

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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July 26, 1995

*Copy to —
Regional Directors
Deputies
E & D*

Addressees Below

AUG 11 1995

The enclosed memo summarizes the availability and location of information and provides suggested guidance for criteria used to determine ownership of submerged inland waters of Alaska. With the elimination of the department budget for navigability assertions, all work on a systematic stream or waterbody ownership program has been suspended.

It is recognized that there will be specific situations where disputed ownership of submerged land involve very important public policy and the issues in dispute have regional or statewide implications. When this situation appears to exist, we can make our technical expertise on navigability standards available. These instances, because of the zero budget, must be confined to challenges to state ownership by a federal or private interest where there is a real potential for the waterbody in question to be declared navigable.

We are preparing a supplement to Department Order No. 125 that places responsibility for determination of submerged ownership with the appropriate state official having jurisdiction over a pending action where a state approval or permit is dependant upon state ownership. For example, the division of oil and gas will make any necessary determinations associated with an upland lease and the division of lands would take similar action in response to removal of gravel from sources defined as submerged lands or for access to public lands involves stream crossings where a land use authorization is required. This division will make the necessary decision associated with mining claims. Other state entities, such as the Department of Transportation and Public Facilities for road and airport projects involving submerged lands under inland waters will be responsible for making and supporting ownership issues. This decentralization of the responsibility for asserting inland submerged land ownership makes it very important that the Attorney General's Office be consulted when there is a possibility that an assertion or acceptance of a federal agency determination of ownership may adversely damage the state's long-term capability to achieve successful quiet title action in federal court.

Enclosed for you information is a current copy of Department Order No. 125 and a fact sheet titled "Ownership and Management of Navigable and Public Water." Please distribute this information to those within your organization that will have the basic responsibility for and/or are interested in navigability determinations.

Sincerely,

[Signature]
John Shively
Commissioner

Enclosures (3)

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Addressees:

William L. Hensley, Commissioner, Alaska Department of Commerce and Economic Development

Mike Irwin, Commissioner, Alaska Department of Community and Regional Affairs

Frank Rue, Commissioner, Alaska Department of Fish and Game

Joseph L. Perkins, Commissioner, Alaska Department of Transportation and Public Facilities

Marilyn Heiman, Office of the Governor

Deborah Williams for the Department of Interior

Larry Hudson, Regional Forester, for the Department of Agriculture

Julie Kitka, President, Alaska Federation of Natives

MEMORANDUM
Department of Natural Resources

State of Alaska
Div. of Mining & Water Mgmt.

TO: Navigability Information & Data Users
and DNR Directors

DATE: June 30, 1995

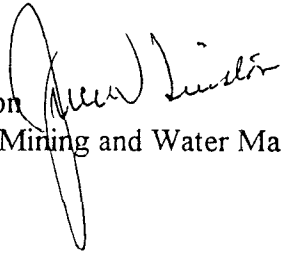
TELEPHONE NO: 762-2573

THRU:

SUBJECT: Navigability Files

FROM:

Jules Tileston
Director of Mining and Water Management



This memo is to inform users of navigability information and data users where file material can be obtained after we shut the Navigability Section down as of June 30, 1995. Files will be maintained by Division of Mining and Water Management, Suite 800, Frontier Building, 3601 C Street, Anchorage. The files contain the following:

1. Historical information on the past court actions that DNR has filed in federal court. This includes Slobucket Lake and Gulkana River files.
2. Historical information gathered by DNR and BLM historians
3. Copies of most BLM and State navigability determinations filed by quad sheets.
4. Individual River files containing information on use, hydrology, and other river related research material.
5. Other litigation files such as Moose Creek in the Kantishna.

These files will be kept in a secure location that can be accessed by DNR employees, other agencies and the public for in building uses.

The navigability maps contain the Quads with navigability overlays. These are important for planning and other purposes. Historical reports and other supporting information for present and past litigation are kept in binders.

We have also been asked to put together information so that each Division in DNR and other agencies can make their own navigability determinations. I would suggest that they use the information in DO #125 and the fact sheet titled "Ownership and Management of Navigable and Public Water".

We suggest the following guidelines that may be used by agencies or individuals:

- A water body that is obviously navigable would be a lake or stream with a size, shape, depth and gradient that is capable of floating at least 1000 pounds. This would include rivers such as the Susitna, Kuskokwim, Copper, and Tanana, will also include rivers such as the Sixmile, Placer and Resurrection. For reference a 19 foot square stern canoe is rated by the manufacturer to carry 1000 pounds and a 13.5-foot Avon Adventure is rated by the manufacturer to carry 1700 pounds.
- Streams that are obviously not navigable would be streams that have excessive gradients (generally in excess of fifty feet per mile) or insufficient flows to carry water borne traffic.
- Streams that fall between these extremes will have to be evaluated using the guidelines in Department Order #125 and may require the collection of additional hydrological, historical, and physical characteristic data to support a navigability finding. Once a determination is made the agency may want to run the finding by the Attorney General's Office to ensure that they are not setting precedence that the State cannot defend or that may weaken the State's claim to submerged lands. These are policy issues that the Department will need to address.

These guidelines do not cover many issues associated with ownership of inland submerged lands, such as, prior and current litigation, pre-statehood withdrawals and management agreements.

There are three primary sources of digital data containing information about the navigability status of Alaska's waterways. A WordPerfect directory, [navrpt] of navigability library sheets; a Foxpro database, [dailylog.dbf], which tracts navigability inquiries and the states response to them, and a Foxpro database compilation of different databases, [waterbod.dbf], which includes navigability work done on

Mental Heath Trust Land and some of the independent statewide work prior of navigability adjudicators. These source of information are described in more detail below.

WordPerfect Reports

A directory of WordPerfect files containing library sheets that summarize work done by the state in recent years on specific waterbodies. These documents were intended to be dynamic as they were continually being updated with new information by the navigability staff. Brief notes as to the known physical characteristics, historical use, contemporary use, fisheries resources, and navigability determinations are included in these documents. The directory is not comprehensive of all navigability work done in Alaska, but it does provide a valuable overview of the waterbodies contained therein.

Access to these reports are on the GIS network at /net/water/water/navrpt/ directory. These reports are indexed by one of six Hydrologic Unit Code (HUC) subregions within the state. The first number in the file name corresponds to the number of the hydrologic unit subregion where the waterbody is located. A Hydrologic Unit Map can be obtained from the Division of Mining and Water Management to identify the HUC for the area of interest. The file naming convention is designed to eliminate confusion and potential

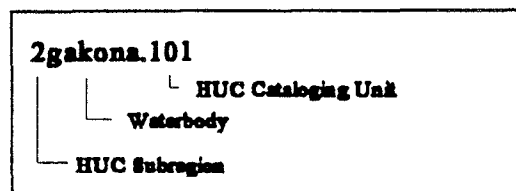


Figure 1. File Naming Convention