United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
AKAK106470188
AKAA-92956 (1864)
(9414)

June 4, 2026

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DECISION

State of Alaska	:	AKAK106470188
Department of Natural Resources	:	Application for a Recordable Disclaimer of
Division of Mining, Land, and Water	:	Interest
Public Access Assertion and Defense Unit	:	Goodnews River System
550 West Seventh Avenue, Suite 1070	:	
Anchorage, Alaska 99501-3579	:	

APPLICATION APPROVED IN PART

I. Summary

On Dec. 16, 2020, the State of Alaska (State) finalized application AKAK106470188 with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest (RDI) pursuant to section 315 of the Federal Land Policy and Management Act of 1976 (FLPMA) as amended (43 U.S.C. § 1745) and the regulations contained in 43 CFR Subpart 1864 for certain lands underlying the Goodnews River system, east of Goodnews Bay in western Alaska (Map 1).[1,2]

The RDI application was submitted for the submerged lands as follows:

A. Goodnews River, including Goodnews Lake

All submerged lands between the ordinary high-water marks (OHWMs) of the left and right banks of the Goodnews River from the confluence with an unnamed creek [about river mile

[1] FLPMA of 1976, Disclaimer of interest in lands, 43 U.S.C. § 1745.
[2] Letter from James H. Walker, Manager, DNR, Public Access and Defense Unit Manager, to Robert Loch Anderson, Supervisory Realty Specialist, BLM, Navigability Section, December 16, 2020, BLM records, Anchorage, AK.

(RM) 77.6] within sec. 3, T. 7 S., R. 66 W., Seward Meridian, Alaska (S.M.), downstream and including Goodnews Lake, to the location where the river enters T. 10 S., R. 71 W., S.M. [about RM 29.5];

B. Igmiumanik River

All submerged lands between the OHWMs of the left and right banks of the Igmiumanik River from the confluence with an unnamed creek [about RM 5.5] within the NE1/4 NE1/4 sec. 19 [correction SE1/4 SE1/4 sec. 18], T. 7 S., R. 66 W., S.M., downstream to the confluence with the Goodnews River in sec. 35, T. 7 S., R. 66 W., S.M.;

C. South Fork Goodnews River

All submerged lands between the OHWMs of the left and right banks of the South Fork Goodnews River from the confluence with an unnamed creek [about RM 25.7] within sec. 3, T. 12 S., R. 70 W., S.M., downstream through sec. 22, T. 12 S., R. 72 W., S.M. [about RM 5.5];

D. Tivyagak Creek and Unnamed Tributary of Tivyagak Creek

1) All submerged lands between the OHWMs of the left and right banks of the Tivyagak Creek from the confluence with an "unnamed tributary" [about RM 8.3] within sec. 28, T. 12 S., R. 71 W., S.M., downstream to its confluence with the South Fork Goodnews River in sec. 7, T. 12 S., R. 71 W., S.M.;

2) All submerged lands between OHWMs of the left and right banks of the Unnamed Tributary of Tivyagak Creek from the confluence of the unnamed tributary and an unnamed creek [about RM 3.25] within sec. 32, T. 12 S., R. 71 W., S.M., downstream to its confluence with Tivyagak Creek in sec. 28, T. 12 S., R. 71 W., S.M.;

E. Middle Fork Goodnews River and Middle Fork Lake

All submerged lands between the OHWMs of the left and right banks of the Middle Fork Goodnews River from within the SE1/4 NE1/4 Sec. 10 [SW1/4 NW1/4 sec. 11], T. 9 S., R. 67 W., S.M. [about RM 53.7], downstream and including Middle Fork Lake, to the location where the river enters T. 11 S., R. 71 W., S.M. [about RM 18.9]; and

F. Kukaktlik River and Kukaktlim Lake

All submerged lands within OHWMs of Kukaktlim Lake and between the OHWMs of the left and right banks of the Kukaktlik River from the outlet of Kukaktlim Lake in sec. 1, T. 10 S., R. 67 W., S.M. [about RM 17.2] downstream to its confluence with the Middle Fork Goodnews River in sec. 23, T. 10 S., R. 69 W., S.M.

The application asserts that the waterbodies were navigable in fact on the date of Alaska's statehood, January 3, 1959.[3] As such, the application contends that ownership of the submerged

[3] James H. Walker, DNR, Public Access and Defense Unit, to Karen Mouritsen, BLM, Acting State Director, Jan. 2, 2018, "(AK AA- 092956) Amended Final Recordable Disclaimer of Interest Application for the Goodnews River System: Including the Goodnews River, [aka the North Fork] including Goodnews Lake, Slate Creek, and the Igmiumanik River, the South Fork Goodnews River, Tivyagak Creek, Unnamed Tributary of Tivyagak Creek, the

lands underlying the subject waters automatically passed from the United States to the State upon the date of statehood under the Equal Footing Doctrine,[4] the Submerged Lands Act (SLA) of 1953,[5] the SLA of 1988,[6] the Alaska Statehood Act,[7] and other title navigability laws.

In support of their application, the State submitted attachments, specifically the *Tivyagak Creek Final Interim Summary Report* (Tivyagak Phase II-B Report), *Attachments for the Tivyagak Creek Final Interim Summary Report* (Tivyagak Attachment Report), and historical use reports from Wild River Guide Company.[8,9,10] Additionally, the State's application incorporates by reference the *Goodnews Interim Summary Report* (Goodnews Phase II-B Report), *Attachments for the Goodnews Interim Summary Report* (Goodnews Attachment Report), an *Inventory and Cataloging of Sport Fish and Sport Fish Waters* compiled by the Alaska Department of Fish and Game, two pages of *The Alaska River Guide*, two versions of the *Togiak National Wildlife Refuge Comprehensive Conservation Plan Revision*, the *Abundance and Run Timing of Dolly Varden in the Middle Fork Goodnews River, 2008 and 2009* report, an excerpt from *Goodnews or Gligamesh,* and various webpages mostly relating to guided fishing tours in the application area.[11, 12, 13, 14, 15, 16 17] All of these attachments are available on Alaska's Department of Natural Resources' website.[18]

Middle Fork Goodnews River and Middle Fork Lake, Kukaktlik River and Kukaktlim Lake," file AKAK106470188 (AKAA-92956) (1864), Alaska State Office, BLM records, (State's application). The State's application and supporting documents are also available in this file.

[4] U.S. CONST. Art IV. § 3.C1.3.

[5] SLA of 1953, 43 U.S.C. § 1301 et seq.

[6] SLA of 1988, 43 U.S.C. § 1631.

[7] Alaska Statehood 72 stat. 339.

[8] Nicole Lantz, Historian I, Office of History and Archaeology, DNR, "Tivyagak Creek, Final Interim Summary Report" dated Dec. 21, 2010, Alaska State Office, BLM records (State's application).

[9] Nicole Lantz, Historian I, Office of History and Archaeology, DNR, "Attachments for Tivyagak Creek, Final Interim Summary Report" dated Dec. 21, 2010, Alaska State Office, BLM records (State's application).

[10] Wild River Guides, "Season Reports: 2011-13 and 2015-2017", (accessed Dec. 4, 2017), https://www.wildriverfish.com/seasons/, BLM records, (State's application).

[11] Rolfe Buzzell, Historian II, Office of History and Archaeology, DNR, "Goodnews River System, Final Interim Summary Report" dated Aug. 19, 2025, Alaska State Office, BLM records.

[12] Kenneth T. Alt, Alaska Department of Fish and Game, "Inventory and Cataloging of Sport Fish and Sport Fish Waters of Western Alaska" undated.

[13] Karen Jettmar, *The Alaska River Guide*, pgs. 163-164, 2002.

[14] USFWS, *Togiak National Wildlife Refuge Comprehensive Conservation Plan Revision*, 2001, BLM records, (State's application).

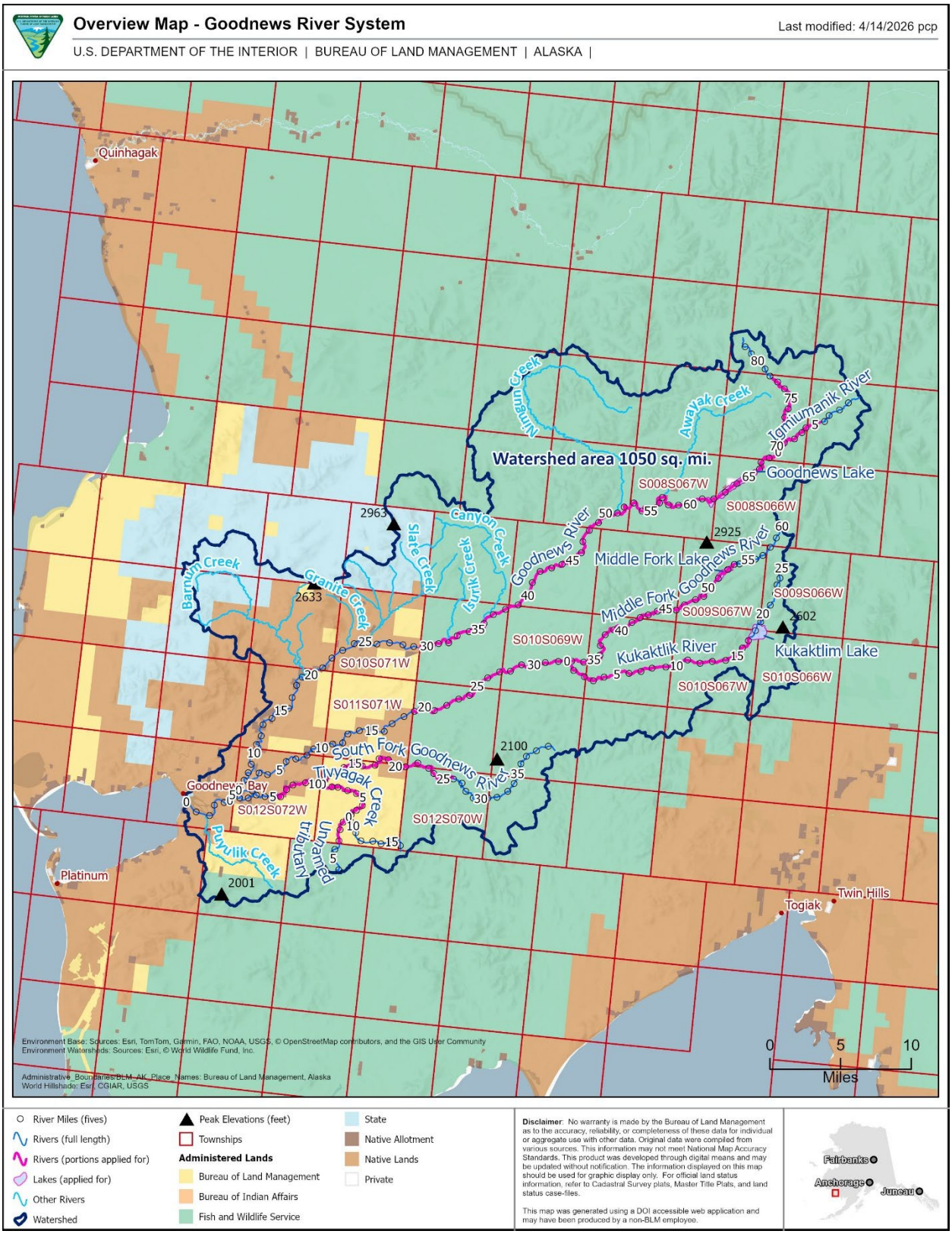
[15] USFWS, *Togiak National Wildlife Refuge Comprehensive Conservation Plan Revision*, 2009, BLM records, (State's Application).

[16] Mark. J. Lisac, Fish Biologist, U.S. Fish and Wildlife Service, *Abundance and Run Timing of Dolly Varden in the Middle Fork Goodnews River, 2008 and 2009*, Alaska Fisheries Data Series Report Number 2010-13, dated Dec. 2010 (State's application).

[17] Troy Letherman, *Fish Alaska Magazine: Goodnews or Gilgamesh? Fishing the Fifty-year Flood*, pgs. 52-57, Jan. 2011, BLM records, (State's application).

[18] State of Alaska, DNR, Navigability Project, Recordable Disclaimers of Interest (RDI), (May 11, 2026, at 12:00 AKST), https://dnr.alaska.gov/mlw/paad/nav/rdi/#inprocess.

The BLM has determined that the preponderance of evidence present in the record for the State's application demonstrates that portions of Goodnews River System in the application were navigable at the time of Alaska's statehood, except as otherwise detailed herein. The State's application is therefore **APPROVED IN PART** and **DENIED IN PART** as described below.



Map 1. Overview map of the Goodnews River System watershed and surrounding features. See also https://experience.arcgis.com/experience/27bee3d0631345dba0f02653b74e92c6.

II. Lands Review

The State's application primarily affects submerged lands in the Togiak National Wildlife Refuge managed by the U.S. Fish and Wildlife Service (USFWS).

Administrative navigability findings were made in support of Alaska Native Claims Settlement Act (ANCSA) land conveyances for submerged lands of the subject waters of the South Fork Goodnews River, in secs. 1 and 2, T. 12 S., R. 71 W., and secs. 35 and 36, T. 11 S. R. 71 W., and again in secs. 11, 12, 14, and 15, T. 12 S. R. 72 W. Therefore, these sections will not be adjudicated within this decision. [19]

Additionally, there are numerous Alaska Native allotments adjacent to the subject waters. Title review clarified that no submerged lands were conveyed with those allotments.

To adjudicate this application, the submerged lands underlying the subject waters were researched to identify any valid withdrawals occurring prior to Alaska's statehood, January 3, 1959, which would defeat the State's claim on title. No valid pre-statehood withdrawals were identified that would impact a decision on this application.

III. Notice of the Application and Public Comments

Notice of the State's application was published in the *Federal Register* on January 7, 2026.[20] The notice of the application was also published in the *Anchorage Daily News* and the *Tundra Drums* once per week for three consecutive weeks beginning on January 14, 2026, and January 16, 2026 respectively.[21] This application and supporting information was also posted on the BLM-Alaska website.[22]

The notices invited reviews and additional information, especially considering historical use of the waterbodies, which may be of use to the BLM in processing the application. The comment period ended on February 5, 2026. The BLM received comments during the published notice period which provided additional information of post-statehood use of watercraft throughout the Goodnews River System.

More specifically, the USFWS identified inaccuracies, such as photo labels and location descriptions within the application, and provided hydrologic reports and field trip notes for the Goodnews River, Middle Fork Goodnews River, and various lakes within the Togiak National Wildlife Refuge.[23]

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[19] The BLM's administrative navigability findings for ANCSA-conveyed lands are subject to legislative finality according to 43 U.S.C. 1631(c)(1).
[20] 91 FR 518 (Document Number 2026-00035).
[21] US Department of the Interior, BLM, "Application for a Recordable Disclaimer of Interest for Lands Underlying Portions of the Goodnews River System, Alaska" (May 14, 2026, at 17:24 AKST), https://www.federalregister.gov/documents/2026/01/07/2026-00035/application-for-a-recordable-disclaimer-of-interest-for-lands-underlying-portions-of-the-goodnews.
[22] US Department of the Interior, Bureau of Land Management, Recordable Disclaimers of Interest: Kuskokwim River Region: Goodnews River System (Mar. 25, 2026, at 15:39 AKST), https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/RDI/kuskokwim.
[23] Memorandum from Ryan Mollnow, USFWS, Division Chief of Natural Resources, Alaska Region, to Bettie Shelby, BLM, Branch Chief, Alaska Lands and Realty, Feb. 6, 2026 "State of Alaska's Application for a Recordable

Other than location errors, no comments received by the USFWS impacted the analysis herein or the subsequent decision.

IV. Administrative Waiver Granted

A legal description of the lands for which a waiver is sought must be based on either an official United States public land survey or a metes and bounds survey tied to the nearest corner of an official public land survey, unless a waiver is granted.[24] In the State's RDI application finalized on December 16, 2020, the State requested a waiver of this requirement under 43 CFR 1864.1-2(d).[25] The locations of the Goodnews River and Goodnews Lake, Igmiumanik River, South Fork Goodnews River, Tivyagak Creek, Unnamed Tributary of Tivyagak Creek, Middle Fork Goodnews River and Middle Fork Lake, and Kukaktlik River and Kukaktlim Lake are clearly depicted on the U.S. Geological Survey quadrangle maps and are not in dispute. The OHWMs of these waterbodies are the legal boundary of the submerged lands. Since the boundaries of these waterbodies are ambulatory, the location may change over time. The BLM therefore determines that survey descriptions of the subject waterbodies are not needed to adjudicate the State's application. The waiver is hereby granted.

V. Applicable Legal Authority

The SLA of 1953, 43 U.S.C. § 1301(a), granted and confirmed to the states title to the lands beneath the inland navigable waters within the boundaries of each respective state.[26] It also gave the states the right and power to manage and administer these lands in accordance with state law. The SLA of 1953 was incorporated into the State's legal framework because the Alaska Statehood Act of 1958 made the SLA of 1953 applicable to Alaska.[27]

Section 315(a) of FLPMA, 43 U.S.C. 1745(a), authorizes the Secretary of the Interior to issue a document of disclaimer of interest in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and to determine whether a record interest of the United States in lands has terminated by operation of law or is otherwise invalid. This authority has been delegated to the BLM Alaska State Director.[28,29]

VI. Standards of Navigability

The Federal test of navigability is found in *The Daniel Ball*, 77 U.S. 557 (1870). There, the U.S. Supreme Court stated: "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."[30]

Disclaimer of Interest for Lands Underlying Portions of the Goodnews River System, Alaska", Alaska State Office, BLM records.

[24] 43 CFR 1864.1-2(c)(1).

[25] 43 CFR 1864.1-2(d).

[26] SLA 43 U.S.C. § 1301(a).

[27] 72 Stat. 339, 343 S.

[28] 209 DM 7; 235 DM 1; BLM Manual MS-1203, App. I, p. 52.

[29] FLPMA of 1976, Disclaimer of interest in lands, 43 U.S. Code § 1745(a).

[30] *The Daniel Ball*, 77 U.S. 557, 563 (1870).

In assessing the navigability of inland waterbodies, the BLM relies upon this test as well as Federal statutes and case law. Relevant Federal statutes include the SLA of 1953 and the SLA of 1988. The Supreme Court's most recent decision on title navigability, *PPL Montana, LLC v. Montana*, 132 S. Ct. 1215 (2012), summarizes and explains the proper interpretation of *The Daniel Ball* criteria. Additional guidance is provided in other cases, including but not limited to: *Alaska v. Ahtna, Inc.,* 891 F.2d 1401 (9th Cir. 1989); *Alaska v. United States*, 754 F.2d 851 (9th Cir. 1983); and *Appeal of Doyon, Ltd.,* Alaska Native Claims Appeal Board RLS 76-2, 86 I.D. 692 (1979).

VII. Related BLM Navigability Findings

A. Goodnews River and Goodnews Lake

The March 13, 2009, Decision to Issue Conveyance (DIC) to Kuitsarak found the Goodnews River navigable from its mouth upstream to about RM 29.5.[31, 32] The BLM has not made a prior navigability finding upstream of RM 29.5, including for Goodnews Lake.

B. Igmiumanik River

The BLM has not made a prior navigability finding for the Igmiumanik River.

C. South Fork Goodnews River

The March 13, 2009, DIC for Kuitsarak found the South Fork navigable up to RM 9.5.[33] The March 21, 2006, memorandum for ANSCA selections confirmed the South Fork was found navigable from RM 17.5 to 21.[34, 35] The BLM has not made a prior navigability finding between RMs 9.5 and 17.5.

D. Tivyagak Creek and Unnamed Tributary of Tivyagak Creek

The BLM has not made a prior navigability finding for Tivyagak Creek or the unnamed tributary of Tivyagak Creek.

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[31] 74 FR 10961 (Document Number E9-5546).
[32] The BLM's administrative navigability finding for ANCSA conveyances is subject to legislative finality according to 43 U.S.C. 1631(c)(1). Legislative finality does not apply to the area upstream of the ANCSA-conveyed lands, from where the State's application begins (about RM 29.5).
[33] 74 FR 10961 (Document Number E9-5546).
[34] Memorandum, Chief Navigability Section (927) to the Chief Branch of Survey Planning and Preparation (927) "Navigable Waters within in Village/Regional-Selected and Interim Conveyed (IC) lands in the vicinity of the Goodnews Bay-Platinum Survey Project (Window 2687), Mar. 21, 2006, BLM records.
[35] The BLM's administrative navigability finding for ANCSA conveyances is subject to legislative finality according to 43 U.S.C. 1631(c)(1). Legislative finality does not apply to the area outside of the ANCSA-conveyed lands.

E. Middle Fork Goodnews River and Middle Fork Lake

The March 13, 2009, DIC for Kuitsarak found the Middle Fork Goodnews River navigable from its mouth up to RM 19.[36, 37] The BLM has not made a prior navigability finding upstream of RM 19, including Middle Fork Lake.

F. Kukaktlik River and Kukaktlim Lake

The BLM has not made a prior navigability finding for the Kukaktlik River or Kukaktlim Lake.

VIII. Key Facts, Supporting Evidence, and Analysis

A. Goodnews River and Goodnews Lake

The Goodnews Phase II-B Report documents a longstanding tradition in which Alaska Native residents traveled overland in late winter/early spring to access customary hunting grounds in the upper reaches of the Goodnews River. After completing their hunts, they constructed skin-boat rafts by stretching caribou hides over alder frames. The boats carried people, supplies, and harvested resources and when considered together, these various items constituted a commercial size load. After spring breakup (ice-out), they floated downstream to the former village at the mouth of the South Fork Goodnews River. This practice occurred before statehood during the first half of the twentieth century and likely even earlier.[38]

Traditional spring hunting practices across Western Alaska that rely on skin boats are well documented, including the timing of hunts, the preparation of hides, and the construction of skin boats, all organized so that water-based travel from upper mountainous drainages could begin once water levels were high enough to float downstream. This reliable period of high-water arrived annually with the spring snowmelt, and travel commenced as soon as river ice broke up. Although brief, this regular pulse of high water created a predictable seasonal water-based transportation route that allowed people and goods to move from the upper reaches of the Goodnews River to the former village at the mouth of the South Fork.

The remaining information shows water-based use to varying and unknown upstream extents across portions of these waters. This use included shallow-draft canoes and kayaks for hunting, recreational travel using modern inflatable rafts, and access for hunting and fishing by both propeller-driven and jet-driven motorboats.

The Goodnews Phase II-B Report does not specify how far upstream these boats were used; it notes only that the activity occurred in "the upper reaches." This application asserts that the Goodnews River is navigable in fact up to about RM 78. At RM 78, the channel between OHWM's is approximately 20 feet wide. By comparison, the nearby Kwethluk River, located only 35 miles away, has channel widths of 50 feet or more at the documented upstream extent of

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[36] 74 FR 10961 (Document Number E9-5546).
[37] The BLM's administrative navigability finding for ANCSA conveyances is subject to legislative finality according to 43 U.S.C. 1631(c)(1). Legislative finality does not apply to the area upstream of the ANCSA-conveyed lands, from where the State's application begins (about RM 19).
[38] Goodnews Phase II-B Report, pgs. 29, 66.

skin-boat use. Even on the Kwethluk River, some users reportedly built their boats farther downstream to bypass impassable reaches.

The Goodnews River more than doubles in size at about RM 69 at its confluence with the Igmiumanik River. From this point downstream to Goodnews Lake, channel widths become comparable to those of the Kwethluk River at the documented upstream extent of skin-boat use. The Goodnews River at RM 69 still lies within what can reasonably be described as "the upper reaches" of the system and aligns with the available information for traditional skin-boat travel. Notably, RM 69 is approximately nine miles downstream from the upstream extent of navigability asserted in this application.

Based on this information, it is reasonable to conclude that the upstream extent of skin boat use began near approximately RM 69 on the Goodnews River, at its confluence with the Igmiumanik River, and continued downstream through Goodnews Lake and along the Goodnews River to the former village at the mouth of the South Fork Goodnews River.

The reach of the Goodnews River between approximately RM 78 and RM 69 contains a stream channel that is two to three times narrower, and likely shallower, than the nearby Kwethluk River at its documented upstream limit of skin-boat use. Given these conditions, it is reasonable to conclude that skin boats were unlikely to have been used as far upstream as RM 78 on the Goodnews River but could have been used beginning as far upstream as RM 69.

The preponderance of this evidence satisfies the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for Goodnews River beginning at the confluence with Igmiumanik River (about RM 69) downstream through Goodnews Lake and continuing to the downstream extent of the application for Goodnews River (about RM 29.5).

The preponderance of this evidence does not satisfy the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for Goodnews River upstream of the confluence with the Igmiumanik River (about RM 69) to the upper extent of the application (about RM 78).

B. Igmiumanik River

The Goodnews Phase II-B report describes the use of a modern 15-foot Avon raft, which appears to have been equipped with a 5-horsepower outboard motor, as well as an unspecified skiff, along with winter overland travel by snowshoes and sled.[39] The information for the modern raft noted that the travelers at times paddled and at other times walked and pulled the raft.

The Goodnews Phase II-B report describes the use of a modern raft on this river, noting that the travelers at times paddled and at other times walked and pulled the raft. This suggests they were able to motor only as far as the mouth of the Igmiumanik River, after which they were required to paddle, walk, and tow the craft upstream. Waterbodies that require frequent dragging or carrying of modern boats are generally not considered navigable based on lack of susceptibility to trade, travel, or commerce by customary watercraft, absent other evidence that such use historically occurred. Standing alone, this evidence is insufficient to support a finding of navigability in fact.

[39] Goodnews Phase II-B Report, pg. 50; Goodnews Attachment Report, attachment #39, pg. 4.

The preponderance of this evidence does not satisfy the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for the subject waters of Igmiumanik River.

C. South Fork Goodnews River

The Goodnews Phase II-B Report notes that the BLM previously determined the South Fork Goodnews River to be navigable between approximately RM 17.5 and RM 21 for the purposes of ANCSA land conveyances.[40] That finding was supported by information showing that the South Fork formed part of a historic inland waterway route whereby canoes and kayaks were used to ascend the South Fork Goodnews River and Tivyagak Creek to portage overland to the Osviak River to Togiak Bay.[41] The criterion BLM used in support of their finding of navigability was "use or susceptibility to use for travel, trade and commerce".[42] That water-based route was used in the late 1800's and early 1900's and likely even earlier.

The remaining information shows water-based use to varying and unknown upstream extents across portions of these waters. This use included shallow-draft canoes and kayaks for hunting, as well as access for hunting and fishing by both propeller-driven and jet-driven motorboats.

The preponderance of this evidence satisfies the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for South Fork Goodnews River from the confluence with an unnamed creek at about RM 25.7 to the downstream extent of the application at about RM 5.5.

D. Tivyagak Creek and Unnamed Tributary of Tivyagak Creek

The available information indicates that Tivyagak Creek formed part of a historic inland waterway route used for travel between Goodnews Bay and Togiak Bay.[43] This route was traveled by canoes and kayaks similar to those used along the comparable route on the South Fork described above. These water-based routes were frequently used in the late 1800's and early 1900's and likely even earlier.

Other information includes the opinion of a local fishing guide that a propeller-driven motorboat capable of carrying a commercial load could travel upstream to approximately RM 8.25 where the unnamed tributary joins Tivyagak Creek. It was also noted that local Alaska Natives sometimes left their boats at the confluence of the unnamed creek and Tivyagak Creek and then hiked up the unnamed small creek to harvest moose.[44]

The available information supports that Tivyagak Creek was part of a historic inland waterway route used to travel between Goodnews Bay and Togiak Bay. This route was regularly used, or was susceptible to being used, for travel, trade, and commerce by the customary watercraft of the time. The available information supports that Tivyagak Creek was used, or was susceptible to being used, by propeller-driven motorboats capable of carrying a commercial load up to

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[40] Goodnews Phase II-B Report, pg. 65.
[41] Goodnews Phase II-B Report, pg.11, 66; Goodnews Attachment Report, attachment #11, pg. 1 and attachment #12, pg. 2.
[42] Goodnews Phase II-B Report, pg. 65.
[43] Tivyagak Phase II-B Report, pg. 6; Goodnews Phase II-B Report, pg. 66.
[44] Tivyagak Phase II-B Report, pg. 7.

approximately RM 8.25 at its confluence with the unnamed tributary. The confluence appears to have been the upper limit of such use.

It is reasonable to conclude that shallow water prevented further motorized travel upstream. This conclusion is reinforced by the fact that both creeks are substantially smaller upstream of the confluence, each about half the size of Tivyagak where they join, making upstream navigation on the unnamed tributary unlikely.

There is no available information supporting sustained or reliable waterborne travel on the unnamed tributary of Tivyagak Creek. The tributary itself is very small, often measuring less than 10 feet in width within the portion relevant to this application. In addition, the tributary is likely very shallow given that locals walked up/down the tributary rather than use their boats.

The preponderance of this evidence satisfies the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for Tivyagak Creek beginning at the confluence with an unnamed creek (about RM 8.25) to the downstream extent of the application for Tivyagak Creek (RM 0).

The preponderance of this evidence does not satisfy the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for the subject waters of the unnamed tributary of Tivyagak Creek.

E. Middle Fork Goodnews River and Middle Fork Lake

The Goodnews Phase II-B Report documents a longstanding tradition in which Alaska Native residents traveled overland in late winter/early spring to access customary hunting grounds in the upper reaches of the Goodnews River drainage. After completing their hunts, they constructed skin-boat rafts by stretching caribou hides over alder frames. The boats carried people, supplies, and harvested resources and when considered together, these various items constituted a commercial size load. After spring breakup (ice-out), they floated down the Middle Fork to the former village at the mouth of the South Fork Goodnews River. This practice occurred before statehood during the first half of the twentieth century, and likely even earlier. [45]

Traditional spring hunting practices across Western Alaska that rely on skin boats are well documented, including the timing of hunts, the preparation of hides, and the construction of skin boats, all organized so that water-based travel from upper mountainous drainages could begin once water levels were high enough to float downstream. This reliable period of high-water arrived annually with the spring snowmelt, and travel commenced as soon as river ice broke up. Although brief, this regular pulse of high water created a predictable seasonal water-based transportation route that allowed people and goods to move from the upper reaches of the Middle Fork downstream to the former village at the mouth of the South Fork.

The remaining information for these waters shows water-based use to varying upstream extents across portions of these waters. This use included shallow-draft canoes and kayaks for hunting, recreational travel using modern inflatable rafts, and access for hunting and fishing by both propeller-driven and jet-driven motorboats.

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[45] Goodnews Phase II-B Report, pg. 66.

Prior to Alaska statehood, portions of these waters served as a reliable downstream travel route for skin boats. Alaska Native families used this route each year for trade and travel, depending on customary watercraft to move themselves, their gear, and their harvests back to homes near the former village at the mouth of the South Fork.

Although the record does not specify how far upstream skin boats traveled on the Middle Fork Goodnews River, these boats were commonly used in the "upper reaches" of rivers such as the Goodnews River and the nearby Kwethluk River. Skin boat frames found on the east bank of a lake near RM 37 of the Middle Fork Goodnews River provide some insight as to where these boats were used.[46] The Kwethluk River, located roughly 50 miles away, has a stream channel that is approximately 50 feet wide or greater at the upstream limit of known skin boat use. The Middle Fork Goodnews River, a few miles downstream from Middle Fork Lake, has similar channel widths to those portions of the Kwethluk River where skin boat travel is documented.

Based on this information, it is reasonable to conclude that skin boat use may have extended from Middle Fork Lake downstream along the Middle Fork Goodnews River to its confluence with the Goodnews River, well below the downstream boundary of this application (about RM 19).

The stream channel upstream of Middle Fork Lake is about 40% smaller than both the Kwethluk River where skin boat use is documented and the Middle Fork Goodnews River downstream of Middle Fork Lake. Given the conditions in the reach from Middle Fork Lake upstream to approximately RM 54, the available information supports the conclusion that the use of skin boats in this portion of the application was unlikely.

For the segment of the Middle Fork Goodnews River from Middle Fork Lake upstream to about RM 54, the available information indicates this segment is substantially smaller than the portion downstream of Middle Fork Lake and the only documented use involves jet boats. This current body of evidence is insufficient to support a finding of navigability in fact.

The preponderance of this evidence satisfies the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for Middle Fork Lake and for Middle Fork Goodnews River beginning at the inlet of Middle Fork Lake (about RM 52.1) to the downstream extent of the application for Middle Fork Goodnews River (about RM 19).

The preponderance of this evidence does not satisfy the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for Middle Fork Goodnews River from the upper extent of the application (about RM 54) downstream to the inlet to Middle Fork Lake (about RM 52).

F. Kukaktlik River and Kukaktlim Lake

The available information indicates that these waters formed part of a historic inland waterway route used for travel between Goodnews Bay and Togiak Bay.[47] This route was likely traversed by canoes and kayaks similar to those used along the comparable route on the South Fork and Tivyagak Creek described above. These water-based routes were frequently used in the late

[46] Goodnews Phase II-B Report, pg. 31.
[47] Goodnews Phase II-B Report, pg. 40.

1800's and early 1900's and likely even earlier. Additional information documents the later use of skiffs outfitted with propeller-driven outboard motors. [48]

The available information supports that these waters were part of a historic inland waterway route used to travel between Goodnews Bay and Togiak Bay. This route was regularly used, or was susceptible to being used, for travel, trade, and commerce by the customary watercraft of the time. Such use could have occurred on the portions of the Kukaktlik River and Kukaktlim Lake in this application.

The preponderance of this evidence satisfies the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for Kukaktlik River and Kukaktlim Lake, from the upper extent of the application (Kukaktlim Lake) to the downstream extent of the application for Kukaktlik River (RM 0).

IX. Summary

The State's application and available information were evaluated for information that demonstrates the subject waters of the Goodnews River System were navigable at the time of Alaska's statehood.

The evidence demonstrates:

- The physical characteristics indicate that all the subject waters in this application remain in substantially the same natural and ordinary condition that existed at the time of Alaska's statehood.
- Certain waters within the application contain sufficient factual and historical evidence to support a navigability determination. Accordingly, only those waters identified with adequate supporting evidence are approved as described below,
- The remaining portions of those waters are determined to lack sufficient evidence and are, therefore, denied as described below.

X. Decision

A. APPROVED IN PART

Accordingly, based on the foregoing and the documentation contained in the case record, I have determined that the State's RDI application AKAK106470188 is sufficient to demonstrate the navigability of the portions described below for the Goodnews River System at the time of statehood and in compliance with the applicable provisions and requirements of the provisions of Section 315 of FLPMA and the regulations contained in 43 CFR Subpart 1864. The State's application for an RDI is hereby **APPROVED IN PART** as follows:

Goodnews River (partial) and Goodnews Lake

1) Goodnews River: all eligible submerged lands between the OHWMs of the left and right banks beginning at the confluence with the Igmiumanik River at about RM 69.1, and

[48] Goodnews Phase II-B Report, pg. 39.

continuing downstream to the lower extent of the application at about RM 29.5 within the following:

Seward Meridian, Alaska

T. 7 S., R. 66 W.,
secs. 34 and 35.

T. 8 S., R. 66 W.,
secs. 3 and 4.

T. 8 S., R. 67 W.,
secs. 19 thru 23, and secs. 27 thru 30.

T. 8 S., R. 68 W.,
secs. 25, 26, 34, and 35.

T. 9 S., R. 69 W.,
secs. 1, 2, 11, 12, 14, 15, 16, 20, 21, 22, 29, 31, and 32.

T. 10 S., R. 69 W.,
sec. 6.

T. 10 S., R. 70 W.,
secs. 1, 2, 10, 11, secs. 14 thru 17, and secs. 19, 20, and 21.

2) Goodnews Lake: all eligible submerged lands up to and including the OHWMs of the shores within the following:

Seward Meridian, Alaska

T. 8 S., R. 66 W.,
secs. 4, 7, 8, 9, 17, 18, and 19.

T. 8 S., R. 67 W.,
secs. 13 and 24.

South Fork Goodnews River[49]

South Fork Goodnews River: all eligible submerged lands between the OHWMs of the left and right banks beginning at the upper extent of the application at the confluence with an unnamed creek at about RM 25.7, and continuing downstream to the lower extent of the application at about RM 5.5 within the following:

Seward Meridian, Alaska

T. 11 S., R. 70 W.,

[49] Administrative navigability findings were made in support of Alaska Native Claims Settlement Act (ANCSA) land conveyances for submerged lands of the subject waters of the South Fork Goodnews River, in secs. 1 and 2, T. 12 S., R. 71 W., and secs. 35 and 36, T. 11 S. R. 71 W., and again in secs. 11, 12, 14, and 15, T. 12 S. R. 72 W. Therefore, these sections will not be adjudicated within this decision. The BLM's administrative navigability findings for ANCSA-conveyed lands are subject to legislative finality according to 43 U.S.C. 1631(c)(1).

secs. 31 and 32.

T. 11 S., R. 71 W.,
sec. 34.

T. 12 S., R. 70 W.,
sec. 3 thru 6.

T. 12 S., R. 71 W.,
secs. 3 thru 7, and sec. 18.

T. 12 S., R. 72 W.,
secs. 13 and 22.

Tivyagak Creek

Tivyagak Creek: all eligible submerged lands between the OHWMs of the left and right banks beginning at the upper extent of the application at the confluence with the unnamed tributary of Tivyagak Creek at about RM 8.25, and continuing downstream to the lower extent of the application at RM 0 within the following:

Seward Meridian, Alaska

T. 12 S., R. 71 W.,
secs. 7, 8, secs. 15 thru 18, and secs. 21, 22, and 28.

Middle Fork Goodnews River (partial) and Middle Fork Lake

1) Middle Fork Goodnews River: all eligible submerged lands between the OHWMs of the left and right banks beginning at the outlet of Middle Fork Lake at about RM 50.9, and continuing downstream to the lower extent of the application at about RM 18.9 within the following:

   Seward Meridian, Alaska

   T. 9 S., R. 67 W.,
   secs. 16, 20, 21, 29, 30, and 31.

   T. 9 S., R. 68 W.,
   secs. 34, 35, and 36.

   T. 10 S., R. 68 W.,
   secs. 3, 4, 5, 7, 8, 9, 17, 18, and 19.

   T. 10 S., R. 69 W.,
   secs. 21 thru 24, and secs. 28, 29, and 30.

   T. 10 S., R. 70 W.,
   secs. 25, 35, and 36.

   T. 11 S., R. 70 W.,
   secs. 2, 3, 4, secs. 7 thru 10, and secs. 17 and 18.

2) Middle Fork Lake: all eligible submerged lands up to and including the OHWMs of the shores within the following:

   Seward Meridian, Alaska

   T. 9 S., R. 67 W.,
   secs. 10, 15, and 16.

Kukaktlik River and Kukaktlim Lake

1) Kukaktlik River: all eligible submerged lands between the OHWMs of the left and right banks beginning at the outlet of Kukaktlim Lake at about RM 17.2, and continuing downstream to the lower extent of the application at RM 0 within the following:

   Seward Meridian, Alaska

   T. 10 S., R. 67 W.,
   secs. 1, 11, 12, and secs. 14 thru 19.

   T. 10 S., R. 68 W.,
   secs. 21 thru 24, and secs. 28, 29, and 30.

   T. 10 S., R. 69 W.,
   secs. 23 thru 26.

2) Kukaktlim Lake: all eligible submerged lands up to and including the OHWMs of the shores within the following:

   Seward Meridian, Alaska

   T. 9 S., R. 66 W.,
   sec. 31.

   T. 9 S., R. 67 W.,
   sec. 36.

   T. 10 S., R. 66 W.,
   sec. 6.

   T. 10 S., R. 67 W.,
   sec. 1.

The United States affirms it has no interest in the lands described above because the federal interests passed to the State at the time of statehood. Approving these portions of the State's application for an RDI provides certainty about ownership of the submerged lands described above in application AKAK106470188 and remove a cloud on the title.

B. DENIED IN PART

Based on the foregoing and the documentation contained in the case record, I have determined that the State's RDI application AKAK106470188 is insufficient to demonstrate the navigability of the portions described below for the Goodnews River System at the time of statehood and in compliance with the applicable provisions and requirements of the provisions of Section 315 of

FLPMA and the regulations contained in 43 CFR Subpart 1864. The State may request reconsideration of this decision if they provide additional facts to support navigability of these portions. The State's application for an RDI is hereby **DENIED IN PART** as follows:

Goodnews River (partial)

Goodnews River: all eligible submerged lands between the OHWMs of the left and right banks beginning at the upper extent of the application at about RM 77.6, and continuing downstream to the confluence with the Igmiumanik River at about RM 69.1 within the following:

Seward Meridian, Alaska

T. 7 S., R. 66 W.,
secs. 2, 3, 11, 14, 23, 26, 27, 34 and 35.

Igmiumanik River

Igmiumanik River: all submerged lands between the OHWMs of the left and right banks of the Igmiumanik River from the confluence with an unnamed creek at about RM 5.5 within the SE1/4 SE1/4 sec. 18, T. 7 S., R. 66 W., S.M., downstream to the confluence with the Goodnews River in sec. 35, T. 7 S., R. 66 W., S.M;

Seward Meridian, Alaska

T. 7 S., R. 65 W.,
secs. 18 and 19.

T. 7 S., R. 66 W.,
secs. 24, 25, 26, and 35.

Unnamed Tributary of Tivyagak Creek

Unnamed Tributary of Tivyagak Creek: all submerged lands between the OHWMs of the left and right banks of the Unnamed Tributary of Tivyagak Creek from the confluence of the unnamed tributary and an unnamed creek at about RM 3.25 within sec. 32, T. 12 S., R. 71 W., S.M., downstream to its confluence with Tivyagak Creek in sec. 28, T. 12 S., R. 71 W., S.M.;

Seward Meridian, Alaska

T. 12 S., R. 71 W.,
secs. 28, 29, and 32.

Middle Fork Goodnews River (partial)

Middle Fork Goodnews River: all submerged lands between the OHWMs of the left and right banks of the Middle Fork Goodnews River from within the SW1/4 NW1/4 sec. 11, T. 9 S., R. 67 W., S.M. at about RM 53.7, downstream to the location where the river enters Middle Fork Lake at about RM 52.1.

Seward Meridian, Alaska

T. 9 S., R. 67 W., secs. 10 and 11.

XI. Appeal Procedure

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of Hearings and Appeals, in accordance with the regulations contained in 43 CFR Part 4. The notice of appeal must be filed no later than 30 days after the date of receiving notice of this decision. Any notice of appeal must be filed with the IBLA and must include a copy of the decision being appealed, a statement of standing, and a statement of timeliness.

You may file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA. A petition for a stay must show sufficient justification based on the following criteria: (i) Immediate and irreparable harm. The likelihood of immediate and irreparable harm if a stay is not granted; (ii) Balance of harms. The irreparable harm to the appellant absent a stay exceeds the harm to the United States and other parties from a stay being granted; (iii) Public Interest: whether the public interest favors granting a stay; and (iv) Likelihood of success. The appellant is likely to succeed on the merits.

The appellant must serve a copy of the notice of appeal and any accompanying documents on the office of the officer who made the decision, each person or entity named in the decision, and the appropriate Office of the Solicitor at the time of filing with IBLA (see 43 CFR 4.403(b); 4.407(b)). Parties must serve the Office of the Solicitor at the address shown on Form 1842-1. Service on a party known to be represented by an attorney or other designated representative must be made on the representative. If a statement of reasons for the appeal is not included with the notice of appeal, it must be filed within 30 days after the record on appeal is filed with the IBLA. Failure to file a statement of reasons within the time required will subject the challenged decision to summary affirmance (see 43 CFR 4.412(a)).

Kevin J. Pendergast
State Director

Enclosures:

Form 1842-1
Appeal Regulations

Copy w/enclosures furnished to:

Access Defense Program Manager
Alaska Department of Fish and Game
333 Raspberry Road
Anchorage, Alaska 99518-1599

Division Chief of Natural Resources
Alaska Regional Office
U.S. Fish and Wildlife Service
1011 E. Tudor Road
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AK FM (AA)