



NATURE OF ACTION

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2 1. This is an action pursuant to 28 U.S.C. §§ 1346(f)  
3 and 2409a to quiet title to real property underlying certain  
4 waters in Alaska in which the State claims an interest and in  
5 which the defendants also may claim an interest, and for a  
6 declaratory judgment pursuant to 28 U.S.C. § 2201 determining the  
7 parties' respective rights to these submerged lands.

JURISDICTION

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9 2. This Court has jurisdiction over this action  
10 pursuant to 28 U.S.C. §§ 1331, 1346(a)(2), 1346(f), 1361, and  
11 2409a. The United States has consented to this lawsuit pursuant  
12 to 28 U.S.C. § 2409a.

13 3. The State provided notice to the United States of  
14 its intent to file this action by letter dated August 27, 1992,  
15 pursuant to 28 U.S.C. § 2409a(m).

PARTIES

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17 4. Plaintiff Alaska is a sovereign state of the  
18 United States and is the legal representative of its citizens.

19 5. Defendant United States of America is a sovereign  
20 nation.

21 6. Defendant Bruce Babbitt is Secretary of Interior,  
22 and is responsible in this capacity for administering certain  
23 federal laws relating to public lands in Alaska, including the  
24 Submerged Lands Act, 43 U.S.C. §§ 1301 - 1315, the Alaska  
25 Statehood Act, 72 Stat. 339, 48 U.S.C. note preceding § 21, the  
26 Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601 - 1626,

1 and the Alaska National Interest Lands Conservation Act, 94 Stat.  
2 2371.

3 7. Defendant Edward Spang is the Alaska State  
4 Director of the Bureau of Land Management ("BLM") and is charged  
5 with responsibility to manage public lands in Alaska, including  
6 processing applications and conveying land under the Alaska  
7 Native Claims Settlement Act.

8 8. Defendant John Morehead is the Alaska Regional  
9 Director of the National Park Service and is charged with  
10 responsibility for managing public lands within National Parks,  
11 Preserves, and Monuments in Alaska.

12 9. Defendant Walter Stieglitz is the Alaska Regional  
13 Director of the United States Fish and Wildlife Service and is  
14 charged with responsibility for managing public lands within  
15 National Wildlife Refuges in Alaska.

16 10. Defendant Doyon, Ltd. ("Doyon") is an Alaska  
17 Native regional corporation entitled to select and receive land  
18 under the Alaska Native Claims Settlement Act, and is  
19 incorporated under Alaska law. As an owner of adjacent uplands,  
20 Doyon may claim an interest in some submerged lands underlying  
21 the Kandik, Nation, and Black Rivers.

22 11. Defendant Chalkyitsik Native Corporation  
23 ("Chalkyitsik") is an Alaska Native village corporation entitled  
24 to select and receive land under the Alaska Native Claims  
25 Settlement Act, and is incorporated under Alaska law. As an  
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1 owner of adjacent uplands, Chalkyitsik may claim an interest in  
2 some submerged lands underlying the Black River.

3 REAL PROPERTY AT ISSUE

4 12. The real property subject to this action is  
5 comprised of:

6 A. the bed of the Kaudik River between the lines of  
7 the ordinary high water marks on its banks, from its confluence  
8 with the Yukon River, within T. 6 N., R. 25 E., Fairbanks  
9 Meridian, Alaska, upstream for approximately 80 miles to the  
10 boundary between the United States and Canada, within T. 12 N.,  
11 R. 32 E., Fairbanks Meridian, Alaska;

12 B. the bed of the Nation River between the lines of  
13 the ordinary high water marks on its banks, from its confluence  
14 with the Yukon River, within T. 4 N., R. 30 E., Fairbanks  
15 Meridian, Alaska, upstream for approximately 42 miles to the  
16 boundary between the United States and Canada, within T. 8 N., R.  
17 33 E., Fairbanks Meridian, Alaska; and

18 C. the bed of the Black River, including its  
19 interconnecting sloughs, between the lines of the ordinary high  
20 water marks on its banks from its confluence with the Black River  
21 Slough of the Porcupine River, within T. 21 N., R. 14 E.,  
22 Fairbanks Meridian, Alaska, upstream for approximately 250 miles  
23 to its confluence with the Wood River within T. 17 N., R. 31 E.,  
24 Fairbanks Meridian, Alaska.

FACTS AND CLAIM FOR RELIEF

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2 13. On July 7, 1958, Congress enacted the Alaska  
3 Statehood Act. The Alaska Statehood Act offered the Territory of  
4 Alaska admission into the Union on certain terms and conditions,  
5 which were accepted by a majority of Alaska's voters on August  
6 26, 1958. Alaska was admitted to the Union by Presidential  
7 Proclamation on January 3, 1959.

8 14. Under Article IV, Section 3, clause 1 of the  
9 United States Constitution, Congress' ability to admit new states  
10 into the Union is limited to admittance on an equal footing with  
11 the original thirteen states of the Union (hereafter "the equal  
12 footing doctrine").

13 15. When the Union was created, each of the thirteen  
14 original states retained title to the lands covered by navigable  
15 inland waters, lands between mean high and mean low tide, and  
16 lands beneath tidally influenced waters within its borders.

17 16. When the United States acquires additional  
18 territory, it holds these submerged lands within the territory in  
19 trust for a future state or states created from the territory.

20 17. Under the equal footing doctrine, each new state  
21 admitted to the Union succeeds to the United States' interest in  
22 these submerged lands within its borders as an attribute of state  
23 sovereignty.

24 18. The Submerged Lands Act of May 22, 1953, 43  
25 U.S.C. §§ 1301 - 1315, was extended to Alaska at statehood  
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1 through § 6 (m) of the Alaska Statehood Act, providing Alaska the  
2 same rights granted existing states.

3 19. The Submerged Lands Act legislatively confirmed  
4 the passage of title to submerged lands to the states at  
5 statehood under the equal footing doctrine, and vested in and  
6 assigned to the states title to submerged lands within their  
7 boundaries below low tide and three miles seaward.

8 20. Under the equal footing doctrine, at statehood  
9 Alaska automatically succeeded to the United States' interest in  
10 submerged lands in Alaska.

11 21. The Kandik River was navigable on January 3, 1959,  
12 when Alaska was admitted to the Union.

13 22. The Nation River was navigable on January 3, 1959,  
14 when Alaska was admitted to the Union.

15 23. The Black River was navigable on January 3, 1959,  
16 when Alaska was admitted to the Union.

17 24. On December 14, 1979 the Department of the  
18 Interior, Alaska Native Claims Appeals Board ("the ANCAB"), ruled  
19 that at statehood the Kandik and Nation Rivers were navigable  
20 from the Yukon River to the Canadian border, including the  
21 portions of these rivers within the area selected by Doyon. 86  
22 I.D. 692 (ANCAB 1979).

23 25. The ANCAB issued its 1979 decision in an appeal by  
24 Doyon from a BLM decision holding that the Kandik and Nation  
25 Rivers were nonnavigable, and that therefore BLM would deduct the  
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1 acreage of these river beds from Doyon's land selection  
2 entitlement under the Alaska Native Claims Settlement Act.

3 26. The ANCAR reversed the BLM decision based on  
4 extensive evidence of historic use of the Kandik and Nation  
5 Rivers demonstrating that the rivers were susceptible of use as  
6 highways of commerce over which trade or travel could be  
7 conducted at statehood.

8 27. On March 28, 1980, on the basis of a BLM staff  
9 report entitled "Navigable and Nonnavigable Waters in the Black  
10 River Basin, Eastern Alaska," the BLM issued a memorandum that  
11 determined the Black River to be navigable from its confluence  
12 with the Porcupine River to its confluence with the Wood River  
13 ("the 1980 BLM navigability determination"). A portion of the  
14 1980 BLM navigability determination is attached as Exhibit A.

15 28. On July 22, 1983, the BLM issued a memorandum  
16 entitled "Final Navigability Determination for Doyon, Ltd. and  
17 Chalkyitsik Native Corporation" ("the 1983 BLM navigability  
18 determination"). The 1983 BLM navigability determination is  
19 attached as Exhibit B.

20 29. The 1983 BLM navigability determination concluded  
21 that, in addition to the mainstem of the Black River, the  
22 interconnecting sloughs of the Black River are navigable,  
23 including certain oxbow lakes and dead-end sloughs, subject only  
24 to a final determination by the BLM's Cadastral Survey unit of  
25 the lateral extent of the river. These lakes and sloughs are  
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1 described at page 5 of the 1983 BLM navigability determination.  
2 Exhibit B at 5.

3 30. In Alaska v. Ahtna, Inc., 891 F.2d 1401, 1404 (9th  
4 Cir. 1989), the Ninth Circuit Court of Appeals clarified that a  
5 river's present capability to sustain commercial activities,  
6 including activities related to the recreation industry such as  
7 guided rafting, provides evidence of the river's susceptibility  
8 to commercial use at statehood. The BLM is bound to apply this  
9 criteria when determining the navigability of any waterway in  
10 Alaska.

11 31. The Kandik, Nation, and Black Rivers each is  
12 navigable under the criteria that the Ninth Circuit applied in  
13 Alaska v. Ahtna, Inc..

14 32. The United States has failed to disclaim title to  
15 the beds of the Kandik, Nation, and Black Rivers.

16 33. The United States' failure to disclaim title to  
17 the beds of these rivers has impaired the State's ability to  
18 provide public information regarding the extent of State-owned  
19 submerged land in Alaska.

20 34. The United States' failure to disclaim title to  
21 the beds of these rivers has impaired the State's ability to  
22 manage its land and water resources.

23 PRAYER FOR RELIEF

24 The State of Alaska prays as follows:

25 1. That the Court enter judgment declaring that the  
26 Kandik and Nation Rivers, as described in this complaint, are

1 navigable in their entirety and that therefore the State of  
2 Alaska has had title to their beds since January 3, 1959.

3 2. That the Court enter judgment declaring that the  
4 Black River and its interconnecting sloughs, as described in this  
5 complaint, are navigable in their entirety, and that therefore  
6 the State has had title to their beds since January 3, 1959.

7 3. That the Court declare that any purported  
8 conveyance by the United States to Doyon of any portion or  
9 portions of the beds of the Kandik, Nation, or Black Rivers is  
10 null and void and without legal effect.

11 4. That the Court declare that any purported  
12 conveyance by the United States to Chalkyitsik of any portion of  
13 the bed of the Black River and its interconnecting sloughs is  
14 null and void and without legal effect.

15 5. That the Court issue an order compelling the named  
16 federal officials to cause the State's title to the beds of the  
17 Kandik, Nation, and Black Rivers and interconnected sloughs to be  
18 officially recognized and acknowledged.

19 6. That the State be awarded costs and attorney's  
20 fees incurred in bringing this action.

21 7. For further relief as the Court deems appropriate.  
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DATED November 8, 1993 at Anchorage, Alaska.

CHARLES E. COLE  
ATTORNEY GENERAL

By: *Joanne Grace*  
Assistant Attorney General

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