

Subject: Valdez Terminal Replacement

Date: Wed, 14 Apr 1999 13:20:30 -0800

From: "John F. Bennett" <johnf_bennett@dot.state.ak.us>

Organization: Alaska DOT&PF

To: "Dengel, Dave" <ddengel@ci.valdez.ak.us>

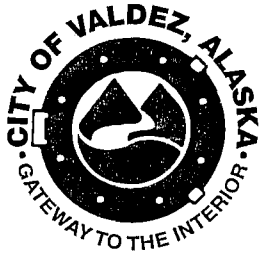
Dave, I recieved your April 8 letter with the attached memo from the City's attorney regarding the true meander line for Tract V. Although I believe the information the attorney provided is accurate with respect to the general rule of boundaries between tidelands and uplands, I also believe that facts unique to this situation ('64 earthquake) were such that the general rule should not have been applied during the preparation of the Port Valdez Subdivision.

However, since the Port Valdez Subdivision is now ancient history and the city's legal advisor considers the actual mean high tide line to form the boundary between the tidelands and the uplands, we have defined the parcels accordingly on our ROW acquisition plans. The City's attorney also recommended a replat to clarify the boundaries between the properties. As our ROW plans perform that function and have been submitted as a replat to the City, this controversy should end with this project. I might have mentioned that changes in the design have resulted in parcels slightly different in shape and size from those we had shown on the preliminary replat submittal. The final plat will show the dimensions and areas as adjusted and the terminal facility boundary will be monumented as a part of this final plat.

We are currently in the process of contacting a fee appraiser to value to two private parcels. Unfortunately, most that we have contacted so far are unable to get to it for 6-7 weeks. We may end up reassigning one of our staff appraisers to expedite this project. I should know more in a couple of days.

Our acquisition of the two private parcels will eliminate their interests in the parcels we have defined including any conflicted area caused by the tidelands boundary controversy. Our legal description in the lease from the city might be expanded, however, to include the areas of the two private parcels so that whatever claim the city might have had to them, if any, they are now subject to the lease. This might constitute the first "quitclaim lease" I've been involved with. The final result is that we hope everyone is treated fairly and that the title is cleared.

Thats all for now. Thanks for your help in obtaining the opinion. JohnB



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APR 12 1999

OFFICE OF THE CITY MANAGER

April 8, 1999

Mr. John F. Bennett
Right of Way Engineer
Northern Region
Department of Transportation
& Public Facilities
2301 Peger Road, MS 2553
Fairbanks, Alaska 99709-5399

Dear Mr. Bennett:

Enclosed is a copy of a letter from City Attorney Bill Walker concerning the true meander line for Tract V, Port Valdez Subdivision. I apologize for the tardiness of this letter but we needed the City council to authorize its release because of attorney-client privilege.

Please let me know if there is more information that is needed for you to proceed with the right of way acquisition phase of the Valdez Terminal Replacement project.

Sincerely,

David Dengel
City Manager



HUGHES THORSNESS
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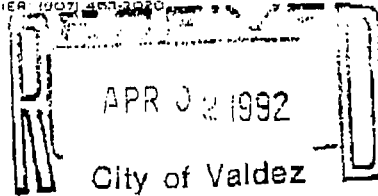
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OF COUNSEL
JOHN C. HUGHES
RICHARD O. GANTZ

Reply to: Anchorage

March 31, 1992

Direct Dial:
(907) 263-8251



Dave Dengel
Community Development Director
City of Valdez
P. O. Box 307
Valdez, AK 99686

Re: True Meander Line for Tract V, Port Valdez Subdivision
Our File No. 925-1500

Dear Dave:

Following the questions raised by the State of Alaska regarding the water side meander line of Tract V, I have researched that issue. The specific question researched was, What establishes the legal boundary of waterfront property - the "meander line of record" or the "true meander line"?

The general rule is that, where "meander line" is used as a call in the legal description of a deed conveying waterfront property, the edge of the water (the "true meander line") is the actual boundary of the upland tract. The meander line created in surveying the property and referenced in that deed (the "meander line of record") is used only to mark the "general contours" of the shore and to aid in calculating acreages.

As an exception to this general rule, the "meander line of record" will mark the legal boundary of a parcel of waterfront

HUGHES THORSNESS
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Dave Dengel
March 31, 1992
Page 2

property if there is clear evidence that the parties to the deed intended that "meander line of record" to be the actual boundary line. The "meander line" call and/or the "acreage" call are alone insufficient evidence of such an intent - something more is necessary. With oceanfront property, the watercourse boundary or "true meander line" is the line of mean high tide.

The general rule with respect to the use of a "meander line" as a call in a legal description in a deed conveying real property is clear: the ordinary high water line of the waterway at issue, rather than the meander line, is the true boundary of the parcel of land. Railroad Co. v. Schurmeir, 74 U.S. (7 Wall) 272, 286 (1869); Houser v. United States, 12 Cl.Ct. 454, 468 (1987).

Alaska has adopted this general rule. In Hawkins v. Alaska Freight Lines, Inc., 410 P.2d 992 (Alaska 1966), the Alaska Supreme Court explained that:

In the surveying of property, the meander line such as is involved here is a straight line between fixed points, or a series of connecting straight lines, run along the shore of a body of water for the purpose of marking the general contour of the shore at high water. Since it is not always possible or feasible to follow all of the minute windings of a high water line, only the general course of the body of water is followed and the meander line runs substantially along the line of high water. The meander line is generally not the boundary line of the property along the shore - the boundary being marked by the actual line of mean high water.

Hawkins, supra, at 994 (citations omitted) (emphasis added).

The purpose of meander lines is to reflect the curvature of a watercourse and to aid in calculating acreages, to ascertain the exact quantity of uplands at issue. They are not intended to "state absolute boundaries" or "limit the title of the grantee to such meander lines." Morse Bros, Inc. v. Wallace, 714 P.2d 1095, 1096 at note 2 (Or.App.1986). That court noted that:

It has frequently been held, both by the Federal and state courts, that such meander lines are intended for the purpose of bounding and abutting the lands granted upon the waters whose margins are thus meandered; and that the waters themselves constitute the real boundary.

HUGHES THORSNESS
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ATTORNEYS AT LAW

Dave Dengel
March 31, 1992
Page 3

Morse Bros., supra (citing Luscher v. Reynolds, 56 P.2d 1158 (Or. 1936) quoting from Hardin v. Jordan, 140 U.S. 371, 380, 11 S.Ct. 808, 35 L.Ed. 428 (1891)) (emphasis added).

Many courts recognize an exception to this general rule where there is clear evidence that the parties intended that the meander line should be the actual boundary. Vavrek v. Parks, 495 P.2d 1051, 1054-1055 (Wash.App.1972); Myers v. Harris, 519 P.2d 1307, 1309 (Wash.App. 1974); Thomas v. Nelson, 670 P.2d 682, 684 (Wash.App.1983).

It has become a "legal presumption" as to the intent of parties involved in the conveyance of land abutting a watercourse that the transferees were getting land not to the "meander line" of record, but were instead getting property to the ordinary high water line of the watercourse that the "meander line" was meant to represent. Houser, supra, at 468. To rebut this presumption, it is necessary to introduce "clear and convincing" evidence that the parties to the conveyance intended the meander line to be the actual boundary. Myers v. Harris, supra, at 1309.

Evidence of an intent to make the meander line the true boundary of the waterfront property conveyed is often found in the document itself. In Meyer v. Worden, 575 S.W.2d 366, 369 (Tex.App.1979), the court noted that:

a course and distance call which is stated to be 'along the meander line' of a river conveys to the river and along the general course of the river for the boundary of the land conveyed, rather than along the direction and distance expressed in the call, unless there are other words in the instrument supporting another intention.

Meyer, supra (emphasis added).

For example, in Thomas v. Nelson, supra, the Washington Court of Appeals noted that the "salient evidence comes from the language of the . . . deed itself" in upholding the trial court's finding that "the meander line clearly was intended to be the actual waterside boundary." Thomas, supra at 684. Focusing on the fact that the legal description of the parcel was not simply "from the road to the meander line" but added that this distance was "about 600 feet" (when the true distance from the road to the line of mean high tide was about 1700 feet), the court held that

HUGHES THORSNESS
GANTZ POWELL & BRUNDIN

ATTORNEYS AT LAW

Dave Dengel
March 31, 1992
Page 4

this was a "clear indication that the parties meant to fix the meander line as the actual boundary." Thomas, supra, at 684.

Finally, it is a general rule that, with regard to ocean front property, the watercourse boundary or "true meander line" is the line of mean high tide. Myers v. Harris, supra, at 1309; Vavrek v. Parks, supra, at 1054. In Hawkins v. Alaska Freight Lines, Inc., supra, the Alaska Supreme Court adopted this general rule in noting that the true boundary of the ocean-front property there at issue was the "actual line of mean high water."

Therefore, it is my recommendation that the meander line of Tract V be the true meander line for the purposes of the boundary of Tract V. As we have discussed, it would be appropriate for there to be a replat of that area to better reflect the true meander line as the meander line regarding that area of property.

I am returning with this letter the copy of ATS 564 maps as well as the Resource Associates of Alaska maps provided to me by your staff. I will bring the ATS 564 with me on April 6, 1992.

Should you have any questions whatsoever, please do not hesitate to contact me.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

By: 
William M. Walker

WMW/kah/1011:XKAH
cc: Doug Griffin

STATE OF ALASKA

10.1
WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 - JUNEAU

1964 Opinions of the
Attorney General No. 6

September 14, 1964

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auth. opinion file
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The Honorable Phil R. Holdsworth
Commissioner
Department of Natural Resources
Juneau, Alaska

SEP 24 1964

Re: Effect of Earthquake on Tideland Boundaries

Dear Commissioner Holdsworth:

You have requested our opinion on the ownership of shoreline property enlarged or reduced, gradually or suddenly, by the earthquake of March 27, 1964, and its after-effects.

Accretion is the increase of riparian land through the gradual deposit of various materials, which create dry land out of that formerly covered by water.^{1/} Erosion is the gradual washing away of land bordering on a body of water by the action of that water.^{2/} Reliction is the uncovering, whether gradual or sudden, of land by the withdrawal of waters previously covering it.^{3/} Avulsion is a sudden and perceptible addition or loss to land by the action of water or otherwise.^{4/}

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- 1/ St. Louis, I. M. and S. R. Co. v. Ramsey, 53 Ark. 314, 13 S.W. 931, 933 (1890)
 - 2/ Oklahoma v. Texas, 268 U.S. 252, 45 S.Ct. 497, 69 L.ed. 937, 943 (1925)
 - 3/ Jefferis v. East Omaha Land Co., 134 U.S. 178, 10 S.Ct. 518, 33 L.ed. 872, 875-6 (1890)
 - 4/ Nebraska v. Iowa, 143 U.S. 359, 12 S.Ct. 396, 36 L.ed. 186, 187 (1892); Barakis v. American Cyanamid Co., 161 F.Supp. 25, 29 (1958)

The Honorable Phil R. Holdsworth
Juneau, Alaska

September 14, 1964
-2-

The means by which the change in shoreline occurs has significant legal consequences. If the location of the boundary of a tract of land at the mean high tide line is gradually and imperceptibly changed by accretion, erosion, or prolonged reliction, the margin of a tract at mean high tide, as so changed, remains the boundary. "Where . . . a boundary bank is changed by these processes, [accretion and erosion] the boundary, whether public or private, follows the change."^{5/} Lands eroded from a tract which, as a result, are below mean high tide are thereby revested in the State.^{6/}

On the contrary, if a tract undergoes sudden or violent change by reliction or avulsion, its boundaries remain the same and no change in ownership occurs.

"When land bordering a body of water is increased by accretion, . . . the new land thus formed belongs to the owner of the upland to which it attaches. . . . [Where] land [is] . . . lost by erosion, [it] returns to the ownership of the State. This is not the rule where the loss of the land occurs by avulsion, . . . the effect or extent of which is perceptible while it is in progress. In such cases, the boundaries do not change."^{7/}

In land precipitously lowered by the earthquake, the upland owner would have title out to the old high-water mark, regardless of the fact that the tract may now be partially submerged; if the owner previously owned the tidelands, he would still own the land out to his old low-water mark boundary. The character of the body of water as tidal, non-tidal, navigable or non-navigable is immaterial as respects the application of

^{5/} Oklahoma v. Texas, 268 U.S. 252, 45 S.Ct. 497, 69 L.ed. 937, 943 (1925)

^{6/} AS 44.03.020

^{7/} Arkansas v. Tennessee, 246 U.S. 158, 38 S.Ct. 301, 62 L.ed. 638, 647 (1918); In re City of Buffalo, 206 N.Y. 319, 99 N.E. 850, 852 (1912)

The Honorable Phil R. Holdsworth
Juneau, Alaska

September 14, 1964
-3-

the rules relating to sudden reliction and avulsion. The rules governing changes of boundaries of tidelands and uplands are equally applicable to the State and to private persons.^{8/}

When land shifts occur by earthquake-generated avulsion, then, the element of suddenness creates a situation where no change occurs in the limits of State boundaries or private tracts; the old State and private boundaries, submerged or otherwise, survive.^{9/}

Briefly, then, these are the answers to your specific questions:

(a) Boundaries follow accretion and erosion because the change is gradual; boundaries do not change where land displacement occurs suddenly, as through avulsion or some kinds of reliction.

(b) State ownership of tidelands is measured by the old boundaries where sudden earthquake displacement has occurred.^{10/}

(c) Yes, the boundaries of tidelands set by pre-earthquake survey are fixed. See (a) and (b).

(d) Where old tideland boundaries were surveyed and known, they must be followed. Presumably, unsurveyed tideland

^{8/} Waynor v. Diboff, 9 Alaska 230, 232 (1937). See also footnote 5, supra.

^{9/} Louisiana v. Mississippi, 282 U.S. 458, 465, 51 S.Ct. 197 (1931)

^{10/} However, boundaries may be changed by State action and Congressional assent. Then, of course, the new mean high tide mark could be used to ascertain the extent of tidelands ownership. U. S. v. Louisiana, 363 U.S. 1, 8-9 (1960). c.f.: 43 U.S.C.A. 1311. Ownership of submerged lands.

Opinion No. 6


The Honorable Phil R. Holdsworth
Juneau, Alaska

September 14, 1964
-4-

boundaries may now be surveyed and specified according to presently existing land contours, as there are no previously established boundaries to recognize.

We trust this information will be of help to you.

Yours very truly,


WARREN C. COLVER
ATTORNEY GENERAL

WCC/rg

cc: William A. Egan
Governor

Floyd L. Guertin, Commissioner
Department of Administration