

Navigability

KARSTETTER
8/29/89 H/8.1

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Healy-GS-FY'89-4
Talkeetna-GS-FY'89-2
Talkeetna Mountains-GS-FY'89-1
F-14844-EE (75.4)
AA-60303 (2620)
✓ F-15557 (2561)
AA-6078 (2561)
AA-6072 (2561)
AA-7791 (2561)
(961)

SEP 1

Memorandum

To: Deputy State Director for Cadastral Survey (923)
From: Deputy State Director for Conveyance Management (960)
Subject: Navigable Waters in Group Surveys 186 and 223 (Window

This memorandum identifies navigable water bodies under a certain size on lands in Group Surveys 186 and 223 (Cantwell) selected under the Alaska Native Claims Settlement Act (ANCSA) or the Statehood Act, and those water bodies excluded in the conveyances (ICs and TAs) under these acts. It also identifies navigable water bodies which cross lands selected under the Native Allotment Act in ICd areas, and navigable waters which cross or border such claims on federal lands.

The thirty-two townships in the survey group are shown on the United States Geological Survey (USGS) Healy, Talkeetna and Talkeetna Mountains topographic maps (1:250,000 scale) and are listed in Table 1. Lakes larger than fifty acres and streams wider than 198 feet (three chains) are not described because they are segregated by the survey regardless of navigability. These include the Susitna River and the West Fork Chulitna River.

In accordance with the draft Memorandum of Understanding between the BLM and the State, if a navigability determination has been made since 1978 on a State selection, no redetermination will be made to conform with the Gulkana River standard. Of the twenty-four State selections in the report area, only one has not had a determination. This memorandum serves as the navigability determination for State selection AA-60303 (T. 18 S., R. 5 W., FM.).

The BLM's navigability determinations are based on criteria described in the memorandum dated March 16, 1976, from the Associate Solicitor, Division of Energy and Resources, to the Director, Bureau of Land Management, subject "Title to submerged lands for purposes of administering ANCSA"; the Alaska Native Claims Appeal Board's (ANCAB) decision (RLS 76-2) of December 14, 1979 on the navigability of the Nation and Kandik rivers; the Regional Solicitor's February 25, 1980, interpretation of the ANCAB decision; and dicta in the United States District Court's decision (A80-359) of April 16, 1987, on the navigability of the Gulkana River. In general, the BLM considers nontidal water bodies navigable if they were navigable for crafts larger than a one-person kayak at the time of Statehood.

The subject report area includes rivers in ANCSA-conveyed areas which the BLM has found to be nonnavigable. The State appealed BLM's decision. (See "Statement of Reasons and Interest," Appeal of the State of Alaska from Bureau of Land Management Decision F-14844-A (Anc.), ANCAB VLS 80-54, November 24, 1980.) These disputed water bodies include "any and all parts . . . which are located within the affected conveyance area . . ." of the Nenana, Cantwell and Jack rivers, plus the "Middle Fork Chulitna River throughout T. 19 S., R. 9 W., FM." Due to the pending litigation, the Middle Fork was excluded from IC 443 in T. 19 S., R. 9 W., FM; the Nenana River in Secs. 1-4, T. 18 S., R. 5 W., FM; and Cantwell Creek in Secs. 5 and 6, T. 18 S., R. 7 W., FM.

Section 901(b)(1) of the Act of August 16, 1988, amending ANILCA states that the United States no longer has any right, title, or interest in the lands underlying water bodies which have been excluded from conveyances. Therefore all water bodies excluded from ICs for whatever reason, are listed in Table 1

Cantwell Creek

This creek heads at Cantwell Glacier in Denali National Park and flows east twenty-one miles to the Jack River one mile east of Cantwell. It flows through ANCSA selections in Secs. 1, 10-12, 15, 16, 19, 20 and 21, T. 18 S., R. 8 W., FM. The creek varies in width from about fifty to 150 feet with an average gradient of about twenty-two feet per mile. It may be seen on the USGS Healy B-4 and B-5 quadrangles and a NASA photograph (CIR 60, roll 3020; frame 5331, August 1981).

The BLM has agreed to defer navigability determinations on Ahtna, Inc., selected lands until litigation on the navigability of the Gulkana River has been completed. (See Wayne Boden, DSD for Conveyance Management, to Ahtna, Inc., February 9, 1989, file 2628, State Office Central Files.) Therefore, no determination is being made for this portion of Cantwell Creek.

Jack River

This stream heads in the Talkeetna Mountains and flows northerly about thirty-two miles to the Nenana River six and one-half miles northeast of Cantwell. It crosses ANCSA selections in Secs. 19 and 20, T. 18 S., R. 6 W., FM, with a width of about eighty feet and a gradient of approximately fifty feet per mile. This stream may be seen on the USGS Healy B-4 quadrangle and a NASA photograph (CIR 60, frame 5333, August 1981). A navigability determination on this portion of the Jack River is deferred in accordance with the agreement with Ahtna, Inc.

The Jack River continues through T. 18 S., R. 7 W., FM, in IC 443, from which the river was excluded. On the USGS maps the river is also located in Sec. 18, T. 18 S., R. 6 W., FM. The riverbed was not excluded from IC 443 in this section. Within Section 3 of T. 18 S., R. 7 W., FM, is a Native allotment which straddles the Jack River (F-15557). The NASA photograph of August, 1981, shows the river in this area to have multiple channels, but the primary one is about fifty feet wide. It appears to be unobstructed. The allotment abuts the Denali Highway on its north boundary.

On September 21, 1982, the BLM determined the Jack River in T. 18 S., Rs. 6 and 7 W., FM, nonnavigable. The main source of information was the Alaska Environmental Information and Data Center's (AEIDC) "Historical Notes on Alaska Water Bodies" report of June 10, 1979, which alluded only to land transportation routes along the Jack River. Also, the BLM examiners did not discover any evidence of commercial use from solicitations made in the summer of 1980. (Robert W. Faithful to Assistant to the State Director for Conveyance Management, August 24, 1982, F-034874, State Selection files.)

The NASA photograph indicates that the primary channel of the Jack River runs along the southern boundary of this allotment; however, flood plain gravel and a man-made dike show that flooding is prevalent one-half way into the allotment. This rock dike roadway crosses the allotment approximately from its northeast corner to its southwest corner along the north (right) bank of the Jack River. According to the field examiner, the southern portion of this parcel is subject to a "high flood hazard potential." The BLM's Mineral Character Determination report of October 24, 1975, has a photograph taken on the dike road in the center of the allotment showing a portion of Jack River. A field map in this same report shows the river entering the allotment along the southern boundary of the dike road, varying in width from about 200 to over 600 feet within the allotment. (John Tiffany, Land Report, May 15, 1975 and Howard L. Edwards, Mineral Report, October 24, 1975, file F-15557.)

A navigability field report for the Jack River dated March 18, 1976, for Cantwell Village selections (File F-14844-EE) by a BLM recreation specialist, states the length as thirteen miles, the width one to five hundred feet and the depth three to six feet. In the present use section it states "Types Watercraft Used . . . canoes, kayaks, rafts." The operator of McKinley Raft Tours, Bob Grose, has floated from the Golden North Air Service strip, which is one and one-half miles upstream from this allotment, to Nenana about twelve times between 1978 and 1983. He used a thirteen-and-one-half-foot Moravia rubber raft, and he has seen canoes, airboats and jet riverboats on this river above and below the airstrip. (James Ducker, handwritten interview report, June 19, 1984, Nenana litigation file, BLM Navigability Section.)

I determine the Jack River navigable in Native allotment F-15557 in Sec. 3, T. 18 S., R. 7 W., FM. Under the Gulkana River navigability criteria, this river is clearly susceptible to travel by canoes and rafts. Aerial and ground-level photographs confirm the physical character of the river. A BLM examiner and a river tour operator stated that these types of watercraft have been used.

Honolulu Creek

This creek heads in the Talkeetna Mountains about twenty-seven miles southwest of Cantwell and flows about twelve miles to its mouth on the Chulitna River in Sec. 35, T. 21 S., R. 11 W., FM. It is shown as a double-lined stream on the USGS Healy A-6 quadrangle map, 1953, and may be seen on the NASA infrared photographs (CIR 60, roll 28, frame 170, August 1980; and CIR 60, roll 2917, frame 6885, July 1980). It goes under the Parks Highway bridge at Mile 178.1 and under the railroad bridge at Mile 288.7 of the Alaska Railroad (The Milepost, Anchorage: Alaska Northwest Publishing Co., 1989), then enters the Chulitna River six-tenths of a mile further west.

Three Native allotments straddle Honolulu Creek from the railroad bridge to about one-half mile upstream from the highway bridge (AA-6078, AA-6092 and AA-7791). These three allotments comprise U.S. Survey No. 7492, which was approved July 21, 1983. They are within two State selections (A-063041 and A-063042), both of which were included in a previous navigability determination report. (See Memorandum from Chief, Division of Resources, to State Director, concurrence by Robert W. Arndorfer, Acting State Director, August 15, 1980.) In this report the Chulitna River was determined navigable to Honolulu Creek, which was described as having a gradient from approximately sixty to two hundred feet per mile. The creek was determined nonnavigable. It has a gradient of about seventy-five feet per mile across the Native allotments in U.S. Survey No. 7492.

The University of Alaska's Arctic Environmental and Data Center's (AEIDC) study of water bodies done for BLM, "Historical Notes on Alaska Water Bodies" June 10, 1979, contains no information about this creek. No references to Honolulu Creek were found in the general source material. Telephone interviews were used to elicit information about this creek. For a full account of the interviews, see Donald C. Koenig to File F-14844-EE (75.4) August 15, 1989.

<u>Name</u>	<u>Date</u>	<u>Telephone No. and Background</u>
Mike Kasterin	July 13, 1989	(267-1215) BLM Realty Specialist with the Anchorage District Office.
Mrs. Steve Hanson	July 14, 1989	(733-2521) Wife of owner of Chulitna River Lodge and Cafe Mile 156.2, Parks Highway.
Steve Hanson	July 14 and 17, 1989	(733-2521) Owner of Chulitna River Lodge and Cafe and operator of river rafting tours.

Mike Kasterin, the BLM Realty Specialist who inspected these allotments in July 1979, believes that Honolulu Creek would be easily navigable by canoes and rafts. He has stood on both the highway and railroad bridges crossing this creek and observed the salmon spawning in water that appeared to be three to six feet deep. He said that the creek looks navigable for about a half mile above the highway and he remembers no impediments for boating below the railroad bridge as far as he could see.

The owner of the Chulitna River Lodge and Cafe, Steve Hanson, has operated river trips on the Chulitna River for twelve years. He has used Honolulu Creek "hundreds of times" as access to the river. The pull-off at the Honolulu Creek bridge on the Parks Highway is used to launch the fourteen- and eighteen-foot Avon rafts, carrying up to six or eight people, respectively. Hanson described the creek as averaging two and one-half feet in depth, with many deeper holes. It is swift but easily navigable, rarely causing any difficulty, even during low water. He has seen canoes on the creek many times and believes that navigability would extend about one-half mile upstream from the bridge.

I determine Honolulu Creek navigable through Native allotments AA-6078, AA-6092 and AA-7791 in Secs. 25 and 36, T. 21 S., R. 11 W., and Secs. 30 and 31, T. 21 S., R. 10 W., FM. A river rafting tour operator has used this creek for twelve years as access to the Chulitna River. The BLM Realty Specialist who inspected the allotments confirms the physical susceptibility of this stream to navigation by canoes and rafts, as do the aerial photographs.

Other Water Bodies

If they are not listed in Table 1 and excluding Jack River and Cantwell Creek on lands selected by Ahtna, Inc., all other streams less than 198 feet wide (three chains) and lakes less than fifty acres in size on lands selected under ANCSA, the Native Allotment or Statehood acts, are nonnavigable. They are too narrow, steep or obstructed for boating, or do not connect to a navigable water body.

78/ WAYNE A. BODEN

cc:

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Chief, Program Planning and Development Staff (920B)

Chief, Branch of Field Survey (921)

Chief, Branch of Examinations and Records (922)

Chief, Branch of Mapping Sciences (924)

Chief, Branch of CIRI/Ahtna Adjudication (968)

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Table 1
Navigable Rivers and Streams Less Than 198 Feet Wide
and Lakes Less Than 50 Acres in Size on Lands
Selected Under the Public Land Laws or Excluded From ICs
and TAs in Group Surveys 186 and 223 (Window 539),
by Township

Fairbanks Meridian

T. 18 S., R. 5 W.
Nenana River

T. 18 S., R. 6 W.
None. (Navigability determination for Jack River in Secs. 19 and 20 is deferred; conveyed in Sec. 18.)

T. 18 S., R. 7 W.
Jack River (IC 443), including Native allotment F-15557; Cantwel Creek in Secs. 5 and 6 (IC 443).

T. 18 S., R. 8 W.
None. (Navigability determination for Cantwel Creek is deferred.)

T. 19 S., R. 8 W.
None.

T. 19 S., R. 9 W.
Middle Fork Chulitna River IC 443)

T. 20 S., Rs. 9-12 W.
None. (West Fork Chulitna River appears to be more than three chains wide in State-selected T. 20 S., R. 11 W.)

T. 21 S., R. 10 W.
Honolulu Creek in Native allotments AA-6078 and AA-6092 (U.S. Survey No. 7492).

T. 21 S., R. 11 W.
Chulitna River to Honolulu Creek (TA; 8/15/80).
Honolulu Creek in Native allotments AA-6078 and AA-7791 (U.S. Survey No. 7492).

T. 21 S., R. 12 W.

T. 22 S., Rs. 11 and 12 W

Seward Meridian

T. 29 N., Rs. 3-6 W.

T. 30 N., Rs. 3-5 W.
None.

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Indian River to railroad bridge Sec (TA, 8/23/80)

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None

T. 32 N., Rs. 2-4
None

 . Rs.
None

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