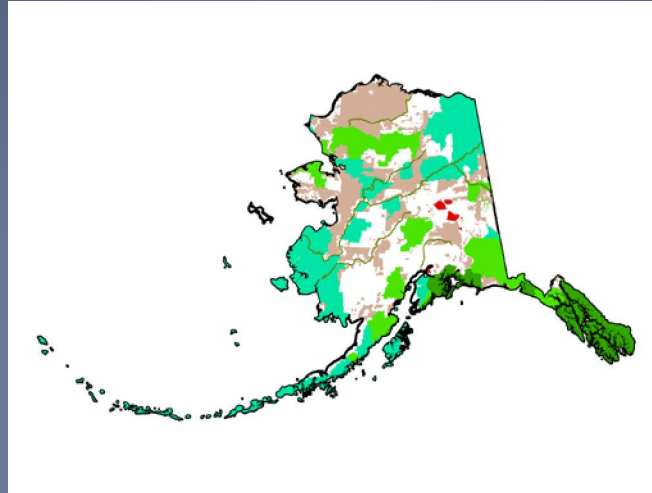


2010 Alaska Lands Forum

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CHAPTER 71



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Navigable Waters Issues:

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Division of Mining, Land & Water

Alaska Department of Natural Resources

Navigable Waters Issues:

Basic Law of Water Boundaries

Navigability

Title Issues

Basic Law of Water Boundaries

Early English common law:

- vested title to underlying lands of navigable waters in the Crown.
- vested control over the waters, in the interest of navigation and commerce, for the benefit of all subjects, in the Parliament.

After the American Revolution:

- 13 original colonies became sovereign states vested with title to all lands within their boundaries over which the tide ebbed and flowed and to beds of inland navigable waters.
- With the adoption of the Federal Constitution, the states ceded powers to regulate interstate commerce and the right to control navigation to the United States.

New states entering the Union:

- subsequent to adoption of the Constitution, were admitted on an equal footing.

Equal footing doctrine. This doctrine provides that, like the original states which retained title to the beds of their navigable waters, all new states are entitled to the beds of navigable waters within their boundaries.

Navigability

Early English common law:

- All streams over which the tide ebbed and flowed were deemed navigable and the beds thereof were owned by the Crown.
- All streams or bodies of water which were not affected by tide were non-navigable and the adjacent landowners held title to the center of the stream or lake.

The English common law doctrine has been uniformly rejected by the Supreme Court of the United States.

The Daniel Ball v. U.S. 77 U.S. (19 Wall.) 557 (1870)

- Streams that are navigable in fact are navigable in law regardless of the presence or absence of a tide.
- The rivers are navigable when they are used, or are susceptible of being used, in their ordinary conditions as highways for commerce.

However, the rule of law that the landowners adjacent to non-navigable water hold title to the center of the water has carried over to Federal law and has been adopted by the majority of states, including Alaska.

43 USC 931

All navigable rivers within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both.



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Navigability Program

State Policy on Navigability

<http://dnr.alaska.gov/mlw/nav/>

Title Issues

Natural features such as rivers, lakes and oceans have historically formed ownership boundaries.

Tidelands include the land between mean high tide and mean low tide.

Submerged lands extend from the mean low tide seaward 3 geographical miles. (6076.10 feet = 1 geographic mile)

The State of Alaska owns most of the tide and submerged lands along its coast as a consequence of the Statehood Act, the equal footing doctrine and the Submerged Lands Act.

Fact Sheet

Title: Tide & Submerged Land Ownership

http://dnr.alaska.gov/mlw/factsht/tide_sub.pdf

A **riparian owner** is one who owns property along the bank of a watercourse, including a lake, and whose boundary is the water course or lake.

The riparian owner rights and privileges include access to and use of surface waters, shorelines and beds of those waters.

The ownership is to the **ordinary high water** mark.



A **littoral owner** is one who owns land abutting a sea or ocean where the tide regularly rises and falls.

The ownership is to the **mean high water** mark .

Riparian rights can be effected by:

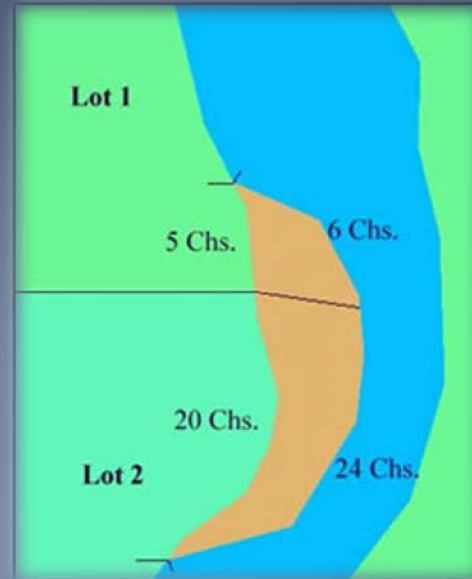
- **Accretion**: the gradual and imperceptible deposit of soil along the edge of a body of water. The upland owner gains property.
- **Erosion**: the gradual eating away of the soil by the operation of currents or tides. The upland owner loses property.
- **Avulsion**: when a sudden change in a watercourse cuts a portion of property off. The cut off portion remains in the original ownership.
- **Reliction**: the uncovering of submerged land by the recession of water. The upland owner gains property. Glacio-isostatic uplift is a form of reliction.

A **meander line** is the survey traverse run at the line of ordinary high water or mean high tide to generally define the shore line of permanent natural bodies of water.

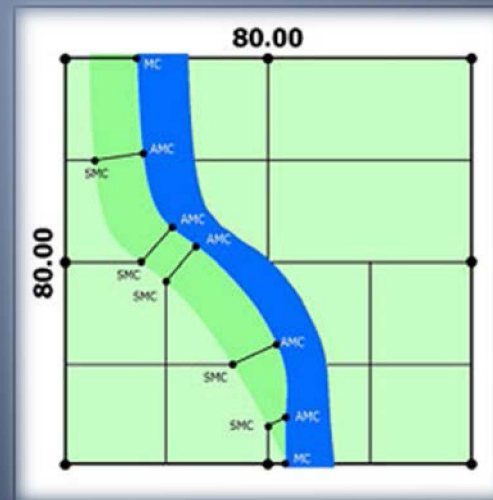
Partition lines of accreted lands are established from the original meander line to the existing ordinary high water mark. The apportionment methods are:

- Proportionate shoreline.
- Perpendicular.
- Prolongation of property line.
- Proportionate acreage.

Proportionate shoreline



Perpendicular



Clouded title is title that is subject to an adverse claim of ownership because there is no patent, deed or other written transfer that clearly establishes ownership.

Quiet Title Action is a legal process that removes an adverse claim or cloud on title of property to establish ownership in accordance with AS 09.45.010.

Fact Sheet

Title: Accretion, Reliction & Quiet Title Action

<http://dnr.alaska.gov/mlw/factsht/accretion.pdf>

Recordable Disclaimers of Interest: State owned Navigable Waters

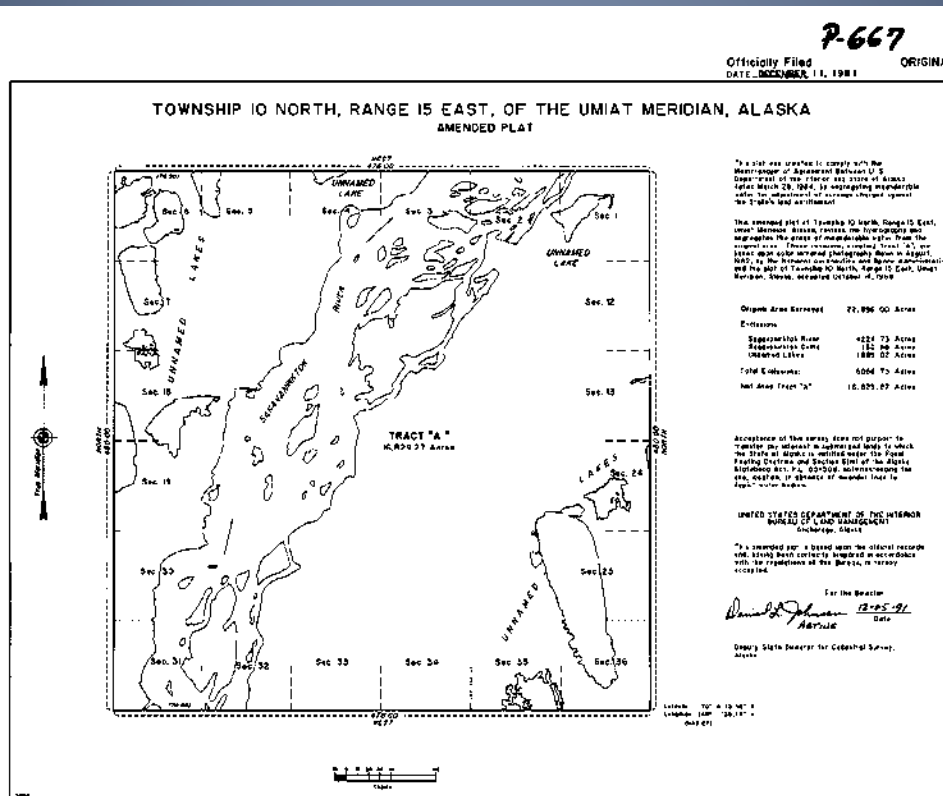
Fact sheet

http://dnr.alaska.gov/mlw/factsht/recordable_disclaimer.pdf

Emerging Islands formed in navigable waters after the date of statehood belong to the state. Islands formed in non-navigable waters after the date of statehood belong to the adjacent upland owner.



Water plats were prepared by BLM to account for the lack of meanders that were done on approximately 500 federal township plats. The state received an entitlement acreage credit as a result of the water plat, but the initial township plat is the plat of record.



Discussion & Questions