

#18.8

March 11, 1987

Re: Project No. S-0141(7)
Nome-Taylor Road
Ownership of Parcel No. 34

Killion Land Company
100 Cushman Street, Suite 308
Fairbanks, Alaska 99701

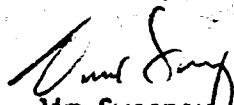
Dear Mr. Killion:

As you requested, I am sending you the the following attachments:

- Attorney General's Opinion #3 on "Management and Use of Submerged Lands Granted under Section 6(m) of the Alaska Statehood Act".
- Assistant Attorney General's Memorandum on "Riparian Rights in State Selections under the Alaska Statehood Act", dated August 6, 1982.
- Assistant Attorney General's Memorandum on "Ownership of the Navigable Waters and Seabeds in Alaska", dated September 27, 1971.
- Assistant Attorney General's Memorandum on "Federal patent effect on Fish and Game Authority to enforce Alaska Statute 16.05.870", dated April 30, 1984.
- United States District Court Decision No. A80-359 on the navigability of the Gulkana River, dated February 9, 1987.
- A determination by the Alaska Department of Natural Resources as to the navigability of the Nome River.

Please call if have any further questions, my phone number is 474-2458.

Sincerely,


 Jim Sweeney
 Right of Way Agent
 Northern Region

JJS/rp

Attachments: as stated

*For more details: see "Navigability & Mining Claims" in general alphabetical file.
 Killion file is drawer #23 of Archives S 014167. Parcel #34*

NAVIGABILITY

Notes to File by Jim Sweeney

March 9, 1987

The ownership of riverbeds, tidal basins and lake beds often depends on whether or not the waterbody is navigable. Navigability can be a complicated issue and there have been a lot of court cases on the subject. The final authority as to whether or not a waterbody is navigable is the courts. State courts can be over-ruled by U.S. courts up to the Supreme Court, the final arbitrator. Several agencies make navigability determinations such as the Corps of Engineers, Bureau of Land Management (BLM), and the Alaska Department of Natural Resources (DNR). BLM and DNR differ as to what is navigable although the Gulkana River navigability decision (see file) will probably cause BLM's determinations to more similar to DNR's.

For our purposes, the DNR is the agency we should consult. The DNR has a State Interest Determination Section in Anchorage headed by Ron Swanson, whose function is to determine the navigability of all the rivers in Alaska. This work is being done by ~~Lance Key~~ (562-1823) who will eventually distribute 1:250,000 scale maps of the State with the limits of navigability of each river shown. A landowner must go to court to get the DNR's decision reversed.

The AG opinions and the Gulkana River navigability decision have some excellent writing on the various aspects of this issue. John Bennett has some very good books on the subject, too.



March 5, 1987

Re: Project No. S-0141(7)
Nome-Taylor Road
Ownership of Parcel No. 34

Killion Land Company
100 Cushman Street, Suite 308
Fairbanks, Alaska 99701

Dear Mr. Killion:

Thank you for taking your valuable time to correspond with the Right of Way Section concerning Parcel No. 34 of Highway Project No. S-0141(7). As a result of your assertions that you are in fact the owner of Parcel No. 34, which is the river bed beneath the Nome River Bridge at Mile 13 of the Nome Taylor Road, a member of our staff was assigned to research the laws on navigability and Federal patents. This research examined the following:

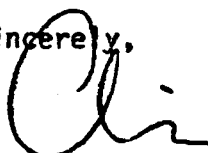
- The Plat, Title, Title Report, and Surveyors Notes of Mineral Survey No. 1140.
- Manual of Instructions for the Survey of the Public Lands of the United States, 1973, BLM Technical Bulletin 6.
- Clark on Surveying and Boundaries--John S. Grimes.
- Shore and Sea Boundaries--Aaron L. Shalowitz.
- Attorney General's Opinion #3 on "Management and Use of Submerged Lands Granted under Section 6(m) of the Alaska Statehood Act".
- Assistant Attorney General's Memorandum on "Riparian Rights in State Selections under the Alaska Statehood Act", dated August 6, 1982.
- Assistant Attorney General's Memorandum on "Ownership of the Navigable Waters and Seabeds in Alaska", dated September 27, 1971.
- Assistant Attorney General's Memorandum on "Federal patent effect on Fish and Game Authority to enforce Alaska Statute 16.05.870", dated April 30, 1984.
- United States District Court Decision No. A80-359 on the navigability of the Gulkana River, dated February 9, 1987.
- A determination by the Alaska Department of Natural Resources as to the navigability of the Nome River.
- State Right of Way files on Project No. S-0141(7) and nearby gravel pits.

These sources establish the following conclusions:

- Prior to statehood, title to the beds of navigable rivers was held in trust by the Federal Government for the future states.
- Title to the beds of navigable rivers within the Territory of Alaska was passed to the State of Alaska at the time of statehood, and is held in trust for the people.
- A Federal patent to a mining claim does not include ownership of the bed of a navigable river.
- That the Nome River is navigable from its mouth to about four miles above the bridge at Mile 13 of the Nome-Taylor Road.
- That the State of Alaska owns the bed of the Nome River.

If you have evidence to dispute these conclusions, please notify our office. We welcome your inquiries into this matter and can give you greater detail, if you wish.

Sincerely,



Chris Birch, P.E.
Chief Right of Way Agent
Northern Region

JSS/rp

cc: Ron Davena, Nome DOT&PF