



United States Department of the Interior



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In Reply Refer To:
AKAK106551968
AKAA-95314 (1864)
(9414)

June 4, 2026

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DECISION

State of Alaska	:	AKAK106551968
Department of Natural Resources	:	Application for a Recordable
Division of Mining, Land & Water	:	Disclaimer of Interest
Public Access Assertion and Defense Unit	:	
550 West Seventh Avenue, Suite 1070	:	Kwethluk River
Anchorage, Alaska 99501-3579	:	

APPLICATION APPROVED

I. Summary

On February 20, 2019, the State of Alaska (State) finalized application AKAK106551968 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 Kwethluk River, located in Southwest Alaska.^{1, 2}

The Kwethluk River is in the Kuskokwim River region. Originating in the Kilbuck Mountains, the Kwethluk River flows northwest for about 163 miles until it joins the Kuskokwim River at the village of Kwethluk, about 11 (air) miles east of Bethel (Map 1).

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

All submerged lands between the ordinary high-water lines of the left and right banks of the Kwethluk River beginning within sec. 6, T. 5 N., R. 67 W., S.M., Alaska, to the portage between

¹ FLPMA of 1976, Disclaimer of interest in lands, 43 U.S. Code § 1745.

² James H. Walker, State of Alaska, Department of Natural Resources (DNR), Public Access and Defense Unit, Ted Murphy, Acting State Director, Feb. 20, 2019, BLM records, Anchorage (hereafter BLM records).

an unnamed lake and the Kwethluk River within the NW1/4NW1/4NW1/4, sec. 29, T. 1 S., R. 62 W., S.M., Alaska.

The portion of the Kwethluk River included in the RDI application (subject waters) is between approximately river mile (RM) 49.5 and RM 136.5, which is about 150 yards southwest of Boundary (Portage) Lake (Map 2).

The State's application asserts that the waterbodies were navigable in fact on the date of Alaska's statehood, January 3, 1959. As such, the application contends that ownership of the submerged lands underlying the subject waters automatically passed from the United States to the State upon the date of statehood under the Equal Footing Doctrine,³ the Submerged Lands Act (SLA) of 1953,⁴ the SLA of 1988,⁵ the Alaska Statehood Act,⁶ and other title navigability laws.

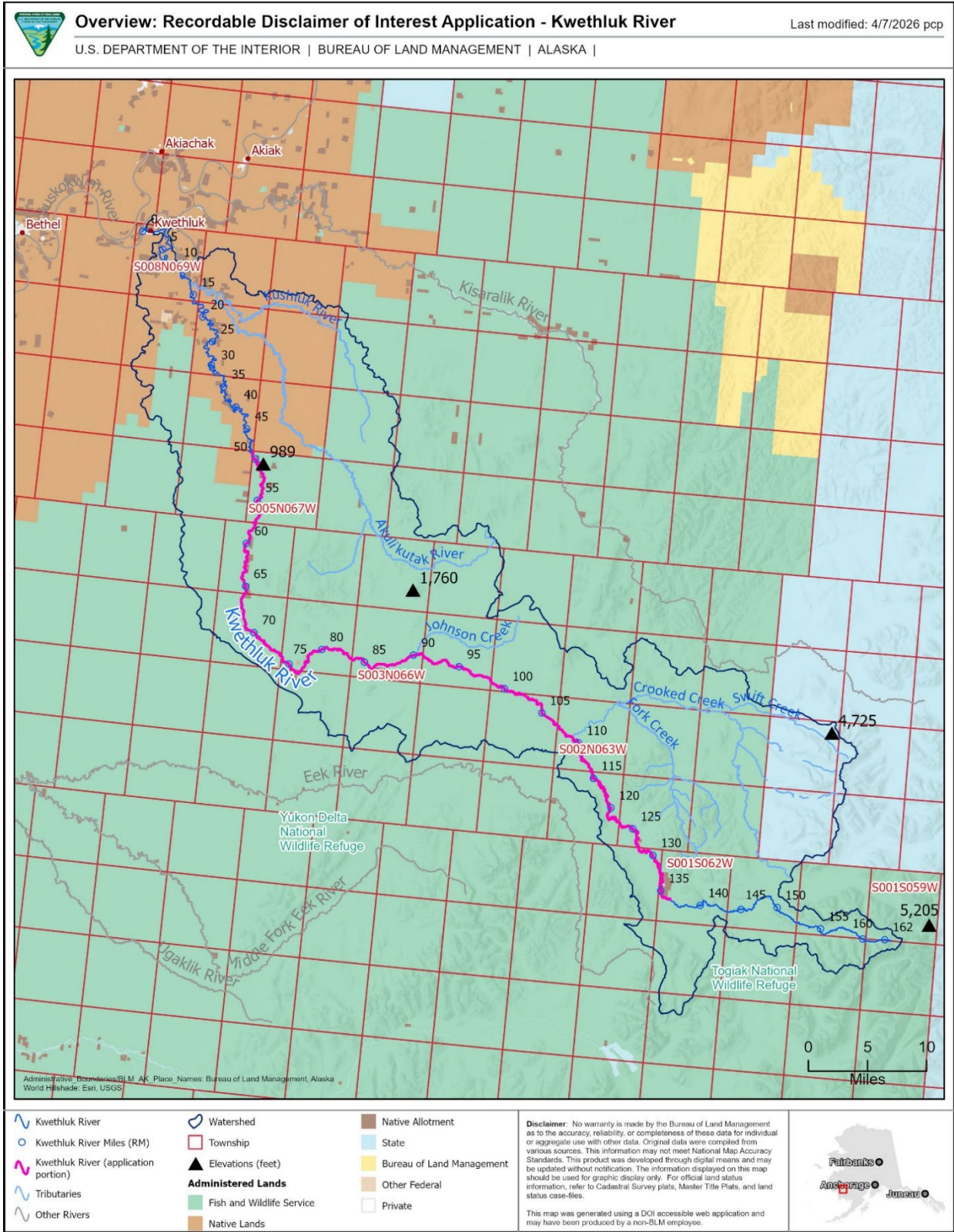
The BLM has determined that the preponderance of evidence present in the record for the State's application demonstrates that the eligible subject waters of the Kwethluk River were navigable at the time of Alaska's statehood. The State's application is therefore **APPROVED** as described below.

³ U.S. CONST. Art. IV. § 3.C1.3.

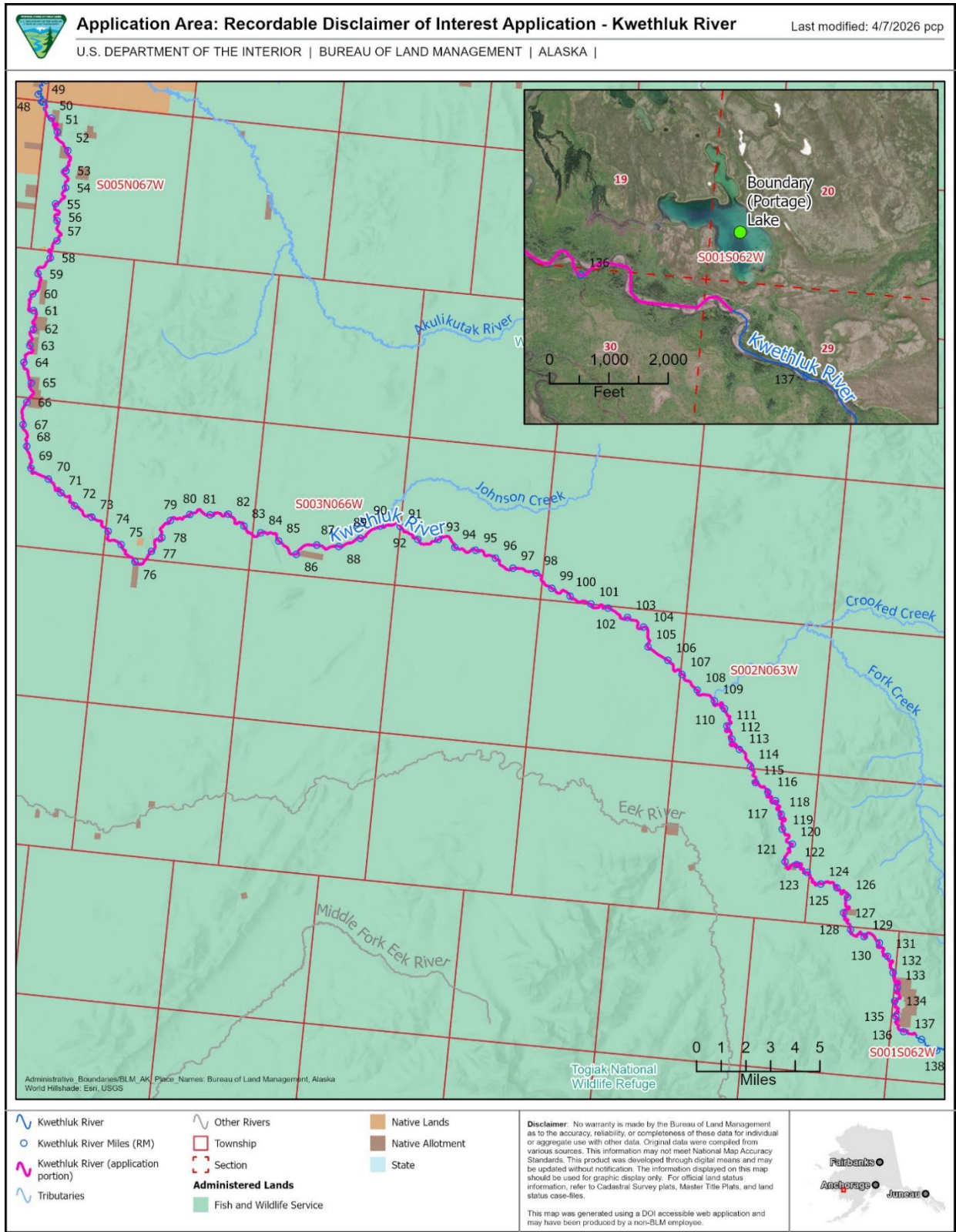
⁴ SLA of 1953, 43 U.S.C. § 1301 et seq.

⁵ SLA of 1988, 43 U.S.C. § 1631.

⁶ Alaska Statehood 72 stat. 339.



Map 1. Overview map of the Kwethluk River watershed and surrounding features.



Map 2. Map of the application area and referenced features.

II. Lands Review

The application primarily affects lands managed by the U.S. Fish and Wildlife Service (USFWS). In response to the BLM's request for information, the USFWS provided historical use information as well as updated information regarding the title to ten Alaska Native allotments.⁷

The following Alaska Native allotments in this application area conveyed submerged lands as part of the non-navigability finding dated June 17, 1998.⁸:

- USS 12302, T. 1 N., R. 63 W. S.M., patent 50-2000-184. Conveyed submerged lands both sides of the centerline, from the left bank Ordinary High Water Mark (OHWM) to the right bank OHWM;⁹ and
- USS 7841 Lot 1, T. 1 N., R. 62 W. S.M., patent 50-2000-0193.¹⁰ Conveyed submerged lands from the centerline to the right bank OHWM.

Therefore, the submerged lands of the Kwethluk River within these allotments will not be adjudicated within this decision. The non-navigability finding dated June 17, 1998, is unaffected by this decision as it relates to the identified allotments.

No other applicable navigability/non-navigability findings exist for the remaining Alaska Native allotments in the application area.

To adjudicate this application, the subject submerged lands 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. There are no valid pre-statehood withdrawals 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. The notice of the application was published in the *Anchorage Daily News* and *Tundra Drums* once per week for three consecutive weeks beginning on January 14, 2026, and January 16, 2026, respectively.¹¹ Information about this application and supporting evidence was also posted on the BLM-Alaska website.¹²

⁷ Memorandum from Ryan Mollnow USFWS Division Chief of Natural Resources, Alaska Region, to Bettie Shelby, BLM Branch Chief, Lands and Realty, Alaska Lands and Realty (Feb. 6, 2026) "State of Alaska's Application for a Recordable Disclaimer of Interest for Lands Underlying Portions of the Kwethluk River in Alaska". Alaska State Office BLM records.

⁸ Memorandum, Chief, Branch of Mapping Sciences (AK924) to Chief, Branch of Survey Preparation and Policy Interpretation, "19 Additional Native Allotments in Survey Window 2700", Jun. 17, 1998, BLM records.

⁹ Patent: Anna Andrews (AK), 50-2000-184, Sept. 14, 2000, BLM records.

¹⁰ Patent: Alfred Evans (AK), 50-2000-193, Sept. 15, 2000, BLM records.

¹¹ US department of the Interior, Bureau of Land Management, *Application for a Recordable Disclaimer of Interest for Lands Underlying Portions of the Kwethluk River in Alaska* (Jan. 27, 2026, at 17:00 AKST), <https://www.federalregister.gov/documents/2026/01/07/2026-00041/application-for-a-recordable-disclaimer-of-interest-for-lands-underlying-portions-of-the-kwethluk>.

¹² US Department of the Interior, Bureau of Land Management, Lands, Realty & Cadastral Survey, BLM Regional Lands & Realty, Alaska, *Recordable Disclaimer of Interest: Kuskokwim, Kwethluk* (viewed Apr. 2, 2026, at 10:00 AKST), <https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/RDI/kuskokwim>.

The notices invited reviews and additional information to support processing of the application. Examples of additional information requested included photographs or videos capturing boats being used on the waterbodies, historical or present-day use diaries, or specific verbal knowledge, whether passed down through the region, or present-day use, information on the type of boat or watercraft used, and information on the time of year boats are, or were, used. In addition to boat use, the BLM asked for hydrological data and/or photographs that captured the waterbody's characteristics such as depth, width, obstructions or obstacles, or shallow stream sections.

The 30-day comment period ended on February 6, 2026. The BLM received comments during the published notice period. However, all comments received were regarding the process and navigability in general but were not specific to this RDI application or this 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.¹³ In the State's RDI application, the State requested a waiver of this requirement.¹⁴ The location of the Kwethluk River is clearly depicted on the U.S. Geological Survey quadrangle maps and is not in dispute. The OHWM of this waterbody is the legal boundary of the submerged lands. Since the boundary of this waterbody is ambulatory, the location may change over time. The BLM therefore determines that a survey of the subject waterbody is not needed to adjudicate the State's application.

V. Applicable Legal Authority

The SLA of 1953 43 U.S.C. § 1301(a), granted and confirmed states' title to the lands beneath inland navigable waters within the boundaries of each respective state.¹⁵ It also gave the states the right and power to manage and administer these lands in accordance with state law. Due to the Equal Footing Doctrine, 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.¹⁶

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,¹⁷ 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.¹⁸

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

¹³ 43 CFR 1864.1-2I(1).

¹⁴ 43 CFR 1864.1-2(d).

¹⁵ 43 U.S.C. § 131 I(a).

¹⁶ 72 Stat. 339, 343.S.

¹⁷ 43 U.S.C. § 1745(a).

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

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."¹⁹

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 *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

In support of their application, the State incorporated by reference the *Kwethluk River Final Interim Summary Report*, by Rolfe Buzzel, Ph.D., a.k.a., *Kwethluk River Final Interim Summary Report*, Phase II-B Submission (Phase II-B Report), dated June 29, 2010, which includes past BLM navigability findings.²⁰

The following briefly summarizes previous administrative navigability findings made by the BLM for the Kwethluk River within the area of the State's RDI application, which is approximately from RM 49.5 to RM 136.5.

In a memorandum dated November 6, 1991, the BLM found the Kwethluk River navigable through T. 7 N., R. 69 W., S.M., Alaska, and upstream to T. 3 N, R. 66 W., S.M., Alaska.²¹ That is approximately from RM 16 to RM 83.5. This administrative navigability finding was made in support of Alaska Native Claims Settlement Act (ANCSA) land conveyances up to about RM 49.5.²²

In a memorandum dated June 17, 1998, the BLM found the Kwethluk River non-navigable within three Alaska Native allotment selections that straddle the Kwethluk River in T. 1 N., R. 62 W. and 63 W., and T. 1 S., R. 63 W., S.M., Alaska, which are located at approximately RM 117 to RM 125.²³ Additional title review indicates the following:

- USS 12302: the submerged land was conveyed to the upland owner under patent 50-2000-184.²⁴
- USS 7841, Lot 1: the submerged land from the centerline to the right bank OHWM was conveyed to the upland owner under patent 50-2000-0193.²⁵

¹⁹ *The Daniel Ball*, 77 U.S. 557, 563 (1870).

²⁰ Phase II-B Report, pg. 9-19.

²¹ Memorandum, Deputy State Director for Conveyance Management (960) to the Deputy State Director for Cadastral Survey (923), "Navigable Waters in Group Survey 253 (Window 1837)", Nov. 6, 1991, BLM records.

²² The BLM's administrative navigability finding for RM 16 up to about RM 49.5 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, which is from about RM 49.5 (where the State's application begins) upstream to about RM 83.5.

²³ Memorandum, Chief, Branch of Mapping Sciences (AK924) to Chief, Branch of Survey Preparation and Policy Interpretation, "19 Additional Native Allotments in Survey Window 2700", Jun. 17, 1998, BLM records.

²⁴ Patent: Anna Andrews (AK), 50-2000-184, Sept. 14, 2000, BLM records.

²⁵ Patent: Alfred Evans (AK), 50-2000-193, Sept. 15, 2000, BLM records.

- USS 7841, Lot 2: the submerged land from the centerline to the right bank OHWM was conveyed to the upland owner under patent 50-2000-0192.²⁶ However, it was conveyed back to federal management via a warranty deed to the USFWS on July 15, 2015.²⁷

VIII. Key Facts, Supporting Evidence, and Analysis

A. Physical Character Summary

The Kwethluk River is approximately 163 miles long and drains a watershed of about 1,300 square miles in southwestern Alaska. Originating at an elevation above 2,300 feet in the Kilbuck Mountains (nearby peak elevations of about 4,500 feet) near the Bristol Bay divide, it flows northwest joining the Kuskokwim River (just above sea level elevation), near the village of Kwethluk. Channels range from shallow, steep and narrow in the upper mountainous headwaters to several hundred feet wide and several feet deep in the low-lying flats at the mouth. The physical character information by river segment is summarized below from the Phase II-B report.

The upper portions of the Kwethluk River (RM 163–90), above the Johnson Creek confluence, consists of a single, boulder strewn, snow fed channel about 50–100 feet wide with seasonal shallows of 6 inches to 2 feet and steep gradients up to 20 feet per mile, transitioning from a mountainous gorge to a tundra valley near RM 140. From RM 90–51, the river becomes a braided gravel bed system 66–100 feet wide and 1–3 feet deep, with depths fluctuating widely after rain events form occasional deep holes up to 12 feet. From RM 51–22, the river widens to 132–198 feet, meanders moderately, and features oxbow lakes and thick bank vegetation; mud bank erosion causes persistent turbidity through much of summer. In the lower portions (RM 22–0), flowing through the Kuskokwim Flats, the channel becomes a deep, meandering, mud bottomed system up to 175 feet wide, reaching roughly 200 feet wide and 15 feet deep at its mouth near Kwethluk village.

B. Subsistence and Skin Boats

The Phase II-B Report describes a longstanding tradition in which Alaska Natives traveled each spring overland by foot and dogsled to reach customary hunting and trapping grounds in the mountainous headwaters of the Kwethluk River.²⁸ This annual practice occurred for hundreds of years until the mid-20th century. After the hunt, families gathered at camps along the Kwethluk River where they worked together to build skin boats capable of carrying people, dogs, supplies, and harvested resources downstream to their homes near the village of Kwethluk (Fig. 1).²⁹ Considered together, these various items constituted a commercial size load. The river camps, situated between approximately RM 120 and RM 135, served as the primary launch points for those float trips.³⁰ The regularity of this use is consistent with the existence of numerous Alaska Native allotments in the vicinity of the river.

²⁶ Patent: Wassillie Andrew (AK), 50-2000-192, Sept. 15, 2000, BLM records.

²⁷ Warranty Deed: USFWS (AK) Document Number 2015-000810-0, Bethel Recording District. DNR Recorder's Office (viewed Jun. 1, 2026: <https://dnr.alaska.gov/ssd/recoff/search/DocDisplay?District=402&SelectedDoc=20150008100>).

²⁸ Phase II-B report, pg. 28-29.

²⁹ *Ibid*, pg. 31, 52.

³⁰ *Ibid*, pg. 47.

The hunting, trapping, skin preparation, and boat building were all timed so that water-based travel from the upper Kwethluk River could begin when the water level was high enough to drift downstream.³¹ This dependable high-water period occurred each spring with the annual snowmelt, and their departure took place immediately after the river ice broke up. Although the high-water period they depended on was brief, its yearly regular return created a seasonal highway that enabled people and goods to travel from as far upriver as RM 135 down to the village of Kwethluk using traditional watercraft.



Figure 1. A woman and child in a loaded bear skin boat on the Kwethluk River around RM 130, 1988. The shallow draft boat is loaded with dried meat, squirrel skins and camping equipment for the 90-mile float to Kwethluk. Photo by John W. Andrew, reprinted from Alaska Fish and Game, Nov.-Dec. 1989, Vol. 21, No. 6, p. 13. (Buzzell pg. 52).

C. Other Uses

The remaining evidence demonstrates use to various upstream extents on the subject waters of the Kwethluk River. The evidence included pre-statehood use to access fishing camps, allotments, and limited use by miners and federal reindeer program inspectors. Post-statehood evidence reflects continued Alaska Native use, as well as use by local residents, federal and state agencies, and unguided recreational users, including rafters floating downstream from Boundary (Portage) Lake.³²

³¹ *Ibid*, pg. 32.

³² *Ibid*.

IX. Summary

The State's application and available information were evaluated for evidence that demonstrates the subject portion of the Kwethluk River was navigable at the time of Alaska's statehood.

The evidence demonstrates:

- The physical characteristics indicate that the subject waters remain in substantially the same natural and ordinary condition that existed at the time of Alaska's statehood.
- Prior to and after Alaska statehood, the subject waters provided a reliable downstream transportation route. The route was used annually by Alaska Native families who traveled in customary modes of watercraft for trade and travel from as far upriver as approximately RM 135 downstream to the village of Kwethluk.

X. Decision

The preponderance of this evidence satisfies the federal test for navigability found in *The Daniel Ball* standard for navigability in fact for the subject waters in this application.

Accordingly, based on the foregoing and the documentation contained in the case record, I have determined that the State's RDI application is sufficient to demonstrate the navigability of the Kwethluk River at the time of statehood and in compliance with the applicable 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:

Seward Meridian, Alaska.

T. 1 S., R. 62 W., partly unsurveyed,
secs. 7, 18, and 19;
sec. 29 NW1/4NW1/4NW1/4;
sec. 30.

T. 1 S., R. 63 W., unsurveyed,
secs. 1, 2, 3, 12, and 13.

T. 1 N., R. 62 W., partly unsurveyed, excluding the conveyed submerged land between the center line of the river and the western meandered boundary of USS 7841, Lot 1.
secs. 29, 30, and 32.

T. 1 N., R. 63 W., partly unsurveyed, excluding the conveyed submerged land within USS 12302,
secs. 2, 3, 10, 11, 13, 14, 23, 24, and 25.

T. 2 N., R. 63 W., partly unsurveyed,
secs. 18 thru 21, and secs. 28, 33, and 34.

T. 2 N., R. 64 W., unsurveyed,
secs. 2 thru 5, and secs. 11, 12, and 13.

T. 3 N., R. 64 W., partly unsurveyed,

secs. 31, 32, and 33.

T. 3 N., R. 65 W., partly unsurveyed,
secs. 19, 20, 21, secs. 25 thru 30, and sec. 36.

T. 3 N., R. 66 W., partly unsurveyed,
secs. 23, 24, secs. 26 thru 30, secs. 32 and 33.

T. 3 N., R. 67 W., partly unsurveyed,
secs. 22 thru 28, and secs. 30 thru 33.

T. 2 N., R. 67 W., partly unsurveyed,
sec. 5.

T. 3 N., R. 68 W., partly unsurveyed,
secs. 4, 5, 8, 9, 15, 16, 21, 22, 23, 25, 26, 27, and 36.

T. 4 N., R. 68 W., partly unsurveyed,
secs. 4, 8, 9, 16, 17, 20, 21, 28, 29, 32, and 33.

T. 5 N., R. 67 W., partly unsurveyed,
secs. 6, 7, 8, secs. 17 thru 20, and secs. 29 thru 32.

The United States affirms it has no interest in the lands described above because the federal interests passed to the State of Alaska at the time of statehood. Approving the State's application AKAK106551968 for an RDI provides certainty about ownership of the submerged lands and removes a cloud on the title from the submerged lands of the Kwethluk River from RM 49.5 up to RM 136.5, as applied for.


BLM does not approve the portions of the application concerning submerged lands within or adjacent to the conveyed Alaska Native allotment numbers USS 12303 and USS 7841 Lot 1, as described in Section II. above, consistent with 43 CFR 1864.1-3(b)(2).

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:

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