITATIONS

Disputes over ownership of submerged lands in Alaska have arisen under a variety of circumstances. The principal source of the disputes in Alaska is the survey and acreage accounting system used by the federal government for conveying land to the state and Native corporations.

The standard procedures for surveying and conveying federal land are found in the Manual of Instructions for the Survey of the Public Lands of the United States, generally known as the BLM Manual of Surveying Instructions. Under those procedures, consistently used in every public land state except Alaska, only uplands are surveyed and conveyed in fulfillment of acreage entitlements, not submerged lands. The survey rules require that all lakes 50 acres or larger, and rivers and streams three chains (198) feet in width or wider, regardless of navigability, be meandered and segregated (excluded) from the surveyed public lands. Only the surveyed uplands are conveyed. The acreage of meandered rivers, lakes and streams is not included in computing the amount

of land involved in the conveyance.

In Alaska, however, the federal government had not consistently followed these survey rules. Until 1983, the federal government treated submerged lands the same as uplands. All bodies of water that were considered non-navigable by the federal government, regardless of size, were surveyed as though they were uplands and the acreage of submerged lands was charged against the total acreage entitlement.

Because of these conveyance procedures, the navigability of waterbodies in Alaska have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In addition to the problems caused by a lack of information about many waterbodies, the situation was exacerbated by the narrow definition of navigability used by the federal government. Hundreds of rivers, lakes and streams considered navigable by the state were determined non-navigable by the federal government.

In 1983, following years of negotiations, lawsuits and legislative attempts to solve the navigability problems created by the unusual survey and conveyance procedures in Alaska, the State of Alaska, the United States Department of the Interior and the Alaska Federation of Natives (AFN) agreed that the standard rules of survey should be followed for land conveyances in Alaska. The effect of that decision was to treat Alaska surveys and land conveyances like federal land surveys and conveyances in other states. The recipients of conveyances from the federal government are charged only for the amount of public land that is calculated by the survey, which does not include the areas of meandered rivers, lakes and streams.

The use of these survey procedures has eliminated many of the problems associated with the federal land conveyance programs in Alaska. Submerged lands are no longer being conveyed to fulfill acreage entitlements. With the exception of lakes smaller than 50 acres and streams narrower than 198 feet, navigability determinations are no longer being made prior to federal land conveyances. Determinations of ownership of submerged lands can be put off until a natural resource use or conflict requires resolution, such as issuance of an oil and gas lease, mining claim or a gravel sale.

Through the joint efforts of the State of Alaska, AFN and the department of the Interior, the 1983 decision to use the standard survey procedures for land conveyances in Alaska was legislatively approved in August of 1988 when the United States Congress passed legislation (94 Stat. 2430) amending section 901 of the Alaska National Interest Lands Conservation Act, codified at 43 U.S.C. 1631. The 1988 amendment, sometimes referred to as the Alaska

Submerged Lands act, requires that the standard rules of survey in the BLM Manual of Surveying Instructions be used for all federal surveys under the Alaska Statehood act and ANCSA. The 1988 amendment also repealed the Section 901 stature of limitations that would have required the state to file a lawsuit within a very short period of time in order to preserve its title to the beds of navigable waters conveyed to Native corporations by the federal government as a result of erroneous navigability determinations, poor maps, surveys or whatever.

Even with this legislation, a major problem concerning navigability decisions made by the federal government under the old system remains unresolved. At issue are the hundreds of erroneous non-navigability decisions and the resulting submerged land conveyances made to ANCSA corporations in previous years. In addition, to comply with the meandering requirements of the BLM Survey Manual, the federal government is still required to make navigability determinations for lakes smaller than 50 acres and rivers or streams narrower than 198 feet in width to determine if these waters must be meandered.

NAVIGABILITY CRITERIA

The greatest hurdle to overcome in the state's efforts to identify and manage navigable waters has been the long-standing differences of opinion between the State of Alaska and the United States regarding the application of the test for determining title navigability. Navigability is a question of fact, not a simple legal formula. Variations in waterbody use that result from different physical characteristics and transportation methods and needs must be taken into account. There are many legal precedents for determining navigability in other states based upon the particular facts presented in those cases. In Alaska, though, we are just beginning to get the final court decisions that are necessary to provide legal guidance for accurate navigability determinations.

The physical characteristics and uses of a waterbody used by the state for asserting navigability, commonly referred to as navigability "criteria", are based upon legal principles that have been established by the federal courts. These criteria are applied to rivers, lakes and streams throughout the state and take into account Alaska's geography, economy, customary modes of water-based transportation and the particular physical characteristics of the waterbody under consideration.

The federal test for determining navigability was established over a hundred years ago. In the landmark decision of The Daniel Ball, 77 U.S. (19 Wall.) 557, 563, (1870), the Supreme Court declared:

> 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 of 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 test is accepted as the correct standard for determining navigability, there has been a lot of disagreement over application of many of the term and phrases used in The Daniel Ball test to the specific uses of Alaska's lakes, rivers and streams. The State of Alaska uses the following interpretation of that test as the basis for it navigability program.

The Waterbody Must Be Usable As a Highway For the Transportation of People or Goods. Interpreting the requirements that navigable waterbodies be used or usable as "highways of commerce", the courts have ruled that the central theme of title navigability is that the waterbody be capable of use as a highway which people can use for transporting goods or for travel. Neither the types of goods being transported nor the purpose of the travel are important in determining navigability. Transportation on water associated with recognized commercial activities in Alaska, such as mining, timber harvesting, and trapping is evidence of navigability. The use of waterbodies for transportation in connection with natural resources exploration or development, government land management, management of fish and game resources, or scientific research is also evidence of navigability. Travel by local residents or visitors for the purpose of hunting, fishing and trapping, or as a means of access to an area can be used to establish navigability. The same holds for recreational transportation, including personal travel and professionally guided trips.

Waters Which Are Capable of Being Used For Transporting Persons and Goods, Although Not Actually Used, Are Navigable. It is not necessary that a waterbody be actually used for transportation to be found navigable. It is enough that it is susceptible, or physically capable, of being used. Whether a waterbody is susceptible of use for transportation depends upon the physical characteristics of the water course such as length, width, depth and, for a river, current and gradient. If those physical characteristics demonstrate that a waterbody could be used for the transportation of persons or goods, it is legally navigable.

The susceptibility element of title navigability is very important for the identification of navigable waterbodies in Alaska. Because of Alaska's sparse population and lack of development, there are hundreds of remote rivers, lakes and streams where there is little or no evidence of actual use. Because of their physical

characteristics, however, many of these remote waterbodies could be used for transporting people or goods if there ever was a need. Under these circumstances, they are considered legally navigable.

Transportation Must Be Conducted In the Customary Modes of Trade and Travel On Water. A finding of navigability does not require use or capability of use by any particular mode of transportation, only that the mode be customary. The courts have held that customary modes of transportation on water include all recognized types and methods of water carriage. Unusual or freak contrivances adapted for use only on a particular stream are excluded. Customary modes of trade and travel on water in Alaska include, but are not limited to, barges, scows, tunnel boats, flat-bottom boats, poling boats, river boats, boats propelled by jet units, inflatable boats, and canoes. In places suitable for harvesting timber, the flotation of logs is considered a customary mode of transportation.

The mode of travel must also be primarily waterborne. Boats which may be taken for short, overland portages qualify. The courts have ruled that the use of a lake for takeoffs and landings by floatplanes is insufficient, in and of itself, to establish navigability.

Without expressly rejecting the claim, at least two court decisions in Alaska have suggested that winter travel on the surface of a frozen river or lake is probably not evidence of navigability. The rivers involved in the two adjudicated cases were both found navigable based upon summer use by boats, however, and it appears likely that most waterbodies in Alaska that are used as highways in winter can also be travelled by at least small boats in the summer. Because of this, the state need not rely upon winter travel to support navigability.

Waters Must Be Navigable In Their Natural and Ordinary Condition. A waterbody which can be used for transportation only because of substantial man-made improvements to the condition of the watercourse is not navigable for title purposes. However, if transportation does or could occur on the waterbody even without the improvements and the improvements would only make transportation easier or faster or possible for larger boats (e.g., dredging), it is still considered navigable for title purposes.

The presence of physical obstructions to navigation (rapids, falls, log-jams, etc.) does not render a waterway non-navigable if the obstruction can be navigated despite the difficulties or if the obstruction can be avoided by other means, such as portaging, lining, or poling. A waterbody is also navigable even if seasonal fluctuations do not allow it to be navigated at all times of the year. However, a waterbody which is only navigable at infrequent and unpredictable periods of high water is not normally considered

navigable. The fact that a waterbody may be frozen for several months of the year does not render it non-navigable if it is navigable in its unfrozen condition.

Title Navigability Is Determined As Of The Date Of Statehood. To be considered navigable for title purposes, the waterbody must have been navigable in 1959 (when Alaska became a state). This element of the navigability test focuses on the physical characteristics of the waterbody and whether those characteristics have changed significantly since statehood. Most waterbodies have not physically changed enough since statehood to alter their navigability. Assuming there have been no significant changes in the physical characteristics of the waterbody, a waterbody that is navigable today would be considered legally navigable in 1959 as well. Exceptions might include the creation, by natural or man-made causes after statehood, of a totally new lake, river or canal now used for navigation. Such a waterbody would not be considered navigable for title purposes. Conversely, a waterbody which was navigable in 1959 but, because of natural or man-made physical changes, is no longer navigable in fact would still be considered navigable for title purposes.

NAVIGABILITY CRITERIA DISPUTES

Because of differing legal interpretations of court navigability decisions, several aspects of the criteria used by the state to determine navigability have been disputed by the federal government. As a direct result of these criteria disputes, many waterbodies considered navigable by the state have been determined non-navigable by the federal government.

The major criteria dispute has been over the type or purpose of the transportation required to establish navigability. The federal government has asserted that a waterway must be used, or capable of use, for transporting commerce to be considered navigable. Other, "noncommercial" transportation uses are not considered sufficient to establish navigability. In this context, the federal government has claimed that the only relevant "commercial" transportation is the distribution of goods for sale or barter, or the transportation for hire of people or things. The federal government has admitted that professionally guided transportation on Alaska's rivers, lakes and streams constitutes commerce, but nevertheless has argued that the waters are not being used as a navigable "highway" when recreation is involved, but rather more as an amusement park. The federal government has therefore claimed that waters used only for commercial recreation are legally nonnavigable even though they may be navigable in fact.

Through the work of the state's navigability program, this definition has been repeatedly rejected by the courts, most recently in the Gulkana River case. Alaska v. United States, 662 F.Supp.455 (D.Alaska 1986), affirmed sub nom. Alaska v. Ahtna, Inc., 891 F.2d 1401 (9th Cir. 1989). Applying the correct definition of navigability, many of the submerged lands that the federal government attempted to convey to ANCSA corporations should have been recognized as belonging to the state. The state appealed many conveyances to protect its title. As occurred in the Kankik-Nation Rivers appeal, Appeal of Doyon, 86 I.D. 692 (ANCAB 1979), Alaska Native corporations also found it necessary to challenge erroneous federal determinations of non-navigability to insure they would not be deprived of any portion of their entitlement by being charged for submerged land owned by the state.

The federal government has also argued that aluminum boats, boats propelled by jet units, inflatable boats and canoes are not customary modes of travel for the purpose of determining navigability in Alaska. As a result, many waterbodies navigated by these types of watercraft have been found legally non-navigable by the federal government. The claim is that these boats represent post-statehood technological advances, are too small to be considered "commercial", or that most "commercial" use of the watercraft developed after statehood.

Another navigability dispute involves remote, isolated lakes. The federal government has found many of these lakes legally non-navigable, even though they are physically capable of being navigated. The federal government's contention is that a navigable connection to another area is necessary to make travel on a remote lake worthwhile. Otherwise, the federal government views the lack of development in the area around the isolated lake as an indication that the lake will never be used for commercial transportation.

To resolve these navigability criteria disputes, the state has actively pursued a limited number of court cases challenging particular findings of non-navigability by the federal government. With the sole exception of floatplanes, the courts have agreed with the navigability criteria presented by the State of Alaska and have rejected the limitations suggested by the federal government. These cases include:

Gulkana River. In this case, both in the U.S. District Court and on appeal to the U.S. Court of Appeals, the federal courts rejected the federal government's restrictive interpretation of the phrase " highway of commerce" in the title navigability test. The federal district court stated that to demonstrate navigability, it is only necessary to show that the waterbody is physically capable of "the

most basic form of commercial use: the transportation of people or goods." Because the Gulkana River can be used for the transportation of people or goods, the Gulkana River was found navigable. Alaska v. United States, 662 F.Supp.455 (D.Alaska 1987). On appeal, the court of appeals affirmed the district court's finding of navigability. Alaska v. Ahtna, Inc., 892 F.2d 1401 (9th Cir. 1989). The court of appeals found that the modern use of the Gulkana River for guided hunting, fishing and sightseeing trips is a commercial use and, since the physical characteristics of the river have not significantly changed since 1959, provides conclusive evidence that the river was susceptible of commercial use at statehood. The court also found that modern inflatable rafts can be used to establish navigability. In April 1990, the United States Supreme court denied a request by Ahtna, Inc. to reconsider and overturn the court of appeals decision. The Gulkana River precedent is now binding on all future navigability determinations in Alaska.

Kandik and Nation Rivers. In this administrative appeal, the State of Alaska and Doyon Limited, an ANCSA regional corporation, successfully established that the use or susceptibility of use of a river or stream by an 18-24-foot wooden riverboat capable of carrying at least 1,000 pounds of gear or supplies is sufficient to establish navigability. Based upon the use of these types of boats for the transportation of goods and supplies by fur trappers, as well as extensive historic and contemporary canoe use, the court found the Kandik and Nation rivers, in Interior Alaska, navigable. Appeal of Doyon, 86 I.D.692 (ANCAB 1979).

Alagnak River. In this federal district court case, the Alagnak River, the Nonvianuk River, Kukaklek Lake and Nonvianuk Lake were all found navigable. These interconnected waterbodies are located in the Bristol Bay region of Alaska, south of Lake Iliamna. Their primary transportation use is for commercially guided hunting, fishing, and sightseeing and for government research and management. They also serve as a means of access for local residents to their homes and to the surrounding areas for subsistence hunting and fishing. After several years of litigation, the federal government conceded that these rivers and lakes are navigable. Alaska v. United States, No. 82-201 (D.Alaska Feb. 2, 1985).

Matanuska River. The recommended decision in this administrative appeal agreed with the State of Alaska's position that post-statehood commercial river rafting operations are sufficient to establish navigability. Based upon that type of use, the administrative law judge who heard the case recommended that the Matanuska River, in Southcentral Alaska, be found navigable. The Secretary of Interior, over the state's objections, assumed jurisdiction over the case and stayed implementation of the

recommended decision. No action has been taken in the case since that time. Appeal of Alaska, No. 82-1133 (IBLA Rec. Decision Aug. 18, 1983)

Slopbucket Lake. The state claimed that the extensive use of floatplanes on Slopbucket Lake, a twenty acre lake adjacent to Lake Iliamna, was sufficient to establish navigability. The federal courts rejected this view. The courts reasoned that floatplanes do not use the lake as a navigable highway; they just take off and land there. Alaska v. United States, 754 F.2d 851 (9th Cir.) cert denied, 106 S. Ct. 333 (1985).

IDENTIFICATION OF NAVIGABLE WATERS

Even if the criteria for determining navigability in Alaska were totally agreed upon, it still would be difficult to prepare a complete list of all of the navigable lakes, rivers and streams in the state. Much of Alaska has not yet been surveyed and many maps are inaccurate and out-of-date. It is an immense and complex task simply to identify and locate all of the thousands of named and unnamed lakes, rivers and streams in the state which might be considered navigable. Furthermore, once a potentially navigable lake, river or stream has been identified, detailed information about its size and uses is necessary for an accurate navigability determination. Because of Alaska's undeveloped and remote character, gathering navigability information is both time consuming and expensive. Finally, administrative navigability determinations made by the state or the federal government are always subject to legal challenge, since only the courts can authoritatively determine title to submerged lands.

Despite these difficulties, both the state and the federal government are frequently called upon to issue navigability determinations. Although the requirement that BLM adhere to the meandering requirements of the BLM Survey Manual has eliminated the need for navigability determinations on the larger rivers, lakes and streams, which must now be meandered regardless of navigability, navigability determinations are still required for the smaller rivers, lakes and streams to determine if they are to be meandered at the time of survey. Because of this, some navigability determinations are still made for nearly every federal land conveyance under ANCSA or the Alaska Statehood act. The management plan for nearly every federal Conservation System Unit (CSU) also addresses the navigability issue.

Federal navigability determinations are reviewed by the state to insure that available information sources were used and interpreted correctly. Where the federal government determines non-navigable a waterbody which is considered navigable by the state, the state may provide the government with supplemental information about the uses and characteristics of the waterbody to obtain a redetermination of navigability. Under some circumstances the state needs to make its own navigability determinations, such as for a oil and gas lease sale, land disposal, material sale, mining claim, or another use of state land or resources requiring a determination of ownership of submerged lands within the affected area.

For large, undeveloped regions of Alaska there may be little or no accurate waterbody use or physical characteristics information available for making navigability determinations. When information is lacking, and it must make a navigability determination, the state is forced to rely solely upon the physical characteristics shown on maps and aerial photographs. In these cases, the state identifies as navigable all streams depicted on the U.S.G.S. maps with double lines (generally at least 70 feet wide) and having an average gradient over the length of the stream of no more than 50 feet per mile. With rare exceptions, the state's experience has been that streams of this type are deep enough and wide enough to be navigable by boats carrying persons or goods and must therefore be considered legally navigable. Streams depicted with single lines, although narrower in width, may also be listed as potentially navigable if they have gradients of substantially less than 50 feet per mile and are at least 10 miles.

If there is no public use or physical characteristics information readily available for lakes, those lakes which are shown on maps and aerial photographs as having a navigable water connection with other navigable waters, or which are accessible by short overland portages, are considered navigable regardless of the size of the lake. These lakes are part of a system of interconnected navigable waters. If a lake is totally isolated, it will be included on the state's navigability maps if it is at last 1 1/2 miles long. That length insures that the lake can be used as a "highway". Future judicial decisions interpreting the "highway" requirement for isolated lakes could shorten or lengthen this 1 1/2 mile "rule of thumb."

The state recognizes that, under some circumstances, lakes smaller than 1 1/2 miles long can be and are used as navigable highway. In those cases, when known, these smaller lakes are also depicted on the state's navigability map. Moreover, as a matter of administrative policy and convenience only, the state may sometimes make an exception to the 1 1/2 mile standard in the extremely wet

regions of the state, including some areas in the Yukon-Kuskokwim Delta, Yukon Flats and on the North Slope. In these areas, an isolated lake might need to be 2-3 miles long to be included on the state's navigability maps. Although smaller lakes in these areas are capable of being used for transportation and should be found navigable by the courts, the state has decided to concentrate its limited resources in protecting the larger waterbodies first.

NAVIGABLE WATERS WITHIN PRE-STATEHOOD FEDERAL WITHDRAWALS

Although disputes over which waters in Alaska are navigable are the most frequent cause of submerged land ownership disputes, there is another major legal issue which poses a threat to Alaska's sovereign claim to the beds of navigable waters. Even where navigability is conceded, the federal government often contends that title to the submerged lands did not vest in the state if the area was withdrawn or reserved by the federal government on the date of statehood. Within Native conveyance areas, the federal government has used this claim of "reserved submerged lands" to justify its attempts to convey the beds of navigable waters in fulfillment of the Native entitlements. Within state selections, the federal government has used the same claim to charge the acreage of submerged lands against the state's entitlement.

The state strongly disagrees with this federal claim and has actively pursued a number of court challenges to resolve the issue. In addition to numerous appeals from federal decisions to convey or charge for the beds of navigable waters, the state was actively involved as a friend of the court in one case before the United States Supreme Court and continues to be involved in another Supreme Court case which presents this issue. The pending case is United States v. Alaska, U.S. Supreme Court 84 Original (filed June, 1979).

On June 8, 1987 the Court issued its decision in Utah v. United States, No. 85-1772 (filed Oct. 14, 1986). In this case the federal government, in 1976, issued oil and gas leases for land underlying Utah Lake, a navigable waterbody located in Utah. The suit sought a declaratory judgement that Utah, rather than the United States holds the lands under navigable waters in the territories in trust for future states, and, absent a prior conveyance by the federal government to third parties, a state acquires title to such land upon entering the Union on an "equal footing" with the original 13 states.

The Supreme Court held that title did pass to the state upon Utah's admission to the Union. They held that there is a strong presumption against finding congressional intent to defeat a state's title, and, that in light of the longstanding policy of the federal government's holding land under navigable waters for the

ultimate benefit of future state absent exceptional circumstances, an intent to defeat a state's equal footing entitlement could not be inferred from the mere act of the reservation itself. The United States would not merely be required to establish that Congress clearly intended to include land under navigable waters within the federal reservation, but would additionally have to establish that Congress affirmatively intended to defeat the future state's title to such land.

This decision has significant ramifications within Alaska, since over 95 million acres - more than 25% of the total area of the state - was enclosed within various federal withdrawals and reservations at the time Alaska became a state.

NAVIGABLE WATERS WITHIN ANILCA CONSERVATION SYSTEM UNITS

On December 2, 1980, the Alaska National Interest Lands Conservation Act became law. This act created or added 104.3 million acres to various federal conservation system units. Because these "withdrawals" occurred after the date of statehood, there is no disagreement between the state and federal governments that navigable waters within the various CSU's are owned by the state. However, there is some disagreement on the amount of authority the federal land managers may have to regulate these state owned submerged lands.

The U.S. Constitution gives Congress certain limited powers to control uses on state owned submerged land. These are known as the Property Clause, Navigational Servitude and the Commerce Clause. The extent of these powers involves complex legal questions. However, even assuming that Congress has the power to regulate state-owned submerged lands in Alaska, the United States Supreme Court has ruled that Congress may choose not to exercise that power, thus leaving regulation totally up to the state. Escanaba Co. v. Chicago, 107 U.S. (17 Otto.) 678 (1883). Whether Congress has done that can only be determined by examining the federal laws passed by Congress dealing with Alaska lands. Another possibility is that the state and federal governments have concurrent jurisdiction, sharing the authority to regulate submerged lands.

In ANILCA, Congress did not take away the state's power to regulate state-owned submerged lands within federal CSU's in Alaska. Numerous provisions in ANILCA recognize and respect the state's authority over state-owned land. In some cases, however, Congress may have attempted to give the federal land managers some concurrent authority to regulate navigable waters within CSU's.

The state, where possible, cooperates with rather than confronts the federal land managers. This cooperation often takes the form of a memorandum of understanding that discusses management issues and how they will be resolved. Differences do occur however, over issues such as column management and restrictions on mining.

II. LEGAL AND POLICY GUIDELINES GOVERNING MANAGEMENT SUBMERGED LANDS AND PUBLIC WATERS

PUBLIC TRUST DOCTRINE

The state has special duties and management constraints with respect to state owned land underlying navigable waters. These special duties and management constraints arise from the Alaska Constitution. The Alaska Constitution contains numerous provisions embracing the principles commonly known as the public trust doctrine. The public trust doctrine is remarkable both for its age and for its vigor. Rooted in the customs of the seafaring Greeks and Romans, it has evolved to become one of the most effective safeguards of public rights. Basically, the trust reflects an understanding of the ancient concept that navigable waters, their beds and their banks, should be enjoyed by all the people because they are too important to be reserved for private use.

In America, the concept of public rights to public waters was recognized since the early days of the Massachusetts Bay Colony where the great Pond Ordinance of 1641 guaranteed the right to fish and fowl in ponds greater than 10 acres, along with the freedom to pass through private property to do so.

By 1821, American courts were pronouncing the law of public trust as we know it today. This does not mean that no water-related development can take place. The public trust doctrine permits states to improve waterways by constructing ports, docks and wharves, thus furthering the purposes of the trust. Generally speaking, the people's trust rights may be alienated only in ways that further overall trust uses, and in relatively small parcels.

Illinois Central Railroad Company v. Illinois, 146 U.S. 387,452 (1982), involved a grant by the State of Illinois of one thousand acres of the bed of Lake Michigan, constituting the entire harbor of the City of Chicago, to the Illinois Central Railroad. The U.S. Supreme Court held that the grant was revokable, that the state held the land in trust for the public, and that it was powerless to relinquish its rights as trustee.

The court went on to say that land underlying navigable waters is much more than a simple property right.

> [I]t is a title different in character from that which the state holds in lands intended for sale. It is different from the title which the United States holds in the public lands which are open to preemption and sale. It is a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties... The trust devolving upon the state for the public, and which can only be discharged by the management and control of property in which the public has an interest, cannot be relinquished by a transfer of the property.

In the 19th century the purposes of the trust were generally described as "commerce, navigation and fishery." This was logical because the major waterways were essential highways of commerce. But as other values became increasingly important, courts began to recognize recreation and environmental protection among the purposes for which the trust exists. As a California court said in 1971, "with our ever increasing leisure time...and the ever increasing need for recreational areas it is extremely important that the public need not be denied use of recreational water...the rule is that a navigable stream may be used by the public for boating, swimming, fishing, hunting and all recreational purposes." People ex rel. Baker v. Mack, 19 Cal. App. 3d 1040, 1044 (1971).

The Alaska constitution provides protections similar to the public trust doctrine protections that cannot be disregarded by the legislature or overruled by the courts. Article VIII, sec. 3 provides; "Wherever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use." After reviewing the public trust doctrine in Owsichek v. State, Guide Licensing, 763 P.2d 488 (Alaska 1988), the Alaska Supreme Court explained that "the common use clause was intended to engraft in our constitution certain trust principles guaranteeing access to the fish, wildlife and water resources of the state."

In CWC Fisheries, Inc. v. Bunker, 755 P2.d 1115 (Alaska 1988), the Alaska Supreme Court applied the public trust doctrine to tidelands, holding that even after conveyance, the title remains subject to continuing public easements for purposes of navigation, commerce and fishery.

The 1985 Alaska legislature recognized the constitution application of public trust doctrine principles in Alaska. In an Act relating to the public or navigable waters of the state, the legislature

found that "the people of the state have a constitutional right to free access to the navigable or public waters of the state" and that the state "holds and controls all navigable or public waters in trust for the use of the people of the state". 85 SLA Ch. 82. In the same act, the legislature ruled that submerged lands are "subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purpose for which the water is used or capable of being used consistent with the public trust."

Courts in other states over the years have defined in somewhat different ways the public uses that are permitted and protected by the public trust as it applies to submerged lands. In reviewing these other cases, it can clearly be seen that through time an ever expanding definition of the public uses protected by the public trust doctrine is being adopted. The California Supreme Court recently held that:

> Although early cases had expressed the scope of the public's right in (lands subject to the public trust) as encompassing navigation, commerce and fishing, the permissible range of public uses is far broader, including the right to hunt, bathe or swim, and the right to preserve the (public trust) lands in their natural state as ecological units for scientific study. City of Berkeley v. Superior Court of Alameda, 605 P.2d 362, 365 (Cal. 1980)

It is clear under the Alaska Constitution that the State of Alaska has the responsibilities of a trustee with respect to management of land underlying navigable waters. Moreover, the Alaska legislature has adopted a broad view of the public uses protected or permitted by the public trust. Accordingly, the Alaska Attorney General's Office has determined that, until the Alaska Supreme Court rules on the question, the state should assume that a broad definition of public rights protected by the Alaska Constitution and the public trust doctrine applies in Alaska, similar to the one adopted by the California Supreme Court. 1982 Atty. Gen. Op. No. 3 (June 10, 1982).

PUBLIC WATERS

It is not only the beds of navigable waters in Alaska that are reserved in public ownership for public use. Under article VIII, section 3 of the Alaska Constitution, all waters occurring in their natural state are reserved to the people for common use. Article VIII, section 14 of the Alaska Constitution also provides for the broadest possible access to and use of state waters by the general public.

> Section 14. Access to Navigable Waters. Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes.

Pursuant to this grant of authority, the Alaska State Legislature, in AS 38.05.365(12), defined "navigable waters" as follows:

> "navigable waters" means any water of the state forming a river, stream, lake, pond, slough, creek, bay, sound, estuary, inlet, strait, passage, canal sea or ocean, or any other body of water or waterway within the territorial limits of the state or subject to its jurisdiction, that is navigable in fact for any useful public purpose, including but not limited to water suitable for commercial navigation, floating of logs, landing and takeoff of aircraft, and public boating, trapping, hunting waterfowl and aquatic animals, fishing, or other public recreational purposes.

This definition of navigable waters does not define state ownership of submerged land in Alaska. The definition of navigability for ownership purposes was discussed earlier in this paper. This definition, however, does define what types of waterbodies in Alaska are available for public use under the Alaska statutes.

The Alaska State Legislature has broadly construed the constitutional protections for public use of the waters of the state. In an Act (85 SLA chap. 82, codified as AS 38.05.128) relating to the navigable or public waters of the state, the state legislature found:

> (a) The people of the state have a constitutional right to free access to the navigable or public waters of the state.
>
> (b) Subject to the federal navigational servitude, the state has full power and control of all of the navigable or public waters of the state, both meandered and unmeandered, and it holds and controls all navigable or public waters in trust for the use of the people of the state.
>
> (c) Ownership of land bordering navigable or public waters does not grant an exclusive right to the use of the water and any rights of title to the land below the ordinary high water mark or subject to the rights of the people of the state to use and have access to the water for recreational purposes or any other public purposes for which the water is used or capable of being used consistent with the public trust.

(d) This Act may not be construed to affect or abridge valid existing rights or create any right or privilege of the public to cross or enter private land.

Thus, under the Alaska Constitution and this statute, any surface waters capable of use by the public defined in AS 38.05.365(12) are available to the public, irrespective of streambed ownership. Further, such public use is not considered a taking and is not subject to inverse condemnation action. Private ownership is subject to public rights that are protected by the public trust.

In two Montana Supreme Court cases involving the nature of public rights were the submerged lands are privately owned, the court rules that public portaging, anchoring, and other uses incidental to the use of the water are allowed. The court also found that if travel on the water or streambed is obstructed, the public is allowed to use the adjacent private land to portage around the barrier in the least intrusive way possible, avoiding damage to the property holder's rights. However, the public does not have the right to enter into or trespass across private property in order to enjoy the recreational use of state owned waters. The State of Alaska agrees with this ruling and believes a similar ruling would be made by our state courts.

BOUNDARIES OF NAVIGABLE WATERS

The state is often asked where public ownership of water bodies ends and private ownership begins. There are two types of water body boundaries to address: 1) non-tidal water boundaries and 2) tidal water boundaries. Non-tidal boundaries are boundaries of lakes, rivers and streams. Tidal boundaries are the boundaries along any body of water which is influenced by the rise and fall of the tides.

1. Non-tidal Water Boundaries

The boundary between public and private ownership is the "Ordinary High Water Mark" which is defined in 11 AAC 53.900(23) as being - The mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, vegetation, or other distinctive physical characteristics. Also see the Alaska State Supreme Court definition in Department of Natural Resources v. Pankrantz 538 P.2d 984, 988-89 (Alaska 1975). The ordinary high water line can usually be observed by the laymen simply by noting the vegetation line or well defined stream banks.

2. Tidal Water Boundaries

The boundary between tidal water bodies and private/public owned uplands is the Mean High Water Line. Mean high water line as defined by 11 AAC 53.900(15) is: The tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence.

This line is not readily observable because it is a line of known elevation which intersects the land surface. The mean high water line can be a considerable distance below the vegetation line because extreme high water will denude the beach above the line of mean high water. The only way that the location of mean high water line can be accurately determined is by differential leveling from known bench marks or by operating a tide gauge for a sufficient period of time to determine the mean high water elevation. The line of mean high water line can be approximated by time coordinated observations of the daily predictions for high and low waters, predicted by NOAA, as they relate to the published mean high water elevation. This method can be highly unreliable because small errors in the predictions or observations can transform into large errors in the horizontal location; this is especially true in areas where the beach gradient is very flat.

It i important to note that in some areas such as Prince William Soun the mean high water line boundary is considerably higher than the current mean high water line because the boundary became fixed at the 1964 pre-quake location. In this instance the boundary between state owned tidelands and the uplands would be established at an elevation which equals the sum of the mean high water elevation plus the published amount of uplift or in some cases submergence.

CONCLUSION

This paper describes the state's policies and procedures for managing and protecting state submerged lands and public waters. As further legal and practical developments occur in this area, these policies and procedures will be reexamined by the state and, if necessary, appropriate changes will be made.

PACIFIC SALMON TREATY UPDATE

Alaska Perspectives on The Pacific Salmon Treaty
April, 1996

A. General

- It is very important to keep in mind that the vast majority (approximately 95%) of salmon harvested in Southeast Alaska, all species combined, are from Southeast Alaska.

- It is also important to recognize that Alaska has managed all of their Treaty related fisheries consistent with negotiated agreements, even during recent years when Canada refused to reach agreement. The same can not be said for Canada. They have managed some fisheries in the northern boundary with no regard for negotiated limits, and in years of no formal agreement have managed Transboundary River fisheries in a manner to redefine the status quo to their advantage.

- The Pacific Salmon Treaty between Canada and the U.S. established the Pacific Salmon Commission. Under the treaty, the Commission is the forum for negotiating fishing issues. Canada's consistent attempts to negotiate fishery arrangements between Ottawa and Washington, D.C., at a government to government level, will not be supported by the State of Alaska.

- We are pleased to see that Canada has finally recognized that there are some conservation concerns with Pacific salmon in Canada and the southern U.S. and I am now optimistic that they will take actions in their fisheries to address concerns without demanding concessions in unrelated Alaska fisheries.

- Negotiation sessions are currently scheduled over the next two months to develop bilateral fishing arrangements for the 1996 season on all Treaty related fisheries. The Alaska delegation stands ready to do their part to address the conservation and fair sharing of these valuable salmon resources, and we look forward to the challenges that lie ahead.

B. Chinook Salmon Rebuilding

- Relative to Canada and Washington/Oregon, Alaska harvests roughly 15% on average of the total Pacific West Coast chinook under the Treaty. Alaska continues to harvest chinook salmon at levels 30% below those that existed prior to the Treaty.

- Many of the chinook salmon harvested in Southeast Alaska are spawned outside Alaska. However, those non-Alaskan chinook salmon feed and grow in Alaskan waters and a vast majority of these chinook salmon are from healthy stocks.

- Alaska continues to recognize its' legitimate responsibility to participate in the rebuilding of coastwide chinook salmon stocks under the treaty. We will honor that commitment. Alaska also recognizes that some chinook stocks have declined. This was factored into our approach for 1995, and will be considered in 1996.

- Canada has expressed conservation concerns for 1996 on West Coast of Vancouver Island natural chinook stocks and returns to the Robertson Creek Hatchery. The Alaska Department of Fish and Game is currently participating in a scientific evaluation of the situation.

C. Implementation of "Equity"

- Consistent with the U.S. perspective on Equity, Alaska believes that any Equity arrangement under the Pacific Salmon Treaty must:

1. Be consistent with Treaty principles of conservation and optimum production which have equal standing with the Equity principle;
2. Account fully for the contributions each country makes to the production of fish;
3. Address directly the goal of avoiding undue disruption of existing fisheries;
4. Must prevent a country from being placed at an equity disadvantage by unilateral actions of the other country (flooding of fish into the other countries' waters);
5. Must prevent a country from being placed at an equity disadvantage by factors beyond its control; and
6. Must take into account annual fluctuations in the abundance of salmon stocks, and the uncertainties in estimates of salmon production and benefits.

- Alaska remains committed to working with the federal government and within the Pacific Salmon Commission process to find a reasonable approach that will resolve the Equity dispute.

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FOR IMMEDIATE RELEASE: April 19, 1996 96-094

ALASKANS URGE NEGOTIATIONS OVER SALMON, CANADIANS BACK AWAY FROM THE BARGAINING TABLE

JUNEAU, Alaska - The State of Alaska today criticized British Columbia and Canadian fisheries officials for refusing to come to the bargaining table to negotiate over who gets to catch how many salmon in each country.

Alaska Commissioner for the Pacific Salmon Commission David Benton proposed talks about the "equity issue" in Anchorage to representatives of the Canadian and British Columbia governments this week, but both refused. Benton urged the Canadians to abandon their headline-grabbing strategy on Pacific salmon for reasoned negotiations about how to conserve valuable salmon stocks.

"Certain Canadians are trying to blame Alaska for decimating their salmon stocks through poor management at the same time Alaskans have been world leaders in professional management," Benton said. "Instead of bombastic sword rattling aimed only at re-election, Canadian officials should demonstrate their commitment to conservation by coming to the negotiating table. This is a time for statesmanship, not political self-promotion."

Benton met Monday with Canadian Director for Fisheries Management Bud Graham and on Thursday with B.C. Fisheries Minister David Zirnhelt. Benton proposed to both they join Alaska to negotiate equity arrangements on a fishery-by-fishery basis for Northern Boundary fisheries between Alaska and Canada. Both refused.

Alaska has repeatedly pressed Canada to return to the Pacific Salmon Commission process, which the Canadians have repeatedly refused. In 1994, Canada withdrew from the treaty negotiations, pursuing instead an aggressive fishing strategy that contributed to the "grab all" attitude in the Canadian fishing fleet. That led to the over-harvest and failure to meet escapement goals of some segments of the Fraser River sockeye run.

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Some 95 percent of all salmon harvested in Southeast Alaska are from Southeast Alaska. Alaskans harvest only 15 percent of the total Pacific West Coast chinook fishery under the treaty, while the rest is caught by Canada, Washington and Oregon. In recent years, Alaska's harvests of chinook salmon have been 40 percent below harvests before the treaty.

Alaska believes any equity arrangement under the Pacific Salmon Treaty must be consistent with the principles of conservation and optimum production, account fully for the contributions each country makes to the production of fish, among other principles.

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Province of British Columbia

NEWS RELEASE

Office of the Premier
330-20:96/97-012

For Immediate Release
April 19, 1996

CLARK RELEASES ACTION PLAN TO RESOLVE SALMON CRISIS

- Premier and fishing stakeholders call on Ottawa to get tough with the Americans -

VANCOUVER – Premier Glen Clark and salmon stakeholders have joined forces to turn up the heat on the Canadian and U.S. governments to resolve the salmon crisis.

The Premier stated that, in order to force the Americans to conclude an agreement to conserve West Coast salmon, we are urging Ottawa to formally notify the U.S. government that unless an agreement is reached before this year's fishing season, Canada will:

- Cancel the agreement allowing U.S. nuclear submarines to use the testing range at Nanoose Bay on the Inside Passage.
- Increase entry requirements for all U.S. fishing boats, such as stringently enforcing all existing Canada customs and immigration requirements, conducting extensive safety inspections on all U.S. fishing boats or imposing a transit fee.

"The Canadian and U.S. governments must realize that the survival of our west coast salmon is at stake, and that B.C.'s fishing jobs and communities are being threatened," said Clark. "We can't afford to wait any longer for the Americans to open their eyes to the need to save our west coast salmon. We have to take immediate and decisive action now before it's too late."

The B.C. government and key fisheries stakeholders are sending an open letter to Prime Minister Chretien asking Ottawa to move expeditiously in resolving the dispute with the U.S. They are calling for:

- U.S. agreement to stop catching threatened B.C. salmon runs, including Fraser River sockeye and Vancouver Island chinook.
- Immediate public release of the international mediator's proposals to resolve the Pacific Salmon Treaty.
- U.S. agreement to immediately start binding arbitration on a fair division of a sustainable salmon catch.

Clark Releases Action Plan to Resolve Salmon Crisis... 2

Each year, about 19 U.S. military vessels, including nuclear submarines, conduct training and testing exercises by Nanoose Bay near Nanaimo. Ottawa has ignored B.C.'s calls for a full public environmental assessment of the Nanoose Bay operation, which is up for renewal this year.

Clark's calls for action follow on the heels of Fisheries Minister David Zimbelt's trip to Alaska where he strongly urged Americans to address B.C.'s salmon conservation concerns. Clark and Zimbelt have also been meeting with the B.C. fishing industry to hear first-hand their concerns about the declining fishery and their outrage over the federal government's fleet reduction plan.

"There's a tremendous sense of instability and frustration within B.C.'s fishing community," said Clark. "In a few weeks, U.S. fishing boats will start heading up the Inside Passage in preparation for the start of the fishing season. We have no agreement in place to keep the Americans from wiping out some of our most important salmon runs. Meanwhile B.C. fishing boats sit idle in an effort to conserve salmon. We won't sit by and allow our salmon stocks, our fishing industry, and our coastal communities to be destroyed."

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Editor's note: Nanoose Bay backgrounder, open letter to Prime Minister Chretien, and Nanoose Bay map are available.

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