



# American Rivers

December 22, 1992

**BY HAND DELIVERY**

Manuel Lujan, Jr.  
Secretary of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Post-Net brand fax transmittal memo 7671		# of pages *
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Dear Secretary Lujan:

American Rivers and the Northern Alaska Environmental Center urge you to reconsider your December 2 offer to Alaska Governor Walter J. Hickel to reach agreement concerning State ownership of certain submerged lands. The final weeks before a new administration takes office is not the time to make precedent setting deals involving control over nationally significant natural resources.

The Attorney General of Alaska notified you of the State's intent to file quiet title actions to the submerged lands of more than 200 rivers and lakes in Alaska by letter dated August 27, 1992. The bare listing of rivers and lakes set forth in the State's letter fails to convey the magnitude of the potential threat to the integrity of the many National Parks, National Wild and Scenic Rivers, National Wildlife Refuges and other federal lands affected by the State's letter.

The magnitude of the State's claim requires a careful, deliberative process, not one that has been rushed by the change of administrations. Rather than spending the few weeks prior to the inauguration of a new Administration engaged in last minute discussions with the Hickel administration, we urge the Department to develop options that may be implemented by the Clinton administration to protect navigable rivers within Federal Conservation System Units.

We have recently completed a comprehensive analysis, including extensive mapping, of the submerged lands claimed in the State's August 27 letter. Our study reveals that the lands sought by the State include:

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12 of the 26 National Wild and Scenic Rivers in Alaska, including the Neotak, Fortymile, Birch Creek, Beaver Creek and Charley National Wild and Scenic Rivers;

26 rivers and lakes in 9 separate units of the National Park System, including Denali, Gates of the Arctic and Wrangell-St. Elias National Parks;

74 rivers and lakes in 14 separate National Wildlife Refuges, including Arctic, Yukon Delta, Yukon Flats, Kenai and Kodiak National Wildlife Refuges;

20 rivers and lakes in 10 separate National Wilderness areas;

3 rivers in Bureau of Land Management administered federal Conservation System Units<sup>1</sup> and the National Petroleum Reserve;

7 rivers and lakes in the Tongass and Chugach National Forests.

Enormous implications arise from the State's assertions and actions to date. Most significantly, if the State is successful, title to thousands of miles of riverbed throughout federal Conservation System Units will become ribbons of state-owned land. Unfortunately, these rivers will then become targets of State-licensed development, including riverbed mining, regardless of the incompatibility of such development with the surrounding federal protected areas.

Unfortunately, agencies of the State of Alaska have demonstrated repeatedly an indifferent approach to significant national interests in rivers flowing through National Parks and other protected areas. Last fall, the State unilaterally asserted that Moose Creek in Denali National Park was a navigable river and proceeded to license riverbed mining in the middle of one of our most spectacular National Parks, notwithstanding the obvious incompatibility of placer mining with the purposes of Denali National Park. Subsequent to a storm of public controversy, the Governor of Alaska ordered a closure of State lands in Denali to new mineral entry. However, the State has failed to extinguish the claims or revoke the permits it had issued prior to its tardy mineral closure and has subsequently acted to approve riverbed mining claims within Lake Clark National Park and Preserve.

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<sup>1</sup> Two of these rivers, Birch Creek and Beaver Creek, are also National Wild and Scenic Rivers.

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Moreover, the State has asserted extremely broad definitions of navigability that bear no relationship to any legal standard. In a remarkable series of letters to the National Park Service and other federal land managers dated July 10, 1991, the State's Department of Natural Resources claimed that:

... each waterbody that is identified on any U.S. Department of Interior map, plat, drawing or written record as a 'river' meets the criteria contained in the Gulkana River decision and the bed is therefore owned by the State of Alaska and subject to its management.

Of course, mere identification of a waterbody on a map as a "river" does not vest title in its bed to the State. The Department's Regional Solicitor properly responded to the State's excessive claim, stating, inter alia:

The question of which rivers or parts of rivers are navigable, is of course, a question of law and fact which must be decided on the basis of individual circumstances.

We believe that the Department must vigorously assert the national interest in rivers that flow through the federal lands in Alaska. The Department must exercise particular care and scrutiny of title assertions within federal Conservation System Units where congressionally protected resource values are threatened by the State's authorization of mining and other activities.

American Rivers and the Northern Alaska Environmental Center are also concerned that the Department not act in a precipitous manner to confirm state title by disclaiming an interest in any land claimed by the State, pursuant to 28 U.S.C. § 2409a. We also understand that if a disclaimer is not filed in federal court, then, pursuant to the Federal Land Policy Management Act, 43 U.S.C. §1745(b), a notice of any disclaimer of interest by the United States must be published in the Federal Register.

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<sup>2</sup> Similar letters were sent to the Regional Directors of the Fish and Wildlife Service, Regional Forester of the Forest Service and Alaska Director of the Bureau of Land Management.

<sup>3</sup> September 30, 1991 letter from J.P. Tangen, DOI Regional Solicitor, to Harold C. Heinze, Commissioner, Alaska Department of Natural Resources.

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We also question whether the State's August 27 letter even serves to provide legally sufficient notice of the State's intent to file quiet title actions to certain rivers. The State's letter includes numerous apparent mistakes, misspellings and inaccurate information which make it difficult, if not impossible, to determine with specificity the particular lands claimed by the State.

#### Recommendations

American Rivers and the Northern Alaska Environmental Center recognize that the State may properly claim title to the beds of certain navigable rivers; however, the overly broad and generalized assertions advanced to date by the State to determine title to lands of significant national interest must be rejected. Protection of nationally significant rivers, comprising the ecological core of federal Conservation System Units, requires a strong reaction to the State's blanket assertion of riverbed ownership. The Department must assert vigorously the national interest in preserving federal title to non-navigable rivers.

We urge you to require the State to establish conclusively that a specific waterbody, especially a waterbody within a federal Conservation System Unit, meets the legal test for navigability prior to confirming State title to its submerged lands.

We urge further that the Department act to ensure that any agreement with the State which finds a river within a federal Conservation System Unit to be navigable, also require the State to permanently close State riverbeds within federal Conservation System Units to mineral entry under the State's mineral disposition and leasing laws. National Park Service Director James N. Ridenour made such a request of Governor Mickel with

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<sup>4</sup> For example, the State asserts title to the "Mouth of Kuna [sic] River to Chefernak." The State has apparently both misspelled and misplaced by hundred of miles the Kinia River, which flows past Chefernak within the Yukon Delta National Wildlife Refuge, within the Kuskokwim River Region, not the Colville Region. The State has also listed two Aniakchak Rivers: "Aniakchak River (Bristol Bay Region)" and "Mouth of Aniakchak River to Albert Johnson Creek (Kodiak Island and Shelikof Straight Region)." Our research indicates that there is only one Aniakchak River, within Aniakchak National Monument and Preserve. The State has apparently misspelled the names of other rivers including the "Tunulk [sic] River" rather than Tunulik River, the "Tazmina [sic] River" rather than Tazimina River within Lake Clark National Park and Preserve.

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respect to National Park System units on November 10, 1992. We believe the proposed National Park System closure should apply to all navigable rivers within Conservation System Units.

We would be pleased to meet with you to discuss our concerns in greater detail or to share with you the results of our analysis of the State's August 27 letter.

Sincerely,

*Kevin J. Coyle*  
Kevin J. Coyle  
President

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Roxford S. Blazer, Jr.  
Executive Director  
Northern Alaska  
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cc: Senator J. Bennett Johnston, Chairman, Senate Energy and  
Natural Resources Committee  
Senator Dale Gumpers, Chairman, Senate Public Lands,  
National Parks and Forests Subcommittee  
Representative George Miller, Chairman, House Interior and  
Insular Affairs Committee  
Representative Gerry E. Studds, chairman, Merchant Marine  
and Fisheries Committee  
Representative Bruce Vento, Chairman, House National Parks  
and Public Lands Subcommittee  
James M. Ridenour, Director, National Park Service  
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