United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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TAKE PRIDE IN AMERICA

AA-085088 (1864)

SEP 14 2004

Memorandum

To: Chief, Branch of Lands and Realty (932)

From: Navigable Waters Specialist Jack Frost

Subject: Navigability of Kvichak River and Iliamna Lake in the Bristol Bay Region

On July 18, 2003, the State of Alaska filed an application for a recordable disclaimer of interest for the submerged lands lying within the ordinary high water line of Lake Iliamna and Kvichak River and all interconnecting sloughs of the Kvichak River beginning at Lake Iliamna downstream to Kvichak Bay within T. 14 S., R. 46 W., and T. 14 S., R. 47 W., Seward Meridian, Alaska, near Koggiung on the Alaska Peninsula. The State identified its application on a map entitled "Kvichak River and Iliamna Lake Recordable Disclaimer of Interest (Map One of Four)," dated May 1, 2003. The map was submitted with the State's application.

In support of its application, the State submitted to the Bureau of Land Management (BLM) two conveyance memoranda dated December 5, 1979 and September 4, 1984, three navigability recommendations dated October 19, 1982, February 22, 1985 and June 2, 1986, and a letter from the Alaska State Director, dated May 13, 1974, all containing statements to the fact that Kvichak River and Iliamna Lake are navigable.[1] The BLM issued these memoranda in support of land conveyances to Native corporations and the State of Alaska under the Alaska Native Claims Settlement Act (ANCSA) and the Alaska Statehood Act, respectively.

This paper considers whether any new information changes or modifies BLM's prior navigability finding that resulted in an appealable decision, or, if the navigability finding was not embodied in an appealable decision, a current determination will be required. Consideration is also given to whether or not the State's application for lands underlying the subject water bodies meets the regulatory requirements (43 CFR 1864).

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[1] Tom Irwin to Henri Bisson, BLM, July 18, 2003, file AA-085088 (1864), Alaska State Office, BLM records, Anchorage. Robert M. Loeffler, Director, Division of Mining, Land & Water, signed the letter.

Briefly stated, BLM's past recommendations that the Kvichak River and Iliamna Lake are navigable are affirmed. In the townships where there was not any past review, Iliamna Lake and Kvichak River are determined to be navigable. The application for "interconnecting sloughs" is not specific without map and name identification and, therefore, under the regulations, must be rejected. However, if waters of the navigable Kvichak River flow through the sloughs, then the sloughs are considered to be part of the river.

Land Status

The United States holds title to a very limited amount of riparian lands along the Kvichak River and Iliamna Lake. Most of the riparian lands have been conveyed out of federal ownership, primarily to the State of Alaska, the villages of Igiugig, Iliamna, Kakhonak, Levelock, and Pedro Bay, Bristol Bay Native Corporation, and to Native allottees. The federal lands are managed by the BLM.

Iliamna Lake at 1115 square miles is the largest lake in Alaska and lies in fifty-one townships.[2] For the most part, the riparian lands in these townships have been interim conveyed (IC Nos. 283, 284, 302, 303, 357, 358, 359, 360, 402, 403, 649, 650, 817, and 818) or patented to Native corporations and Native allottees. The State of Alaska has a very limited amount of riparian land in comparison.

Kvichak River, heading in Iliamna Lake, flows 50 miles southwesterly and through 13 townships to Kvichak Bay.[3] The majority of the Kvichak River riparian lands have been either interim conveyed (IC Nos. 193, 194, 265, 266, 302, and 303) or patented to Native corporations and Native allottees. The remaining riparian lands are primarily selected by the State of Alaska. There are only parts of two townships that are currently in federal (BLM) ownership. In T. 10 S., R. 41 W., S.M. there are village selections (AA-6669-K) by Igiugig Village and Native Corporations along the Kvichak River that have not been conveyed and in T. 13 S., R. 46 W., S.M. a Native allotment (AA-6609 Parcel B) along the Kvichak River has not been surveyed or certified.

BLM and Other Federal Navigability Determinations

The BLM first considered the navigability of the Kvichak River and Iliamna Lake while considering land selection applications under the Alaska Native Claims Settlement Act and the Statehood Act. In general, all administrative determinations referenced list the Kvichak River and Iliamna Lake as navigable in specific townships but not in their entirety. These documents reference the navigability of the Kvichak River and Iliamna Lake without any facts to support the navigability finding. On October 19, 1982 BLM wrote a navigability recommendation in the Dillingham State selection region that listed the Kvichak River as navigable in two townships.[4] In a navigability report dated June 2, 1986, the BLM

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[2] Selkregg, Lidia L. *Alaska Regional Profiles: Southwest Region*, 106.
[3] Orth, Donald J. *Dictionary of Alaska Place Names*, 557.
[4] Sherman F. Berg to Chief, Branch of Conveyance Support, October 19, 1982, file 2620, State Grants, BLM records, Alaska State Office, Anchorage.

affirmed a determination from April 5, 1979, that determined the lower reaches of the Kvichak River navigable in six townships, and subsequently excluded the submerged lands from lands conveyed to Levelock Natives, Limited by Interim Conveyance 193, dated May 24, 1979.[5] A navigability report dated February 22, 1985, reviewing State selections on certain sections in two townships, lists Iliamna Lake as navigable.[6] Additionally, in a letter dated May 13, 1974 to a Native regional corporation, the BLM identified the Kvichak River and Iliamna Lake as navigable.[7] Generally speaking, only the navigable waters listed in the determination from June 2, 1986 and two conveyance memoranda dated December 5, 1979 and September 4, 1984 were incorporated in an appealable decision. Finally, both the U.S. Army Corps of Engineers and the U.S. Coast Guard identify Kvichak River and Iliamna Lake as navigable.[8]

Iliamna Lake and Kvichak River Physical Characteristics

The Bristol Bay Lowland is bounded by the Ahklun Mountains to the northwest and the Aleutian Range to the southeast. Two great rivers, the Nushagak and the Kvichak, drain the lowland into Bristol Bay. Iliamna Lake is one of several large, glacially formed, and very deep lakes held in by end moraines, in the foothills of the Aleutian Range; the Kvichak River is its outlet.[9] Iliamna Lake is about 80 miles in length and 8 to 20 miles in width.[10] Iliamna Lake is located on the west side of Cook Inlet and fed by the glacial melt and rain from the Chigmit Mountains of the Aleutian Range through the Lake Clark system. Tributaries of Iliamna Lake include the Newhalen, Pile, Iliamna, Copper, and Kakhonak rivers. The Kvichak River and Iliamna Lake are in their natural condition.

The Kvichak River is a clear water stream that heads at Iliamna Lake and flows 50 miles to Kvichak Bay in the Bristol Bay region. Some of the primary tributaries of the Kvichak River include the Alagnak River (locally referred to as the Branch River), Kaskanak, Ole, Pecks, and Yellow creeks. The lower reaches of the Kvichak River is a single channel and tidal with a controlling depth of about 10 feet up to Kaskanak Flats, about river mile 43; between miles 43 and 51 the controlling depth at low water is about 2 feet.[11] In the area around Kaskanak Flats the river is "broken by islands and bars into narrow shallow channels."[12] Dredging was considered on the Kvichak River in the Kaskanak Flats but it never happened due to the fact that the project was not economically justified during the time it was under review. In 1957 the Corps of Engineers reported, "Local interests request improvement of the Kvichak River channel to permit freight barges and boats of moderate

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[5] Robert W. Arndorfer, DSD for Conveyance Management (960), to DSD for Cadastral Survey (920), June 2, 1986, file AA-6678-EE, Alaska Native Claims Settlement Act selection files, BLM records.
[6] Robert W. Arndorfer, DSD for Conveyance Management (960), to Chief, Branch of State Adjudication (964), February 22, 1985, file AA-21695, BLM records.
[7] Curtis V. McVee, Alaska State Director, to Joe Upicksoun, President, Artic Slope Regional Corporation, May 13, 1974, BLM records.
[8] For a listing of the U.S. Army Corps of Engineers navigability determinations go to website (www.poa.usace.army.mil/reg). See also the U.S. Coast Guard, "Navigable Waters of the U.S. Within the Seventeenth Coast Guard District (State of Alaska)," revision date of April, 2003, in writer's files.
[9] Alaska Planning and Management, Alaska Community Survey, September 1972, 1.
[10] U.S. Army, Corps of Engineers, *Southwestern Alaska*, 5.
[11] *Ibid.*, 5.
[12] *Ibid.*, 49.

draft to navigate throughout the entire ice-free period of each year. They suggest a channel with a minimum depth of 5 to 6 feet below average low water and a width of 100 feet through the Kaskanak Flats area, a distance of about 8 miles."[13]

Evidence of Commerce

Culturally, people of this region are Eskimo (both Yup'ik and Alutiiq). The current villages in this region are Igiugig, Iliamna, Kakhonak, Levelock, Pedro Bay, and Pile Bay. While all of the villages have small populations, growth in the region is evident by looking at the population trends of most of the villages in the accompanying table.[14]

Village	1950	1960	1970	2000[15]
Igiugig	None listed	36	36	53
Iliamna	44	47	58	102
Kakhonak	39	57	88	174
Levelock	76	88	74	122
Newhalen	48	63[16]	88	160
Pedro Bay	44	53	65	50
Pile Bay	48	None listed	None listed	None listed
Total	299	344	409	661

Most people in the villages depend on commercial fishing and subsistence as a lifestyle due to the famous Bristol Bay fisheries, the lack of other viable jobs, and the remoteness of the region. The Kvichak River and Iliamna Lake, as highways of travel and transportation, have played a huge role in the development of commerce for the villages in the region as well as sport and commercial fishing in Bristol Bay. Area villages were accessible by boat from Kvichak Bay and by truck and boat from Cook Inlet. Transporting goods by boat to the region from Cook Inlet and Anchorage required a portage. Boats on the Cook Inlet side traveled to Williamsport, at Iliamna Bay of Cook Inlet, and then hauled by trailer approximately 10 miles by road to a site across the Iliamna River from Old Iliamna Village originally called Foss' Landing. Boats using the portage are typically commercial fishing vessels traveling to Bristol Bay and other boats supplying the Iliamna Lake, Kvichak River, and Lake Clark area with goods and services. This vastly shorter route serves as an alternative to going around the Aleutian Peninsula and has been used from well before statehood to the present.

Use of Iliamna Portage in the early 1930's for boats picking up freight is described in *Seversen's Roadhouse: Crossroads of Bristol Bay, Alaska.*[17] This book notes the importance of the portage and how Seversen's Roadhouse at present-day Iliamna obtained

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[13] *Ibid.*, 5.
[14] Rollins, Alden M., *Census Alaska*, 1960-8, 1970-10.
[15] Census for 2000 records at www.free-definition.com
[16] Population information listed in *Census Alaska* for the village of Newhalen list two different values for the year 1960. On page 1960-8 the table lists the population as 110 and on page 1970-10 the table lists the population as 63.
[17] Branson, John, *Seversen's Roadhouse*, 25.

goods to be sold in their business. The roadhouse was the "commercial, transportation, and social hub of the Lake Clark-Iliamna country. The roadhouse was analogous to a small general store, a place where a 1932 era shopper could have purchased or ordered nearly everything available in Anchorage."[18] A picture in the book, which shows two Bristol Bay double-enders (barge-type boats) and a gas boat taking on drums of fuel and cargo at Foss' Landing, on the Iliamna River, that is bound for Seversen's Roadhouse in 1937.[19]

George Seversen's Roadhouse located in present-day Iliamna has been a focal point for goods and services since the early 1900's. From Bristol Bay, boats with large quantities of freight ascended the Kvichak River and crossed Iliamna Lake to get to the roadhouse and then returned back again. A picture in *Seversen's Roadhouse: Crossroads of Bristol Bay, Alaska* shows the boat *Katie G*. This was a converted Bristol Bay double-ender that was lengthened from 28 to 38 feet using an 8-horsepower Atlas gas engine; it was one of the first boats to regularly travel from Koggiung (at Kvichak Bay) up the Kvichak River to Iliamna Lake.[20] The *Katie G* was used in 1913 by Herman Gartelmann to haul building materials up the Kvichak River to the spit on Iliamna Lake where he built the roadhouse.[21] George Seversen upgraded his ability to haul more goods by building a new boat:

> In the late 1920's Seversen had a large gas boat built in San Francisco, called the "Tern", and sent in pieces to Naknek where it was reconstructed. The "Tern" was about 40 feet long and powered by a 40-horsepower, three-cylinder Palmer gas engine that was slow and powerful. Each spring, Seversen hauled many area fishermen down the lake to the Kvichak River and then on to Bristol Bay canneries for the commercial fishing season and returned with groceries and all manner of merchandise to stock his roadhouse store. While navigation was open on Iliamna Lake, the Kvichak, and Bristol Bay, Seversen made frequent trips hauling freight from the Bay to his store at the roadhouse. He also made frequent trips to Old Iliamna hauling freight and passengers.[22]

Statistics on the amount of freight transported on the Kvichak River by boat are rare. However, the U.S. Army Corps of Engineers reported, "Transportation records indicate that about 1,450 tons of commerce was barged via the Kvichak River in 1953, an increase of about 45 percent over 1952".[23]

Freighting on the Kvichak River and Iliamna Lake continues. In a phone interview with the writer on June 15, 2004, Roland Moody, original owner of Moody's Barge Company, stated that he began his service in 1972 serving the Kvichak River and villages on Iliamna Lake until 1986 when his boys took over the business. The boys have since sold the barge business to Yutana Barge Lines that is still serving the same region as Roland Moody did. Roland Moody stated that he started his barge work about the end of July and continued on through the 10th of October of each year for a total of 7 to 8 trips per season. His first barge was wooden and measured 24 feet wide by 40 feet long. He could haul up to 450 fifty-five-gallon barrels of fuel at a time. In 1975 Mr. Moody purchased a steel barge that

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[18] *Ibid.*, 29.
[19] *Ibid.*, 27.
[20] *Ibid.*, 20.
[21] *Ibid.*, 20.
[22] *Ibid.*, 28.
[23] U.S. Army, Corps of Engineers, *Southwestern Alaska*, 5.

measured 34 feet wide by 76 feet long. This barge had a capacity of 70,000 gallons of fuel but a typical load averaged 50,000 gallons. Another barge was added in 1980 that measured 30 feet wide by 80 feet long and was able to carry an average load of 50,000-60,000 gallons of fuel. Moody stated that these barges generally had a draft of about 4 feet and all carried additional freight in addition to the fuel. The barge added in 1980 allowed Moody to carry more freight for the many lodges being built during this time frame along the Kvichak River and Iliamna Lake. Mr. Moody also stated that about the time of statehood for Alaska, someone (he could not remember the person's name) was using power barges that came from World War II era, measuring about 26 feet wide by 55-60 feet long, on the Kvichak River and Iliamna Lake carrying goods for sale.

Conclusions

In assessing the navigability of inland water bodies, the BLM relies upon federal administrative and case law and the advice of the Interior Department's Solicitor's Office. The classic definition of navigable waters is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). Pertinent DOI Office of the Solicitor's opinions include Associate Solicitor Hugh Garner's memo of March 16, 1976 ("Title to submerged lands for purposes of administering ANCSA") and Regional Solicitor John Allen's memo of February 25, 1980 ("Kandik, Nation Decision on Navigability"). The agency is also guided by the Submerged Lands Act of 1953 and the Alaska Submerged Lands Act of 1988.

After reviewing the State's application, the historic record pertaining to the Kvichak River and Iliamna Lake, and the legal guidance on title navigability, we conclude that the Kvichak River and Iliamna Lake were navigable at the time of statehood. BLM's past navigability determinations for these two waterways are affirmed. In regards to the State's application for interconnecting sloughs, the BLM should reject these. If water from the navigable Kvichak River flows through the slough then the slough is considered to be part of the river. However, because of the ambulatory nature of the river, the location of many sloughs may change from year to year. Moreover, over time some sloughs may disappear, while new sloughs may be created.

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