

Chistochina Dike: This dike is shown graphically on the BLM Master Title Plat but is not subject to a specific ROW grant and is not reserved or otherwise mentioned in the 1979 patent to Ahtna. A parcel plat indicates that DOT claims a ROW for the dike that is approximately 1 mile in length and 700 feet in width. The file for Project F-046-1(20) Chistochina Dike (1977) recognized that this existing dike was not subject to a specific ROW grant. It was discussed that DOT should apply for a BLM grant to clarify the ROW, however, there was insufficient time available to go through that process. The AGO advised in writing that "the Chistochina Dike area was reserved and appropriated by the federal government on public lands for a public use. The State's title would be derived from the conveyance under the Omnibus Act." They attached a partial briefing paper that states "It has been uniformly held by the courts that when the Federal Government expends money for utilization of the construction of improvements and facilities on the public lands of the United States that the public lands so affected are legally appropriated by the United States for a public purpose." In conjunction with this memo, an Affidavit was recorded on 10/17/77 (Bk 4, Page 929, Chitina) by the South Central Regional Engineer attesting to the history of the dike and claiming it as an existing public facility and right of way. The dike ROW dimensions are supported by a memo from the Division Materials Engineer stating that the width was based upon a review of aerial photos showing that this area was used as a material source. A specific grant of ROW for the dike would be preferable and more easily supported, however, this claim we have approved by the AGO advice and formed the basis for the 1977 project ROW certification. Therefore, until shown the contrary, we should continue to assert the same claim.