

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

WHEI 7.1 RECLAS.
HAMMOND RIVER

BILL SHEFFIELD, GOVERNOR

Wiseman

Telephone: (907) 465-2640

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Juneau 99811

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July 13, 1983

83-1396

Mssrs. Pelham L. Jackson and
J. Dennis Stacey
P.O. Box 73546
Fairbanks, Alaska 99707

Alaska Dept. of Fish & Game
Habitat - Region III

Sirs:

I enclose a copy of my recommendation to Commissioner Neve on the proposed reclassification of the Hammond River in the vicinity of Vermont Creek.

Essentially I have recommended that the reclassification of the Hammond River be held in abeyance until such time as the status of the tributary stream, Vermont Creek, is clarified. Information that came to my staff's attention subsequent to the May 31 hearing indicated that receiving waters for the discharge from the mine include Vermont Creek as well as the Hammond.

Because the present petition does not address the Vermont Creek issue, it must be deemed inappropriate. For that reason I have recommended that the status of Vermont Creek be resolved before a final decision on the Hammond River petition is issued, and that you be notified that you must petition to reclassify Vermont Creek, or otherwise take steps to resolve this issue.

State water quality regulations provide that my recommendation be served on the petitioners and on all persons who either submitted timely written comments or who testified at the public hearing. Accordingly, a copy of this letter is being sent to these other interested parties.

Should you have questions or if we may be of assistance, please contact Mr. William Leitch of my staff.

Sincerely,

Randy Begins for

Joe Cladanos, Director
Environmental Quality Management

MEMORANDUM

State of Alaska

TO: Richard A. Neve
Commissioner

DATE: July 5, 1983

FILE NO: :

FROM: Joe Cladouhos
Director, EQM

Pandy Bayless for

TELEPHONE NO: 465-2640

SUBJECT: Petition to Reclassify
Water of the Hammond River

Attached is the Staff Recommendation by Bill Leitch on the subject reclassification request. I concur that the present petition is not appropriate, because Vermont Creek has been assumed.

As Hearing Officer, I concur completely. It is recommended that you notify Messers. Stacy and Jackson that they must petition to reclassify Vermont Creek. After the status of Vermont Creek is decided we will act upon the present petition.

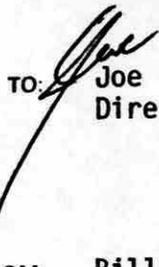
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Dept. of
Environmental Conservation

MEMORANDUM

State of Alaska

TO:  Joe Cladouhos,
Director, EQM

DATE: June 29, 1983

FILE NO: 1.49.004

TELEPHONE NO: 465-2653

FROM: Bill Leitch 
Ecologist

SUBJECT: Hammond River
Reclassification

My recommendations on the reclassification of the Hammond River near the mouth of Vermont Creek follow.

1. GENERAL

A. Substantiality

18 AAC 70.058(h) states that "when presence of use. . . depends upon substantiality of use, regularity and diversity of use, rather than intensity of use, will be the determining factors." Thus, a use is substantial if diverse persons or groups regularly use the waters during certain periods. This definition of "substantial" is used in the following discussion.

B. Burden of Proof

18 AAC 70.058(i) states that "the burden of proof in establishing the applicability or nonapplicability of the criteria established in this section is upon the person seeking to exclude a protected use. . ." In other words, the petitioners must prove that no uses are made of the waters under consideration other than industrial use.

II. DISCUSSION OF USES

A. Source of Drinking Water [18 AAC 70.020(a)(1)(A)(i)]

According to the water quality regulations, a drinking water use is present if there is substantial domestic use associated with residences, or if the waters are used for drinking by substantial numbers of hunters, fishermen, hikers or other recreational transients. The petitioners claim that there is no use of these waters for this purpose. Neither testimony nor written comments indicate that the section of the Hammond River proposed for reclassification is used for drinking by substantial numbers of hunters, fishermen, hikers, or other recreational transients.

B. Source of Agriculture Water [18 AAC 70.020(a)(1)(A)(ii)]

In order for an agricultural use to be present, there must be a water use permit appropriating water for this purpose, and the waters must actually be used for agriculture under the permit. The petitioners claim that there is no use of these waters for this purpose. Neither testimony nor written comments indicate that waters from the reclassification zone are used for agricultural purposes. The Department of Natural Resources verified by phone that no water use permits for agriculture are in effect in the area.

C. Source of Aquaculture Water [18 AAC 70.020(a)(10(A)(iii))]

A water use permit is necessary to establish a use as a source of aquacultural waters. The petitioners claim that there is no use of the waters for this purpose. Neither testimony nor written comments refute this claim. The Department of Fish and Game verified by phone that there are no state aquacultural facilities in the area, and that none are planned over the next three years. The Department of Natural Resources verified by phone that there are no water use permits in effect for that purpose in the area.

D. Contact Recreation [18 AAC 70.020(a)(1)(B)(i)]

A use for contact recreation is present if there is substantial recreation where there is direct and intimate contact with the water, or if such substantial recreation is likely to develop within three years. Neither testimony nor written comments indicated a substantial use of the waters for this purpose.

E. Secondary (Non-contact) Recreation [18 AAC 70.020(a)(B)(ii)]

Secondary recreational use includes fishing, boating, camping, hunting, hiking, and vacationing. This use is present if the waters can be seen from a public highway or campground, or if they lie in lands subject to substantial secondary water recreation use, or if such recreation is likely to develop within three years.

The section of the Hammond River proposed for reclassification lies approximately 5 miles northwest of the Dalton Highway in the vicinity of the confluence of the Hammond and the Middle Fork of the Koyukuk River. State Trooper Jerry Hooper verified that this section of the Hammond proposed for reclassification is not visible from the highway.

The petitioners claim that there is no secondary recreation use of the Hammond River in the section proposed for reclassification. Although testimony of some witnesses supports this claim, statements from other persons indicate that there is use of the river by recreationists. The National Park Service confirmed by phone that the Hammond River Valley is used occasionally by wilderness recreationists as a route of access to Gates of the Arctic National Park and stated that there is "significant potential" for increase in such use.

F. Aquatic Life [18 AAC 70.020(a)(1)(C)]

Use of waters to support fish and other wildlife is present in all waters unless the department, after consulting with the Department of Fish and Game, finds that the waters are inconsequential for this purpose.

The petitioners claim that only grayling are found in the Hammond River. Written comments from other individuals and agencies refute this claim. A memorandum from the Fish and Wildlife Service states that the Hammond River contains arctic grayling, dolly varden, slimy sculpin, and whitefish, and that adult king salmon have been observed there. From its mouth to a point approximately 12 miles above the mouth of Vermont Creek, a stretch that includes the section proposed for reclassification, the Hammond River is designated as an anadromous stream in the Department of Fish and Game's Anadromous Stream Catalog.

Other documents from the Alaska Pipeline Office, Fish and Wildlife Service, Office of the Federal Inspector, and Alaska Department of Fish and Game indicate the presence of fish in the Hammond River. Documents from several sources confirm the presence of other wildlife, including furbearers, in the Hammond River area. The Department of Fish and Game indicated by phone that the Hammond River is an Anadromous Stream that has resident fish that warrant protection.

III. RECOMMENDATION FOR RECLASSIFICATION

- A. The petitioners have failed to prove the absence of uses for secondary recreation and to support aquatic life. I recommend that the request to exclude these uses be denied.
- B. The petitioners have shown that there are no substantial uses of the waters as a source of drinking water, for agriculture, for aquaculture, and for contact recreation. The request to exclude these uses should be approved.
- C. Information obtained subsequent to the public hearing indicates that the petitioners should be seeking to reclassify Vermont Creek rather than the Hammond River (see discussion at V., below). I recommend that a decision on the Hammond River reclassification be held in abeyance until such time as the interested parties petition to reclassify Vermont Creek and a final decision on that petition is rendered.

IV. EFFECTS ON WATER QUALITY STANDARDS

The most stringent of all applicable water quality criteria apply if waters are classified for more than one use [18 AAC 70.030(1)]. If the Hammond River is reclassified following the reclassification of Vermont Creek, exclusion of the uses described above would lower the water quality standards for turbidity and sediment in the half-mile section of the Hammond River presently proposed for reclassification. Reclassified, a turbidity level of 25 rather than 5 NTUs above natural conditions would be permitted. Allowable levels of sediment would increase from no measureable increase to 5% increase above natural conditions.

V. PRESENT PETITION NOT APPROPRIATE

18 AAC 70.010(a) states that "no person may conduct an operation which causes or contributes to a violation of the water quality standards. . ." 18 AAC 70.010(d) states that no person may discharge or cause the discharge of any waste or substance into waters within the jurisdiction of the state without first treating and controlling the discharge. . ."

Statements from staff of DNR, ADF&G, and DEC, and an EPA placer mine field data report (attached) indicate that water from the sluice box at the Stacey-Jackson mine runs directly into Vermont Creek approximately one mile upstream from the uppermost settling pond. A direct, untreated discharge into state waters is a clear violation of State water quality regulations.

The mine is located in a relatively narrow canyon, complicating the proper placement of settling ponds. Such complications, however, do not justify the appropriation of Vermont Creek for private purposes.

To ignore the present classification of Vermont Creek would be a serious error; to reclassify a portion of the Hammond River before the status of Vermont Creek is clarified would compound that error. The petitioners should therefore be notified that their request to reclassify the Hammond River will be held in abeyance until, through the reclassification procedure, the status of Vermont Creek is clarified.

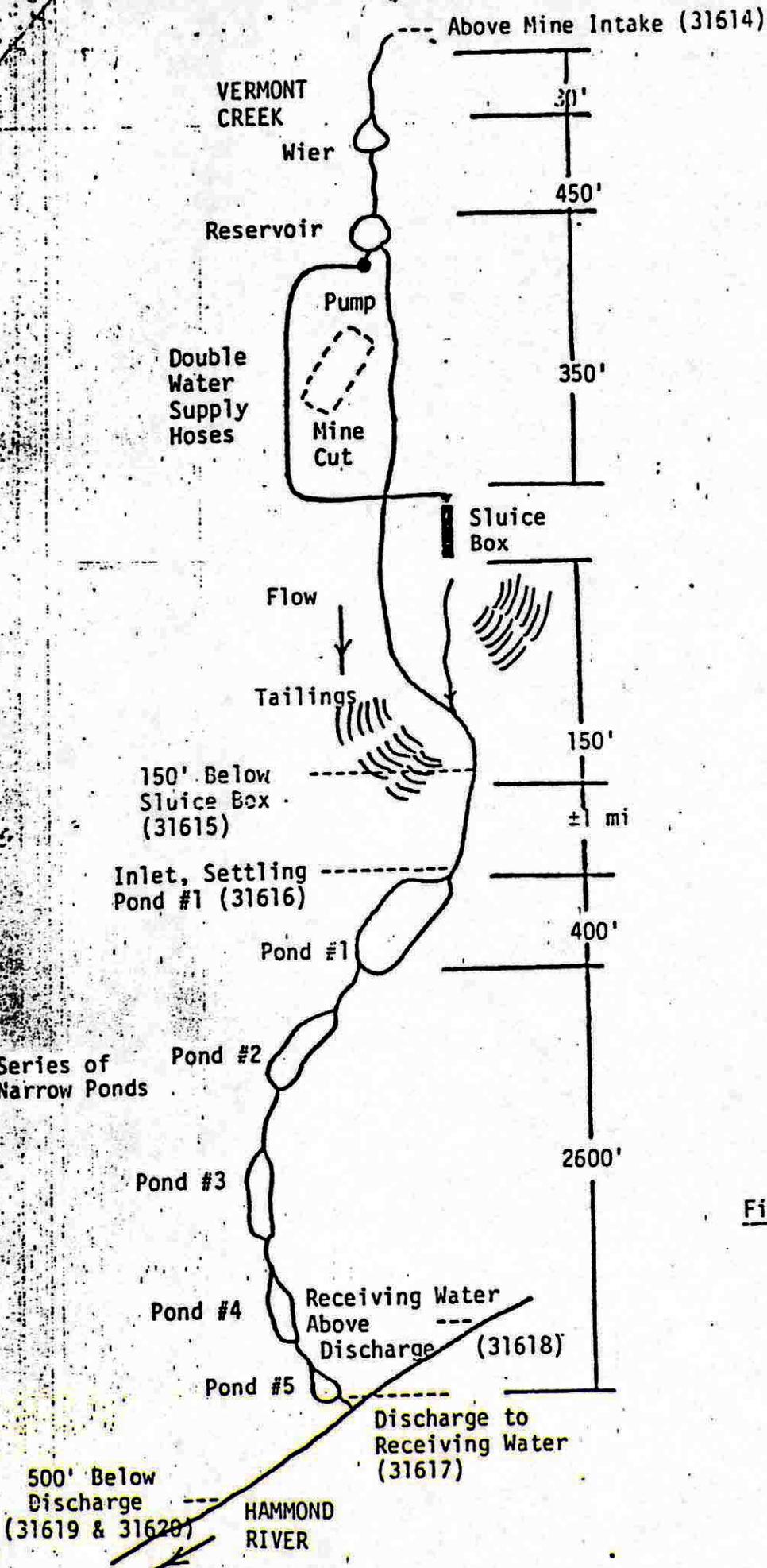


Figure 1. Diagram of Stacy-Jackson Mine, Vermont Creek, August 4, 1982.