

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9651 SENATE RESOURCES

bars joining the federal government as a party to any basin-wide adjudication in which the state court will look at factual issues of navigability. Second, the agencies argue that federal reserved water rights and navigability are irrelevant to the allocation of fishery management authority between the state and federal governments.

However, these objections are framed in the rhetoric of advocacy (e.g., "legally impossible," "fundamental misunderstanding") rather than meaningful references to the actual state of the law today. Despite our repeated requests for citations to specific legal precedents, the rhetoric remains unsupported. We conclude that the potential limits on a basin-wide adjudication simply remain an open, unsettled area of the law at this time.

In regards to the agencies' first argument concerning the McCarran Amendment, they cite only the case of *South Delta Water Agency v. U.S., Dept. of Int.* We note that this case did not even involve a basin-wide adjudication. The court explicitly observed:

*The parties agree that the instant suit does not meet the requirements of subsection (1) of the McCarran Amendment because the suit does not involve a general stream adjudication.*⁵

The agencies have correctly noted that a suit under the federal Quiet Title Act is generally the sole means to directly challenge federal title to real estate. However, the agencies have ignored the explicit exception which the Quiet Title Act contains for suits brought under the McCarran Amendment:

*[N]or does it [the Quiet Title Act] apply to or affect actions which may be or could have been brought under . . . section 208 of the Act of July 10, 1952 (43 U.S.C. 666) [the McCarran Amendment].*⁶

The agencies also seem to implicitly argue that the basin-wide adjudication must decide all parties' rights in an initial case and then require them to return with a second case for "administration" of those rights. If this is in fact the agencies' argument, it disregards guidance from the U.S. Supreme Court that "administration" under the McCarran Amendment "obviously includes water rights previously acquired by the United States through appropriation or presently in the process of being so acquired."⁷ No precedent

⁴ 43 U.S.C. 666.

⁵ *South Delta Water Agency v. U.S., Dept. of Int.*, 767 F.2d 531, 540 (9th Cir. 1985).

⁶ 28 U.S.C. § 2409a (a).

⁷ *United States v. District Ct., County of Eagle, Colo.*, 401 U.S. 520, 524 (1971).

brought to our attention indicates that a basin-wide adjudication cannot address both rights and administration for a hydrologic unit in a single efficient proceeding.

Also, contrary to the agencies' assertion, the U.S. Supreme Court has construed the McCarran Amendment broadly, not narrowly, to allow state courts to decide a considerable spectrum of federal water-related rights during a basin-wide adjudication:

[W]e deal with an all-inclusive statute concerning "the adjudication of rights to the use of water of a river system" which in § 666(a)(1) has no exceptions and which, as we read it, includes appropriate rights, riparian rights, and reserved rights.⁸

The agencies further assert that federal reserved water rights and a waterway's navigability are irrelevant to which level of government prescribes the rules for fishery allocation between subsistence and other users. Indeed, in the recent *Totemoff* case, the agencies were successful in convincing the Alaska Supreme Court that federal reserved water rights should not be a factor.⁹ However, the court's decision still hinged upon a factual finding that a waterway was navigable and thus subject to state authority.

Nevertheless, in *Babbitt*, the agencies were quite unsuccessful in persuading the U.S. Court of Appeals to disregard federal reserved water rights and navigability. The plain language of that court's decision makes them key factors in which level of government gets to write the rules:

By virtue of its reserved water rights, the United States has interests in some navigable waters. Consequently, public lands subject to subsistence management under ANILCA include certain navigable waters.

For these reasons, we hold to be reasonable the federal agencies' conclusion that the definition of public lands include those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine. We also hold that the federal agencies that administer the subsistence priority are responsible for identifying those waters.¹⁰

This ruling from the *Babbitt* case is unique, unprecedented, unpopular with the State's attorneys, and at variance with the Alaska Supreme Court. However, all of this does not

⁸ *United States v. District Ct., County of Eagle, Colo.*, 401 U.S. 520, 524 (1971) [Emphasis added].

⁹ See *Totemoff v. State*, 905 P.2d 954, 961-968 (Alaska 1995).

¹⁰ *State of Alaska v Babbitt*, 72 F.2d 698, 703-704 (9th Cir. 1995).

change the case's status as a mandate to federal agencies. who we doubt will defer to the conflicting guidance of the Alaska Supreme Court.

To put it bluntly, unless the extent of federal reserved water rights gets established in the State court system, federal regulators will do it themselves. The State's current approach, which denies the significance of federal reserved water rights, leaves the State by default in a posture of waiting to react to whatever those regulators might decide is best for Alaska. In fact, those regulators may ultimately decide that federal authority exists in entire waterways from their source to the sea, even if only a portion of the waterway passes by federal land.

The agencies' current posturing of "irrelevance" appears to be a recent adaptation. During a House Resources Committee hearing on April 28, 1995, the Department of Law expressed considerable concern on how federal agencies would attempt to regulate fishing in waterways that are navigable and have federal reserved water rights. The minutes from that hearing describe that concern as follows:

MR. WHITE [Assistant Attorney General] said during the break he was able to talk with the attorney who is representing the state in all of the federal/state fish and wildlife cases. He stated the question he struggled with earlier is how far away from the federal reservations does the federal reserve water rights extend in regard to allowing federal management. He noted unfortunately the answer is not clear since the Ninth Circuit did not say anything about it other than the federal reserve water rights allow the federal government to manage navigable waters which are necessary to serve the purposes of the federal reserves. . . .

MR. WHITE told committee members the federal government, before the Ninth Circuit, also advocated the position that the court held--that is, the federal reserve water rights allow some management over navigable waters but they did not clarify what that meant. He said the plaintiffs in the case argued, under various theories and will argue under the federal reserve water rights, that the federal government should manage all the way out to the ocean. [Emphasis added.]

Similarly, in a House Resources Committee hearing on February 21, 1996, the commissioner of the Department of Fish and Game noted his concern with the role of navigability in allocating state-federal management authority. The minutes from that hearing state:

FRANK RUE, Commissioner, Department of Fish and Game (ADF&G) said the department is in a support role to the Department of Law and the Department of Natural Resources and share the concern that we want to be aggressive in asserting navigability for a number of reasons. Recently with

dual management in subsistence, it may be important for the state's management of fish and wildlife that we assert navigability. Also, primarily, for public use, public access to fish and wildlife, the navigability issue can become significant. So, we have supported the Department of Law and the Department of Natural Resources in various litigations and/or assertions and that has been our role. We give information and point out areas where we think the federal agencies are overreaching and trying to restrict public uses on what believe are navigable waters. [Emphasis added.]

It is important to remember that our Recommendation No. 8 advised the legislature to establish a joint committee to review the potential for basin-wide adjudications to resolve some long-term issues. It is disturbing that the agencies apparently do not wish the legislature to even consider the possibility. Short-term posturing is no substitute for long-term planning.

The full potential for basin-wide adjudications under Alaska's unique circumstances remains an open and untested legal frontier. However, we suspect that the agencies' true concern with a basin-wide adjudication lies more with internal administrative preferences than the state of the law. Such adjudications have historically required states to make a serious, long-term allocation of their legal resources. We are not unsympathetic with this concern and would not expect such a refocus in the State's litigation to be undertaken lightly. However, we still feel basin-wide adjudications should be one of a spectrum of alternatives that the legislature considers in devising a strategy for resolving the State's waterway issues.

Though the outer limits for use of basin-wide adjudications are unsettled, both a state statute and the U.S. Supreme Court provide clear legal authority for Alaska to use the basic process to decide water rights. Thus, in a February 7, 1997 letter to the attorney general, we requested his projection of the annual personnel funding required from the legislature to support basin-wide adjudications. Unfortunately, the attorney general did not respond to our request for this estimate.

The agencies propose that their current litigation approach can be rehabilitated with a public information campaign which disseminates agency opinions concerning navigability ("public use determinations"). Such a sharing of technical information with the public is, of course, a commendable governmental function.

However, a good portion of land within the State's borders will ultimately be owned by corporate entities that wish to fully exercise their rights to control entry. Disputes in such situations concerning the use of waterways, shorelines, portages, gravel bars, and islands frequently involve conflicting values rather than a mere lack of information.¹¹ Resolution of

¹¹ Cf. Debra Stein, *Overcoming Community Opposition*, Land Development (Winter 1997), pp. 10-12; Thomas Morehouse & Marybeth Holleman, *When Values Conflict: Accommodating Alaska Native Subsistence*, (Inst. of Social and Economic Research, University of Alaska, June 1994), pp. 1-10, 44-46.

those disputes will require legally-binding determinations. The agencies need to develop a broader vision of a systematic means for settling waterway status disputes in a mandatory, permanent fashion.

Some binding, systematic effort beyond information brokerage was no doubt envisioned by the electorate when they adopted AS 38.05.500-38.05.505 in a 1982 initiative. Alaska Statute 38.05.502 provides that the State holds the title to unappropriated land "in trust for the people of the state." Alaska Statute 38.05.505(b) provides that "[a]n individual may institute a civil action to recover damages for injury or loss sustained . . . for the failure of the state to enforce its trust responsibilities to the people of the state." Though the decision to pursue an individual case lies within executive discretion, these sections may impose a duty upon the State to adopt some form of binding program to pursue public access.

Report Conclusions

Lack of decisive top-level direction impairs program implementation

The agencies are understandably disturbed by our finding that deficiencies in teamwork have resulted from a lack of decisive top-level executive direction. The agencies' audit response insists that the administration's navigability program is now being decisively implemented through a coordinated team.

Though not widespread, we did encounter instances in which too much energy was diverted into turf wars and employees' record-building concerning their perceptions of co-worker deficiencies. Based on the audit response, responsible executives have hopefully rectified this divisive behavior.

For a program of this magnitude, we believe that a team approach should be designed within definite guidelines formulated by executives directly accountable to the governor. We remind the administration of the important distinction between the roles which the State Personnel Act assigns to classified technical staff and nonclassified executives:

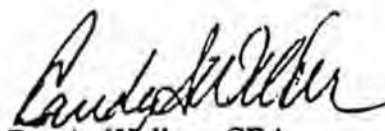
The personnel board, upon written recommendation of the commissioner of administration, may extend the partially exempt service to include any position in the classified service that, in the judgment of the board,

- (1) involves principal responsibility for the determination of policy; [or]*
- (2) involves principal responsibility for the way in which policies are carried out; . . .¹²*

¹² AS 39.25.130(a).

We trust that the administration will assign policymaking responsibilities and classify personnel as necessary to assure strong leadership with sufficient accountability to the governor. For example, a governor, commissioner, or director may decide to substantially delegate that position's policymaking in a specialized area to an individual with particular talents, skills, or experience.¹³ The State Personnel Act envisions that such delegation will occur in the context of reclassification or reassignment to a position as an assistant under the exempt or partially-exempt service.¹⁴ This status provides the control necessary to ensure that the assistant will faithfully promote the administration's programs and work most cohesively with the administration's other appointees.

The success of this program is very much dependent on it receiving top-level direction. Given the number of agencies involved, this direction must be focused through a team effort. This was one of the reasons we requested a single response from the agencies as a team. The audit response demonstrated the top-level attention and teamwork essential to a program of this complexity and importance. We hope the focus of this attention and teamwork can now be transferred toward the program itself.


Randy Welker, CPA
Legislative Auditor

¹³ See AS 44.17.010; AS 44.17.040; AS 44.17.070.

¹⁴ See AS 39.25.120(c)(8) (special assistants); AS 39.25.120(c)(1) (assistant commissioners); AS 39.25.110(20) (governor's office).



Official Business

ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Leman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

AGENDA
3:30 TO 5:00 p.m.
Friday, January 30, 1998

Briefing: Waterway Management Issues

I Presentation of Legislative Audit:

Waterway Management Issues
March 28, 1998

Audit Control Number 10-4540-97

Pat Davidson, Acting Legislative Auditor
Dane Larsen, Staff Auditor
Mike Marsh, Staff Auditor

II Agency Response to Questions

Department of Natural Resources
John Shively, Commissioner
Jane Angvik, Director, Division of Lands *
Dick Mylius, Division of Lands *

Department of Fish and Game
Janet Kowalski, Director, Division of Habitat
Tina Cunning, ANILCA Program Manager *
Christopher Estes, In-stream Flow Coordinator
Robin Willis, Access Defense Manager *

Department of Law
Joanne Grace, Assistant Attorney General

* via teleconference

NEXT MEETING
Wednesday, February 4

ADJOURN



Official Business

ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Leman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

MEMORANDUM

TO: Members, Senate Resources Committee

FROM: Senator Rick Halford, Chairman
Senate Resources Committee

DATE: 31 January, 1998

SUBJECT: Waterway Management Briefing

Attached you will find a copy of the written testimony of the Legislative Auditors from yesterday's briefing on their Waterway Management Issues audit of March, 1997.

I expect to receive additional information from the agencies in response to requests made by the committee including: a matrix of 17(b) easements that were invalidated by the court, but had contractual stipulations upon conveyance mandating replacement easements for those that were found invalid; copies of past public access atlases produced by the DNR; a copy of the easement vacation in Unalaska referred to by the department; and a detailed breakdown of agency funding allocations expended relating to waterway management issues.

I hope to have most of this information before we continue our briefing this Wednesday.

As I announced yesterday, I believe that Navigability and RS 2477 Rights-of-way are important issues which warrant in-depth attention by the committee.

Senate Resources Committee
Waterway Management Issues Briefing
January 30, 1998

Legislative Audit:
Pat Davidson
Dane Larsen
Mike Marsh

After several decades of statehood, the legislature is understandably concerned about whether we've made any real progress in settling the public's rights concerning Alaska's waterways. The short answer is that it's a very slow journey, and we've barely begun.

Perhaps this isn't too surprising. Alaska has 17,000 identified rivers and streams, as well as an estimated two million lakes larger than 50 acres. The status of only a handful of these waterbodies has been addressed so far.

We completed a review of various waterway management issues last March that covered FY 96 and 97. It included the departments of Law, Natural Resources, and Fish & Game.

Our overall objective was to evaluate the effectiveness of the State's programs in resolving issues of ownership, access, and resource allocation concerning public waterways.

We identified a number of areas where improvements could be made. Our recommendations ranged from relatively minor "house keeping" suggestions to a very substantial proposal to rethink the way the State is attempting to resolve these issues. Some of these problems have already been addressed. However, we still have concerns in four major areas that we'll talk about today.

Those four areas of concern are:

First, public access easements under ANCSA section 17(b). These are public routes across private land. They link public land, navigable waterways, and other parts of the State's transportation network.

Second, the allocation of the State's water supply among competing users. This is the subject of traditional water rights.

Third, federal reserved water rights. As a State, we didn't pay much attention to them until the *Babbitt* case said their presence determines an important issue, that is, whether State rules or federal rules will govern fishing in a given waterway.

Fourth, the ownership of submerged land. This involves legal determinations as to whether the land beneath a particular waterway is owned by the State. This is one of the traditional reasons we care about whether a particular waterway gets classified as "navigable."

We'll take a look at each of these four areas in depth.

17(b) easements

Our first area of concern is the public access easements under section 17(b) of ANCSA. These easements, once again, establish public access routes across private land. More specifically, they provide legal access between waterways, public land, and other parts of the State's transportation network, such as rural airports maintained by DOTPF.

These easements arise during the BLM process for conveying ANCSA land selections. BLM writes the State a letter concerning each proposed conveyance and gives the State, specifically DNR and Fish & Game, the opportunity to request any easements they feel are necessary for public access.

Though these easements are meant to assure public access to public lands, BLM's process is, unfortunately, largely insulated from the public. There is no public hearing, and both BLM and the State conduct the process with little input from organizations other than government agencies and the affected landowner.

In our report, we provide detailed recommendations on how the State can, at minimal expense, facilitate input from citizen groups and, just as importantly, from the people who actually live and work in the area involving the easement.

To put it bluntly, despite the large amount of territory that these easements can potentially affect, the average variance from a local zoning ordinance involves a more rigorous search for public input.

Thus, the public is seldom consulted in the initial decision as to whether there needs to be an easement. However, we also found that once these easements have been reserved, the public remains largely unaware of their existence. Though BLM estimates that there are 3,500 of these easements in Alaska, less than five percent are marked on the ground with any sort of signs.

Some of the easements fall along well-established trails and roadways; however, many others are simply an abstract line drawn on a map. For these latter easements, the public's inability to locate them on the ground may reduce their establishment to a meaningless exercise.

Federal regulations establish the easements at only 25 to 60 feet in width, depending upon the mode of transportation involved. Even using the popular Global Positioning Satellite system, it would be difficult for the average user to accurately determine an unmarked, abstractly-determined line on the ground, when it is only 60 feet wide at best. This is because GPS accuracy on a predictable, consistent basis is ± 300 feet for the type of equipment used by recreational users.

To further aggravate this uncertainty, information concerning the location of 17(b) easements cannot be obtained from commercially-available publications. In all too many cases, the average recreational user would need to research obscure legal materials kept at government offices.

Without a means for learning of the easements, and for finding them on the ground, the public is unlikely to use them. An unpublicized, unmarked easement is, in effect, no easement at all.

And to make matters worse, we note that some 17(b) easements are subject to termination by BLM if there is no evidence of public use by the year 2001. In the event of such termination, the efforts to secure these easements on paper will have been nothing more than a waste of public time and money.

Our report recommends that various forms of State financial assistance be conditioned upon the marking and maintenance of easements across land under the recipient's control. For State aid related to land use, such conditions are analogous to those long imposed upon subdivision plats, such as the dedication of land necessary for schools, parks, streets, and drainage. A similar analogy is the requirement that businesses dedicate some of their parking lot spaces to handicapped parking.

For such State grants, related to land use, we suggest that compliance with easement marking and maintenance be added to the list of items which private CPA firms are required to verify under the state single audit act.

We discovered one further serious problem concerning the State's pursuit of 17(b) easements.

Prior to 1977, BLM reserved easements that ran continuously along waterway shorelines. Parties selecting affected tracts filed litigation challenging those easements. However, these parties did not wish their ANCSA conveyances delayed while awaiting the outcome. Most of these parties thus entered into written agreements with BLM that had the following special terms:

- The conveyance would proceed on schedule as though the easements were not in dispute.
- Any easement found invalid by the court would be vacated.

- In the event that a reserved easement was found invalid, the landowner committed itself in advance to substitute a replacement easement for the one found invalid.

In 1977, the federal court did in fact find the easements in dispute to be invalid. In the 20 years since that decision, some of the prevailing landowners have kept their word and provided the replacement easements as they promised. However, we understand from DNR that a large number of the promises to substitute easements have not been honored.

Unfortunately, neither BLM nor the State have kept track of the number of promised easements that were never provided. In deciding whether to enforce the contracts — or to just let the matter slide, the affected State departments need to determine this number without delay. Federal regulations reflect an overall theme that 17(b) easement issues will be finalized by the year 2001.

In short, we believe that the State should make a conscious choice whether to hold landowners to their contracts, or to just let this slide. Such an important matter should not be decided simply by ignoring the question. In the event that the State decides to enforce its rights to the promised easements, our report details a variety of legal remedies that the State can pursue.

Allocation of the State's water supply among competing users

With both a small population and a third of the nation's fresh water, Alaska has so far been spared the water-use battles of large western states in the Lower 48. Frankly, our current approach to this waterway issue simply assumes that we have an unlimited supply of water — and that it's just one of those things you don't need to worry about.

However, the availability of water controls the development of other resources, and Alaska's assumption of limitless abundance will probably not be valid throughout the next century.

One indicator of the future comes from industrialized Pacific Rim countries with less stringent water quality controls than we have here in Alaska. Those countries may very well face a critical shortage of unpolluted water in the coming decades.

Through a permitting system, our water statutes already recognize the need for the State to regulate the export of Alaska's fresh water. Indeed, one publication by the Department of Fish and Game notes that "*Interest for exporting water from Alaska to other states and countries appears to be increasing*" The publication goes on to discuss the arrangements for Alaska water to reach destinations such as Japan and Saudi Arabia.

As would be expected with a resource that appears unlimited, we make little effort to even determine the amount of fresh water that's available in our waterways. The technical means for

monitoring this is through gauging stations, but less than one percent of the State's waterways have such equipment. To put it in perspective, Lower 48 waterways average one gauging station for every 400 square miles while Alaska averages one per 7,400 square miles.

Frankly, Alaska may not need the density of gauging stations found Outside. Nevertheless, the State could do better by conditioning the water rights of large users upon the installation of gauging stations at their own expense. Such arrangements for private sector responsibility have not been the norm so far, though.

To look at the much bigger picture of all of this, it's helpful to start by noting that the U.S. Geological Survey has divided our State into six hydrologic subregions, each of which focuses upon the area's main river systems.

Though it's long forgotten and never been used, the legislature a while back enacted a procedure which would allow the court system to simultaneously determine everybody's water rights for an entire subregion — all in a single case. The procedure established in the statute is called a "basin-wide" water rights adjudication. And, interestingly enough, though such a proceeding is conducted in the State court system, the rights subject to adjudication explicitly include federal reserved water rights — which we will be talking about shortly.

This process for a "basin-wide" adjudication of water rights, also known as a general water adjudication, has had considerable use in State courts for drier areas of the Lower 48. Its value to finalize water rights was greatly promoted when Congress passed a statute in 1952. Through that statute, the federal government consented to have its own water rights decided in such State court proceedings.

However, unlike the drier western states, Alaska has never used the basin-wide adjudication procedure. The Department of Law has traditionally assumed that it narrowly applies to only one specific water-related issue, that is, the quantities available for consumption by competing users. Since water has been plentiful in most of Alaska, there has been little actual conflict that seemed to justify such a proceeding. Additionally, federal reserved water rights only recently acquired their unexpected importance to the management of fisheries.

We feel the Department of Law is underestimating the possibilities for basin-wide adjudications. We think that an Alaska basin-wide adjudication has the potential to resolve a whole host of water-related issues.

Now, we're not saying that you need to immediately run out and buy a basin-wide adjudication, but we are saying that you need to take a very serious look at it as something that could be a lot more effective than what we're doing now. So, as we continue to look at some other waterway issues, we'll keep coming back to the topic of this untried procedure.

Federal reserved water rights

So, with that in mind, let's take a closer look at why we suddenly care about federal reserved water rights – another one of those water topics that we never really cared about until the federal courts gave us a reason.

The existence of federal reserved water rights now determines how responsibilities will be divided up between the State and federal government for managing important fisheries. Where the federal government has reserved water rights in a navigable waterway, fishing will be managed under federal regulations by the Federal Subsistence Board. Where the federal government does not have reserved water rights in a navigable waterway, fishing will be managed under State regulations by Fish & Game.

Actually, federal reserved water rights have been around since the early 1900s. However, until the *Babbitt* case in 1995, the concept was only used to allocate physical quantities of water between the federal government and competing users. The *Babbitt* decision is so far a unique development in its use of federal reserved water rights as a mechanism for defining the geographical scope of federal management authority.

And, we, of course, now have every reason to be interested in federal reserved water rights. DNR estimates that just under half of the State consists of federal land that may have such reserved rights.

The State's current approach is to simply wait for the Federal Subsistence Board to announce where it claims such rights exist. We're telling you, though, that there is another possibility: for each of the State's six hydrologic basins, the State court system can decide the extent of federal reserved water rights within the context of a basin-wide adjudication.

Navigability/ownership of submerged land

Now let's turn to our fourth major area of concern: navigability determinations, also known as the battle for title of submerged land.

As a general rule, land underlying a waterway is owned by the State if the waterway was navigable at the time of statehood. Federal case law considers a waterway to have been navigable at statehood if it is was actually used for commerce or could have been used for that purpose.

In the current State approach for proving a waterway's navigability, the State files an action to quiet title in the federal court. However, each of these suits involves only a few waterbodies out of the thousands that probably meet the criteria for navigability. The State selects the waterbodies for these "test cases" with the hope that a victory will serve as a valuable precedent in eventual negotiations with the federal government over other waterways.

Unfortunately, the federal government has taken a "never surrender" approach when joined as a party to these quiet title actions. Even in instances where BLM has already conceded navigability on an administrative level, attorneys representing the federal government refuse efforts at settlement and file technical objections that protract the litigation for years.

This federal "bad attitude" is hardly unique to water litigation in Alaska. We're simply victims of a long-standing federal approach apparent in other states over many years.

As we mentioned earlier, Alaska has 17,000 identified streams and rivers as well as lakes that number in the millions. However, only about a dozen waterbodies are the subject of quiet title actions that have either been decided or are currently pending in the federal court. In other words, year-to-year skirmishes are being waged over a minute fraction of the State's navigable waterways.

And these narrowly-focused cases take forever. Water-related adjudications, whether one river or an entire hydrologic basin, span 10 to 20 years. They thus span administrations at both the State and federal levels. The joke in the trade among water lawyers is that you'd have to start as a very young lawyer to ever work one of these cases from beginning to end.

A fine example would be the *Dinkum Sands* case that was decided less than a year ago by the U.S. Supreme Court. Alaska fought the federal government for 18 years on that one and, in the end, Alaska walked away empty-handed.

In other words, the State's emphasis has been on setting precedents, rather than finality and predictability for entire hydrologic areas. Given the federal government's vigorous resistance to any type of efficient, nonlitigation solution, the State's piecemeal approach has little impact on the long-term resolution of the State's waterway issues.

We do not mean to suggest that there's a problem with the quality of the State's lawyering. We do mean to suggest that it's time for the legislature to consider finding a different way of litigating all of this.

If the State sues the federal government in a suit to directly determine the ownership of land under a waterway, the State has no option but to file that suit under the federal Quiet Title Act and litigate it in the federal courts. However, we feel that there may be a more effective alternative.

More specifically, the factual issue of a waterway's navigability should be subject to determination in the State courts as part of an adjudication of water-related issues for an entire system of rivers. Once navigability has been decided in the State's favor, it can treat the underlying land as State-owned. If any party contests the State's ownership, the State court's factual determination should have binding effect in later proceedings to directly quiet title.

To repeat our position, we feel that a basin-wide adjudication set in the State court system has the potential for an eventual resolution of the navigability status of all water bodies found within the basin – not just a few. It also has the ability to decide the extent of federal reserved water rights within that basin, as well as the traditional allocation of water among competing users.

Clearly, our suggested approach to waterway litigation is a matter of first impression. The State has never pursued a basin-wide adjudication, nor have federal reserved water rights ever been addressed in Alaska's State court system. Also, the *Babbitt* case, along with its ANCSA and ANILCA origins, are all uniquely Alaskan.

The affected State departments have expressed doubts that the courts would allow our suggested approach. We have reviewed the two cases that these departments have cited in support of their hesitation, and we do not find those cases applicable to the issue. The bottom line is that it simply remains an untried matter of first impression.

It is important to note that the affected departments do not seem to challenge the basic underpinnings for the potential use of basin-wide adjudications. Let's take a look at those undisputed underpinnings:

- Both a State statute and the U.S. Supreme Court provide clear legal authority for Alaska to use the basin-wide adjudication process if it chooses to do so.
- Both a State statute and the U.S. Supreme Court provide clear legal authority for Alaska to join the federal government as a party to a basin-wide adjudication.
- Both a State statute and the U.S. Supreme Court provide clear legal authority for Alaska to determine federal reserved water rights in the context of a basin-wide adjudication.
- Except in the context of an action to directly quiet title against the federal government, State courts have the authority to routinely make factual findings of navigability to resolve property disputes.
- State statutes and regulations make factual findings of navigability pertinent to some of the water rights issues subject to a basin-wide adjudication.

- In the event that a State court makes findings of navigability during a basin-wide adjudication, those findings may have binding effect against the federal government in any later litigation to directly quiet title in the federal court.

To summarize all of this, we see resolution of the State's waterway issues as a very long-term project. The State needs a long-term litigation strategy for finalizing the allocation of three of its most important natural resources, that is, water, fish, and submerged land minerals. We believe Alaska's basin-wide adjudication statute has untried potential for this long-term resolution of most water-related issues.

The Public Trust Doctrine

Before concluding our presentation, I want to comment in passing on what the public trust doctrine does, and does not, require from the State in regards to its limited resources for pursuing lawsuits.

Though the Alaska Supreme Court has adopted the public trust doctrine for Alaska, debate continues as to whether it imposes an affirmative duty to initiate legal action on waterway issues — or only restricts the State's ability to convey property rights out of the public domain. One position asserts that the State incurs liability for violating the public trust if it fails to aggressively pursue suits involving potential navigability and 17(b) easements. An opposing position asserts that State managers must allocate their use of limited legal resources among a wide variety of projects, and that choices to pursue potential claims lie within the executive's discretion.

After examining the interpretations of the Alaska Supreme Court, we conclude that the public trust doctrine does not place the State under a duty to pursue every potential claim for assertion of navigability or for a 17(b) easement. The number of possible claims is staggering: thousands of the State's waterbodies could probably meet the criteria for navigability.

State managers have discretion to set priorities in the use of their limited legal resources for enforcing public rights. Suits regarding navigability and easements may be pursued as an instrument of public policy; however, they are not mandatory. In other words, the State does not face legal liability for leaving such claims unpursued.

However, we still note the provision in Title 38 which says "*An individual may institute a civil action to recover damages . . . for the failure of the state to enforce its trust responsibilities to the people of the state.*" Though the decision to pursue an individual case lies within executive

discretion, this section may impose a duty upon the State to adopt some form of binding program to pursue issues such as public access. This remains an untested question in Alaska law.

State Navigability Project - Status Report
February 4, 1998

Accomplishments - FY 98 to date

Public Information

- navigability information made available to the public on World Wide Web through DNR Navigability Web Site and ADFG Access sites
- published public information brochure for Karluk River, available on ADFG web site
- responded to numerous inquiries from public and other agencies, particularly related to Karluk River, Chuit River, Kanektok River, Arolik River, Cottonwood Creek, Prairie Creek, and Iliamna Lake area
- distributed public access atlases for Prince William Sound and Kodiak Island

Public Access Protection

- met with Koniag, Tyonek, and Quinhagak Native Corporations to address and seek solutions for access problems that occurred during summer 1997 fishing season
- worked with US Fish and Wildlife Service to address problems on navigable waterways within Togiak NWR and the Kisarlik River (Yukon Delta NWR)

Litigation

- oral arguments before federal court on Kandik/Nation/Black rivers lawsuit
- continued research to support state's intervention in Peratrovich case (Tongass tidelands). Prepared GIS map of all federal withdrawals that effected Tongass NF
- filed notice of intent (180 day notice) with US to assert navigability of Russian River
- re-evaluated North Slope litigation after US Supreme Court Dinkum Sands decision

Navigability Determinations

- continued research on 90 rivers to address BLM decisions, to make navigability determinations, or support possible litigation
- reviewed navigability status of rivers proposed for Wild and Scenic Designations in the Tongass and Chugach National Forest
- issued navigability determination for Fish Creek (Susitna Valley)
- provided navigable waters information for state leases and disposals

Statewide Navigability Information

- made final revisions to statewide navigability map - including incorporating results from Supreme Court "Dinkum Sands" decision
- completed computer linkage between mapped and tabular statewide data

Respond to BLM and other federal actions

- Responded to BLM decisions regarding three areas - Tyonek, Cordova, and Alatna/Allakaket
- appealed BLM decision regarding Ayakulik River (Kodiak Island)
- reviewed all BLM conveyance decisions to ensure that navigable waterbodies are excluded

Navigability Project - Status Report - page 2 of 3

Work in Progress - FY 98

Public Information

- publish and distribute Chuitna brochure
- publish and distribute statewide brochure (the team concluded a generalized statewide brochure was needed before doing additional individual river brochures)
- revise Department Order 125 (state navigability policy)
- respond to public inquiries about navigability
- update web page with revised policy, court decisions, and maps

Public Access Protection

- work with US Fish and Wildlife Service concerning Togiak Refuge planning
- participate in BLM's planning effort for the Gulkana River
- meet with Native Corporations and other upland owners to resolve access problems that arise

Litigation

- continue work on PLO 82 appeal
- prepare briefing for Peratrovich (Tongass tidelands) litigation
- continue work on Kandik/Nation/Black rivers litigation

Navigability Determinations

- continue research on 90 rivers, make navigability determinations where there is sufficient conclusive information
- provide navigable waters information for state leases and disposals

Statewide Navigability Information

- make final revisions to statewide map, publish and distribute map
- make maps and tables available on world-wide-web through the navigability home page

Respond to BLM and other federal agency actions

- currently drafting response to 3 BLM decisions that affect navigable waters
- respond to all future BLM navigability decisions

Major Accomplishments - FY 97

- Established an interagency team to coordinate all navigability work and policy issues. Includes departments of Natural Resources, Fish and Game, and Law. Other state agencies (such as Fish and Wildlife Protection Division and DOTPF) participate as needed.

Public Information

- began to develop prototype public information brochures to explain public and landowner's rights along navigable and public waters
- responded to numerous inquiries from public and other agencies, particularly related to Kanektok River, Arolik River, Fish Creek, and other areas.
- prepared public access atlases for Prince William Sound and Kodiak Island
- developed DNR Navigability web site

Public Access Protection

- met with Native Corporations and other upland owners to resolve problems with public access and public use of navigable waterbodies

Litigation

- developed list of issues to litigate (list issues) and identified waterbodies that may best serve as candidates to file Quiet Title actions on (Hot Waters List)
- developed detailed outline of data needed to support future litigation
- systematically evaluated all the rivers on the hot water list for possible litigation
- filed notice of intent (180 day notice) with US to assert navigability of ten rivers
- continued ongoing litigation on navigability, including NPRA, PLO 82, Kandik/Nation/Black rivers,

Statewide Navigability Information

- consolidated all DNR navigability records in one location and established centralized records system to facilitate future research on navigability
- inventoried all state, BLM, and Court navigability determinations, entered this information into a data base and onto maps
- prepared preliminary statewide navigability map
- DNR hydrologists evaluated USGS maps and other sources to identify navigable waterbodies based on state criteria
- identified the location of avulse tidelands in eastern Prince William Sound, reviewed proposed BLM conveyances to ensure avulsed lands are not conveyed to private upland owners

Respond to BLM and other federal actions

- researched 34 rivers to address BLM decisions, to make navigability determinations, or support possible litigation
- reviewed all BLM conveyance decisions to ensure that navigable waterbodies are excluded

NAVIGABILITY CRITERIA EVALUATION FORM

NAME OF WATERBODY: _____

WATERSHED: _____ HUC #: _____

ARID#: _____ ANADROMOUS STREAM #: _____

SUMMARY OF DATA:

- 1) Other names:
- 2) Lat/Long of river mouth:
(or northernmost point of lake)
- 3) MTRS of river mouth:
(or northernmost point of lake)
- 4) USGS Quad name:
(river mouth or northernmost point of lake)
- 5) Drainage area (mi²):
- 6) Average Stream or Lake Length (mi):
- 7) Average Stream or Lake Width (ft):
- 8) Average Stream or Lake Depth (ft):
- 9) Channel Gradient (ft/mi):
- 10) Elevation (range in ft):
- 11) Channel Form (meandering, braided, mixed, straight):
- 12) Point of Discharge:
- 13) Is the waterbody glacial?
- 14) General Description:

Filled in

A. General Questions:

1) Have there been any determinations of NON-NAVIGABILITY?

Determined non-navigable by:

Court BLM State Other:

Date of determination:

River segment affected by determination:

Reason given in written documentation for the non-navigability finding:

a) Other determinations of NON-NAVIGABILITY?

Determined non-navigable by:

Court BLM State Other:

Date of determination:

River segment affected by determination:

Reason given in written documentation for the non-navigability finding:

b) Other determinations of NON-NAVIGABILITY?

Determined non-navigable by:

Court BLM State Other:

Date of determination:

River segment affected by determination:

Reason given in written documentation for the non-navigability finding:

Filled in

2) Any determinations of NAVIGABILITY?

Determined navigable by:

Court BLM State Other:

Date of determination of navigability:

River segment affected by determination:

Reason given in written documentation for the navigability finding:

a) Other determinations of NAVIGABILITY?

Determined navigable by:

Court BLM State Other:

Date of determination:

River segment affected by determination:

Reason given in written documentation for the navigability finding:

b) Other determinations of NAVIGABILITY?

Determined navigable by:

Court BLM State Other:

Date of determination:

River segment affected by determination:

Reason given in written documentation for the navigability finding:

Filled in

- 3) Who are the upland owners?
Please attach status plats, and summarize ownership below:

<u>River Miles (from mouth)</u>	<u>Owner</u>	<u>Date of conveyance or withdrawal</u>
---------------------------------	--------------	---

- 4) Is there any post statehood special land management classification present (such as Wild & Scenic River, other Federal CSU, etc?):
- 5) If the Federal government is the upland owner, were the lands withdrawn prior to statehood?
If so, by what order? When?
- 6) Have submerged lands been meandered from federal conveyances or surveys of uplands?
- 7) Has a conveyancing document purported to transfer ownership to the bed of a navigable water body?
To whom?
What was the date of the conveyance?
- 8) Has the 180-day (quiet title) notice been given? Yes _____ No _____
What was the date of the notice?
- 9) Have Federal Water Rights claims been requested or adjudicated?
Is the waterbody a Federal Power Withdrawal Site? What is the BLM site code (if known)?

Filled in

B. Questions relevant to Navigability.

- 1) Is there evidence that the ordinary water flow is sufficient to
- a) float an 4 or 8 person recreational raft (1000 to 2000 lbs)?
 - b) float a simple raft or canoe, or similar craft such as might have been in use at statehood?

- 2) Is there record of any craft that has floated this waterbody? Are there any first-hand accounts of use?

a) Describe any current or historic evidence of any use of the water body for transportation, trapping access, fishing, hunting or recreational use?

- 3) Are there currently, or historically, any villages, homesteads, or other settlements on, along, or near the water body?

Were there any settlements in the area in 1959?

- 4) Would someone floating the waterway encounter any obstructions such as falls, rapids, riffles, shallows, sandbars, etc?

How far does the obstruction extend (how many miles, or how high is the falls)?

Is there a portage, or possible portage, around the obstruction?

- 5) Characteristics of river channel:

Is the river bed a braided channel?

If it is a braided channel has it been meandered from bank to bank?

Are there sloughs? If so are they interconnected, or dead ended?

Is there any documentation, or other indication that the sloughs were or are used for transportation, hunting, fishing, or other?

- 6) Characteristics of Water Flow:

Filled in

Is it passable only during certain water stages? If so, describe these water stages, when they occur, and how long they last.

During the times when the water is passable, is it widely relied upon for travel or transportation of goods?

For what periods or during what months is the waterbody frozen?

Is it used for travel or transporting goods while frozen?

What types of vehicles are known to have been used on the waterbody while frozen?

C. Questions relevant to access & use of the waterbody:

- 1) Is someone interfering with the use of or access to the waterway?
(If No, skip to next part; if Yes, answer the following questions:)
- 2) Identity of person(s) or group interfering with use and claiming right or interest to the water or the submerged lands? (Federal Agency, Native Corp., other upland owner)
- 3) Specifically, what use is being interfered with? (camping on sandbars, fishing, floating, etc)
- 4) Is the interference with use or access based upon upland owner's or land manager's claim of title?

If yes, what is the title claim based upon.

- 5) Is there interference with state agency staff conducting state activities? If yes, describe.
- 6) Specifically, identify the method of interference with use:

- obstruction/blocked
- attempt to charge fee
- attempt to require permit
- chilling presence signaling claim to superior right to use the water

Filled in

-attempting to establish conditions and regulate use without
requiring a permit

- 7) If a permit is being required, is it a permit to use the waterway or the uplands?
What conditions does the permit place on the use of the waterway?
- 8) Do the users ONLY use the WATERWAY. Is it claimed or, in fact, do the users touch the uplands?
If there is use of the uplands, is the claimed interference with portaging or for other upland uses?
Is all use of the uplands confined to use of 17(b) easements?
- 9) If the use interfered with is of only the waterway itself, where does the user put in and take out of the water?
What is the ownership status of this access point?
- 10) Does the user touch the bed or banks below ordinary high water of the water body? If yes, how?
Does the user touch sand bars above or below ordinary high water?
- 11) Have the persons responsible for the interference been advised of the illegality of their conduct? (by Public Safety, DNR, or ADF&G)?
- 12) Has there been any attempt to negotiate a settlement of this conflict?
- 13) Are there any other problems or concerns (such as 17(b) easements, RS2477 or other rights-of-way?)

Filled in

D. Other Information

1) NAME OF PERSON(S) FILLING OUT THIS FORM:

Name	Agency	Date
------	--------	------

Name	Agency	Date
------	--------	------

2) OTHER CONTACTS:

3) ARE PHOTOGRAPHS, VIDEOS, etc. AVAILABLE FOR THIS WATERBODY? If so, where are they located?

4) SOURCES --(Please be thorough when citing sources. Page numbers need to be provided if possible!)

Concerns regarding the federal regulation that allows for the termination of ANCSA 17(b) easements in the year 2001.

1. Federal regulation states that the BLM State Director shall terminate a public easement if it is not used for the purpose for which it was reserved by the date specified in the conveyance, if any, or by December 18, 2001, whichever occurs first.
2. The regulation also states that the Director shall not terminate an access easement to isolated tracts of publicly owned land solely because of the absence of proof of public use.
3. Because of the complexity of the conveyance process there is very little chance that land conveyances to the Native Corporations and to the State will be completed prior to the year 2001. Consequently, the requests to terminate easements can begin before there is a clear picture of where public lands still exist.
4. In 1988 there was an MOU signed that disseminated the authority to administer and terminate easements between the federal agencies. The agency whose land was being accessed would then be responsible for marking, managing, and if appropriate, terminating all 17(b) easements in their area. This means that in the year 2002 at least three agencies could simultaneously be requesting the termination of easements in their respective areas. The concern is that if we were inundated with requests for termination that the current staff in DNR, ADF&G, and the AG's office would be unable to evaluate and track the significance of each easement and defend them appropriately.
5. No easement management regulations have ever been adopted because the parties involved could never reach a consensus.
6. Currently it appears that the state would be responsible for defending any easement proposed for termination. We would potentially need to provide evidence of use including public use prior to 1977. As the years progress this historic use is becoming more and more difficult to obtain.
7. Statewide, only a very small percentage of the currently existing easements have been marked on the ground. In addition, BLM currently requires an invitation from the affected Native Corporation prior to marking these easements. We are not aware of any invitations that have been received during the last few years. To their credit, the USFS, in the Chugach Region, obtained money through their agency to mark, plat and publish all 17(b) easements in their area. This work is being done with the cooperation of the Eyak Corporation.

Current example of a request for the termination of an easement on Unalaska Island.

- The U.S. Fish and Wildlife Service manages the easements on Unalaska Island as part of the MOU mentioned in item #4 above. The island is part of the Alaska Maritime Refuge whose headquarters are in Homer.
- The Ounalashka Corporation requested the termination of a 17(b) road easement that accesses Humpy Cove, a favorite sport and subsistence fishing area for the local community. The road has been in existence since 1945 and is the only road access to the coast on the north side of the island reserved under 17(b).
- The tidelands of Humpy Cove, which belong to the public, can only be accessed by the road unless one has a boat they can launch in town, four miles away. Ninety percent of the people who live in Dutch Harbor/Unalaska can not afford boats and the weather conditions in the area make their use potentially hazardous.
- To the state this appears to be a necessary easement providing access to an isolated piece of public water. Unfortunately the corporation and the USFWS want to see the easement terminated so the state has had no choice but to appeal their decision. This is a very time consuming process which has included trying to find individuals who can verify that this road was used prior to 1976 (a somewhat difficult task).

by the State of Alaska or by the United States after the conveyance has been issued, unless the responsible agency waives administration. Where the responsible agency is an agency of the Department of the Interior, administration shall be waived when the conveyance covers all the land embraced by a lease, contract, permit, right-of-way, or easement, unless there is a finding by the Secretary that the interest in the United States requires continuation of the administration by the United States. In the latter event, the Secretary shall not renegotiate or modify any lease, contract, right-of-way, or easement, or waive any right or interest belonging to the grantee until the grantee is notified and allowed an opportunity to present his

4-4 Revenues. [Reserved]

4-5 National forest lands.

Every conveyance which includes lands within the boundaries of a national forest shall, as to such lands, be subject to the same restrictions that apply in national forest reservations that:

(1) Until December 18, 1976, the sale of timber from the land is subject to the same restrictions relating to the disposal of timber from the United States as are applicable to national forest lands in Alaska under rules and regulations of the Secretary of Agriculture; and,

(2) Until December 18, 1983, the land shall be managed under the principles of sustained yield and under management practices for protection and enhancement of environmental quality which are more stringent than such management practices on adjacent national forest lands.

4-6 National wildlife refuge system lands.

Every conveyance which includes lands within the national wildlife refuge system shall, as to such lands, provide that the United States has the right of first refusal so long as such lands remain within the system. The right of first refusal shall be for a period of 120 days from the date of notice to the United States that the owner of the land has received a bona fide offer to purchase. The United States shall

exercise such right of first refusal by giving written notice to the village corporation within such 120-day period. The United States shall not be deemed to have exercised its right of first refusal if the village corporation does not consummate the sale in accordance with the notice to the United States.

(b) Every conveyance which covers lands lying within the boundaries of a national wildlife refuge in existence on December 18, 1971, shall provide that the lands shall remain subject to the laws and regulations governing use and development of such refuge so long as such lands remain in the refuge. Regulations governing use and development of refuge lands conveyed pursuant to section 14 shall permit such uses that will not materially impair the values for which the refuge was established.

§ 2650.4-7 Public easements.

(a) *General requirements.* (1) Only public easements which are reasonably necessary to guarantee access to publicly owned lands or major waterways and the other public uses which are contained in these regulations, or to guarantee international treaty obligations shall be reserved.

(2) In identifying appropriate public easements assessment shall be made in writing of the use and purpose to be accommodated.

(3) The primary standard for determining which public easements are reasonably necessary for access shall be present existing use. However, a public easement may be reserved absent a demonstration of present existing use only if it is necessary to guarantee international treaty obligations, if there is no reasonable alternative route or site available, or if the public easement is for access to an isolated tract or area of publicly owned land. When adverse impacts on Native culture, lifestyle, and subsistence needs are likely to occur because of the reservation of a public easement, alternative routes shall be assessed and reserved where reasonably available. The natural environment and other relevant factors shall also be considered.

(4) All public easements which are reserved shall be specific as to use, location, and size. Standard sizes and uses which are delineated in this subsection

may be varied only when justified by special circumstances.

(5) Transportation, communication, and utility easements shall be combined where the combination of such easements is reasonable considering the primary purposes for which easement is to be reserved.

(6) Public easements may be reserved to provide access to present existing Federal, State, or municipal corporation sites; these sites themselves shall not be reserved as public easements. Unless otherwise justified, access to these sites shall be limited to government use.

(7) Scenic easements or easements for recreation on lands conveyed pursuant to the Act shall not be reserved. Nor shall public easements be reserved to hunt or fish from or on lands conveyed pursuant to the Act.

(8) The identification of needed easements and major waterways shall include participation by appropriate Natives and Native corporations, LUPC, State, Federal agencies, and other members of the public.

(9) After reviewing the identified easement needs, the Director shall tentatively determine which easements shall be reserved. Tentative determinations of major waterways shall also be made by the Director and shall apply to rivers, streams, and lakes. All lakes over 340 acres in size shall be screened to determine if they qualify as major waterways. Those smaller than 640 acres may be considered on a case-by-case basis. The Director shall issue a notice of proposed easements which notifies all parties that participated in the development of the easement needs and information on major waterways as to the tentative easement reservations and which directs that all comments be sent to the LUPC and the Director.

(10) The State and the LUPC shall be afforded 90 days after notice by the Director to make recommendations with respect to the inclusion of public easements in any conveyance. If the Director does not receive a recommendation from the LUPC or the State within the time period herein called for, he may proceed with his determinations.

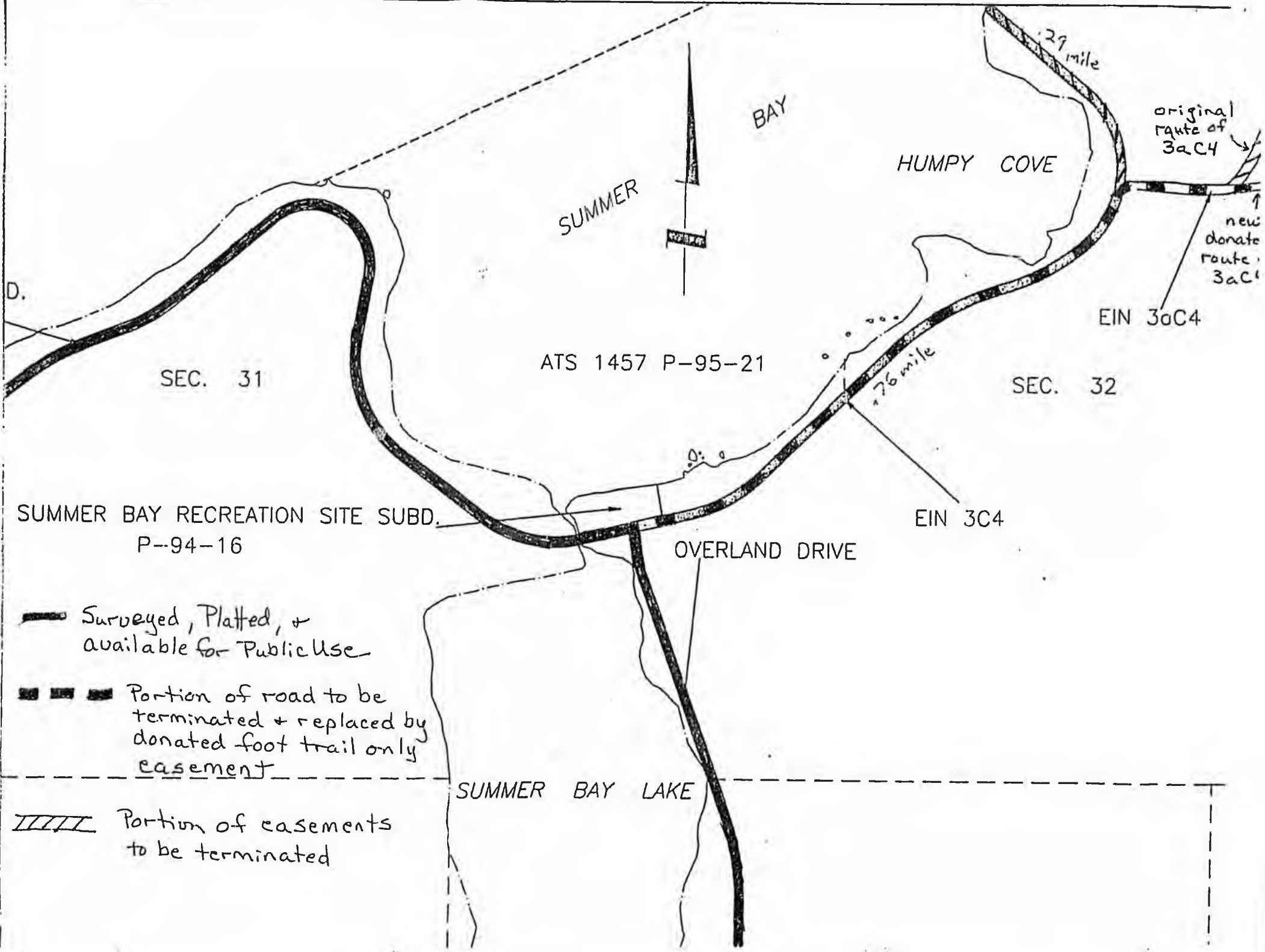
(11) Prior to making a determination of public easements to be reserved, the


Director shall review the recommendations of the LUPC, appropriate Native corporation(s), other Federal agencies, the State, and the public. Consideration shall be given to recommendations for public easement reservations which are timely submitted to the Bureau of Land Management and accompanied by written justification.


(12) The Director, after such review, shall prepare a decision to convey that includes all necessary easements and other appropriate terms and conditions relating to conveyance of the land. If the decision prepared by the Director is contrary to the LUPC's recommendations, he shall notify the LUPC of the variance(s) and shall afford the LUPC 10 days in which to document the reasons for its disagreement before making his final decision. The Director shall then issue a Decision to Issue Conveyance (DIC).


(13) The Director shall terminate a public easement if it is not used for the purpose for which it was reserved by the date specified in the conveyance, if any, or by December 18, 2001, whichever occurs first. He may terminate an easement at any time if he finds that conditions are such that its retention is no longer needed for public use or governmental function. However, the Director shall not terminate an access easement to isolated tracts of publicly owned land solely because of the absence of proof of public use. Public easements which have been reserved to guarantee international treaty obligations shall not be terminated unless the Secretary determines that the reasons for such easements no longer justify the reservation. No public easement shall be terminated without proper notice and an opportunity for submission of written comments or for a hearing if a hearing is deemed to be necessary by either the Director or the Secretary.

(b) *Transportation easements.* (1) Public easements for transportation purposes which are reasonably necessary to guarantee the public's ability to reach publicly owned lands or major waterways may be reserved across lands conveyed to Native corporations. Such purposes may also include transportation to and from communities, airports, docks, marine coastline, groups of private holdings sufficient in



 Surveyed, Platted, & available for Public Use

 Portion of road to be terminated & replaced by donated foot trail only easement

 Portion of easements to be terminated

Inter-Agency Meeting

AGENDA

State of Alaska Appeal of the 17(b) Easement Termination at Summer Bay ("Humpy Cove")

Ounalashka Corp. Appeal of the *Unalaska Easement Decision* Document

Unalaska, AK

October 30, 1997

I. Background

- A) Easement (EIN 3C4) first reserved: Interim Conveyance (IC) No. 223 to the Ounalashka Corporation (OC) on 08/15/1979. No site easement reserved at road terminus.
- B) Description of EIN 3C4 changed to clarify "segments" in Patent No. 50-90-0651 to OC on 09/26/1990.
- C) Summer Bay Recreation Site (including portions of both segments) surveyed (10/1993), easement dedicated to public by OC (4/12/1994).
- D) Majority of segment one (Summer Bay Road) surveyed (10/93), easement dedicated to public by OC (7/21/1994).
- E) Segment two (Overland Drive) surveyed (6/96), easement dedicated to public by OC (7/19/96).

II. FWS Rationale to Terminate Humpy Cove Portion of EIN 3C4

- A) Site easement never reserved at Humpy Cove. *Is there one at Agaulik Bay?*
- B) Present road easement not necessary for access to public lands/waters.
- C) Present use of Humpy Cove is fishing and recreating (contrary to regs).
- D) Lack of dock or boat-launch facility.
- E) Reasonable alternative boat launching sites exist. *(approx. 4 miles)*

site easements - NA

Foot traffic vs 17b provisions

Summer Bay - Humpy Cove

Access for foot traffic??

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

Habitat and Restoration Division

TONY KNOWLES, GOVERNOR

333 Raspberry Road
Anchorage, AK 99518-1599
PHONE: (907) 344-0541
FAX: (907) 267-2464

MEMORANDUM

TO: Robin Willis
Habitat Biologist

FROM: Mike Thompson *MT*
Habitat Biologist

DATE: November 14, 1997

SUBJECT: Unalaska Easement Meeting

A meeting was held on October 30, 1997 to discuss the State of Alaska's appeal of the U.S. Fish and Wildlife Service's (USFWS) proposed vacation of a portion of 17b easement EIN 3 C4. This easement is important because it provides the only legal land access to public lands in Summer Bay and is intensely used by local residents who recreate on public lands. Specifically, the USFWS intends to vacate the 0.29 mile spur providing access from state owned tidelands in Humpy Cove to the 17b easement known as Summer Bay Road. I provided you with a copy of the agenda and attendance list after the meeting. Several points were made which I will summarize in bullet format:

- The city is currently maintaining the Summer Bay Road.
- USFWS indicated that people launch boats on both sides of the bridge across the outlet stream from Summer Cove Lake.
- USFWS indicated that the two boat launches at Dutch Harbor and Unalaska provided sufficient alternative access to public lands within Summer Bay.
- I asked about the Summer Bay Recreational Subdivision and if there was dedicated access to the tidelands. I also wanted to know what uses were allowed at the Recreation Site. Although someone said it was for general public use, Dick Davis quickly pointed out that the Recreational Subdivision was private land and allowed uses were subject to change.

- A plat of the Summer Bay Recreation Site Subdivision was requested by DNR and ADF&G.
- I said that maintaining access to public tide and submerged lands was our goal. I pointed out that the boat launches at Unalaska and Dutch Harbor did not provide alternative access for people without boats. USFWS did not really respond to this comment.
- The access spur to Humpy Cove was discussed in some detail. Doug V. offered a drawing with associated pictures to familiarize people with the site. Someone mentioned that there are two trails into the Cove, one high and one low. They said this created trespass problems. I asked who was responsible for managing the easement and was lack of management justification for vacating the easement. Sharon did mention later that USFWS managed the easements and the nearest staff were in Homer so management was difficult. We determined that people did, in fact, travel to and use Humpy Cove tidelands below the mean high tide mark. The issue of a site easement was discussed and Carol stated that the 60 foot easement was established prior to the existence of site easements and that BLM staff charged with reserving easements determined that the width of the easement was sufficient to accommodate a change in mode of transportation.
- As we discussed before the meeting, I mentioned that a dedicated easement at the Recreational Site may offer a reasonable alternative to the Humpy Cove access point. Someone thought it might be easier to vacate this type of easement as opposed to a 17b easement but John B. said any easement could be vacated. We really didn't discuss this as a negotiated agreement but it was definitely viewed as a possibility when the meeting terminated.
- Although I didn't see the Ounalaska appeal, Bob Hume indicated that the it was based on minor editorial points. I think the description of easements to be vacated were as originally described by BLM and did not reflect current familiar names. I was of the impression that their appeal was not going to be a major issue.
- John B. asked for a 30 day extension and Dennis Hopewell agreed.

USFWS staff are actively pursuing vacation of the easement to Humpy Cove. The arguments they offer for justification are not supported by the facts and we should continue in our efforts to protect access to public lands. I did take the map of Unalaska Island in which Kristiann portrayed public lands, private lands, and dedicated public access. I was only able to show the map to Bob Hume, but it is clearly apparent that access is almost non-existent for such a large land mass.

cc: Carol Shobe John Baker
Bill Hobbs Virginia Hancbuth

led by Act of December 2 1980.

ts prior to conveyance of with-
lected land. — Prior to conveyance,
ons have a right to be consulted about
it of selected lands, a right to subse-
r sale contract lands under certain
right that money derived from with-
separated into an escrow account and
conveyance. Title, however, to native
remains in the United States prior to
pe Fox Corp. v. United States, 458 P.
Alas. 1978), aff'd in part and rev'd in
199 (9th Cir. 1981).

VT

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128 129
this Act to the same extent as they would have participated had they not elected to
acquire title to their former reserve as provided by section 19(b): *Provided*, That nothing
in this subsection shall affect the existing entitlement of any Regional Corporation to
lands pursuant to section 14(h)(8) of this Act: *Provided further*, That no such lands shall
be withdrawn from an area previously withdrawn as a forest reserve without prior
consultation with the Secretary of Agriculture: *Provided further*, That the foregoing
provisions of this subsection shall not become effective unless and until the Village
Corporation for the village of Klukwan shall quitclaim to Chilkat Indian Village,
organized under the provisions of the Act of June 18, 1934 (48 Stat. 984), as amended by
the Act of May 1, 1936 (49 Stat. 1250), all its right, title, and interest in the lands of the
reservation defined in and vested by the Act of September 2, 1957 (71 Stat. 596), which
lands are hereby conveyed and confirmed to said Chilkat Indian Village in fee simple
absolute, free of trust and all restrictions upon alienation, encumbrance, or otherwise:
Provided further, That the United States and the Village Corporation for the village of
Klukwan shall also quitclaim to said Chilkat Indian Village any right or interest they
may have in and to income derived from the reservation lands defined in and vested by
the Act of September 2, 1957, after December 18, 1971, and prior to January 2, 1976.

(2) The lands withdrawn by the Secretary pursuant to paragraph (1) of this subsection
shall be located in the southeastern Alaska region and shall be of similar character and
comparable value, to the extent possible, to those of the Chilkat Valley surrounding the
village of Klukwan. Such withdrawal shall be made within six months of October 4, 1976
and the Village Corporation for the village of Klukwan shall select, within one year from
the time that the withdrawal is made, and be conveyed, twenty-three thousand and forty
acres. None of the lands withdrawn by the Secretary for selection by the Village
Corporation for the village of Klukwan shall have been selected by, or be subject to an
outstanding nomination for selection by, any other Native Corporation organized pursu-
ant to this chapter, or located on Admiralty Island. (Amended January 2 1976, P.L. 94-204
§§ 9, 10, 89 Stat. 1150; October 4 1976, P.L. 94-456 § 1(a), (b), 90 Stat. 1934; November
15 1977, P.L. 95-178 § 1, 91 Stat. 1369)

NOTES TO DECISIONS

Section 22(i) of act must be read in conjunc-
tion with subsection (a). — Section 22(i) of this act,
which requires the Secretary to manage the with-
drawn and selected land prior to conveyance in accor-
dance with applicable laws and regulations, must be
read in conjunction with subsection (a) of this section
and § 11(a)(1)-(2) of this act. *Rowe v. United States*,
464 F. Supp. 1060 (D. Alas. 1979), aff'd in part, 633
F.2d 799 (9th Cir. 1980), cert. denied, 451 U.S. 970,

101 S. Ct. 2047, 68 L. Ed. 2d 349 (1981).

Section 22(i) explicitly provides that the Secretary
of Agriculture must administer National Forest lands
withdrawn under this section prior to conveyance.
Cape Fox Corp. v. United States, 456 F. Supp. 784 (D.
Alas. 1978), aff'd in part and rev'd in part, 646 F.2d
399 (9th Cir. 1981).

Applied in *Johnson v. Chilkat Indian Village*; 457
F. Supp. 384 (D. Alas. 1978).

JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

Sec. 17. (a) (1) There is hereby established the Joint Federal State Land Use Planning
Commission for Alaska. The Planning Commission shall be composed of ten members as
follows:

(A) The Governor of the State (or his designate) and four members who shall be
appointed by the Governor. During the Planning Commission's existence at least one
member appointed by the Governor shall be a Native as defined by this Act.

(B) One member appointed by the President of the United States with the advice and
consent of the Senate, and four members who shall be appointed by the Secretary of the
Interior.

(2) The Governor of the State and the member appointed by the President pursuant to
subsection (a)(1)(B), shall serve as cochairmen of the Planning Commission. The initial
meeting of the Commission shall be called by the cochairmen. All decisions of the
Commission shall require the concurrence of the cochairmen.

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(3) Six members of the Planning Commission shall constitute a quorum. Members shall serve at the pleasure of the appointing authority. A vacancy in the membership of the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) (A) Except to the extent otherwise provided in subparagraph (B) of this subsection, members of the Planning Commission shall receive compensation at the rate of \$100 per day for each day they are engaged in the performance of their duties as members of the Commission. All members of the Commission shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Commission.

(B) Any member of the Planning Commission who is designated or appointed from the Government of the United States or from the Government of the State shall serve without compensation in addition to that received in his regular employment. The member of the Commission appointed by the President pursuant to subsection (a) (1) (B) shall be compensated as provided by the President at a rate not in excess of that provided for level V of the Executive Schedule in title 5, United States Code.

(5) Subject to such rules and regulations as may be adopted by the Planning Commission, the cochairmen, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power —

(A) to appoint and fix the compensation of such staff personnel as they deem necessary, and

(B) to procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 a day for individuals.

(6) (A) The Planning Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings, take such testimony, receive such evidence, print or otherwise reproduce and distribute so much of its proceedings and reports thereon, and sit and act at such times and places as the Commission, subcommittee, or member deems advisable.

(B) Each department, agency, and instrumentality of the executive branch of the Federal Government, including independent agencies, is authorized and directed to furnish to the Commission, upon request made by a cochairman, such information as the Commission deems necessary to carry out its functions under this section.

(7) The Planning Commission shall —

(A) undertake a process of land-use planning, including the identification of and the making of recommendations concerning areas planned and best suited for permanent reservation in Federal ownership as parks, game refuges, and other public uses, areas of Federal and State lands to be made available for disposal, and uses to be made of lands remaining in Federal and State ownership;

(B) make recommendations with respect to proposed land selections by the State under the Alaska Statehood Act and by Village and Regional Corporations under this Act;

(C) be available to advise upon and assist in the development and review of land-use plans for lands selected by the Native Village and Regional Corporations under this Act and by the State under the Alaska Statehood Act;

(D) review existing withdrawals of Federal public lands and recommend to the President of the United States such additions to or modifications of withdrawals as are deemed desirable;

(E) establish procedures, including public hearings, for obtaining public views on the land-use planning programs of the State and Federal Governments for lands under their administration;

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(F) establish representatives users, wilderness

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(F) establish a committee of land-use advisers to the Commission, made up of representatives of commercial and industrial land users in Alaska, recreational land users, wilderness users, environmental groups, Alaska Natives, and other citizens;

(G) make recommendations to the President of the United States and the Governor of Alaska as to programs and budgets of the Federal and State agencies responsible for the administration of Federal and State lands;

(H) make recommendations from time to time to the President of the United States, Congress, and the Governor and legislature of the State as to changes in laws, policies, and programs that the Planning Commission determines are necessary or desirable;

(I) make recommendations to insure that economic growth and development is orderly, planned and compatible with State and national environmental objectives, the public interest in the public lands, parks, forests, and wildlife refuges in Alaska, and the economic and social well-being of the Native people and other residents of Alaska;

(J) make recommendations to improve coordination and consultation between the State and Federal Governments in making resource allocation and land use decisions; and

(K) make recommendations on ways to avoid conflict between the State and the Native people in the selection of public lands.

(8) (A) On or before January 31 of each year, the Planning Commission shall submit to the President of the United States, the Congress, and the Governor and legislature of the State a written report with respect to its activities during the preceding calendar year.

(B) The Planning Commission shall keep and maintain accurate and complete records of its activities and transactions in carrying out its duties under this Act, and such records shall be available for public inspection.

(C) The principal office of the Planning Commission shall be located in the State.

(9) (A) The United States shall be responsible for paying for any fiscal year only 50 per centum of the costs of carrying out subsections (a) and (b) for such fiscal year.

(B) For the purpose of meeting the responsibility of the United States in carrying out the provisions of this section, there is authorized to be appropriated \$1,500,000 for the fiscal year ending June 30, 1972, and for each succeeding fiscal year.

(10) The Planning Commission shall submit, in accordance with this paragraph, comprehensive reports to the President of the United States, the Congress, and the Governor and legislature of the State with respect to its planning and other activities under this Act, together with its recommendations for programs or other actions which it determines should be implemented or taken by the United States and the State. An interim, comprehensive report covering the above matter shall be so submitted on or before May 30, 1976. A final and comprehensive report covering the above matter shall be so submitted on or before May 30, 1979. The Commission shall cease to exist effective June 30, 1979.

(b) (1) The Planning Commission shall identify public easements across lands selected by Village Corporations and the Regional Corporations and at periodic points along the courses of major waterways which are reasonably necessary to guarantee international treaty obligations, a full right of public use and access for recreation, hunting, transportation, utilities, docks, and such other public uses as the Planning Commission determines to be important.

(2) In identifying public easements the Planning Commission shall consult with appropriate State and Federal agencies, shall review proposed transportation plans, and shall receive and review statements and recommendations from interested organizations and individuals on the need for and proposed location of public easements: Provided, That any valid existing right recognized by this Act shall continue to have whatever right of access as is now provided for under existing law and this subsection shall not operate in any way to diminish or limit such right of access.

(3) Prior to granting any patent under this Act to the Village Corporation and Regional Corporations, the Secretary shall consult with the State and the Planning Commission and shall reserve such public easements as he determines are necessary.

(c) In the event that the Secretary withdraws a utility and transportation corridor across public lands in Alaska pursuant to his existing authority, the State, the Village Corporations and the Regional Corporations shall not be permitted to select lands from the area withdrawn.

(d) (1) Public Land Order Numbered 4582, 34 Federal Register 1025, as amended, is hereby revoked. For a period of ninety days after the date of enactment of this Act all unreserved public lands in Alaska are hereby withdrawn from all forms of appropriation under the public land laws, including the mining (except locations for metalliferous minerals) and the mineral leasing laws. During this period of time the Secretary shall review the public lands in Alaska and determine whether any portion of these lands should be withdrawn under authority provided for in existing law to insure that the public interest in these lands is properly protected. Any further withdrawal shall require an affirmative act by the Secretary under his existing authority, and the Secretary is authorized to classify or reclassify any lands so withdrawn and to open such lands to appropriation under the public land laws in accord with his classifications. Withdrawals pursuant to this paragraph shall not affect the authority of the Village Corporations, the Regional Corporations, and the State to make selections and obtain patents within the areas withdrawn pursuant to section 11.

(2) (A) The Secretary, acting under authority provided for in existing law, is directed to withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and from selection under the Alaska Statehood Act, and from selection by Regional Corporations pursuant to section 11, up to, but not to exceed, eighty million acres of unreserved public lands in the State of Alaska, including previously classified lands, which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems: Provided, That such withdrawals shall not affect the authority of the State and the Regional and Village Corporations to make selections and obtain patents within the areas withdrawn pursuant to section 11.

(B) Lands withdrawn pursuant to paragraph (A) hereof must be withdrawn within nine months of the date of enactment of this Act. All unreserved public lands not withdrawn under paragraph (A) or subsection 17(d) (1) shall be available for selection by the State and for appropriation under the public land laws.

(C) Every six months, for a period of two years from the date of enactment of this Act, the Secretary shall advise the Congress of the location, size and values of lands withdrawn pursuant to paragraph (A) and submit his recommendations with respect to such lands. Any lands withdrawn pursuant to paragraph (A) not recommended for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems at the end of the two years shall be available for selection by the State and the Regional Corporations, and for appropriation under the public land laws.

(D) Areas recommended by the Secretary pursuant to paragraph (C) shall remain withdrawn from any appropriation under the public land laws until such time as the Congress acts on the Secretary's recommendations, but not to exceed five years from the recommendation dates. The withdrawal of areas not so recommended shall terminate at the end of the two year period.

(E) Notwithstanding any other provision of this subsection, initial identification of lands desired to be selected by the State pursuant to the Alaska Statehood Act and by the Regional Corporations pursuant to section 12 of this Act may be made within any area withdrawn pursuant to this subsection (d), but such lands shall not be tentatively approved or patented so long as the withdrawals of such areas remain in effect: Provided,

That selection of lands be affected by such v granted as authoriza any areas withdra Corporations or the made available for time periods establi extend to the ext subsection (2).

(3) Any lands w Secretary under ap to grant leases, p withdrawal. (Amer

Cross references. - Alaska lands, see AS 3

- I. General Considerat
- II. Public Easeme
 - A. In General.
 - B. Constructic
- III. Lands Withdri

I. GENERAL

Commission's p to native lands. - the Land Use Plan and make recomme of lands remaining also to undertake so spect to native lands. the public use of the Defense Fund v. Anc 1977).

Action of Secret from oil and gas l discretion. - See (9th Cir. 1975), cert 2171. 48 L. Ed. 2d 7

Applied in Alask: Andrus, 435 F. Supp Mgt. of Alas. Lands F. Supp. 753 (D. Ala States, 456 F. Supp and rev'd in part Stratman v. Watt, dismissed, U.S. 170 (1982).

Cited in Chugac F.2d 723 (9th Cir. 1 Supp. 1060 (D. Ala

II. PU

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1025, as amended, is actment of this Act all forms of appropriation ons for metalliferous ie the Secretary shall ortion of these lands w to insure that the drowal shall require and the Secretary is o open such lands to ications. Withdrawals age Corporations, the in patents within the

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ph (C) shall remain til such time as the d five years from the ed shall terminate at

tial identification of hood Act and by the ade within any area l not be tentatively n in effect: Provided,

That selection of lands by Village Corporations pursuant to section 12 of this Act shall not be affected by such withdrawals and such lands selected may be patented and such rights granted as authorized by this Act. In the event Congress enacts legislation setting aside any areas withdrawn under the provisions of this subsection which the Regional Corporations or the State desired to select, then other unreserved public lands shall be made available for alternative selection by the Regional Corporations and the State. Any time periods established by law for Regional Corporations or State selections are hereby extended to the extent that delays are caused by compliance with the provisions of this subsection (2).

(3) Any lands withdrawn under this section shall be subject to administration by the Secretary under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by the withdrawal. (Amended January 2 1976, P.L. 94-204 § 7, 89 Stat. 1149)

Cross references. — For the steering council for Alaska lands, see AS 38.95.100 — 38.95.140.

NOTES TO DECISIONS

- I. General Consideration
- II. Public Easement
 - A. In General.
 - B. Constructive
- III. Lands Withdrawn

I. GENERAL

Commission's report to native lands. — the Land Use Plan and make recommendations of lands remaining also to undertake some planning functions with respect to native lands, those functions did not relate to the public use of these lands. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Action of Secretary in withdrawing lands from oil and gas lease entry held not abuse of discretion. — See Burglin v. Morton, 527 F.2d 486 (9th Cir. 1975), cert. denied, 425 U.S. 973, 96 S. Ct. 2171, 48 L. Ed. 2d 796 (1976).

Applied in Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977); Citizens for Mgt. of Alas. Lands v. Department of Agriculture, 447 F. Supp. 753 (D. Alas. 1978); Cape Fox Corp. v. United States, 456 F. Supp. 784 (D. Alas. 1978), aff'd in part and rev'd in part, 646 F.2d 399 (9th Cir. 1981); Stratman v. Watt, 656 F.2d 1321 (9th Cir. 1981), cert. dismissed, U.S. , 102 S. Ct. 1744, 72 L. Ed. 2d 170 (1982).

Cited in Chugach Natives, Inc. v. Doyon, Ltd., 588 F.2d 723 (9th Cir. 1978); Rowe v. United States, 464 F. Supp. 1060 (D. Alas. 1979).

II. PUBLIC EASEMENTS.

A. In General.

The entire easement selection process of the Alaska Native Claims Settlement Act is contained in this sub-section. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Purpose of public easements. — Congress was justifiably concerned that certain portions of the state which were to remain in the public domain would

ecome inaccessible, or landlocked by native lands. It appears, therefore, that the public easements were to be reserved to provide access to the lands not selected, and they were not intended to provide the public with right to use the native lands for recreational activities. This construction of the act is supported by its language and legislative history. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

The purpose of the easements along the courses of major waterways is to provide a place for docks, campsites and such facilities to service those who are properly using the public waters. This purpose is apparently accommodated by the reservation of site easements under the order of the Secretary of the Interior. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Subsection does not create cloud on title. — It seems rather certain from the general purpose of the Alaska Native Claims Settlement Act that Congress did not envision the narrow purpose of this subsection as creating a cloud on the title and usability of all the natives' land. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

Pursuant to the Alaska Statehood Act, the Submerged Lands Act of 1953 applies to Alaska. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

B. Construction.

This act prevails where there is conflict with other law. — This act contains a preemption section which states: "To the extent that there is a conflict between any provision of this act and any other federal laws applicable to Alaska, the provisions of this act shall govern." Pub. L. 92-203, 85 Stat. 688, § 26. Apparently this section was not codified. Alaska Pub. Easement Defense Fund v. Andrus, 435 F. Supp. 664 (D. Alas. 1977).

NATIVE CORPORATIONS WHICH HAVE A 17(b)
AGREEMENT WITH THE DEPARTMENT OF INTERIOR
February 4, 1998

<u>Village Corporation</u>	<u>IC</u>	<u>Regional Corporation</u>
Akutan Corporation	255	Aleut Corporation
Arctic Slope Regional Corp.	055	Arctic Slope Regional Corp.
Arctic Slope Regional Corp.	068	Arctic Slope Regional Corp.
Atkasook Corporation	049	Arctic Slope Regional Corp.
Atkasook Corporation	090	Arctic Slope Regional Corp.
Atxam Corporation	159	Aleut Corporation
Bay View, Inc.	038	Bristol Bay Native Corp.
Bay View, Inc.	036	Bristol Bay Native Corp.
Belkofski Corporation	133	Aleut Corporation
Bethel Native Corporation	142	Calista Corporation
Chaluka Corporation	125	Aleut Corporation
Chignik Lagoon Native Corp.	083	Bristol Bay Native Corp.
Choggiung Limited	008	Bristol Bay Native Corp.
Choggiung Limited	233	Bristol Bay Native Corp.
Choggiung Limited	026	Bristol Bay Native Corp.
Choggiung Limited	141	Bristol Bay Native Corp.
Cook Inlet Region, Inc.	046	Cook Inlet Region, Inc.
Cook Inlet Region, Inc.	116	Cook Inlet Region, Inc.
Cully Corporation	056	Arctic Slope Regional Corp.
Cully Corporation	058	Arctic Slope Regional Corp.
Doyon, Limited	013	Doyon, Limited
Doyon, Limited	028	Doyon, Limited
Doyon, Limited	078	Doyon, Limited
Doyon, Limited	089	Doyon, Limited
English Bay Corporation	020	Chugach Natives, Inc.
English Bay Corporation	022	Chugach Natives, Inc.
Eyak Corporation	127	Chugach Natives, Inc.
Eyak Corporation	127	Chugach Natives, Inc.
False Pass Corporation	187	Aleut Corporation
Far West, Inc.	081	Koniag, Inc.
Kaguyak, Inc.	114	Koniag, Inc.
Kaktovik Inupiat Corporation	052	Arctic Slope Regional Corp.
Kaktovik Inupiat Corporation	085	Arctic Slope Regional Corp.
Karluk Native Corporation	105	Koniag, Inc.
Kenai Native Association, Inc.	001	Cook Inlet Region, Inc.
Kikiktagruk Inupiat Corporation	004	NANA Regional Corporation
Kikiktagruk Inupiat Corporation	062	NANA Regional Corporation
Kikiktagruk Inupiat Corporation	006	NANA Regional Corporation
Kikiktagruk Inupiat Corporation	024	NANA Regional Corporation
King Cove Corporation	151	Aleut Corporation
Kwethluk, Inc.	213	Calista Corporation
Levelock Natives, Limited	193	Bristol Bay Native Corp.
Manokotak Natives, Limited	181	Bristol Bay Native Corp.
Meshik, Inc.	091	Bristol Bay Native Corp.

Page 2

Native Corporations which have a 17(b) agreement with the Department of Interior

NANA Regional Corporation	010	NANA Regional Corporation
Natives of Afognak, Inc.	103	Koniag, Inc.
Natives of Afognak, Inc.	060	Koniag, Inc.
Natives of Akhiok, Inc.	135	Koniag, Inc.
Natives of Kodiak, Inc.	097	Koniag, Inc.
Nelson Lagoon Corporation	167	Aleut Corporation
Ninilchik Native Assc, Inc.	095	Cook Inlet Region, Inc.
Ninilchik Native Assc, Inc.	095	Cook Inlet Region, Inc.
Nu-Nachk Pit, Inc.	1t7	Koniag, Inc.
Nunamiut Corporation	069	Arctic Slope Regional Corp.
Oceanside Corporation	080	Bristol Bay Native Corp.
Old Harbor Native Corporation	165	Koniag, Inc.
Olgoon Corporation	042	Arctic Slope Regional Corp.
Olgoon Corporation	043	Arctic Slope Regional Corp.
Olgoonik Corporation	075	Arctic Slope Regional Corp.
Ounalashka Corporation	123	Aleut Corporation
Ounalashka Corporation	040	Aleut Corporation
Ouzinkie Native Corporation	064	Koniag, Inc.
Ouzinkie Native Corporation	053	Koniag, Inc.
Port Graham Corporation	018	Chugach Natives, Inc.
Port Graham Corporation	137	Chugach Natives, Inc.
Port Graham Corporation	023	Chugach Natives, Inc.
Port Graham Corporation	066	Chugach Natives, Inc.
Saguyak, Incorporated	119	Bristol Bay Native Corp.
Saguyak, Incorporated	199	Bristol Bay Native Corp.
Saguyak, Incorporated	201	Bristol Bay Native Corp.
Seldovia Native Assoc., Inc.	196	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	139	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	183	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	016	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	185	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	101	Cook Inlet Region, Inc.
Shumagin Corporation	121	Aleut Corporation
St. George Taneq Corporation	129	Aleut Corporation
St. Mary's Native Corporation	169	Calista Corporation
Tanadguisix Corporation	149	Aleut Corporation
Tatitlek Corporation	153	Chugach Natives, Inc.
Tatitlek Corporation	144	Chugach Natives, Inc.
Tatitlek Corporation	131	Chugach Natives, Inc.
Tigara Corporation	050	Arctic Slope Regional Corp
Twin Hills Native Corporation	076	Bristol Bay Native Corp.
Tyonek Native Corporation	173	Cook Inlet Region, Inc.
Tyonek Native Corporation	087	Cook Inlet Region, Inc.
Ukpeagvik Inupiat Corporation	044	Arctic Slope Regional Corp
Ukpeagvik Inupiat Corporation	045	Arctic Slope Regional Corp
Unga Corporation	111	Aleut Corporation
Yak-Tat Kwan, Inc.	003	Sealaska Corporation
Yak-Tat Kwaan, Inc.	155	Sealaska Corporation

NATIVE CORPORATIONS WHICH HAVE RECEIVED PATENT
AND MAY OWE 17(B) EASEMENTS

February 4, 1998

<u>Village Corporation</u>	<u>Patent</u>	<u>Region Corporation</u>
Afognak Natives, Inc.	50-79-0125	Koniag, Inc.
Afognak Natives, Inc.	50-77-0094	Koniag, Inc.
Akutan Corporation	50-80-0008	Aleut Corporation
Bethel Native Corporation	50-79-0046	Calista Corporation
Cape Fox Corporation	50-78-0083	Sealaska Corporation
Chenega Corporation	50-79-0106	Chugach Natives Inc.
Chignik Lagoon Native Corp.	50-78-0030	Bristol Bay Native Corp
Choggiung Limited	50-76-0091	Pristol Bay Native Corp
Choggiung Limited	50-79-0144	Bristol Bay lative Corp
Eklutna, Inc.	50-78-0015	Cook Inlet Region, Corp
Eklutna, Inc.	50-79-0057	Cook Inlet Region, Corp
Kaktovik Inupiat Corporation	50-77-0046	Arctic Slope Regional Corp.
Kenai Natives Association, Inc.	50-74-0109	Cook Inlet Region, Inc.
Knikatnu, Inc.	50-77-0101	Chugach Natives Inc.
Klukwan, Incorporated	50-74-0155	Sealaska Corporation
Ninilchik Native Assoc., Inc.	50-78-0053	Cook Inlet Region, Inc.
Ninilchik Native Assoc., Inc.	50-78-0053	Cook Inlet Region, Inc.
Ninilchik Native Assoc., Inc.	50-79-0001	Cook Inlet Region, Inc.
Nu-Nachk Pit, Inc.	50-78-0089	Koniag, Inc.
Oceanside Corporation	50-78-0029	Bristol Bay Native Corp
Old Harbor Native Corporation	50-79-0060	Koniag, Inc.
Ounalashka Corporation	50-76-0022	Aleut Corporation
Ouzinkie Native Corporation	50-77-0118	Koniag, Inc.
Seldovia Native Assoc., Inc.	50-79-0072	Cook Inlet Region, Inc.
Seldovia Native ASBOC., Inc.	50-79-0078	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	50-79-0099	Cook Inlet Region, Inc.
Seldovia Native Assoc., Inc.	50-79-0023	Cook Inlet Region, Inc.
St. George Tanaq Corporation	50-79-0008	Aleut Corporation
Tazlina, Incorporated	50-76-0023	Ahtna Inc.
The Port Graham Corporation	50-77-0127	Chugach Hatives, Inc.
Tyonek Native Corporation	50-79-0064	Cook Inlet Region, Inc.
Ukpeagvik Inupiat Corporation	50-75-0153	Arctic Slope Regional Corp.

CONTACT: Jane Angvik

269-8503

COMPONENT GOALS:

The Division of Land has two primary responsibilities under this component:

1. RS 2477 Rights-of-way.
2. Navigability.

The goals of the RS2477/Navigability Component are:

1. RS 2477: Defend the state's rights under RS 2477 to protect public access to state land and resources.
2. Navigability: Assert state ownership of and public rights to navigable and public waters. Includes support of litigation, review of all federal administrative actions affecting navigable waters, and providing agencies and the public with information on navigable and public waters.

EXPENDITURES:

Personal Services			
Other Program Costs		115.0	115.0
Total		115.0	115.0

FY97
ACTUAL

FY98
AUTHORIZED

FY99
GOVERNOR

FUNDING SOURCES:

Federal Receipts			
General Fund Match			
General Fund		115.0	115.0
GF Program Receipts			
GF Des. Prog Rec			
Other Funds			
Total		115.0	115.0

STAFFING:

Permanent Full-Time			
Permanent Part-Time			
Temporary			

DESCRIPTION OF COMPONENT SERVICES:

This component includes funding for both the RS 2477 program and the Navigability program. Both programs directly impact state rights and the public's rights as addressed through the services provided in these programs.

RS2477: This component provides the funding for ongoing activities associated with the RS2477 research project and litigation. Since 1992, the Department has researched more than 1900 routes, identified approximately 585 routes as potential RS2477s, and certified 11 routes through the regulatory process. Further research of trails should be accomplished. Other activities involve response to inquiries from the public that may require further research, administrative actions that must be taken to ensure reservation of these rights across lands conveyed by BLM to third parties, and maintaining the integrity of the information gathered to date. The division also supports litigation efforts by the Dept of Law. (Continued on Page 2.)

DESCRIPTION OF COMPONENT CHANGES:

This component was created by the legislature for FY 98. There is no change anticipated for FY 99.

COMPONENT GOALS AND SERVICES

Form CF1
Revised 8/5/98

AGENCY NATURAL RESOURCES

BRU Statehood Defense

COMPONENT RS2477/Navigability #2226

Page 1 of 2

Revised Date:

FY99

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CONTINUATION OF FORM: CF1

DESCRIPTION OF COMPONENT SERVICES (continued):

Navigability: This component provides funding for on-going activities associated with the Navigability program that 1) provides information to the public and agencies on the location and rights to navigable and public waters; 2) does research and other work to support state litigation asserting state ownership; and 3) reviews all federal decisions and plans to assure that state ownership and public use are protected.

RS 2477 (\$40.0)

Tasks:

1. Routes to litigation list.
 - * Continue in-depth research on selected trails
 - * Do initial identification of land owners and title search at recorder's office, Bureau of Land Management, and on Motzlik for non-certified routes in preparation of future certification action.
2. Continue to complete quality control on files.
 - * Standardize casefile summaries and LAS input.
 - * Compare file contents with casefile summaries to verify information is complete in files.
3. Newsletter
 - * Prepare a one-page newsletter to send to mailing list providing current status of litigation and any changes to the database.
4. Public Inquiries - respond to public or Web page inquiries received.

Navigability (\$75.5)

1. Public/agency information:
 - * Respond to public and agency requests for navigability determinations or information.
 - * Maintain/update database and web site that provides information on navigability status.
 - * Develop and distribute maps and public informational brochures for specific waterbodies.
2. Research in support of on-going or new litigation, including litigation with both US Department of Interior and US Forest Service. Includes research into public use, historical use, and possibly hydrology of specific waterbodies. Research done in coordination with Departments of Law and Fish and Game.
3. Review all BLM administrative decisions and all federal land use plans and regulations that may affect state ownership or public use. Provide comments and file appeals as necessary.

ADDITIONAL EXPLANATION FORM
Revised 8/5/96

AGENCY NATURAL RESOURCES
BRU Statehood Defense

Page 2 of 2
Revised Date: FY99

COMPONENT RS2477/Navigability #2226

000828

CONTACT:

Jane Angvik

269-8503

OBJECTIVES AND ACCOMPLISHMENT MEASURES:

RS 2477

1. Review land conveyances for RS2477 conflicts.
2. Assist the Attorney General's Office in research related to RS2477 litigation.
3. Respond to requests submitted by phone, e-mail, RS2477 Web site, letters, etc.
4. Update mapped and tabular statewide RS2477 data. Make data available for public and agency use.
5. Complete standardization of files on LAS and databases.

Navigability

1. Issue at least five navigability determinations and review navigability determinations prepared by ADF&G.
2. Respond to all BLM navigability decisions and review BLM land conveyances.
3. Assist the Attorney General's Office in research related to administrative appeals and litigation regarding navigable waters.
4. Provide information to agencies and the public on the navigability of waterbodies. Respond to requests submitted by phone, e-mail, Navigability Web Site, letters, etc.
5. Prepare public information brochures for three more waterbodies. Brochures provide the public with information about land ownership and public access to specific waterways where conflicts/problems have been occurring.
6. Update mapped and tabular statewide navigability data. Make data available for public and agency use.

STATUTORY/REGULATORY CITATIONS

AS 38.05

AS 38.05				

**COMPONENT
OBJECTIVES AND
ACCOMPLISHMENT
MEASURES**
Form CF2
REVISED 8/5/96

AGENCY NATURAL RESOURCES

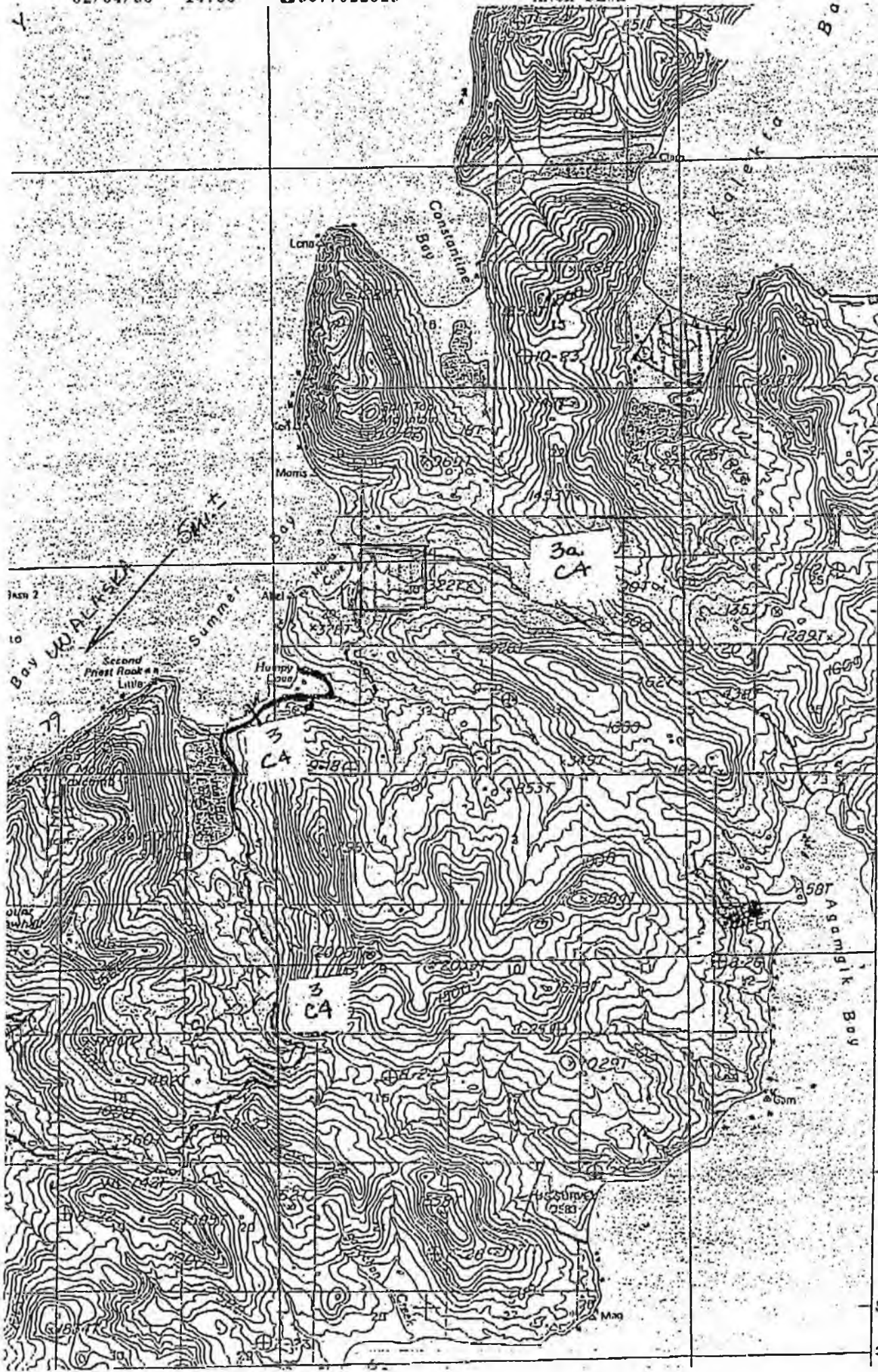
BRU Statehood Defense

COMPONENT RS2477/Navigability #2226

Page 1 of 1

Revised Date:

FY99



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-  The Alaska

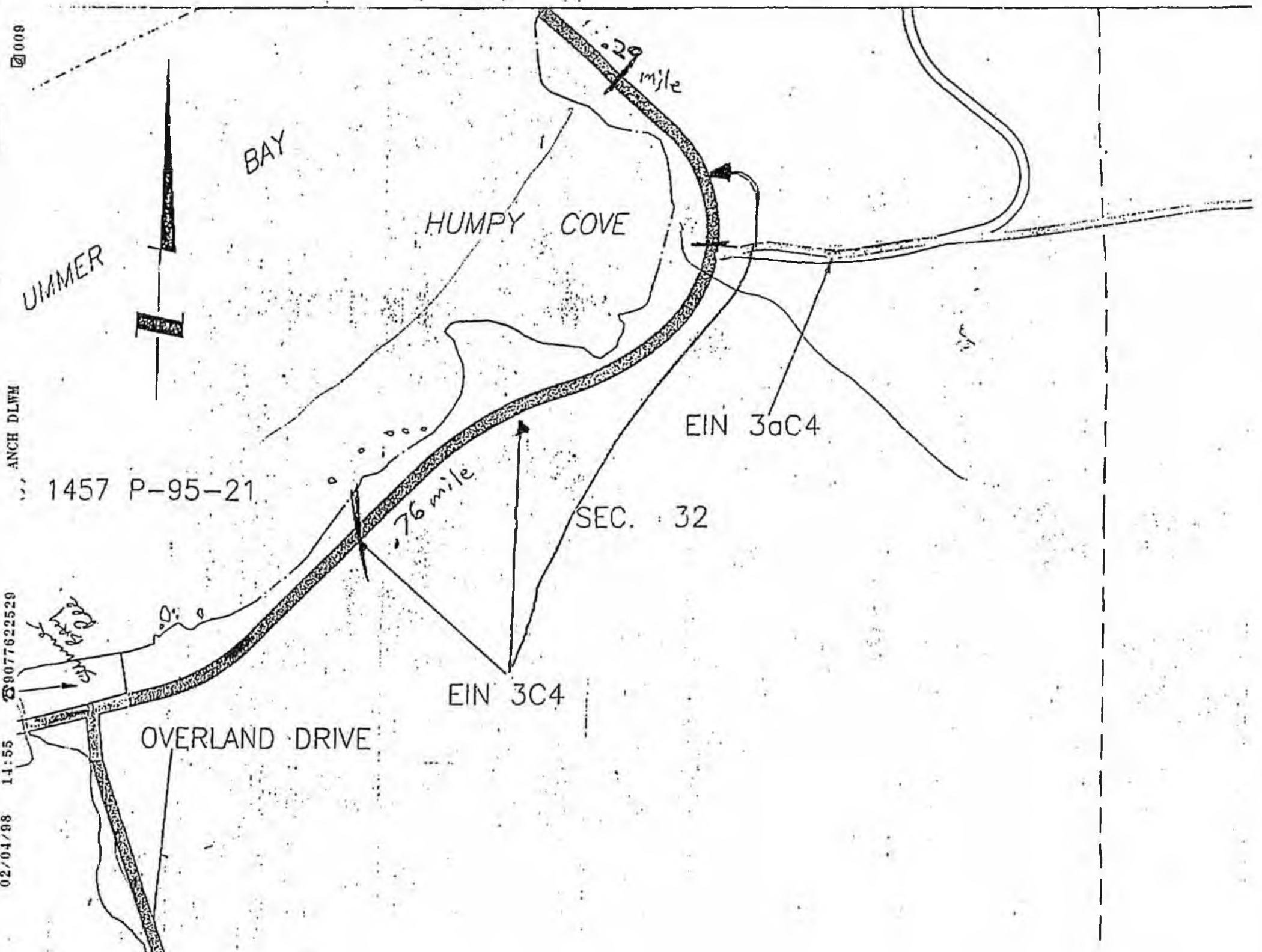
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OVERLAND DRIVE

1457 P-95-21

UMMER

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LAND

TONY KNOWLES, GOVERNOR

3601 C STREET, SUITE 1122
ANCHORAGE, ALASKA 99503-5947
PHONE: (907) 269-8503
FAX: (907) 269-8904

MEMORANDUM

TO: Senate Resources Committee

From: Jane Angvik
Director, Division of Land

Date: February 4, 1998

Sub.: Department of Natural Resources Response to Auditors comments before
Senate Resources Committee on January 30, 1998

The Legislative Auditors completed and issued their review of waterway management issues in Audit number 10-454-97 on March 28, 1997. It covers the period from July, 1995 through March, 1997. From July 1, 1995 through June 30, 1996 there was no navigability program in DNR due to budget reductions. The interdepartmental Navigability Team was established in August, 1996. Therefore, the audit covers only seven months of its operation. In that time several of the issues identified in the audit were addressed.

The audit raises several issues about 17(b) easements across Native lands. DNR would like to point out to the committee that the 17(b) monitoring program in the Division of Land is not paid for as part of the Navigability project. It is housed in the Realty Services Section and is paid out of the general fund appropriation to the division. The BLM has 14 full time staff who work on the review of 17(b) easements in Native corporation conveyances. The Division of Land has one full time person who reviews conveyances for 17(b) easements. Similarly, the BLM devotes 36 full time positions to the adjudication of Native Allotments and the Division of Land has one full time person who reviews them in order to protect the interests of the state, which includes 17(b) easements, and navigability claims.

The issue of the BLM easement conformance agreements needs additional research to determine the extent of the problem. The Division of Land will report back to the Legislature on our findings with recommendations that may be appropriate.

The auditor's remarks related to the adjudication of water rights will be forwarded to the Division of Mining and Water Management, which has responsibility for this issue. That division will address the adjudication of federal reserve water rights.

KARLUK RIVER

Access & Use Information

Located on the southwest end of Kodiak Island approximately one hour by air from the city of Kodiak, the Karluk River area provides excellent opportunities for fishing, hunting, hiking, wildlife viewing, and other wilderness activities.

The Karluk River is 22 miles long. Though all but the lower 8 miles of the river are located within the boundary of the Kodiak National Wildlife Refuge (KNWR), all of the lands adjacent to the river and most of the land surrounding Karluk Lagoon are privately owned. Public use trail and site easements have been reserved at intervals along the river to provide reasonable access to the remaining public land and major waterways. In addition, Koniag, Inc., and Karluk Tribal Council, the owners of most of the lands adjacent to the river, have implemented permit programs to allow the use of their lands along the river.

This brochure will attempt to answer questions regarding access to, and use of, private and public land, and assist the visitor in planning a trip to the Karluk River. The map provided on the opposite side of this brochure depicts the land ownership pattern and the location of public use easements. The map inset provides additional details for visitors beginning or ending their trip at Karluk Village.

No matter where you go or how long you stay, we hope you have a safe and memorable trip. Please remember to be a courteous camper by packing out your waste and, if possible, leaving this beautiful area in better shape than when you arrived.

Questions and Answers

Q. "Do I need to get permission from the landowners before I begin my trip?" **A.** Yes, if you plan to cross, enter, or use private land. Where you intend to begin and end your trip, as well as the length of time you want to spend in a particular area, will determine what land use permits are required. As previously mentioned, there are public use easements available at various locations along the river for anyone to use, but they are limited in number, and there are restrictions on uses.

Q. "What type of restrictions are there on the use of these easements?" **A.** The easements exist only to provide access across privately owned lands to reach public lands or major waterways. No hunting or fishing from or on an easement is permitted. There are two types of easements: site easements (marked as a triangle on the map and described as a campsite), and trail easements (marked with bold dashed lines on the map). Site easements may be used for temporary (up to 24 hrs) camping, loading, or unloading; and vehicular parking, including boats and aircraft where appropriate. Trail easements are 25 feet wide and may be used for travel by foot, dogsled, animals, snowmobiles, two and three-wheel vehicles, and small all-terrain vehicles under 3,000 lbs. gross vehicle weight. Camping is not allowed on trail easements. There is no access from trail easements to the river except at one of the designated site easements. If you are on the river and wish to go on the land for any reason, you may do so only at a site easement unless you have permission from the landowner.

Q. "How do I find these easements?" **A.** Easements shown on the map are described below in the Easement Descriptions section. Whenever possible, a GPS (Global Positioning System) reading has also been provided. Each easement should be identified by a Bureau of Land Management (BLM) marker, unless the marker has been destroyed by bears. If a marker is not present, easements may be found by the use of landmarks such as islands, stream mouths, etc., or the presence of well worn trails and other signs of use. It is your responsibility to make sure you are located on the easement. For additional information on the location of easements, you may contact the KNWR or BLM. Their addresses and phone numbers are listed elsewhere in this brochure.

Q. "How often can I use the same easement?" **A.** There is no explicit restriction on the number of times an easement may be used. However, the reservation of easements was designed to allow for the logical progression of travelers from one location to the next when moving up- and down-river.

Q. "Do I need a land use permit or permission for crossing or using private lands?" **A.** Yes, a permit or prior permission from the owner or the owner's designee is required anytime the visitor wishes to enter, cross or use private land, except at designated easements. Use of private land, including travel across the land without obtaining prior permission, may be trespass.

Q. "Whom do I contact for a land use permit for private lands?" **A.** The map on the back side of this brochure enables you to determine the appropriate upland owner. Some landowners, such as Koniag, Inc., issue permits for recreational use of their lands. Such uses include fishing, camping, and sometimes hunting. For current information on the uses permitted and the cost of a permit, contact the owners at the addresses listed below:

Koniag, Inc.
4300 B Street, Suite 407
Anchorage, AK 99503
(907) 561-2668

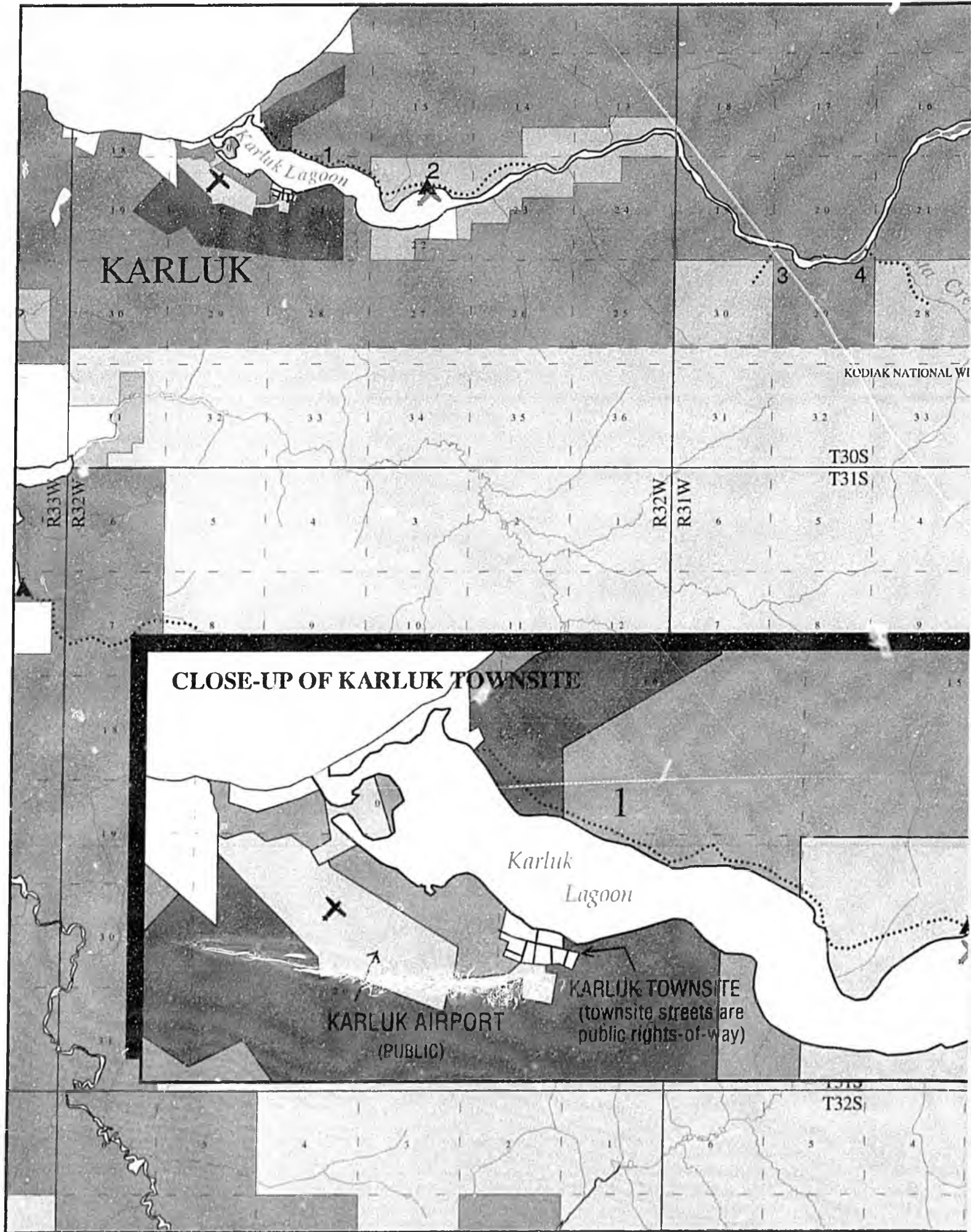
Karluk Tribal Council
Box 22
Karluk, AK 99608
(907) 241-2218

Q. "May I travel by boat or canoe on the water without obtaining a land use permit?" **A.** Yes. Under state law, the public has the right to use and have access to the Karluk River. The water is available for public use for the purpose of fishing, boating, and other activities. However, any overnight camping or use of the uplands for any purpose, except at designated public use easements, requires the permission of the upland owner.


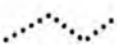











Q. "May I stand in the river (below the Ordinary High Water Mark) without getting a land use permit?"

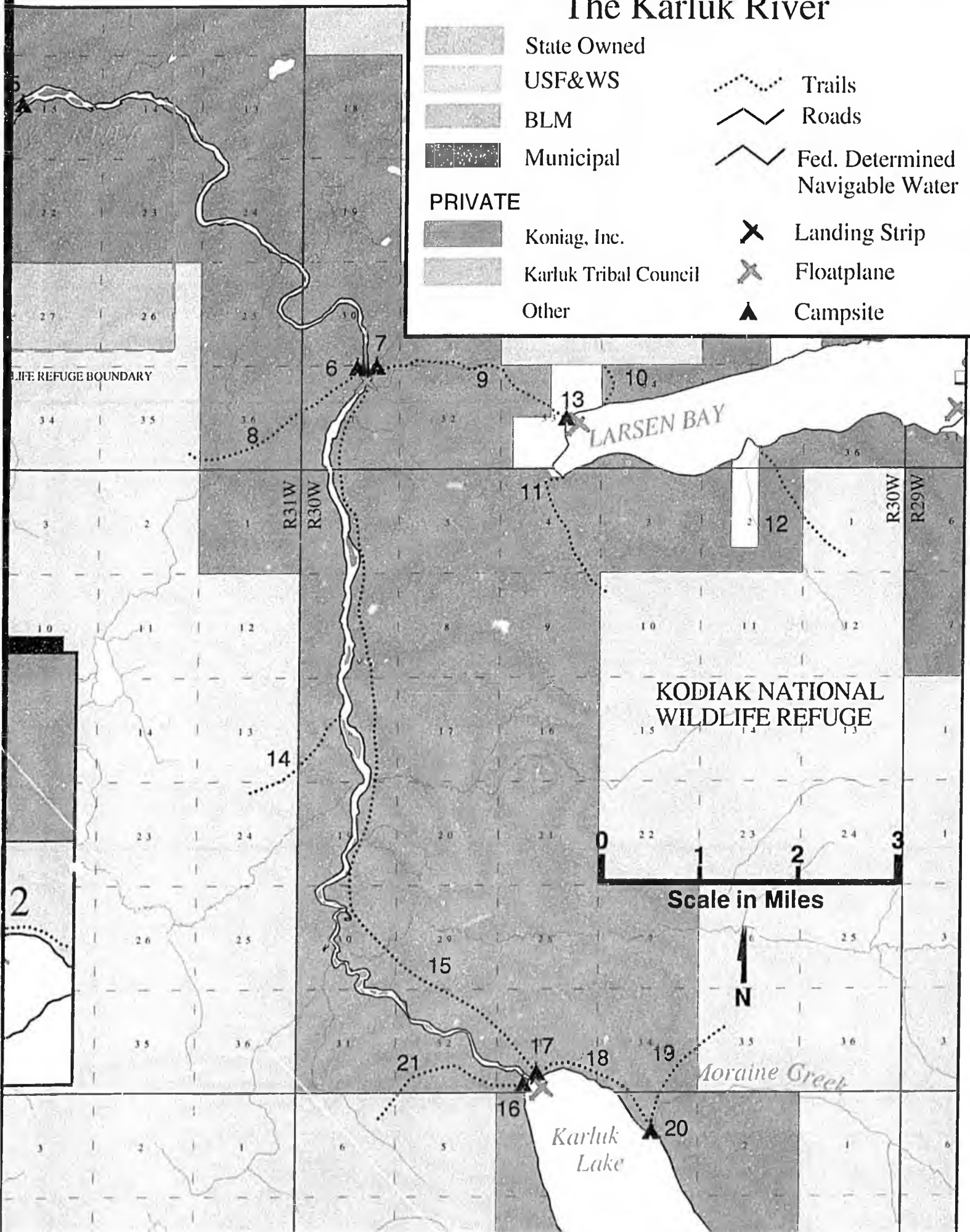
A. This is currently an open question. It is the state's position that under state law, members of the public may touch the bed of the river below ordinary high water to the extent reasonably necessary to pull a boat across riffles or across obstructions, and to fish. However, Koniag, Inc., has stated that it considers such activity without a permit to be trespass.

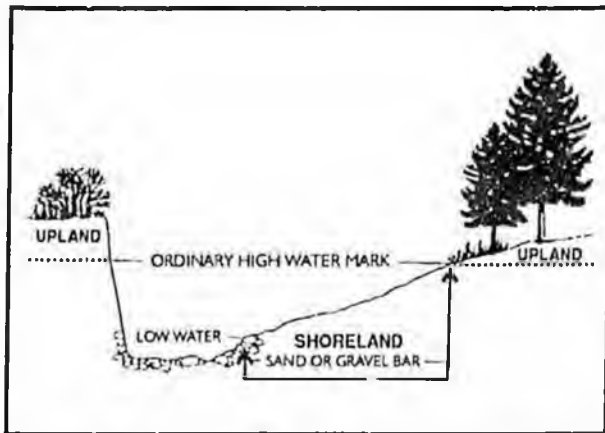
Until the legal issues discussed above are resolved, the state cannot assure the public that a private owner would not pursue a trespass action against them if they stand in the river without a permit.



The Karluk River

- | | | | |
|---|-----------------------|---|---------------------------------|
|  | State Owned |  | Trails |
|  | USF&WS |  | Roads |
|  | BLM |  | Fed. Determined Navigable Water |
|  | Municipal |  | Landing Strip |
| PRIVATE | |  | Floatplane |
|  | Koniag, Inc. |  | Campsite |
|  | Karluk Tribal Council | | |
|  | Other | | |





The "Ordinary High Water Mark"

The Ordinary High Water Mark can usually be identified by the vegetation line along the bank or shore, or by other distinctive signs. It is defined as the mark along the bank or shore where the presence and action of water are so common and usual as to leave a natural line impressed on the bank or shore. That line may be indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics.

Run Timing for Salmon & Steelhead

Run timing for adult salmon returning to freshwater to spawn will impact angling success. Approximate run timing for the Karluk River:

King Salmon	Peak run June 1 - July 1 ⁰
Red Salmon	June 10 - August 1
Pink Salmon	July 20 - August 20
Silver Salmon	Mid August - September
Steelhead	Mid to late October

General Sport Fishing Information

The Alaska Department of Fish and Game sponsors the Sport Fish Information Line at (907) 486-5176. The line is updated weekly May to October.

The Alaska Department of Fish and Game publishes sport fishing regulations for the Karluk River in the Sport Fishing Regulations Summary for Kodiak Island and Southwest Alaska. To obtain a copy of these regulations contact:

Alaska Dept. of Fish & Game, Kodiak Office
211 Mission Road
Kodiak, AK 99615 phone (907) 486-1880

Field Tips

Be advised that you are in bear country. In most cases, bears are not a threat, but they deserve your respect and attention. Before travelling in bear country, pick up the brochure "Bear Facts" from any Department of Fish and Game office. There are two key regulations regarding human/bear interactions in Alaska. The first prohibits feeding bears or leaving garbage that attracts them (5 AAC 92.230). The other sets the guidelines for taking bear in defense of your life and property (5 AAC 92.410). State law allows a bear to be shot in self-defense if: (1) you did not provoke the attack by an unreasonable invasion of the bear's habitat; (2) the problem was not caused by negligent storage of food, garbage, or other attractive nuisance; and (3) there is no alternative. If a bear is killed, the hide and skull must be salvaged, and the incident must be immediately reported to the authorities.

It is recommended that river visitors carry suitable containers to dispose of human waste, since there are no facilities along the river.

Kodiak National Wildlife Refuge

Many trail easements along the Karluk River access public lands within the Kodiak National Wildlife Refuge. The Refuge is responsible for managing all lands and easements within its boundary.

For information regarding Refuge regulations or easements, contact:

Kodiak National Wildlife Refuge
1390 Buskin River Road
Kodiak, Alaska 99615 phone (907) 487-2600

Bureau of Land Management

The Bureau of Land Management manages all other easements. For information on easements outside the Refuge boundary, contact:

Bureau Of Land Management
Anchorage District Office
6881 Abbott Loop Road
Anchorage, AK 99507 phone (907) 267-1248

Department of Natural Resources

For additional public use information contact:

Alaska Department of Natural Resources
Division of Land / Navigability Section
3601 C Street Suite 980
Anchorage, AK 99503-5937 phone (907) 269-8525
<http://www.dnr.state.ak.us/land/nav.htm>

Easement Descriptions*

The following easements are shown on the map:

1. An existing trail running easterly from the village of Karluk along the north side of Karluk Lagoon to the shore of the Karluk River. (25-foot trail) (EIN 7)
2. A campsite on the north shore of Karluk Lagoon. (two and one-half acre site on record) (EIN 6) (GPS: 57° 33.878' N / 154° 23.951' W)
3. An unimproved trail running southerly from the Karluk River to public lands. (25-foot trail) (EIN 34)
4. An unimproved trail running southeasterly from the Karluk River near the mouth of Shasta Creek to public lands. (25-foot trail) (EIN 33)
5. A campsite on an island in the Karluk River. (site encompassing entire island on record) (EIN 30) (GPS 57° 34.538' N / 154° 14.897' W)
6. A campsite on the left bank of the river at the Karluk River portage. (one-acre site) (EIN 13b) (GPS 57° 32.185' N / 154° 9.517' W)
7. A campsite on the right bank of the river at the Karluk River portage. (one-acre site) (EIN 13a)
8. An existing trail running southwesterly from the west side of the Karluk River portage at easement #6 to public lands. (25-foot trail) (EIN 47)
9. An existing trail from the head of Larsen Bay westerly to the Karluk River. (25-foot trail) (EIN 12)
10. An unimproved trail running northerly from the head of Larsen Bay to public lands. (25-foot trail) (EIN 11)
11. An unimproved trail running southeasterly from the head of Larsen Bay to public lands. (25-foot trail) (EIN 9)
12. An unimproved trail running southeasterly from Larsen Bay to public lands. (25-foot trail) (EIN 8)
13. A one-half acre site and twenty-five foot trail. (LAS AA007120)
14. An unimproved trail running southwesterly from the left bank of the Karluk River to public lands. (25-Foot trail) (EIN 43)
15. An unimproved trail from easement #7 at the Karluk River portage southerly along the right bank of the Karluk River to the outlet of Karluk Lake at easement #17. (25-foot trail) (EIN 17)
16. A campsite on the northwest shore of Karluk Lake and the left bank of the Karluk River. (one-acre site) (EIN 20) GPS 57° 26.365' N / 154° 6.679' W)
17. A campsite on the northwest shore of Karluk Lake and the right bank of the Karluk River. (one-acre site) (EIN 21) (GPS 57° 26.473' N / 154° 6.466' W)
18. An unimproved trail along the north shore of Karluk Lake from the outlet of the lake at easement #17 to the mouth of Moraine Creek. (25-foot trail) (EIN 40)
19. An unimproved trail running northeasterly from Karluk Lake at easement #20 to public lands. (25-foot trail) (EIN 37)
20. A campsite on the shore of Karluk Lake at the mouth of McRane Creek. (one-acre site) (EIN 39)
21. An unimproved trail running westerly from the outlet of Karluk Lake at easement #16 to public lands. (25-foot trail) (EIN 18)

*For the official record descriptions of the easements described above, contact BLM.

**CONFIRM.:
AK COMM.
FISHERIES
ENTRY
COMMISSION**



ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Official Business

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Lemman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

April 23, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Mr. President,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION:

Bruce C. Twomley - Juneau

Respectfully,

Senator Halford, Chairman

Senator Green

Senator Lemman

Senator Sharp

Senator Taylor

Senator Torgerson

Senator Lincoln

RESUME

of

BRUCE TWOMLEY
P.O. Box 020972
Juneau, AK 99802-0972
Work Phone: 789-6160
Home Phone: 586-3251

Height: 5'11"
Weight: 165
Marital Status: Married to Sara Minton
Children: Christopher (6)
Jonathan (5)

WORK EXPERIENCE: Appointed by Governors Hammond, Sheffield, Cowper, and Hickel, to the Alaska Commercial Fisheries Entry Commission (CFEC).

Chairman, CFEC. 1983 to present.
Commissioner, CFEC. 1982 to present.
Member, Governor's Fisheries Cabinet. 1983 to 1990.
Attorney, Alaska Legal Services. 1973 - 1982.
VISTA Volunteer. 1972 - 1973.
Legal Research for San Francisco Neighborhood Legal Assistance Foundation (as a law student).
Indigent Adult Criminal Appeals (as a law student).
Legal research for Professor Roscoe T. Steffen and private attorneys (as a law student).

LAW SCHOOL: National Judicial College, University of Nevada, Administrative Law: Advanced Course (recruited to serve as a group discussion leader). 1988.
National Judicial College, University of Nevada, Administrative Law: Fair Hearing. 1983.
Hastings College of Law, San Francisco, California. 1967 - 1970. Graduated with J.D. in upper 15% of the class.

EDUCATION: Northwestern University, Evanston, Illinois. 1963 - 1967. Graduated with A.B. in upper quarter of the class.
Elgin High School, Elgin, Illinois. 1960 - 1963.

BAR MEMBERSHIPS: Alaska State Bar
California State Bar (inactive)
United States District Court for the District of Alaska
United States Court of Appeals for the Ninth Circuit

One Regional Educational Attendance Area School Districts S-134, a proceeding before the Department of Health, Education and Welfare, to enforce Title VI of the 1964 Civil Rights Act on behalf of Alaska Native school children.

SELECTED PRESENTATIONS

AND PUBLICATIONS:

Contributor, Limiting Access to Marine Fisheries: Keeping the Focus on Conservation. Center for Marine Conservation and World Wildlife Fund U.S. 1994.

"License Limitation in Alaskan Salmon Fisheries." Paper and panel presentation to Conference on Managing Marine Fisheries by Limited Access sponsored by World Wildlife Fund and Center for Marine Conservation. Annapolis, MD. 1992.

"Getting and Keeping Alaska Limited Entry Permits in Local Rural Communities."

- Bristol Bay Native Association, Bristol Bay Fisheries Conference, Dillingham, 1992.
- Southeast Alaska ANCSA Economic Summit. Saxman, 1991.
- AFN Convention. Anchorage, 1991.

"The IRS and Alaska Limited Entry Permits," University of Alaska Commercial Fishing Business Seminar, Federal Tax Impact on Commercial Fishermen. Anchorage, 1987.

"Parental Involvement, Local Control, and Quality of Education," Alaska Native Education Association. Anchorage, 1981.

"Alaska Native Control of Local Village Secondary School Programs," Lawyers Clinic on Parental Liberty in Education. Washington, D.C. December 1978.

CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

RESUME

of

BRUCE TWOMLEY

P.O. Box 020972

Juneau, AK 99802-0972

Work Phone: 789-6160

Home Phone: 586-3251

Height: 5'11"
Weight: 165
Marital Status: Married to Sara Minton
Children: Christopher (6)
Jonathan (5)

WORK EXPERIENCE: Appointed by Governors Hammond, Sheffield, Cowper, and Hickel, to the Alaska Commercial Fisheries Entry Commission (CFEC).

Chairman, CFEC. 1983 to present.

Commissioner, CFEC. 1982 to present.

Member, Governor's Fisheries Cabinet. 1983 to 1990.

Attorney, Alaska Legal Services. 1973 - 1982.

VISTA Volunteer. 1972 - 1973.

Legal Research for San Francisco Neighborhood Legal Assistance Foundation (as a law student).

Incigent Adult Criminal Appeals (as a law student).

Legal research for Professor Roscoe T. Steffen and private attorneys (as a law student).

LAW SCHOOL: National Judicial College, University of Nevada, Administrative Law: Advanced Course (recruited to serve as a group discussion leader). 1988.

National Judicial College, University of Nevada,

Administrative Law: Fair Hearing. 1983.

Hastings College of Law, San Francisco, California.

1967 - 1970. Graduated with J.D. in upper 15% of the class.

EDUCATION: Northwestern University, Evanston, Illinois.
1963 - 1967. Graduated with A.B. in upper quarter of the class.
Elgin High School, Elgin, Illinois. 1960 - 1963.

BAR MEMBERSHIPS: Alaska State Bar
California State Bar (inactive)
United States District Court for the District of Alaska
United States Court of Appeals for the Ninth Circuit

HONORS:

Alaska Legal Services Award. 1992.
Martindale-Hubbell highest (a v) lawyer rating. 1983
Alaska Legal Services Distinguished Service Award. 1983
Elected to Senior Men's Honorary, Northwestern (Deru).
Elected to Junior Men's Honorary, Northwestern (Norleggama).
Illinois State Scholarship Winner.
Elected Most Outstanding Male Graduate (Marie K. Ekvall Award),
Elgin High School (student body: 2,000).

SELECTED CASES:

Co-counsel for plaintiff class of 2,667 Alaska Native secondary school age children in Tobeluk v. Lind (known as the Molly Hootch case), 589 P.2d 873 (Ak. Sup. Ct. 1979), which by consent decree established the entitlement of Alaska Native children in 126 villages throughout the state to attend secondary school in their home villages and further required the state to expend more than \$158-million for the construction of local secondary facilities.

Wilson v. Watt, 703 F.2d 395 (9th Cir. 1983). Class action with co-counsel Kathleen Strasbaugh, sought preliminary injunction against Secretary of Interior James Watt to restore BIA general assistance payments to Alaska Natives.

Fairbanks Correctional Center Inmates v. Williamson,
600 P.2d 743 (Ak. Sup. Ct. 1979).

Ferdinand v. City of Fairbanks, 599 P.2d 122 (Ak. Sup. Ct. 1979).

Horton v. Horton, 519 P.2d 1131 (Ak. Sup. Ct. 1974).

Attorney for plaintiff class of Alaska Native women and minor children in Finnesand v. Kleppe, No. A75-42 Civ. (U.S. District Court Alaska), which by consent decree abolished a discriminatory eligibility standard for BIA General Assistance.

Represented more than 100 Alaska Native Allotment applicants before the Department of Interior. 1972-1982.

Attorney for the Akiak Indian Reorganization Act Council and parents of grade school children in Akiak v. Lind, No. 4BR 8-39 Civ.

Amicus Curiae (In cooperation with the Office for Civil Rights) in The Matter of Alaska State Department of Education and Twenty-

One Regional Educational Attendance Area School Districts S-134, a proceeding before the Department of Health, Education and Welfare, to enforce Title VI of the 1964 Civil Rights Act on behalf of Alaska Native school children.

SELECTED PRESENTATIONS

AND PUBLICATIONS:

Contributor, Limiting Access to Marine Fisheries: Keeping the Focus on Conservation. Center for Marine Conservation and World Wildlife Fund U.S. 1994.

"License Limitation in Alaskan Salmon Fisheries." Paper and panel presentation to Conference on Managing Marine Fisheries by Limited Access sponsored by World Wildlife Fund and Center for Marine Conservation. Annapolis, MD. 1992.

"Getting and Keeping Alaska Limited Entry Permits in Local Rural Communities."

- Bristol Bay Native Association, Bristol Bay Fisheries Conference, Dillingham, 1992.
- Southeast Alaska ANCSA Economic Summit. Saxman, 1991.
- AFN Convention. Anchorage, 1991.

"The IRS and Alaska Limited Entry Permits," University of Alaska Commercial Fishing Business Seminar, Federal Tax Impact on Commercial Fishermen. Anchorage, 1987.

"Parental Involvement, Local Control, and Quality of Education," Alaska Native Education Association. Anchorage, 1981.

"Alaska Native Control of Local Village Secondary School Programs," Lawyers Clinic on Parental Liberty in Education. Washington, D.C. December 1978.

**SUBJECT OF
BIOGRAPHICAL NOTICE: Who's Who in the World (14th Ed. 1996)**

Who's Who in the West (23rd Ed. 1991)

Who's Who in Society (1988)

Who's Who of Emerging Leaders in America (1st Ed. 1987)

The Dictionary of International Biography, Vol. XX. (Cambridge, England 1986)

ACTIVITIES:

Member, Alaska Child Support Enforcement Division Rural Task Force. 1995--.

Member, Alaska Federation of Natives Task Force on IRS and Alaska Native Fishermen. 1994 --.

Member, Bristol Bay Native Association Blue Ribbon Commission on Limited Entry, 1994--.

Reading, Skiing, Hiking, Kayaking

Juneau Racquet Club Advisory Board, 1989

Guest Chef, Summit Restaurant, 1987

International Law Club, Hastings

President, Interfraternity Council, Northwestern

Kappa Sigma Fraternity, Northwestern

President, Student Council, E.H.S.

REFERENCES:

Mary McDowell, Special Staff Assistant to Governor Tony Knowles

Bruce M. Botelho, Attorney General

Frank Rue, Commissioner, ADF&G

Trefon Angasan, Member, Alaska Board of Fisheries; Vice President, Bristol Bay Native Corporation; Board Member, Alaska Federation of Natives, Bristol Bay Native Association, Alaska Peninsula Corporation; 265-7829 (W) and 243-4669 (H).

Dr. John White, Member, Alaska Board of Fisheries; 543-3778 (W) and 543-2926 (H).

Jerry McCune, Executive Director, United Fishermen of Alaska. 424-3447 (Cordova Fishermen United); 424-7488 (H)



ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Official Business

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Lemau
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

April 23, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182


Dear Mr. President,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

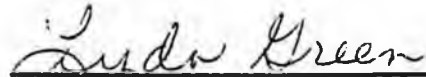
ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION:

Marlene A. Johnson - Juneau

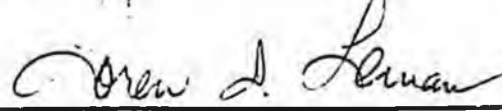
Respectfully,



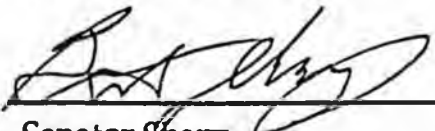
Senator Halford, Chairman



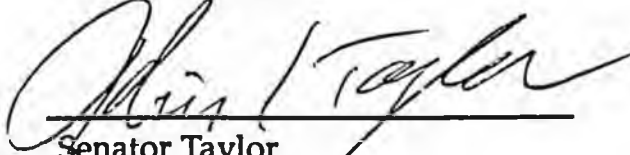
Senator Green



Senator Lemau

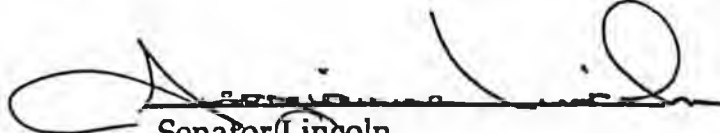


Senator Sharp



Senator Taylor

Senator Torgerson



Senator Lincoln

RESUME

Marlene A. Johnson
9505 Antler Way
Phone/Fax 907-789-4833
Juneau, Alaska 99801

Name: Marlene A. Greenewald Johnson
DOB: August 4, 1935
POB: Hoonah, Alaska

Marital Status: Married
Children: 5 (grown)

1995- Present:

Manager of Shareholder Services for Huna Totem Corporation and Coordinator of Huna Heritage Foundation.

1992-1995:

Held the position of Shareholder Service Coordinator for Huna Totem Corporation, on a part time basis, and has been the coordinator of the activities of Huna Heritage Foundation during this same period of time. Promoted.

1971-1995:

Former Director (1971-1995) of Sealaska Corporation. The former full time Chairman (1982-1992) of Sealaska Corporation, was one of the 5 original incorporators of Sealaska, the largest of 13 Regional Corporations formed under the Alaska Native Claims Settlement Act. Served on the Board and was Vice Chairman of Ocean Beauty Seafood and its subsidiaries, which used to be wholly owned by Sealaska Corporation.

1980-1985:

Was a Director of United Bank Alaska and United Bank Alaska Southeast, as well as the holding Company.

CURRENTLY:

Is a Trustee of Huna Totem Heritage Foundation and Sealaska Heritage Foundation.

Is a former member of Huna Totem Corporation Board of Directors; the ANCSA village corporation for the community of Hoonah, which is her home town.

1985 to Present: Is a Consultant to the University of Colorado and the Robert Wood Johnson Foundation on health issues pertaining to American Indians and Alaska Natives.

Marlene Johnson Resume # 2

1969 - 1982:

Was part owner and operator of an Air Taxi Business in Southeast Alaska from 1969 until 1982. Had bases in 7 communities and chartered through-out Southeast Alaska. Employed over 50 people and developed the tourist Ice Cap Tours. When elected chairman of Sealaska full time, sold interest in the Air Taxi business. Served as Vice President of the Air Taxi and as its Sales and Personnel manager. Managed the outlying agent stations.

1961-1980

Served on the Tlingit and Haida Central Council, Executive Committee;

Served on the original Rural Cap Board of Directors, and as it's President for 8 years. Assisted in forming Alaska Federation of Natives and lobbying Congress for the passage of the Alaska Native Claims Settlement Act and later ANILCA.

Served as President of the Hoonah City School Board for 15 years and a member of the School Board for over 25 years.

Was Vice President and Treasure of the Hoonah Indian Assoc.(IRA) and helped re-activate it so that it could run several programs. Wrote the grants that funded the Cultural Center Building and the City of Hoonah dock.

Was Secretary/Treasure of Tlingit-Haida Community Council of Hoonah. Was instrumental in bringing Cable TV to Hoonah.

Served on the Hoonah Health Council, the Southeast Alaska Health Systems Agency and the State Rural Affairs Commission.

Has also served on the Governor's:

- Interim Commission on Children and Youth,
- The Governor's Review commission on Native Services,
- The State Personnel Board,
- The Public Employees Retirement Board,
- Alaska Labor Relations Agency,
- Railroad Labor Relations Agency,
- The State Reapportionment Board.
- The Governors Transition Team

The first Juneau Convention & Visitors Bureau,
Board of Directors

A Board of Trustee member of; The University of Alaska
Foundation

Marlene Johnson page # 3

Now serves on the:

University of Alaska School of Fisheries and Ocean Sciences advisory council, is the Vice Chairman. The Council advises the school of fisheries on its programs both academic and research.

Is on the Robert Wood Johnson Foundation National Advisory Committee for programs to improve the Health of American Indians and Healthy Nations projects.

Is a member and former chairman of the Selective Service Board, for Southeast Alaska, was appointed by President Nixon, and has served continually since.

Is a Board Member of American Cancer Society, Juneau Unit.

She is a member of Alaska Native Sisterhood since 1961.

Served on the University of Alaska's President Search Committee, The Alaska Committee and several other Municipal and State Boards and Commissions.

Spouse is Clifford Leo Johnson, is the mother of 5 adult children and also the grandmother of 11. She was born in Hoonah, Alaska, and attended Hoonah and Juneau Public Schools as well as vocational training in accounting and personnel management.

EMPLOYMENT HISTORY

- 1992-present Huna Totem Corporation, a village Native corp., that invests in real estate and passive portfolio investments and has a cultural heritage foundation; duties are managing and coordinating and developing non business programs, and shareholder services.
- 1985-present Consultant: To the University of Oklahoma, the University of Colorado and the Robert Wood Johnson Foundation on American Indian's health issues.
- 1982-1992 Chairman of Sealaska Board of Directors, A native Regional Corporation, which was then involved in the Timber, Fisheries and Building materials & cement business.

Marlene Johnson page # 4

- 1969-1982 An air taxi operator, as part owner, was the Hoonah station manager and the Vice President of sales, personnel and public relations.
- 1961-1969 Coastal Glacier Seafoods, AKA Hoonah Seafoods was the assistant accountant and the fuel operations manager.
- 1954-1956 Federal Market, Ketchikan Alaska, Bookkeeper and
1958-1961 accounts receivable technician.
- 1956-1958 Skagit Plastics, LaConner, Wash., Cost Accounting and payroll clerk.
- 1953-1954 U.S. Dept. of Interior
Bureau of Indian Affairs
Accounting Department, Posting and Travel Clerk

AWARDS:

- 1991, 1990, 1989 Nominated to Alaska's 10 Outstanding women
- 1989 Alaska Legislature Commendation for Public Service.
- 1988 Commendation Award for Governor's Interim Commission on Children & Youth
- 1985-1991 Outstanding Women of America
- 1986 AASA Mackinnon Education Excellence & Human recognition Award for Achieving High Standards and Ideals in Education.
- 1985 Americans for Indian Opportunity -Certificate of Recognition for Outstanding Services.
- 1983-1989 Who's Who in America
- 1987-1995 Who's Who in American Business
- 1989-1990 Who's Who in America's Finance & Industry
- 1990-1994 Benton's Who's Who International
- 1993 Robert Wood Johnson Foundation Distinguished Service Award
- 1995 AFN's Citizen of the Year award



ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Official Business

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Lemman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

February 25, 1998

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

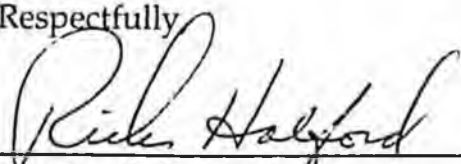
Dear Mr. President,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

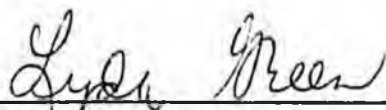
ALASKA COMMERCIAL FISHERIES ENTRY COMMISSION:

Mary McDowell - Juneau

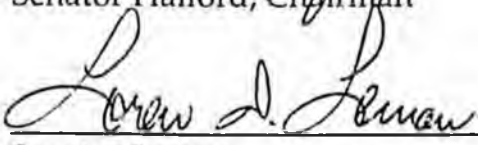
Respectfully



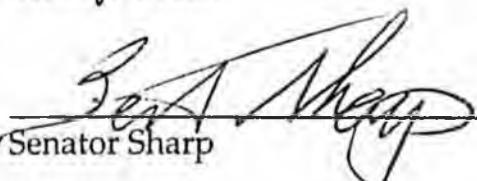
Senator Halford, Chairman



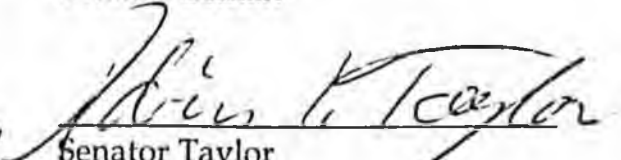
Senator Green



Senator Lemman

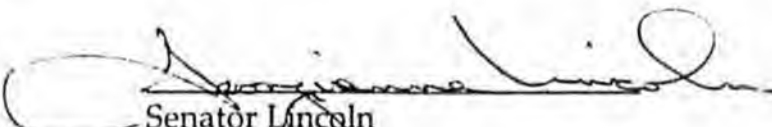


Senator Sharp



Senator Taylor

Senator Torgerson



Senator Lincoln

#1

Mary E. McDowell
555 Hemlock Street
Juneau, AK 99801
(907) 463-5160

PROFESSIONAL EXPERIENCE

SPECIAL STAFF ASSISTANT, OFFICE OF THE GOVERNOR

Juneau, Alaska, May 1995 - Oct. 1997

Member of Governor's senior staff. Responsible for fisheries and wildlife issues.

SPECIAL STAFF ASSISTANT, OFFICE OF THE LIEUTENANT GOVERNOR

Juneau, Alaska, Dec. 1994 - April 1995

Member of Lieutenant Governor's senior staff. Responsible for natural resource issues.

LEGISLATIVE AIDE. ALASKA STATE LEGISLATURE

Juneau, Alaska, 1979-1994 (Worked 16 legislative sessions plus 25 months of interim time).

Specific job title and duties varied over the years, including the following:

- Committee Aide to House Resources Committee
- Senior Aide to the Senate President
- Committee Aide to Senate Rules Committee
- Committee Aide to Senate Special Committee on Fisheries
- Committee Aide to Senate Special Committee on the Exxon Valdez Oil Spill Settlement
- Finance Aide to Senate Finance Committee Member
- Resources Aide to Senate Resources Committee Member
- Senate District Aide

SELF-EMPLOYED COMMERCIAL FISH BUYER

Angoon, Alaska, May through September, 1976-1994

EDUCATION

University of Wisconsin, Madison, Wisconsin, graduated 1976
Bachelor of Arts Degree in Anthropology
Emphasis on cultural anthropology of Alaska Natives

University of Connecticut, Storrs, Connecticut, 1973-1974
Undergraduate Research Assistantship in anthropology / archeology
Two summers of field work in Aleutian Islands, Alaska. One semester research, analysis and writing on campus.

Sheldon Jackson College, Sitka, Alaska, 1977
Completed Village Management Course



UNITED FISHERMEN OF ALASKA

211 Fourth Street, Suite 112
Juneau, Alaska 99801
907/586-2820
Fax: 907/463-2545
E-Mail: ufa@alaska.net

Feb. 23, 1998

Senator Rick Halford
Senate Resources Committee
State Capitol
Juneau, AK 99801-1182

Dear Sen. Halford:

This session your committee will be conducting confirmation hearings. The United Fishermen of Alaska heartily recommends legislative confirmation of Mary McDowell's appointment to the Commercial Fisheries Entry Commission.

Mary has worked diligently on fisheries issues, in various forums, for over eighteen years. She also had many years of hands-on business experience in the seafood industry as operator of a fish-buying station. Her statewide perspective on fisheries issues, thorough understanding of pertinent state laws and regulations, and personal integrity serve the State of Alaska well. She is committed to fairness in the treatment of the individual, and dedicated to sound and equitable public process.

We respectfully request your support for Mary's appointment to the Commercial Fisheries Entry Commission by voting in favor of her confirmation.

Sincerely,

Theo Matthews
President

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fishermen's Association • Alaska Trollers Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association • Kodiak Regional Aquaculture Association • Kodiak Seiners Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Northwest Seiners Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Purose Seine Vessel Owners Association • Seafood Producers Cooperative
Southeast Alaska Seiners Association • Southern Southeast Regional Aquaculture Association • United Cook Inlet DnI Association • United Southeast Alaska Gillnetters

**CONFIRM.:
AK OIL & GAS
CONSERVA-
TION
COMMISSION**



ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Official Business

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Lemman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

April 23, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182


Dear Mr. President,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

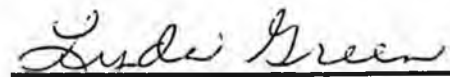
ALASKA OIL AND GAS CONSERVATION COMMISSION:

Mary Coffee Marshburn - Homer

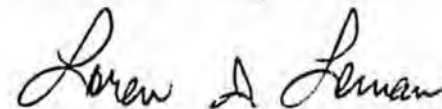
Respectfully,




Senator Halford, Chairman



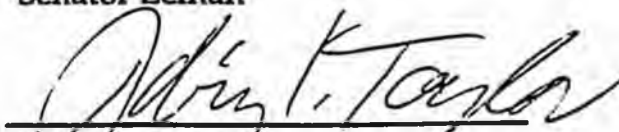
Senator Green



Senator Lemman

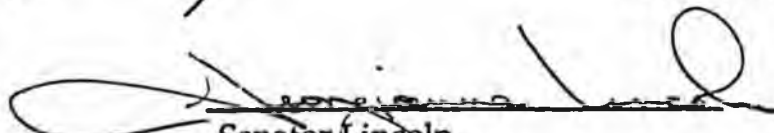


Senator Sharp



Senator Taylor

Senator Torgerson



Senator Lincoln

Mary Coffey Marshburn
P. O. Box 277
Homer, Alaska 99603

(907) 235-7978 (hm)

Special Projects
Oil and Gas
March 1995 to present

Office of the Commissioner, Dept. of
Commerce & Economic Development

Coordinated the work of the Oil and Gas Policy Council as specified by Administrative Order No. 152. This included coordination of research and development of two reports discussing Alaska's competitive environment for investment, hydrocarbon resources, fiscal, leasing and regulatory systems, oil refining and transportation. Other projects include working with leaseholders of North Slope natural gas resources and state departments to develop and complete an LNG project to transport and market North Slope natural gas; working with private industry and state departments to improve Alaska hire in the petroleum industry and use more Alaska businesses to supply equipment and services to the oil industry; and research and analysis of other energy sources and development technologies. These projects have an economic development focus and involve interaction and coordination with multiple divisions and agencies involved in public and private economic development.

Manager
1985 to 1994

Homer Orthopedic Clinic and Itinerant
Physician Clinic

Developed and managed a nine member itinerant physician specialist clinic for the South Peninsula area of Alaska.

Manager
1979 to 1983

L. A. Marshburn, M. D., APC

Manager of a medical family practice business.

Municipal Clerk
Borough Clerk
1970 to 1979

Municipality of Anchorage
Greater Anchorage Area Borough

Head of the department for the Borough Assembly and Anchorage Assembly, legislative bodies of Anchorage local government. From 1970 to 1975, Borough Clerk. Upon unification of the City of Anchorage and Greater Anchorage Area Borough in 1975, appointed Municipal Clerk for the new Municipality of Anchorage. As Clerk, responsible for the administration and management of the department's programs and functions. These included merger of the two government offices; staff to the Assembly, Board of Ethics and Commission on Salaries and Emoluments;



ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Official Business

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Leman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

May 7, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Mr. President,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

ALASKA OIL AND GAS CONSERVATION COMMISSION:

Robert N. Christenson - Anchorage

Respectfully,

Senator Halford, Chairman

Senator Green

Senator Leman

Senator Sharp

Senator Torgerson

Senator Taylor

Senator Lincoln

Robert N. Christenson

15800 Southpark Loop, Anchorage, AK 99516

EXPERIENCE

STRATEGIC PLANNING - VECO Corporation

Senior Vice President, Strategic Planning, Current

Responsible for long range planning for the corporation which includes Engineering, Construction, Operations and Maintenance, Drilling and international activities in the oil and gas sector.

VECO ENGINEERING (FORMERLY CHRISTENSON ENGINEERING)

President, 1993-1996

See below for responsibilities

CHRISTENSON ENGINEERING

President, 1986-1993

Responsible for the total operation of multi-disciplined petroleum service company of 1,000 personnel. Principal service areas are all facets of production facilities including well tie-ins, gathering, separation, produced water handling, gas handling, crude transport, various EOR methods-water flood and gas injection, gas compression and utilities. Coordination of these activities with drilling and reservoir to maximize production. Also maintenance and operations of existing fields and engineering alliance partner for the Alyeska pipeline.

HALLANGER ENGINEERS

Manager, 1976-1986

Same responsibilities as above and additionally serviced refineries in the Puget Sound area.

Discipline Engineer/Project Engineer, 1956-1976

During this time I served as a discipline engineer with progressively increasing responsibility and transitioned into project direction with increasing responsibility in various industries.

EDUCATION

CALIFORNIA STATE UNIVERSITY AT LONG BEACH

Bachelors of Science in Mechanical Engineering, 1963

REGISTRATION

- Mechanical Engineer in Alaska and Washington

CORRECTION

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



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Mary Coffey Marshburn
P. O. Box 277
Homer, Alaska 99603

(907) 235-7978 (hm)

Special Projects
Oil and Gas
March 1995 to present

Office of the Commissioner, Dept. of
Commerce & Economic Development

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1979 to 1983

L. A. Marshburn, M. D., APC

Manager of a medical family practice business.

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Borough Clerk
1970 to 1979

Municipality of Anchorage
Greater Anchorage Area Borough

Head of the department for the Borough Assembly and Anchorage Assembly, legislative bodies of Anchorage local government. From 1970 to 1975, Borough Clerk. Upon unification of the City of Anchorage and Greater Anchorage Area Borough in 1975, appointed Municipal Clerk for the new Municipality of Anchorage. As Clerk, responsible for the administration and management of the department's programs and functions. These included merger of the two government offices; staff to the Assembly, Board of Ethics and Commission on Salaries and Emoluments;

development of departmental budget; business licensing; development of the community council and ombudsman programs; conduct of all local elections; codification; municipal bonding and development of local and state legislation.

Deputy Borough Clerk
1967 to 1969

Greater Anchorage Area Borough

Employed by the Borough Assembly, under the direction of the Borough Clerk, to assist with the administration of the department's programs. These programs included the administration of elections, budget development and the work of the Anchorage Charter Commission.

REFERENCES

Arliss Sturgulewski
George F. Gates, M. D.
Don Gilman - former Mayor, Kenai Peninsula Borough
George Sullivan - former Mayor, City of Anchorage and Municipality of Anchorage
Mike Navarre - Mayor, Kenai Peninsula Borough
Esther Wunnicke - Chair, Oil and Gas Policy Council

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Health Care Providers Scholarship Fund, Homer - Board member
American Lung Association, Homer
International Institute of Municipal Clerks - CMC designation
Alaska Association of Municipal Clerks - past president and vice president
Pioneers of Alaska
Private Pilot Certification



ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

Official Business

State Capitol
Juneau, AK 99801

Chairman: Senator Rick Halford
Vice Chair: Senator Lyda Green
Senator Loren Lemman
Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

May 7, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Mr. President,

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ALASKA OIL AND GAS CONSERVATION COMMISSION:

Robert N. Christenson - Anchorage

Respectfully,

Senator Halford, Chairman

Senator Green

Senator Lemman

Senator Sharp

Senator Taylor

Senator Torgerson

Senator Lincoln

Robert N. Christenson

15800 Southpark Loop, Anchorage, AK 99516

EXPERIENCE

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Senior Vice President, Strategic Planning, Current

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VECO ENGINEERING (FORMERLY CHRISTENSON ENGINEERING)

President, 1993-1996

See below for responsibilities

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HALLANGER ENGINEERS

Manager, 1976-1986

Same responsibilities as above and additionally serviced refineries in the Puget Sound area.

Discipline Engineer/Project Engineer, 1956-1976

During this time I served as a discipline engineer with progressively increasing responsibility and transitioned into project direction with increasing responsibility in various industries.

EDUCATION

CALIFORNIA STATE UNIVERSITY AT LONG BEACH

Bachelors of Science in Mechanical Engineering, 1963

REGISTRATION

- Mechanical Engineer in Alaska and Washington



Official Business

ALASKA STATE LEGISLATURE

SENATE RESOURCES COMMITTEE

State Capitol
Juneau, AK 99801

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Senator Bert Sharp
Senator Robin Taylor
Senator John Torgerson
Senator Georgianna Lincoln

February 25, 1998

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

Dear Mr. President,

In accordance with AS 39.05.080, the Senate Resources Committee reviewed the following with regard to confirmation of the Governor's appointment:

ALASKA OIL AND GAS CONSERVATION COMMISSION:

Camille Oechsli - Anchorage

Respectfully,

Senator Halford, Chairman

Senator Green

Senator Leman

Senator Sharp

Senator Taylor

Senator Torgerson

Senator Lincoln

#1

CAMILLÉ OECHSLI
1333 West 11th Avenue
Anchorage, Alaska 99501
(907)277-4242

EMPLOYMENT

ASSISTANT ATTORNEY GENERAL

Department of Law, Civil Division
Oil, Gas & Mining Section, June 1995 - present
Natural Resources Section, February 1995 - June 1995
Advise and represent the Department of Revenue, Department of Natural Resources and the Alaska Oil and Gas Conservation Commission on a broad range of oil and gas issues, including lease sales, regulatory compliance, royalty value, royalty sales, and lease administration in court and administrative proceedings.

ASSISTANT PUBLIC DEFENDER

Alaska Public Defender Agency
Anchorage, Alaska, June 1988 - February 1995
Ketchikan, Alaska, September 1986 - June 1988

SUPERIOR COURT LAW CLERK

August 1984 - August 1986
Alaska Superior Court, Ketchikan
Honorable Thomas E. Schulz

CLERK OF DISTRICT COURT/ACTING MAGISTRATE

May 1978 - July 1981
Alaska Court System, Petersburg, Alaska

ELEMENTARY SCHOOL TEACHER

August 1975 - August 1977
Oglethorpe Elementary School, Athens, Georgia

EDUCATION

ROCKY MOUNTAIN MINERAL LAW FOUNDATION BOARD

Denver, Colorado
Onshore Pooling and Unitization, January 1997
Oil and Gas Law, October 1995

AUG 21 1997

JNS

UNIVERSITY OF OREGON SCHOOL OF LAW

Eugene, Oregon
J.D., May 1984

UNIVERSITY OF GEORGIA

Athens, Georgia
B.S.Ed., Summa Cum Laude, 1975

BOSTON UNIVERSITY

Boston, Massachusetts
Liberal Arts/Latin American Studies (1970-1973)