



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ALASKA STATE OFFICE
222 W. 7th Avenue, #13
ANCHORAGE, ALASKA 99513-7599

1864 (932)

September 4, 2003

To: File FF-093920

From: Navigable Waters Specialist

Subject: Navigability of Black River, Northeast Alaska

On February 14, 2003, the State of Alaska filed an application for a recordable disclaimer of interest for the beds of the Black River, certain tributaries, and “interconnecting sloughs.” The State applied for Black River from its mouth on the Porcupine River to the mouth of the Wood River; Grayling Fork from its mouth to the International Boundary; Bull Creek from its mouth on Grayling Fork to Sec. 5, T. 13 N., R. 31 E., FM; Salmon Fork from its mouth on Black River to the International Boundary; and “interconnecting sloughs” of these rivers and streams.

In support of its application, the State submitted the Bureau of Land Management’s (BLM) determinations and report of March 28, 1980 that these waterways were in fact navigable. The BLM had prepared this report after Doyon, Limited, appealed the agency’s decision in 1977 to include the beds of Grayling Fork, Bull Creek, and several lakes, in an interim conveyance of land to the corporation.¹ Through the use of “Water Delineation Maps,” the State of Alaska had notified the corporation that these water bodies may be navigable in fact and in law, in which case title to the lands passed to the State at the time of statehood. In 1978, the Alaska Native Claims Appeal Board (ANCAB) decided to delay a factual hearing on these water bodies until it had reached a decision in another navigability case involving the Nation and Kandik Rivers (ANCAB RLS 76-2). After ANCAB issued its decision of December 14, 1979, BLM agreed to review its navigability findings on Grayling Fork and Bull Creek in light of the principles set forth in the new decision. The result was the BLM’s report and determinations of March 28, 1980.

A factual hearing was not held. Instead, on July 2, 1980, Doyon, Ltd., and the State filed a Stipulation with ANCAB, agreeing to the segregation of the disputed water bodies. The State also agreed not to dispute the BLM’s findings that Grayling Fork and Bull Creek are navigable and that the lakes are non-navigable. In recognition of the State’s and Doyon’s concurrence in

¹ The lands lie in townships 15 N. and 16 N., R. 28 E., and T. 16 N., R. 27 E., FM (FF-19155-78, FF-19155-81, and FF-19155-80, respectively). Vunvekottlui Lake in T. 15 N., R. 28 E., FM, and two other unnamed lakes were also contested.

BLM's determinations and "where the facts in the record are undisputed so that no issue of fact as to navigability remains before the Board, then the Board will find the water bodies to be navigable." The Board found Grayling Fork and Bull Creek within the selected townships to be navigable.²

The purpose of this paper is to determine: 1) whether any new information that has since been discovered changes or modifies BLM's navigability findings of 1980; 2) whether any decision of the Federal courts or Interior Board of Land Appeals changes or modifies BLM's navigability findings; and 3) whether the State's application for lands underlying the subject water bodies meets the regulatory requirements.

This paper focuses on the Black River above the former Salmon Village, located just downstream of the Salmon Fork. The reasons for this decision are two-fold. First, there is no doubt that the Black River to village of Chalkyitsik (rivermile 82) is navigable in fact. At the time of statehood, this was the sole village in the Black River drainage area. As demonstrated in the BLM's report of March 28, 1980, commerce between this village and other communities in Alaska was conducted mostly by airplane and riverboat. There is little point in describing these activities again. Second, the BLM's report describes the annual fur trading trips that families and individual trappers living along the Black as far upstream as Grayling Fork and along the Salmon Fork and the Grayling made to Fort Yukon during the 1920's, 1930's and early 1940's. These trips are the best evidence of commercial activity in the Upper Black area.

Status of Lands Underlying Black River to Wood River (Rivermile 271)

From the mouth of Wood River, the Black River flows through thirty-two townships before emptying into the Porcupine River, a major tributary of the Yukon River. In its headwaters, the river flows across BLM lands in T. 13 N., Rs. 26 and 27 E., FM, and T. 14 N., Rs. 26 and 27, FM. The remainder of the river is located in the Yukon Flats National Wildlife Refuge.

Land in nearly eight townships in the Yukon Flats National Wildlife Refuge have been conveyed to the Chalkyitsik Native Corporation and Doyon, Limited. Interim Conveyance No. 1079 (Doyon, Ltd.) conveyed lands in T. 21 N., R. 21 E. and T. 22 N., R. 20 E., T. 22 N., R. 18 E., T. 21 N., R. 17 E., and T. 22 N., R. 16 E., FM. Interim Conveyance Nos. 1104 and 1105 (Chalkyitsik Native Corporation and Doyon, Ltd.) conveyed lands in T. 21 N., R. 19 E., T. 21 N., R. 18 E., and T. 21 N., R. 16 E., FM. Lands in T. 21 N., R. 20 E., T. 22 N., R. 19 E., and T. 22 N., R. 17 E., FM, are still selected under the provisions of the Alaska Native Claims Settlement Act.

Numerous Native allotments are located along the Black River. Along the main stem of the Black River from the mouth of the Salmon Fork upstream to the mouth of the Wood River, a distance of 121 miles, there are only four allotments, each one owned by a member of the Thomas family of Fort Yukon and Chalkyitsik. From the mouth of the Salmon Fork to Chalkyitsik village, more than a dozen Native allotments are located along the river and nearby lakes. Slightly more are located along the Black and nearby lakes between Chalkyitsik and the Porcupine River.

² See William H. Timme, Attorney, Doyon, Ltd., Statement of Reasons, May 19, 1977, See *Appeal of Doyon, Limited*, 5 AN CAB 354, RLS 77-1, July 24, 1981.

In 1980 the BLM determined the river to be navigable from the Porcupine River to the mouth of Wood River. Subsequently, on the basis of this report, the bed of the river was excluded from conveyances of land to Doyon, Limited, and Chalkyitsik Native Corporation.³ Cadastral surveyors have also meandered the river and segregated the submerged lands from uplands where Native allotment claims about the river.

Main Stem Black River from Salmon Fork (Rivermile 150) to Wood River (Rivermile 271)

Physical Character⁴

The Black River is a non-glacial, clear water, meandering stream. In this reach the river definitely changes in character at or near the mouth of the Grayling Fork (rivermile 225). Between the mouth of the Grayling Fork and the mouth of the Salmon Fork, a distance of about seventy-five miles, the river averages more than two hundred feet in width. It may be as little as half that width between the mouths of the Grayling Fork and the Wood River. The river flows through a broader valley below the Grayling Fork, and it receives the waters of much larger lakes along its course. In addition, the river's meanders below the Grayling Fork are longer and wider.⁵

The available records contain little information about stream depths. In late June 1979, while participating on a canoe trip down the river, an employee of the U.S. Heritage Conservation and Recreation Service reported that the river, which he described as confined, monotonous, and not very interesting, was about five feet deep at about rivermile 194 (below Tommy Lake) and at the mouth of the Salmon Fork. The river was then at a high water stage.⁶ In August 1975, a BLM employee recorded his observations of the Black River near the mouth of Van Hatten Creek, located about sixteen miles upriver of Wood River. According to the employee, Black River and Van Hatten Creek are virtually the same where they join. He described the river as being five and fifteen feet wide with many bars. It was two inches deep at riffles and ten feet deep in

³ Robert W. Faithful to Assistant Deputy State Director for Conveyance Management, July 22, 1983, file F-14846-A, Alaska Native Claims Settlement Act files, Northern Field Office, Bureau of Land Management, Fairbanks (hereafter NFO, BLM). This memo identified, through aerial photo-interpretation, sloughs that may fall within the limits of the ordinary high water mark of the Black River. Final identification of these sloughs is made by cadastral surveyors at the time of survey of the lands.

⁴ For an overview of the Black River's physical character, see C. M. Brown to Chief, Division of Resources, March 28, 1980, file FF-09320, Alaska State Office, BLM, Anchorage (hereafter ASO, BLM). The original report is in file F-21779-55, ANCSA files, NFO, BLM.

See also Steve Lyons to Chief, Water Resources Branch, January 12, 1994, Branch of Lands records, U.S. Fish and Wildlife Service, Anchorage. Lyons, the Fish and Wildlife Service's Region 7 hydrologist, provides a succinct description of the river and its potential for commercial navigation.

⁵ Much of this description is based upon interpretation of the U.S. Geological Survey maps and BLM's aerial photographs. For the Grayling Fork-Wood River reach, see the following aerial photographs: CIR 60, roll 22, frames 141 and 142, roll 22, 1980; roll 3128, frames 26334, 2635, and 2689, roll 3128, 1982, Division of Cadastral Survey and Geomatics, Alaska State Office, Bureau of Land Management, Anchorage.

⁶ C. M. Brown to Chief, Division of Resources, March 28, 1980, 15 and 16, file FF-09320, ASO, BLM.

pools. The river may reach depths up to three feet at times. The BLM observer judged the river at this point as not navigable because it “would be more of a walk than a float.”⁷

Since the creation of the Yukon Flats National Wildlife Refuge in 1980, the U.S. Fish and Wildlife Service (F&WS) has conducted scientific studies of the Black River and its environs. Streamflow data has also been collected. From 1993 to 1998, the agency operated a continuous recording discharge gage on the river near Tommy Lake or approximately twenty-six miles below the mouth of the Grayling Fork.⁸ Here the river is like a canal, flowing between steep banks thirty to thirty-five feet high.⁹ In 2000 the F&WS published its streamflow data for the Black and other rivers in the refuge. The data show, among other things, that the river rises and falls over relatively short periods of time following the rainfalls between June and September.¹⁰

History of Use

Historically, trapping has been the principal economic activity in the area drained by the Upper Black River (above former Salmon Village). During the 1920's or 1930's, the heyday of the Alaska fur trade industry, two trappers—Jack Van Hatten and “Tommy the Mate” Thomas—are known to have operated on this reach of the river. Van Hatten, after whom Van Hatten Creek is named, is often mentioned in the local newspapers in the 1930's as trapping the upper Black River.¹¹ According to longtime area residents Harry Thomas and Fred Thomas, Van Hatten used to own cabins near the mouth of the Grayling Fork and a few miles below the mouth of Wood River. (The Thomas's home cabin was located below the Grayling Fork.) In the winter of 1933-34 George Moriarty was identified as Van Hatten's trapping partner on the Black River.¹² In 1937 and 1939 a newspaper correspondent in Fort Yukon reported the arrival of Van Hatten, along with other trappers on the Black River, during the month of June, not long after the spring breakup of the Black River.¹³ By 1946 he was reportedly managing a store at Chalkyitsik for Harry Carter of Fort Yukon; he may have even purchased the store from Carter.¹⁴ From this

⁷ James Ducker, “Alaska's Upper Yukon Region: A History (Draft)” (unpublished ms., Bureau of Land Management, 1982), 357-358. A copy of this report is available in the Alaska Resources Library, Anchorage.

⁸ John Trawicki, “Water Resources Inventory and Assessment, Yukon Flats National Wildlife Refuge (Water Years 1993-1998): Final Report,” WRB 00-04 (Water Resources Branch, U.S. Fish and Wildlife Service, April 2000), 7. See also Mada Hansen, “Black River Navigability Research Report,” WRB 96-4 (unpublished ms., Water Resources Branch, Region 7, U.S. Fish and Wildlife Service, February 27, 1996), 1b.

⁹ Trawicki, 9, 11.

¹⁰ *Ibid.*, see figure 2 on page 17.

¹¹ Donald J. Orth, *Dictionary of Alaska Place Names*. U.S. Geological Survey Professional Paper 567 (Washington: Government Printing Office, 1967), 1017. Local name reported in 1956.

¹² In the spring of 1932, the Fairbanks newspaper reported George Moriarty's rescue of Thomas Kennedy, a sick trapper, who lived along the Black River twenty miles above the Thomas' cabin. Moriarty transported Kennedy to the Thomas's cabin by dogsled and then, leaving Kennedy there, he mushed to Fort Yukon, 150 miles, in fifty-two hours. Ed Young, a pilot with Alaskan Airways, made a mercy flight to the Thomas's cabin. So far as is known, this was the first plane to land in the Black River area. *Fairbanks Daily News-Miner* (hereafter FDNM), March 10, 1932, 1.

¹³ FDNM, January 13, 1934, 5, June 5, 1937, 8, June 22, 1939, 4. The 1939 article reported, “all of the trappers who customarily come in had reached Fort Yukon by June 12. . . .”

¹⁴ H. W. Starling, Supervisor Of Education, Alaska Native Service, to General Superintendent, March 21, 1946, file 864 Chalkyitsik-Supervisory visits, Education Program Decimal Files, 1938-68, Box 293 04/08/13 (4), Records of the Juneau Area Office, Bureau of Indian Affairs, RG 75, National Archives, Anchorage. Copy in Branch of Lands, U.S. Fish and Wildlife Service, Regional Office, Anchorage (hereafter F&WS Branch of Lands records).

point on, little is known of Van Hatten's activities except that he reportedly sold his upper Black River cabins to the Thomas boys. (The USGS maps show these cabins on the right bank of the Black River in Sec. 5, T. 13 N., R. 27 E., FM, miles below Wood River and near the mouth of Grayling Fork. No other cabins are shown on Wood River-Grayling Fork reach.)

After the Second World War, members of the Thomas family purchased Van Hatten's cabins. The patriarch of this family was "Tommy the Mate" Thomas. It is not exactly clear when Thomas moved to the upper Black River. Several dates have been cited. Edward Hoaglund, the well known American writer, recorded Fred Thomas's statement that his father Jacob, born about 1880 in Wisconsin, came North during the Klondike Gold Rush. For a time he worked on the Yukon River steamboats. After the First World War, Jacob then moved the family from Fort Yukon to the Grayling Fork on the Upper Black River. As Hoaglund described it:

It was July 1919 in Fort Yukon when Fred's parents put him and most of their belongings in a boat and paddled 25 miles up the Porcupine to the mouth of the Big Black River. From there they paddled, poled, lined their laborious way up the midsummer shallows of the Black for about 200 miles to Grayling Fork, where they built a trapping camp that has remained the heart of the Thomas family's activities ever since. They would stay out from August till June, when the muskrats, the last of the fur animals to lose the lush nap of their coats, finally did so, and the river was high and yet safe enough to travel upon in boats stuffed with furs, dogs, and youngsters.¹⁵

In Fort Yukon, Thomas was locally known as "Tommy the Mate" or sometimes "Tommy" Thomas. The Fort Yukon correspondent of the *Fairbanks Daily News-Miner* sometimes mentioned Thomas's comings and goings. The family usually traveled by boat, sometimes by airplane. In 1937, for example, after spending the winter trapping, Thomas and his wife flew to Fort Yukon by plane.¹⁶ They must have returned to their upper Black River home, because in June their arrival in Fort Yukon along with other Black River trappers was noted. That summer, Thomas also had a boat built for him in Fort Yukon.¹⁷ In late August of the following year, the Thomases left Fort Yukon for their trapping headquarters.¹⁸ About a year later, the father was reported to be in the Fort Yukon hospital recuperating from a broken leg. His son, Fred, who had finally recovered his health after spending two years in the hospital owing to asthma, returned to the "family home" on the Black River on July 22, taking advantage of a favorable stage of water. According to the Fort Yukon correspondent, Fred and his brother Billy would be in charge of the household until their father returned by plane later this summer.¹⁹

During the war, the Thomas family suffered a number of losses. The father died; John left to serve in the Army; and William joined the Navy. Other family members apparently spent the war in Fort Yukon. In 1946, the local newspaper reported that Fred, then 26, was en route to Arizona, planning to spend the next two years in a sanatorium. The report indicates that John would operate Fred's trapline, but it does not indicate whether this was on the Black River or

¹⁵ Edward Hoaglund, "Meat for the Old Man: Up the Big Black River into Alaska," *Outside* (May 1992): 86.

¹⁶ FDNM, April 1, 1937, 6 and April 1, 1937, 6.

¹⁷ FDNM June 5, 1937, 8 and August 5, 1937, 4.

¹⁸ They left for their trap line on August 27, 1938. FDNM September 13, 1938, 5.

¹⁹ FDNM August 8, 1939, 8. It is uncertain how many there were in the family. The newspaper reported that there were eight boys in 1937. One died in March 1938 while the family was on the Black River trap line. FDNM, March 15, 1938.

somewhere near Fort Yukon.²⁰ By 1955 the family was again residing on the Black River. Government wildlife agents Ray Woolford and Jim King, assigned to visit trappers and seal their beavers pelts, flew to the Thomas's cabin on the Black River. In 1955 the *Fairbanks Daily News-Miner* published Woolford's photograph of King at the Thomas's cabin. According to the caption, the family "stays in the Black River area all winter and spends the summers in Fort Yukon, about 100 miles from the trapping area."²¹

In the early 1970s the Thomas family applied for Native allotments along the Upper Black, all of them upstream of the Salmon Fork. In upstream order, William H. Thomas applied for land in Section 34, T. 18 N., R. 24 E., FM; John Thomas, in Section 24, T. 17 N., R. 24 E., FM; Fred Thomas, in Section 6, T. 15 N., R. 26 E., FM; and Harry Thomas, in Sections 8 and 9, T. 13 N., R. 27 E., FM. Documents in BLM's case files for these allotment applications provide further insight into the Thomas's history on the river.

William Thomas (born 1920) filed for an allotment below the family's former home. It is located on the left bank of the Black River in Section 34, T. 18 N., R. 24 E., FM. He claimed use of the land since 1926. According to the BLM's records:

Mr. Thomas lived upriver with his parents beginning in 1924. By the time he was 14 years old he was trapping, fishing and hunting by himself. He contributed his furs and meat to the family stores. He said (when interviewed in Fairbanks) that he would net pike in the lake on this allotment in the summer, hunt in the fall and trap throughout the winter. Until the age of 13 Mr. Thomas went to school in Ft. Yukon during summer months and wintered with his family on Black River. From age 14 (1934) until 1942 (22) he used the area continuously for hunting, fishing, and trapping.

After the war William worked as an aircraft mechanic in the States. He also worked in that field when he returned to Fairbanks in the early 1950s. Each year he returned to the Black River with his brothers during the fall moose hunting season. He normally reached the place by riverboat.²²

John Thomas (born 1923) applied for the family's former home cabin on the left bank of the Black River, in Section 24, T. 17 N., R. 24 E., FM. The USGS Black River B-4 quadrangles (1956) show several cabins at this location. Accompanying a BLM employee on a helicopter flight to the site in 1974, John pointed out the location of two cabins, two caches, dog houses, a garden where lettuce, potatoes, cabbages and radishes had been grown, a boat landing site, an old "skin boat," a recent campsite, miscellaneous equipment and tools, trails (including one to Chalkyitsik) and an old whiskey still which the father had once operated. In the course of this tour, John recalled:

... his father brought him here with the rest of his family in 1924. He lived there until World War II and served in World War II until 1946 when he came back to this parcel and began supporting his mother. His father had died during World War II. Prior to his departure, he had been trapping, hunting and fishing in the area and supporting his family. His father was fairly old at the time. From 1946 until 1952, he lived on

²⁰ FDNM, April 26, 1946, 3.

²¹ FDNM April 21, 1955, 9.

²² Paul Costello, Field Report, August 18, 1974, file FF-019456, Alaska Native Allotment files (2651), NFO, BLM. This file contains several photos, taken in mid August 1974, of the Black River at William's land claim. The river appears to be bankfull and may have overflowed low banks in some places. According to surveyors, the banks are twelve to fourteen feet high. See U. S. Survey 8030, filed May 24, 2000, in the William's case file.

this site and supported his mother while she was living there. In 1952, he got married and moved to Ft. Yukon. Since that point, he has returned each fall to hunt moose in this area. Mr. Thomas was here last fall and plans to return again this fall.

The BLM employee also noted that the family had “stripped the area of any house-size logs and made a pretty significant dent in the fuel wood in the area.”²³

Fred Thomas (born 1919) applied for lands encompassing the five cabins shown on the USGS Black River A-3 maps (1956) at the mouth of the Grayling Fork. His brother, John, said that Jack Van Hatten once owned these cabins. Fred began using the land in connection with his trapping activities in 1947 or 1948. In 1951 he purchased the cabins from Van Hatten and moved there with his new wife. After spending a full year there, Fred and his wife began to spend their winters on the Black and their summers at Fort Yukon. Each fall, he and his brothers, John, William, and Harry would haul in their supplies from Fort Yukon. When the fur prices collapsed in 1956 or 1957, Fred and his family moved to Fort Yukon, residing there on a year-round basis. His brothers continued to use the cabins periodically for hunting and trapping, and every other year Fred would return to the area to spend the winter trapping. On occasion he also spent time there during the fall hunting season with his brothers.

When in 1975 a BLM employee and John Thomas inspected the site, they found three cabins, two caches, a meat-drying house, boat racks, and trails leading to the back country. The BLM employee noted John’s remark that the brothers normally traveled to the site by boat or dogsled. At that time one of the brothers and a nephew were using one of the cabins in connection with their trapping activities. However, Fred planned to reside there on a permanent basis after he retired from a job in Fort Yukon.²⁴

Harry Thomas’s allotment is located the farthest upriver, in Sections 8 and 9, T. 13 N., R. 27 E., FM., approximately three miles below the mouth of Wood River. The USGS Charley River D-3 maps (1956) do not show cabins at this location, though several cabins are shown on the right bank six miles downstream (in Section 5, T. 13 N., R. 27 E., FM). Visiting the site with John Thomas in 1974, a BLM employee found several cabins, a cache, an outhouse, caribou horns, chairs, stoves, and a calendar “marked March 1959.” One of the cabins was in better shape than the other. According to John, Harry and another brother built this cabin in the early 1950’s. Harry later confirmed this information. He said that he purchased the cabins and other improvements from Jack Van Hatten, the trapper. As the original cabin was in very poor condition, he built a new cabin. He trapped there from 1951 until 1957 when fur prices collapsed and he moved to Fort Yukon. In subsequent years, he visited the area during the

²³ BLM cadastral surveyors reported that the river bank is twenty to thirty feet high here. John Thomas, Alaska Native Allotment Application and Evidence of Occupancy, December 2, 1970; Paul Costello, Land Report, December 19, 1974; U. S. Survey No. 7315, filed May 24, 2000; Certificate No. 50-2001-0161, file FF-017457, NFO, BLM.

²⁴ John Thomas accompanied the BLM examiners in all of the field examinations of his brothers’ Native allotment claims. BLM used a helicopter to reach the lands. Fred Thomas, Alaska Native Allotment Application and Evidence of Occupancy, December 2, 1970; Paul Costello, Native Allotment Report, March 20, 1975, FF-017457, BLM Native Allotment files. In his application Thomas indicated that the cabins were built in 1949. U.S. Survey No. 7311, filed May 24, 2000; Native Allotment Certificate No. 50-2001-0323, June 8, 2001. The BLM employee and John Thomas traveled to the site by helicopter. The surveyors indicated that the river bank here is four to six feet high.

hunting season. Citing evidence of rot and damage caused by a bear, the BLM examiner noted that the cabin did not appear to have been used for “quite awhile.” Harry indicated that he had visited the place about six times since 1957.²⁵

Fred, Harry, William, and John Thomas have stated that they normally traveled to their allotments by boat. During a boat trip from Fort Yukon to Chalkyitsik, Fred Thomas described to writer Edward Hoaglund the annual journeys that his family and other trappers made to their trapping headquarters:

When I could hear him above the water’s rush, Fred was telling me of trips like this (Ft. Yukon-Chalkyitsik) he had made up the river in fall, with as many as 30 people transporting themselves to trapping camps above Chalkyitsik—at Red Bluff, Doghouse Slough, Salmon Fork, Grayling Fork, and the northernmost Big Black—and how they’d get stranded sometimes in shallow water and have to live on just the fish that they angled for and the ducks that they shot. Once, the worst year, it was a month before rains released them and, quite hungry, they managed to float themselves off the river’s high bottom in their slow, old, deep-draft, inboard motorboats. Then they poled around just three bends and saw two moose standing on a high bank and shot them. They camped right there, and—among the 30 of them—ate all eight legs in a couple of days.”²⁶

This description is very similar to Evelyn Berglund Shore’s account of her family’s annual boat trips up the Black River and its Salmon Fork during the inter-war years.

In the mid 1970’s Harry and Fred Thomas informed the BLM that the Black River was usually navigable for their boats as far as Grayling Fork and sometimes farther upstream. Whenever the water was high enough, Harry Thomas boated to his allotment. This apparently did not occur frequently or predictably. Later, he wrote the BLM examiner:

I’ve been going back up Black River hunting ever since I quit trapping. I’ve been hunting around Fred’s place [Grayling Fork] for the past ten years. Sometime I hunt up Grayling and sometime up Black River. Depends on the water. If the river is high, I go up Black, if it is low, I go up Grayling. I figure to go trapping again some day.²⁷

²⁵ Harry Thomas, Ft. Yukon, Alaska Native Allotment Application and Evidence of Occupancy, May 14, 1971; Paul Costello, Land Report for F-14733, March 13, 1975; U.S. Survey No. 7306, August 15, 2000; Certificate No. 50-2001-0239, May 1, 2001, file F-14733, BLM Native Allotment files. In 1999, BLM cadastral surveyors meandered the river along the allotment. The meanders were described as being “along a well-defined bank, 8 ft. high, at the line of ordinary water.”

²⁶ Hoaglund, 88. In 1995 Charlie Thomas provided a similar account of these annual journeys as follows: “The first of June, after muskrats, they would go to Ft. Yukon and stay to mid-August and then back up w/inboard. They had a 9 h.p. Universal but most had 10 h.p. Kermath. Someone had a 35 h.p. that would go all day on 5 gals of gas. The whole family, dogs, furs, kids, etc. to town first of June. Then when they came upstream again they would have the whole winters supply to a heavy load. Usually it took 15 days. They took their loads in relays or they would never have made it. (One time they made the trip in 6 days but that was going dark to dark and in a hurry.) Relay meaning that they would unload and take smaller load across the riffles.” Mada Hansen, interview with Charlie Thomas, April 13, 1995, Branch of Lands records, U.S. Fish and Wildlife Service, Anchorage.

²⁷ Harry Thomas’s handwritten note, dated February 20, on Costello’s original letter dated February 18, 1975, file FF-014733, NFO, BLM. See also Paul Costello, Land Report, March 13, 1975, file FF-014733, NFO, BLM. An aerial photo in this file shows a well defined meandering river with dark brown water, flowing between low banks with a dense stand of black spruce trees. The file, like most other files of this type, also contains photos of improvements and a sketch map of the land claim showing locations of improvements.

Earlier, he had mentioned to the BLM employee that “he had tried to get up to the parcel last fall but had not succeeded because of low water.” In fact, the river “is generally low and difficult to navigate.” In the eighteen years since 1957, he had managed to reach his allotment claim by boat only about six times.²⁸ In 2003 John Thomas informed Bob Stephenson of the Alaska Department of Fish and Game that he and others “occasionally traveled as far upstream as the mouth of Wood River with 20-30 foot boats. Inboard and outboard powered.”²⁹

Fred Thomas agreed with his brother’s characterization of the Upper Black River. When BLM requested the public to provide information about navigable waters and proposed easements in the Black River area, Fred Thomas replied:

The Black River is a fair river to travel on and you can almost always get as far as Grayling River with a light boat. Of course if it’s a dry summer the river gets pretty low. Grayling as far as Bull River is not too bad if there is water. Same with the Black to Wood River. But you have to have a good stage of water to have no trouble. Above there it’s not so good.³⁰

Fred clearly states that the Grayling Fork is usually accessible by boat. It depends upon the water level to navigate beyond these points, however.

Fred Thomas continued to trap in the Grayling Fork area during the 1970s and 1980s. He evidently took advantage of high water levels in planning his trips to the Upper Black River. In July 1979 a government party descending the Black River in canoes recorded several encounters with Fred. On July 3 they met Fred and a man named Johnson not far upstream from Chalkyitsik. The two men were en route from Fort Yukon to the Grayling Fork in a heavily loaded twenty-four-foot aluminum riverboat with a twenty-five-horsepower Evinrude motor with a lift. They had already used thirty-nine gallons of gas to this point. Fred said that the river, about five feet deep, was the highest he had seen in it in three years. Four days later, Fred and Johnson again stopped at the government party’s camp, this time en route to Fort Yukon.³¹

In the early 1980s Fred’s brothers, Albert and Charlie, and his son Michael were also trapping on the Upper Black River at Grayling Fork. Participating in a University of Alaska oral history project, Fred said that when the river is high it usually takes three days by boat to reach the Grayling Fork. In the summer of 1983, Fred hauled six to seven hundred pounds of groceries from Fort Yukon to the Grayling Fork. He also carried seven barrels of gas. More than three

²⁸ Paul Costello, Land Report, March 13, 1975, file FF-014733, NFO, BLM.

²⁹ Alaska Department of Fish and Game, Waterbody Use and Observation Questionnaire: John Thomas, Fort Yukon, May 2, 2003, file FF-093920, ASO, BLM.

³⁰ Fred Thomas to BLM, April 28, 1976, part 1, file FF-021779-55 (75.4), Alaska Native Claims Settlement Act Files, NFO, BLM. The writer has corrected spelling and punctuation errors in the letter.

³¹ Fred told the canoers that he and his brother had caught thirteen wolverines and a number of lynx and marten the previous winter. On the downriver trip, Fred’s boat was loaded with fifty-five-gallon fuel drums. See “Mike Brown’s Notes from Jack Mosby’s Fieldbook, Black River Trip, June-July 1979,” p. 2, FF-093920, ASO, BLM. When Hoaglund traveled with him from Fort Yukon to Chalkyitsik, Fred was operating a flat-bottomed, thirty-two-foot boat, four feet wide, and powered by a forty-horsepower Evinrude motor. Hoaglund, 88.

barrels of gas were used on the trip to his cabin.³² According to John Thomas, it takes 120 gallons of gasoline to travel from Fort Yukon to the Grayling Fork.³³

Salmon Fork Black River (Rivermile 138.3) to International Boundary (Rivermile 74)

Land Status

The Salmon Fork of Black River, seventy-four miles long in Alaska, flows through ten townships: T. 20 N., R. 31 E., T. 19 N., Rs. 27 thru 31 E., T. 20 N., Rs. 25-27 E., and T. 19 N. R. 25 E., FM. The State of Alaska has selected BLM lands along the river in the uppermost seven townships. In the last three townships, the river flows through the Yukon Flats National Wildlife Refuge.

There are no Native allotments along the river. However, the BLM has discovered unauthorized cabins along the river outside of the National Wildlife Refuge. In some instances, this has resulted in the issuance of special use permits.

Physical Character³⁴

From the International Boundary, the Salmon Fork flows southwesterly to a landmark called Pink Bluff near the mouth of Runt Creek. At this point the river flows westerly to the Black River, not far upstream of the former Salmon Village. According to Michael G. and Florence E. Hartman, former prospectors and lodge operators in the area, the Salmon Fork, though wider and slower, is similar to the upper Chena River near Fairbanks. The clear water stream flows around three miles per hour in the pools and about ten miles per hour in the swift reaches. The river bottom is gravel. Sand and gravel bars are always present.³⁵ According to one report, the river is about three feet deep about eight miles below Pink Bluff.³⁶

History of Use

In 1980 the BLM concluded that the Salmon Fork was navigable from its mouth to the International Boundary. This decision was largely based upon two facts. First, as described in considerable detail in Evelyn Berglund Shore's *Born on Snowshoes*, published in 1954, a number of white trappers including Berglund's family relied upon the Black River and Salmon Fork as a highway for transporting furs by boat from their trapping headquarters on the Salmon Fork to

³² Mada Hansen, 1996: 51.

³³ Mada Hansen, interview with John Thomas, April 14, 1995, Branch of Lands records, U.S. Fish and Wildlife Service. In April 1995, Hansen wrote that John Thomas and Mike Thomas were operating a large camp at the mouth of the Grayling Fork. Hansen 1996, Addendum I, 2.

³⁴ See aerial photos CIR 60, frames 6784-6794, role 2628, 1978, ASO, BLM.

³⁵ Michael G. and Florence E. Hartman, to Michael T. Green, March 18, 1985, file FF-884710 (2920.09), NFO, BLM. This file contains a sketch map and several photos of the Hartmans' lodge and boat. One photo shows the river and a bluff twelve miles above the Hartmans' lodge. Additional photos (E. Lowe, 1979) of the area are also in file FF-084983, NFO, BLM.

³⁶ Roger D. Dowding, Land Use Application and Permit, December 7, 1982. See sketch map attached to application, file FF-081285, NFO, BLM.

Fort Yukon over a period of about fourteen years (1928-1942 or 1943). They used the same mode of transportation to return to their home cabins on the Salmon Fork with several tons of food and equipment to last them for another year. The Berglund family resided with John Roberts at his cabin on the left bank of the river in Section 18, T. 19 N., R. 30 E., FM. The USGS Black River B-1 (1956) quadrangle identifies a cabin at this location as the “John Roberts Cabin” (rivermile 58). Another trapper named Bill O’Brien lived farther upriver approximately twelve miles.³⁷

Second, the BLM relied upon reports that Chalkyitsik Natives traveled on the Black River and Salmon Fork in boats during fall hunting trips for bear and moose. According to Richard K. Nelson in *Hunters of the Northern Forest*, published in 1973, some men ascend Black River to the Salmon Fork and up the Salmon Fork for distances ranging from thirty-five to forty-five miles. Nelson indicated that the Natives used boats up to twenty-four feet in length with the capacity of carrying three or four moose carcasses. Sometimes an empty boat was towed to increase the carrying capacity.³⁸

Since 1980 a considerable amount of information about the Salmon Fork has come to light. Some of this information contradicts material presented in BLM’s report. Specifically, in 1980 the writer reported that in 1912 the launch *Falcon* ascended the Black River a distance of 275 miles, and poling boats the remaining estimated distance of 30 miles to the International Boundary. These were used to transport supplies and equipment to crews who were clearing and installing monuments along the boundary. Given the distance (305 miles), he concluded that the route taken was the Black River-Grayling Fork (311 miles). However, another BLM historian believes that the Black River-Salmon Fork route (224 miles) is the more likely one. He points out that the International Boundary Commission consistently referred to the Salmon Fork as “Black River” while the Upper Black and Grayling Fork were called “Orange Creek.” He reasoned that if the expedition had taken the Black River-Grayling Fork route, it would have referred to it as Orange Creek rather than as Black River.³⁹ This interpretation is consistent with evidence presented by Canadian historian Lewis Green in his history of the International Boundary surveys. Green also identifies the Salmon Fork as the route used by the International Boundary Commission to reach the boundary.⁴⁰

The BLM has also established that white trappers were settled along the Salmon Fork as early as 1921. Local newspapers oftentimes carried news from Fort Yukon about the Black River area. In 1922 the *Dawson Daily News* reported that two trappers (not partners) named Smith and Rice had disappeared on the upper Black River the previous year. Local residents suspected that the two men had been murdered. Other trappers included Rube Mason, Waldo Curtis, and William O’Brien. O’Brien reportedly was located the farthest up the river.⁴¹ Subsequently, John Roberts

³⁷ C. M. Brown to Chief, Division of Resources, March 28, 1980, pp. 10-12, file 093920, ASO, BLM.

³⁸ *Ibid.*, 8.

³⁹ *Ibid.*, 10; Ducker, 360-361.

⁴⁰ See Map 9 in Hunter, *The Boundary Hunters: Surveying the 141st Meridian and the Alaska Panhandle* (Vancouver: University of British Columbia Press, 1982), 154.

⁴¹ At least one trapper, Jim Taylor of Nation, thought that Albert Johnson, a white trapper turned murderer who was killed in a shootout with Canadian Mounties in 1931 or 1932, was responsible for the disappearance of Smith and Rice. *Dawson Daily News*, August 8, 1922: 4; FDNM April 26, 1932, 4.

moved into Rice's former cabin, and Bill O'Brien occupied Smith's former cabin, which was located farther upriver.⁴²

In her book, *Born on Snowshoes*, Shore wrote that her family, John Roberts, and Bill O'Brien resided on the Salmon Fork on a year-round basis, only going to Fort Yukon once a year for a few weeks in the early summer to sell their furs and to purchase a year's supply of food and equipment. As she described it, "In the next twelve years our lives were an unvarying route: up the river in the summer; a fall of woodcutting, meat-cutting, toboggan-building, berry picking; a long, hard, cold winter of running the traplines; a spring of beaver trapping, wolf skinning, closing-up; a fast trip downriver; and brief few weeks in Fort Yukon, and up the river again."⁴³

Other sources corroborate Shore's account of river travel. When he arrived at Fort Yukon in 1937, the American writer Ernie Pyle met the Berglund family. Later, in his book, *Home Country*, he described the family's annual journey from the Salmon Fork to Fort Yukon:

Just after the spring ice-break they would come down river with their pelts, on a combined vacation and business trip. They sold their furs at auction, and loaded their boats with a year's supply of staples. The round trip took two weeks and they tarried in Fort Yukon a couple of weeks. They were gone from home just a month. They made the trip to Fort Yukon in two open motorboats, with a small scow that they pushed ahead of them. At night they camped in tents. Besides the winter's catch of furs, the boats carried bedding and personal belongings, also seven rifles. And twenty-two Husky dogs.⁴⁴

During the late thirties, the Fairbanks newspaper sometimes carried news from Fort Yukon. The comings and goings of trappers in the Porcupine River area, including the Black River and Salmon Fork, were noted. In 1934, for example, it was reported, "The last week of May and first week of June saw all the trappers in town. The Burglunds, John Roberts, Pete Nelson and Ed Owens have already returned to their trapping grounds."⁴⁵ In 1937 the Fort Yukon correspondent wrote, "The trappers were delayed getting into town this year, but June 2 the first ones arrived. Tommy the Mate, Pete Nelson, John Roberts, Bill O'Brien, Mrs. Berglund with her three daughters, Mary Jones, Jack Van Hattan, and Paul Henry all came in from the Black River."⁴⁶ In 1938 the paper noted, "The first trappers to leave for their traplines were Mr. and Mrs. John Roberts and the Misses Hazel, Evelyn and Elsie Berglund. They left July 2 for the upper Black River."⁴⁷ Finally, in 1939, "All of the trappers who customarily come in had reached Fort Yukon by June 12, except Mr. and Mrs. John Roberts and the Misses Berglund, who trap on the Black River. The water in that stream has been so low that it is necessary for them to await a rise of water before making the trip to town."⁴⁸ These reports clearly indicate

⁴² See "I Was Tom," *Alaska Trapper*, October 1993: 18. This article is an account of an interview with Evelyn Burglund Shore. She said that Rice and Smith lived "about maybe twenty miles apart on the river." In her book, *Born on Snowshoes*, she indicated that the distance between the two cabins was about twelve miles. C. M. Brown to Chief, Division of Resources, March 28, 1980, p. 10, file FF-093920, ASO, BLM.

⁴³ *Ibid.*, 11-12.

⁴⁴ Ernie Pyle, *Home Country* (New York: William Sloane Associates, 1947, first published in 1935), 171-172. Xeroxed copy in F&WS Branch of Lands records.

⁴⁵ FDNM, July 6, 1934, 5.

⁴⁶ FDNM, June 5, 1937, 8.

⁴⁷ FDNM, August 4, 1938, 5.

⁴⁸ FDNM, June 22, 1939, 4.

that the trappers usually left the Upper Black in late May or early June, leaving Fort Yukon a few weeks later to return to their headquarters.

The BLM memo of 1980 states that Bill O'Brien, the trapper who lived on the Salmon Fork some twelve miles above the John Roberts cabin, moved into Canadian territory east of the International Boundary where his trapline was located in 1938, shortly after his cabin on the Salmon Fork was washed away by the river. In fact, O'Brien, 75, died alone in 1938 on the Salmon Fork. Apparently he had died from natural causes at one of his line camps. In June 1938 the local U.S. Commissioner sent two trappers named G. B. Linxwiler and James Carroll to search for the missing man. They returned to Fort Yukon on June 25 with the report that they had found O'Brien. Only a few bones and personal effects remained of him. Upon learning of his death, several men immediately announced plans to take over O'Brien's trapline. He had had "a very small trap-line," which Maud Berglund (Evelyn's mother), now married to John Roberts, had allotted to him in 1935 after he stopped trapping in Canada."⁴⁹

Beginning in the late thirties, trappers on the Salmon Fork sometimes relied upon airplanes for travel and transportation. This occurred both in winter and in summer. In December 1939, the Fort Yukon newspaper correspondent noted that pilot Herman Joslyn made several trips to the Salmon Fork carrying freight for John Roberts.⁵⁰ On July 14, 1940, Jim Dodson flew Hazel Berglund and her mother from Fort Yukon to the Salmon Fork.⁵¹ In September 1940, pilot Herman Lerdahl flew Evelyn Berglund's future husband, W. L. Grinnell, to the Salmon Fork. The two were married at Fort Yukon on February 28, 1941.⁵² The newspaper on June 26, 1941 reported that Jim Dodson would fly freight to "Roberts' Landing on the Black River." Don Brady flew additional freight to Black River for John Roberts later that year in July.⁵³

Although John Roberts may have used airplanes on occasion, he continued to rely upon the river for most travel and transportation. When in 1942 Elsie Berglund visited Fairbanks for the first time, the local newspaper interviewed her. Her description of life on the Salmon Fork is virtually the same as that described in her sister's book, *Born on Snowshoes*, published twelve years later:

The home of Miss Burglund, her parents, and her sister, on the Salmon river, is a log cabin 35 by 30 feet. The roof is covered with the tin of gasoline cans. Gasoline being used for lighting purposes in winter.

'In summer, we always grow a large garden,' Miss Burglund said.'

'Our hardier vegetables are stored in a ground cellar. Although the weather becomes intensely cold at times, we never have had any artificial heat in the vegetable cellar.'

'In summer we fish in the Salmon river. We have a boat with an 8-horsepower engine.'

'To go home by water from Fort Yukon, the journey is 20 miles up the Porcupine to the mouth of the Black river; then 200 miles up the Black river to the mouth of the Salmon, and finally 80 miles up the Salmon.'

'Fort Yukon is our metropolis. We take our furs there. We trade them. We spend about two weeks there every summer.'

⁴⁹ C. M. Brown to Chief, Division of Resources, March 28, 1980, p. 12, file FF-093920, ASO, BLM; FDNM, July 5, 1938, 8; September 13, 1938, 5; and November 8, 1938, 8.

⁵⁰ FDNM, December 6, 7, 8, 1939, all page 6.

⁵¹ FDNM, July 16, 1940, 2.

⁵² FDNM, September 24, 1940, 6, and March 7, 1941, 7.

⁵³ FDNM, June 26, 1941, 4, and August 1, 1941, 4.

'My mother is now at Fort Yukon for the annual visit. In the last few years, we have traveled between our home on the Salmon and Fort Yukon by Jim Dodson's airplane service.'

'From Fort Yukon, Sam White brought me in a Wien's plane. This is my first visit to Fairbanks. I never before was in a community larger than Fort Yukon.'⁵⁴

In the early 1940s, John Roberts and his family moved to Fort Yukon on a permanent basis. His wife operated a bakery there. In 1944 he advertised in the Fairbanks newspaper that his Black River trapline, his thirty-six-foot-long scow, and a 15-30 horsepower Universal engine were for sale.⁵⁵

There are indications in the record that other trappers besides the Roberts family operated on the Salmon Fork during the 1940s and later. There is, for example, a newspaper report in 1942 that Canadian authorities caught an American trapper named Harold Ostrud on the Black River. He was trying to leave Canada without first obtaining an export permit for his furs. He was subsequently tried and fined in Fort Yukon for the infraction.⁵⁶ Nearly twenty-five years later, in 1965, the Fairbanks newspaper carried a dramatic story about the Charlie Thomas family, reportedly living on the Salmon Fork. According to the report, Charlie's wife, Sharon, fell sick at their trapping camp, located "100 miles above Chalkyitsik on the Salmon River." She needed medical treatment, but the nearest doctor was located at Fort Yukon. Disregarding the fact that freeze-up was near, the husband loaded his wife and two young children into their boat for the trip to Chalkyitsik. According to the report, "They ran for 24 hours straight through increasingly heavy ice until by noon Tuesday the bottom was completely worn off their boat and the river was frozen solid." Leaving his wife and children in the boat with a tent over it, Charlie walked the remaining twelve miles to Chalkyitsik. Upon learning of the family's plight, Ross Carswell, a pilot for Wien Alaska Airlines, flew to the Black River, making a daring landing on the river ice near the stranded boat. He then flew the family to the hospital at Fort Yukon.⁵⁷

In the 1980s and 1990s, BLM and Fish and Wildlife Service investigations into reports of unauthorized cabins along the Salmon Fork revealed considerable use of the area for hunting, trapping, and recreation. The area was especially attractive for hunters in search of moose. At least five Natives from Fort Yukon hunted or trapped in the area. In one case, the refuge manager reported that several trappers had built a cabin on refuge lands because low water prevented them from traveling farther upriver to BLM lands.⁵⁸ The BLM discovered at least fifteen unauthorized cabins in the Salmon Fork area, several located along the upper reaches of the river near the International Boundary.⁵⁹ Many of these cabins had clearly not been used in recent years, the roofs having collapsed, the interiors ransacked by bears, etc.

⁵⁴ FDNM, July 15, 1942, 2.

⁵⁵ FDNM, July 28, 1944, 7, and July 27, 1954, 1 and 2.

⁵⁶ FDNM, July 21, 1942, 3.

⁵⁷ FDNM, October 14, 1965, 1.

⁵⁸ Jerry McGee, Confirmation/Telephone Conversation with Roy Nowlin, Alaska Department of Fish and Game, January 12, 1987; and Jerry W. McGee, Confirmation/Telephone Conversation with Lou Swenson, Yukon Flats National Wildlife Refuge, January 16, 1987, FF-084983 (9230), NFO, BLM. According to the Alaska Department of Fish and Game, hunters were attracted to the remote Salmon Fork because it has good habitat for moose, hence a healthy moose population.

⁵⁹ See map of cabin sites in file FF-088148 (2928.03), NFO, BLM. Few cabins are shown along the Grayling Fork.

The BLM found substantial improvements at two locations, both downstream of Pink Bluff and upstream of the National Wildlife Refuge. The Gene Mahler family resides along the right bank of the Salmon Fork in Section 10, T. 19 N., R. 28 E., FM, approximately eight miles below Pink Bluff. According to Mahler, he and his family resided there seasonally from 1983 to 1991 and permanently since 1991. Over the years they have built several cabins, a generator building, a barn for their horses, chickens, and goats, a cache, a workhouse where boat motors and snowmachines are repaired, and a covered kitchen area for use in the summer. Mahler claimed to trap and sells his furs to Klondike Furs at Fairbanks.⁶⁰

Sandy Jamieson's camp is located about six miles downriver from the Mahlers' place, on the right bank of the river in Section 1, T. 19 N., R. 27 E., FM, approximately three-quarters of a mile downstream of Tehhajik Creek (rivermile 37). This camp was founded in 1976 by Michael G. and Florence E. Hartman of Fairbanks. After prospecting State mining claims in the area, they decided upon plans to establish a wilderness resort at this location. Presumably Hartman located the site while flying the area in a small plane, and landed it on either the river or the nearby gravel bar. Over the next few years, the Hartmans with the help at various times of up to seven people built a cabin (25'x 25'), a bunkhouse (12'x14') and a cache (14'x16'). During this time the Hartmans "took some of the paid workers up the river and they floated back down on their days off. They were really impressed with the float and later we floated it ourselves. The float trips would be a real attraction to practically anyone." So confident was Hartman that the lodge proposal would succeed that he developed plans to build five additional cabins, a bath house, a fuel storage shed, a greenhouse, a generator shed, a tent camping area, picnic areas, two floating boat docks, outhouses, and a two-thousand-foot-long runway on the nearby gravel bar.

Despite its remote location, the Hartmans' lodge attracted a considerable number of people. "As people came and went, our location became known and people began to 'drop in'. After awhile we put a guest book in our unlocked bunkhouse and as of December 1984 43 signed entries were in it," wrote Hartman. He said that many of the visitors had boated in from Chalkyitsik and Fort Yukon. A few trappers had also visited the place on snowmachines and dogsleds.⁶¹

In 1980 the BLM inspected the improvements and then cited the Hartmans for trespass. According to one BLM report, the site was accessible by airplane, jet boat, and snowmachine. In 1988, while visiting the lodge, a BLM employee photographed an open boat with an outboard motor and jet unit.⁶²

⁶⁰ Gene Mahler, Land Use Application and Permit, November 21, 2000; Gene Mahler "to whom it may concern," n.d. (received by BLM, November 23, 2001); and Martha A. Woodworth to Robert Layne, March 26, 2002, file FF-093475, NFO, BLM. This file contains a sketch map of the improvements at the site, as well as color photographs, dated July 30, 2001, of the site, cabins, and river. The BLM examiner did not see a boat, but she did see parts of boat motors and empty fifty-five-gallon fuel drums. Martha A. Woodworth to FF-088149, December 21, 2001, file FF-088149 (2928), NFO, BLM. This file contains good photographs of the river and improvements.

⁶¹ Michael G. and Florence E. Hartman, to Michael T. Green, March 18, 1985, file FF-884710 (2920.09), NFO, BLM. Photocopies of the guest books containing the names of forty or more visitors to the Hartmans' place are in this file. See also Jerry W. McGee, Land Report, October 26, 1988, file FF-087986, NFO, BLM.

⁶² David E. Wickstrom to Mike Hartman, November 12, 1980, file FF-884710 (2920.09), NFO, BLM. See also Jerry W. McGee, Land Report, October 26, 1988, file FF-087986, NFO, BLM.

The Hartmans subsequently moved to Kotzebue, turning over their improvements on the Salmon Fork to David Y. “Sandy” Jamieson of Ester. According to Jamieson, he has used the facilities as a base of operations in his guiding activities since the late seventies. He acquired ownership of the improvements in 1988. Jamieson, also a pilot and an outfitter, applied with the BLM for land use and special recreation permits. He planned to use the cabins for storing equipment used in trapping, hunting, and fishing and for conducting hunting, fishing and wilderness tours.⁶³

Since 1989 or 1990 Jamieson has operated as a guide outfitter in the Salmon Fork area. From 1990 to 1999 he annually reported that he had two or three clients and grossed \$1,500 to \$15,000. Some years he employed one or two assistants.⁶⁴ In 1988 he indicated on a map that he used a “motorboat” on the Salmon Fork from the lodge as far upriver as the International Boundary.⁶⁵ In an interview with Fish and Wildlife Service personnel, Jamieson said that he flies his clients to the International Boundary. They then float down the Salmon Fork to its mouth, where he meets them with his plane. Approximately three float trips are made each year.⁶⁶ For the 1995-2000 period, Jamieson cited plans to operate a spike camp near the John Roberts Cabin on Salmon Fork, another on or near upper Grayling Fork, and another on upper Black River above Mountain Creek (below Wood River).⁶⁷ In his application filed in 2000 Jamieson again described plans to operate a guide service along the Salmon Fork for hunting, fishing and wilderness touring. During the spring and fall hunting seasons, he planned to use a small plane to land on the river or its gravel bars and a riverboat on the river.⁶⁸

Jamieson apparently is not the only pilot who arranges float trips down the Salmon Fork. In the early 1980s, Roger D. Dowding, a pilot then residing at North Pole, reportedly has flown recreationists or hunters to the upper Salmon Fork for float trips downriver. At one time he considered building a cabin along the Salmon Fork in Section 9, T. 19 N., R. 28 E., FM. In his application for a land use permit, he proposed to use the site for trapping purposes. The site was accessible only by plane and “river” (he clearly meant to say by boat because he indicated on a sketch map that the river was three feet deep). He later decided against the plan, explaining that the Cadzow brothers had recently established a trapline and base of operations in the area.⁶⁹

Besides Jamieson, several other guides and outfitters operate in the Salmon Fork area. In late March 1991 the BLM conducted an aerial survey of the river. Three guides, including Jamieson,

⁶³ Michael and Florence Hartman to Al Cronk, October 21, 1991; and D. Y. (Sandy) Jamieson, Land Use Application, October 31, 1991, file FF-087986, NFO, BLM. Jamieson also offers guide services in the Yukon Flats National Wildlife Refuge. See D. Y. Sandy Jamieson, Alaska Refuge Guiding Prospectus Application, Offering No. YF 2, October 12, 1992, Branch of Lands records, U.S. Fish and Wildlife Service, Anchorage.

⁶⁴ See post-use report forms in file FF-086520, NFO, BLM.

⁶⁵ D. Y. Jamieson, Land Use Application and Permit, April 25, 1989, file FF-086520, NFO, BLM.

⁶⁶ Hansen 1996, 82-83; Mada Hansen, interview of Sandy Jamieson, October 31, 1994, Branch of Lands records, U.S. Fish and Wildlife Service, Anchorage.

⁶⁷ D. Y. Jamieson, Special Recreation Application and Permit, January 12, 1995, file FF-086520, NFO, BLM.

⁶⁸ David Y. Jamieson, Special Recreation Application and Permit, March 13, 2000; “Finding of No Significant Impact: Documentation of Applicability of Categorical Exclusion,” n.d. [2000], file FF-09287, NFO, BLM. See also Howard L. Smith, Assessment of Archaeological and Historic Resources, October 17, 2002 [from the international boundary to Tetthajik Creek].

⁶⁹ Roger D. Dowding, Land Use Application and Permit, December 7, 1982; Jerry W. McGee, Report of Telephone Conversation, January 9, 1987; and Jerry W. McGee to District Manager, Steese/White Mountains, May 13, 1987, file FF-081285, NFO, BLM.

and at least one outfitter were identified. Justin John and his wife are located in the National Wildlife Refuge just below Kevinjik Creek. They offer bear hunt trips in the fall. A man identified only as “Mr. Schumacher” uses a small cabin and airstrip at Rice Gulch Creek on the upper reaches of the Salmon Fork in connection with his guiding service and his trapping activities on Rice Gulch Creek. The BLM employees inspected the cabin and found that it probably had not been used in about two or three years. Finally, Joe Firmin of Ft. Yukon, an outfitter, uses the upper Salmon Fork as well.

The BLM also located a number of Native hunting camps along the river, most of them below Pink Bluff. Clifton Cadzow of Ft. Yukon and his brothers trapped the Salmon Fork, Rice Gulch Creek, and Tetthajik Creek, as well as nearby seismic lines. Their headquarters is located or on just upstream of refuge lands, on the left bank of the Salmon Fork upstream of the mouth of the Kevinjik Creek. They usually reach this area by snowmachine or dogteam. Joe Firmin and his brother reported also trap somewhere near the refuge boundary in this vicinity.⁷⁰

At least one other Native trapper is located on the Salmon Fork. He is Charlie Thomas, probably the same man described in the *Fairbanks Daily News-Miner* article in 1965. Thirty years later, Mada Hansen of the F&WS questioned him about his use of the river. Thomas said that his camp is located on the Salmon Fork, “a short distance upstream from the Black River.” He travels to his camp each fall in a twenty-four-foot aluminum river boat powered by a forty-horsepower motor. He also uses a snowmachine and freight sled.⁷¹

Grayling Fork (Rivermile 225) to International Boundary (Rivermile 86)

Land Status

The Grayling Fork flows through twelve townships. In the uppermost five townships the river flows across BLM lands, all selected by the State under the Alaska Statehood Act. The townships are: T. 15 N. and 16 N., R. 32 E., T. 16 N., Rs. 30 and 31 E., and T. 16 N., R. 29 E., FM. The river also flows across BLM lands in Secs. 19, 30-33, T. 16 N., R. 29 E., FM and in T. 17 N., Rs. 27 and 28 E., FM, which have not been selected by the State or Native corporations. The river crosses Doyon, Limited, lands in T. 16 N., Rs. 27 and 28 E., FM, which were conveyed by Interim Conveyance Nos. 331 and 432. In both townships, the Grayling Fork was excluded from the conveyances as a navigable waterway. Finally, the river flows through three townships (Tps. 15-17 N., R. 26 E., FM) in the Yukon Flats National Wildlife Refuge before it empties into the Black River.

Besides Fred Thomas’s at its mouth, several other Native allotments are located in the drainage area. One (Stephen Henry, Sr., FF-017133A, U.S. Survey 7313) is located at the mouth of Bull Creek in Section 4, T. 16 N., R. 28 E., FM, and another (Stephen P. Henry, Jr., FF-014784; U.S. Survey 8159) downstream in Sections 28, 29, 32, 33, T. 17 N., R. 27 E., FM. No allotments are located between Bull Creek and the International Boundary.

⁷⁰ BLM, “Black River Survey, 1991, File Report,” March 3, 1992, copy in writer’s files and in Branch of Lands records, Fish and Wildlife Service, Anchorage.

⁷¹ Hansen 1996: Addendum I, 4.

Physical Character

From the International Boundary the Grayling Fork flows westerly eighty-six miles to the main Black River. Its principal tributary is Bull Creek (rivermile 46), which empties in the river from the south. Above Bull Creek, the river is narrow with many gravel or sand bars located at bends. Below Bull Creek, the river widens and gravel bars appear less frequently.⁷² Nothing is definitely known about water depths.

History of Use

In 1980 the BLM decided that the Grayling Fork was navigable from its mouth to the International Boundary. This decision was based primarily on two facts. First, in 1976 Fred Thomas, a longtime trapper of the area, informed the BLM that the Black River was “almost always” navigable to the Grayling Fork and that the Grayling Fork to Bull Creek was “not too bad” for navigation “if there is water.”⁷³ Second, the BLM concluded that in 1912 three tons of supplies destined for men marking the International Boundary were taken up the Black River and Grayling Fork by launch and poling boat to the boundary. This was evidence that the river was susceptible to commercial navigation if the need ever arose.

Since 1980 several historians have cast doubt upon the BLM’s conclusion that the Grayling Fork route was the one used by the International Boundary Commission. The available Commission records do not provide a detailed description of the route. The Commission reported that the launch *Falcon* ascended the Black River a distance of 275 miles and poling boats the remaining estimated distance of 30 miles to the International Boundary, for a total distance of 305 miles. The BLM concluded that the Grayling Fork route was followed because the aggregate lengths of the Black River and Grayling Fork approximated the Commission’s estimate of the distance traveled by the launch and poling boats. The Black River-Grayling Fork route to the boundary is approximately 311 miles, while the Black River-Salmon Fork route is approximately 224 miles. However, another historian believes that the Black River-Salmon Fork route is the more likely one because the International Boundary Commission consistently referred to the Salmon Fork as “Black River” while the Upper Black and Grayling Fork were called “Orange Creek.” He reasoned that if the expedition had taken the Black River-Grayling Fork route, it would have referred to it as Orange Creek rather than as Black River. In addition, in his book *The Boundary Hunters*, Canadian historian Lewis Green identifies the Black River-Salmon Fork route as the one used by the International Boundary Commission to reach the boundary.⁷⁴

However, in the course of discovery work for litigation involving the Black River’s navigability status, the U.S. Fish and Wildlife Service discovered a newspaper report that adds weight to BLM’s finding in 1980 that the Commission followed the Black River-Grayling Fork route. The *Dawson Daily News* of September 8, 1909 reported:

⁷² See aerial photos, CIR 60, roll 2628, frames 6735-6537, 1978; roll 3128, frames 2665-2671, 1982; and roll 33, frames 149-151, 1980, ASO, BLM.

⁷³ Fred Thomas to BLM, April 28, 1976, part 1, file FF-021779-55 (75.4), NFO, BLM.

⁷⁴ C. M. Brown to Chief, Division of Resources, March 28, 1908, p. 10, file FF-093920, ASO, BLM; Ducker, 1980, footnotes 341-344; see Map 9 in Hunter, *The Boundary Hunters: Surveying the 141st Meridian and the Alaska Panhandle* (Vancouver: University of British Columbia Press, 1982), 154.

Mr. Craig made a remarkable trip of reconnaissance in connection with the boundary work. He left here in July and was gone 47 days. Taking the White Pass company's launch *Falcon*, he traveled to the mouth of the Porcupine river, near Fort Yukon, thence ascended the Porcupine 25 miles, then went up the Black river 175 miles in the launch, and 150 miles farther with canoe. At the end of the canoe journey he was almost to the point where the international boundary will pass. . . . The object of the trip was to ascertain how near to the boundary one can go with launch or canoe, and the feasibility of getting supplies into that district next season for the boundary.⁷⁵

The fact that Craig calculated that he had traveled 325 miles is remarkable because it is very close to the figure that he cited in 1912. That Craig would have miscalculated the distance twice is highly unlikely. Nor is it likely that he would have erred by eighty to one hundred miles if the Black River-Salmon Fork route had been used. All this points to the Black River-Grayling Fork route as the probable route, but it cannot be said with certainty that it was the route.

Little is known about trappers' activities in the Grayling Fork area. The Rev. David Salmon of Chalkyitsik was born and raised in the mid 1910's at his parent's trapping headquarters, located about seventy miles up the Grayling Fork.⁷⁶ This distance would place the headquarters well beyond the mouth of Bull Creek at rivermile 46. In 1922 a white trapper named William Cote reportedly planned to spend the winter on the Grayling Fork.⁷⁷ It is not known if he did in fact travel to the Grayling Fork, much less spend the winter there. In any case, historical evidence of trappers using the Grayling Fork as a route of travel and transportation during the inter-war period has not been found.

The U.S. Geological Survey maps, dated 1956, show the location of cabins at only two places along the Grayling Fork. The cabins located at the mouth of the Grayling Fork were formerly owned by Jack Van Hatten and are now owned by a member of the Thomas family. Two cabins are also shown at the mouth of Bull Creek, in Section 4, T. 16 N., R. 28 E., FM.

Besides the one located at the mouth of Grayling Fork, only four Native allotments are located in the area drained by the Grayling Fork and its tributaries. All four are owned by the Stephen Henry family of Chalkyitsik. The father owns a parcel at the mouth of Bull Creek. (He also owns a parcel located along the upper reaches of Runt Creek, a tributary of the Salmon Fork.) The son, Stephen Henry, Jr. (deceased), obtained an allotment along the left bank of Grayling Fork (below Bull Creek) and nearby lake in Sections 28, 29, 32, and 33, T. 17 N., R. 27 E., FM. The wife, Sara Henry (deceased), has several eighty-acre parcels in the area, one along Bull Creek at the foot of Steamboat Mountain in Section 36, T. 15 N., R. 29 E., FM, and another along a small lake located about two miles east of Grayling Fork and five and a half miles southwest of the mouth of Bull Creek, in Sec. 15, T. 16 N., R. 27 E., FM. The land records also indicate a number of cases involving unauthorized occupancies (reports of long abandoned cabins) in the Grayling Fork area, but nothing specific is known about them.

Among some Natives from the Black River country, Grayling Fork at the mouth of Bull may have been an important place. As already noted, the only cabins shown along the Grayling Fork

⁷⁵ Hansen, 1996, 30.

⁷⁶ Hansen 1996: Addendum I, 3.

⁷⁷ *Dawson Daily News*, August 8, 1922: 4.

(excepting at its mouth) are at the mouth of Bull Creek. In addition, the mouth of Bull Creek is the only place along the Grayling Fork where multiple applications for Native allotments have been made. In the 1980s Elfrieda N. Edgington (Kushida in 1967) and Rhonda Lord Mancuso (Lord in 1967) claimed that in 1967 they had applied for allotments at the confluence of Grayling Fork and Bull Creek and that their applications had been subsequently lost. According to Edgington, this place had been her family's trapping camp before the Second World War. The family used the site year-round, trapping, fishing, and picking berries according to the seasons. The BLM rejected the application because Edgington and Mancuso had failed to apply before the deadline set by law and they had presented insufficient documentary evidence of a timely filing of an application.⁷⁸

Stephen Henry, Sr., succeeded in obtaining an eighty-acre parcel of land (Parcel A) at the confluence of the Grayling Creek and Bull Creek. In the early 1970s both he and his wife applied for allotments at this location, in Section 4, T. 16 N., R. 28 E., FM.⁷⁹ Both claimed to have used the land since 1944 in connection with hunting and trapping activities and noted the existence of a two-story cabin, which had been built in 1944.⁸⁰ In September 1974 a BLM employee traveled to the place in a helicopter. Stephen Henry, Sr., accompanied him. At that time, Henry indicated that the land was normally accessed by dogsled and snowmobile. The BLM employee found (and photographed) a two-story log cabin, "in almost liveable shape," on the land. Henry said that it had been flooded in 1973--an unusual occurrence. The cabin had never before been flooded. In his report the BLM employee noted that the parcel was located "on the bank of a non navigable waterway" in Section 4, T. 16 N., R. 28 E., FM. On a sketch map, he showed the parcel as fronting entirely on Bull Creek. Grayling Fork is not shown on the sketch map. (Unfortunately, he did not show the location of the land claim on a U.S. Geological Survey map, making it impossible to identify the exact location.) Surveyed in 1999, the Parcel A fronts on the left banks of both Bull Creek and Grayling Fork.⁸¹

Steven Henry, Jr.'s Native allotment is located in Sections 28 and 33, T. 17 N., R. 27 E., FM. The allotment is located on the left bank of Grayling Fork and a lake to the south. In his application Henry (deceased) claimed to have used the land since 1964 for trapping, hunting,

⁷⁸ Elfrieda Neulo Edgington, Affidavit, Fairbanks, March 7, 1984 and Alaska Native Allotment Application and Evidence of Occupancy, August 30, 1987; and Mary M. Bone, Acting Chief, Branch of Doyon Adjudication, to Elfrieda Kushida Edgington, et al., May 10, 1988, file FF-085880, NFO, BLM.

⁷⁹ Sara and then her husband claimed the land at the confluence of the Grayling Fork. Sara, the original claimant, subsequently stated that her land claim had not been plotted correctly and that she claimed land along a lake in Section 22, T. 16 N., R. 27 E., FM, where she engaged in trapping muskrats. Her husband, who had originally filed for the land in Section 22, T. 16 N., R. 27 E., FM, also stated that his land claim had not been plotted correctly and that he claimed the land at the confluence of the Grayling Fork and Bull Creek.

⁸⁰ Sara J. Henry, Alaska Native Allotment Application and Evidence of Occupancy, November 8, 1971, file FF-017132; and Stephen Henry, Sr., Alaska Native Allotment Application and Evidence of Occupancy, October 29, 1971, file FF-017133, NFO, BLM. In the former file, the BLM examiner recorded Stephen Henry's remarks that a cabin had burned down in a forest fire sometime between 1947 and 1954. It is not clear whether Henry was referring to a cabin on the Bull Creek parcel or to another cabin at the confluence of Grayling Fork and Bull Creek. Paul B. Heimsath, Native Allotment Land Report, February 2, 1975, file FF-017132, NFO, BLM.

⁸¹ Paul B. Heimsath, Field Report, February 7, 1975; Stephen Henry, Sr., Handwritten note, August 24, 1977; U.S. Survey No. 7313, filed April 6, 2000; Certificate No. 50-2001-0056, file FF-017133, NFO, BLM. Both streams were meandered and segregated from the allotment lands. The surveyors described both banks as five to ten feet high.

fishing, and berry picking since 1964. A cabin, a cache, and trails were cited as improvements. In 1974, Steven's father, Stephen Henry, Sr., accompanied a BLM employee on an inspection trip to the land claim. He confirmed that his son had used the land in 1964 prior to joining the U.S. Army and that his son normally traveled to the land by boat and dog sled. The BLM examiner did not find a cabin or cache, but he did see evidence of recent use, such as a camping area, cut poles, and trash. Henry thought that someone from Circle may have trespassed on the parcel. Beaver signs were noted in the nearby lake.⁸²

There is some evidence in the BLM case files that Natives accessed their allotments by boat. The use of boats to the trapping headquarters at the mouth of Grayling Fork has already been presented. As noted above, Stephen Henry, Sr., stated that his son used to boat to his land claim along the Grayling Fork. Henry, Sr., informed the BLM examiner that he normally traveled to his allotment at the mouth of Bull Creek by dogsled and snowmachine. It is possible, however, that he was referring to the parcel (A) of land in Section 22, T. 16 N., R. 27 E., FM, located along a landlocked lake (the parcel was subsequently conveyed to his wife) or, less likely, to the parcel which the BLM examiner placed on the lower reaches of Bull Creek. Several weeks earlier, Henry had accompanied the same BLM employee on an inspection of his wife's land claim along Bull Creek near Steamboat Mountain, in Section 36, T. 15 N., R. 29 E., FM. According to the BLM examiner, Henry stated that his wife normally reached this parcel by boat and snowmobile.⁸³ The BLM examiner clearly stated that, in his opinion, Bull Creek was not navigable. It is highly likely, then, that Henry meant that he and his wife used a boat to ascend the Grayling Fork to their cabin at the confluence of Grayling Fork and Bull Creek. She then used a snowmobile to reach her parcel along Bull Creek. The examiner noted the existence of a "faint trail" on the parcel.

Additional evidence of navigability comes from members of the Thomas family, many of them longtime residents and owners of Native allotments along the Upper Black. In 1975 Harry Thomas informed the BLM, "I've been hunting around Fred's place [at the mouth of Grayling Fork] for the past ten years. Sometime I hunt up Grayling and sometime up Black River. Depends on the water. If the river is high, I go up Black, if it is low, I go up Grayling."⁸⁴ In 1976, his brother, Fred, remarked that the Grayling Fork as far as Bull River is "not too bad" for navigation "if there is water."⁸⁵ In 2003 John Thomas informed Bob Stephenson of the Alaska Department of Fish and Game that he and others "regularly traveled with 20-30 foot boats to the mouth of Bull River, where Paul Henry's trapping cabin still exists. These cabins were built where they could be reached by boat on a regular basis. I have also traveled 6 miles above Bull

⁸² Steven P. Henry, Jr., Alaska Native Allotment Application and Evidence of Occupancy, November 9, 1971; Paul B. Heimsath, Native Allotment Field Report, February 7, 1975; U. S. Survey No. 8159, filed April 26, 2000; Certificate No. 50-2001-0143, February 27, 2001, file FF-014784, NFO, BLM. This file contains several good aerial photos of the Grayling Fork and the lake. Cadastral surveyors meandered and segregated the Grayling Fork. They described the bank as well defined, eroding, and five to ten feet high at the line of ordinary high water.

⁸³ Paul B. Heimsath, Native Allotment Land Report, February 6, 1975, file FF-017132, NFO, BLM.

⁸⁴ Harry Thomas's handwritten note, dated February 20, on Costello's original letter dated February 18, 1975; see also Paul Costello, Land Report, March 13, 1975, file F-14733, NFO, BLM.

⁸⁵ Fred Thomas to BLM, April 28, 1976, part 1, file FF-021779-55 (75.4), NFO, BLM.

River on Grayling Fork with a 20-foot boat [with a] 40 Hp O.B. [40 horsepower outboard motor].”⁸⁶

Bull Creek (Rivermile 46) to Section 5, T. 13 N., R. 31 E., FM (Mile 47)

Land Status

Bull Creek flows through at least six townships. Lands along the creek in T. 13 N., R. 31 E., T. 14 N., R. 30 E., T. 15 N., R. 30 E., and T. 15 N., R. 29 E., FM, are managed by the BLM. The State has also selected lands (including the riparian lands) in the last three townships. Before emptying into Grayling Fork, the creek flows through two townships where the uplands have been conveyed to Doyon, Ltd., by Interim Conveyance No. 331. In both townships, Bull Creek was excluded from the conveyances as a navigable waterway.

Physical Character

This creek flows northerly to Grayling Fork. For most of its course downstream of T. 13 N., R. 31 E., FM, the creek appears to be very similar in width to the upper reaches of the Grayling Fork. It too has many bars along its course, usually at its bends.⁸⁷

History of Use

In 1980 the BLM decided that Bull Creek was navigable from its mouth to Section 5, T. 13 N., R. 31 E., FM, a distance of approximately forty-seven miles. In its report attached to the decision, the BLM explained, “We have found no actual instances of boat traffic on Bull Creek; but given its physical character, which is similar to that of Grayling Fork, and the nature of boat navigation on the upper Black River, it is apparent that boats with considerable loads of freight could be used on Bull Creek if the need arose. The limit of navigation appears to be located in Section 5, T. 13 N., R. 31 E., FM.”⁸⁸ It is at this point on the U. S. Geological Survey maps that the creek narrows significantly.

No information has surfaced since 1980 that adds weight to this decision. On the contrary, the evidence today throws considerable doubt upon the validity of the decision. As noted before, there is now doubt that Grayling Fork from Bull Creek to the International Boundary—not too dissimilar in physical character to Bull Creek itself—is navigable in fact. In 1980 the BLM relied heavily upon evidence that boats were used on the Grayling Fork to supply crews working on the International Boundary. This evidence is now viewed as suspect. As a result, the validity of the 1980 determination for Bull Creek is also in doubt.

⁸⁶ Alaska Department of Fish and Game, Waterbody Use and Observation Questionnaire: John Thomas, Fort Yukon, May 2, 2003, file FF-093920, ASO, BLM.

⁸⁷ See aerial photos, CIR 60, roll 3128, frames 2670-2671, August 1982, ASO, BLM.

⁸⁸ C. M. Brown to Chief, Division of Resources, March 28, 1980, file F-093920, ASO, BLM.

Only one Native allotment is located along Bull Creek. In the early 1970s Sara J. Henry of Chalkyitsik applied for an 80-acre allotment on the left bank of the creek, near the foot of Steamboat Mountain in Section 36, T. 15 N., R. 29 E., FM. She claimed to have used this land for trapping and hunting purposes since September 1944. In August 1974 a BLM examiner and Sara's husband, Stephen, inspected the land, traveling there by helicopter. The examiner noted that the parcel was normally accessed by boat and snowmobile. He may have misunderstood Stephen Henry in this regard, for it is far more likely that Henry was referring to their cabin at the confluence of Grayling Fork and Bull Creek. According to Stephen, his wife had used the land from 1944 to 1947. She had a cabin at this location. When he and she returned in 1954, they found that their cabin had been destroyed in a forest fire. She had not used the parcel since. The BLM examiner found only a "faint trail and many cut stumps" as evidence of use of the land. He made no mention of a cabin site. Moreover, under the "Navigability" section of his field report, the BLM examiner reported that Bull Creek had "no commercial value."⁸⁹

At least one longtime resident of the Upper Black was unable to provide evidence of navigability for this creek. In 2003 State employee Bob Stephenson quoted John Thomas as follows: "I am not aware of much boat travel up this river any distance. There was no reason to travel by boat further than its mouth."⁹⁰

Black River Slough

Land Status

In the unsurveyed Townships 21 and 22 N., R. 14 E., FM, the slough is located within the Yukon Flats National Wildlife Refuge. In surveyed T. 21 N., R. 13 E., FM, the uplands are patented (50-99-0432). The slough was meandered and segregated from uplands in this township.

Physical Character

On the U.S. Geological Survey Fort Yukon C-2 quadrangle (1956), Black River Slough heads in the Porcupine River in Section 32, T. 22 N., R. 14 E., FM, and returns to the Porcupine River in Section 15, T. 21 N., R. 13 E., FM. The slough is approximately eleven miles long. On the USGS map and BLM's aerial photographs of 1978, the slough is virtually indistinguishable from the Porcupine River. It is approximately twice as wide as the main Black River. It is not possible to determine from the photos whether the upper mouth of the slough is fed by Porcupine River water or Black River water. The lower portion of the slough is undoubtedly Black River water.⁹¹

⁸⁹ Sara J. Henry, Alaska Native Allotment Application and Evidence of Occupancy, November 8, 1971, FF-017132, Paul B. Heimsath, Field Report—Sara J. Henry Native Allotment F-17132A, August 17, 1974, NFO, BLM. This file contains few photos of the land and none of Bull Creek. The parcel was surveyed in early August 1999. The surveyors meandered Bull Creek along the parcel and described the creek as having a well defined bank, four to six feet high. U.S. Survey No. 7955, February 25, 2000; see also Certificate No. 50-2002-0278, NFO, BLM.

⁹⁰ Alaska Department of Fish and Game, Waterbody Use and Observation Questionnaire: John Thomas, Fort Yukon, May 2, 2003, file FF-093920, ASO, BLM.

⁹¹ See BLM's color-infrared aerial photographs, CIR 60, roll 27, frames 220 and 221, July 1978, ASO, BLM.

When in July 1979 an employee of the National Park Service canoed up this slough to the Porcupine River, he described the slough as larger than the Black River. The Porcupine was cutting a new channel to the slough in Section 33, T. 22 N., R. 14 E., FM, and in Section 4, T. 21 N., R. 14 E., FM. He estimated the channel to be three to four hundred feet wide. The water was about five feet deep. The current was two to three miles per hour, about half that in two or three places. Another Federal employee on the same trip also described the slough: “Approximately two and a half miles long, the water flows one way when the Black River is higher than the Porcupine and the other way when the situation is reversed. It was an interesting route; the slough resembled a canal with straight grassy banks, sluggish current and silty water.”⁹²

History of Use

Most riverboat traffic between Fort Yukon and Chalkyitsik undoubtedly occurs on the lower portion of the slough. This is the most direct route between the two villages. This is not to say that the upper portion of the slough is not also navigable. In early July 1979 Federal employees described their experiences in paddling canoes up the “north channel” of the Black River to the Porcupine River. They reported that Porcupine River water was flowing through the channel.⁹³

Black River Distributaries

The Black River empties into the Black River Slough in at least three distributaries, all of them located in the Yukon Flats National Wildlife Refuge. The “lower mouth” extends from Section 1, T. 21 N., R. 14 E., FM, and empties into Black River Slough in Section 9, T. 21 N., R. 14 E., FM. Within this township it crosses Sections 1, 2, 4, 9, 10, 11, 12, 14, and 15. Its configuration on the map and in the aerial photograph is virtually the same. The State of Alaska’s application for a disclaimer includes this distributary.

The State of Alaska’s application also includes the Black’s “upper mouth,” flows from Black River in Section 1, T. 21 N., R. 14 E., FM, to an interconnecting slough of the Porcupine River in Section 34, T. 22 N., R. 14 E., FM. (The interconnecting slough is also part of the State’s application.) The slough is located in Sections 1, 2, and 3, T. 21 N., R. 14 E., and in Section 34, T. 22 N., R. 14 E., FM. The configuration of the “upper mouth” on the map and in the aerial photo is virtually the same. However, gravel bars almost block the channel of the distributary where it leaves the main Black River.

Since the USGS map was published, the Porcupine River has evidently cut a channel to the Black River’s upper mouth. The BLM’s aerial photograph shows a slough running from the Porcupine River in Section 25, T. 22 N., R. 14 E., FM, to the Black River distributary in Section 1 or 2, T. 21 N., R. 14 E., FM. The State’s application does not specifically include this slough.

Interconnecting Sloughs

⁹² “Mike Brown’s Notes from Jack Mosby’s Fieldbook, Black River Trip, June-July 1979,” p. 3; and JoAnne Dunec, “Memorandum for the Record,” August 26, 1980, file FF-093920, ASO, BLM.

⁹³ C. M. Brown to Chief, Division of Resources, March 28, 1980, file FF-093920, ASO, BLM.

The State has applied for all interconnecting sloughs in the Black River drainage area. Other than the Black River Slough, these were not identified by name or location. As a result, the BLM does not know what specific sloughs the State has applied for. “There must be no ambiguity in the land description,” the Department’s Solicitor has advised the BLM in processing applications for recordable disclaimers. In this instance, the BLM must reject the State’s application for “interconnecting sloughs” in the Black River drainage.

The State’s application is problematic in this regard because it does not distinguish between an interconnecting slough of a navigable waterway and an interconnecting slough that is a unique waterway in itself. If, for example, the Black River is in fact navigable, the lateral extent of the navigable river extends from bank to bank, the ordinary high water mark being the legal boundary. Obviously, this definition would encompass many “interconnecting” sloughs, not to mention many “dead-end” sloughs, of the Black River. The State need not specifically apply for these sloughs. These sloughs are usually identified at the time that surveyors determine the location of the ordinary high water marks of a navigable river or stream. Other interconnecting sloughs, however, are evaluated in the same manner as rivers and streams. That is, a determination is made as to whether the interconnecting slough was used, or was susceptible to use, for travel, trade, and commerce. Other than the Black River Slough, the State’s application did not identify these sloughs by name or location.

Conclusions

In assessing the navigability of inland water bodies, the BLM relies upon Federal administrative and case law and the advice of Interior Department’s Solicitor’s Office. The classic definition of navigable waters is found in *The Daniel Ball*, 77 U.S. (10 Wall.) 557 (1870). Among the most important Federal and administrative court decisions are: *Alaska v. United States*, 754 F.2d 851 (9th Cir. 1989), cert. denied, 474 U.S. 968 (1985) (Slopbucket Lake); *Alaska v. Ahtna, Inc.* 891 F.2d 1401 (9th Cir. 1989), cert. denied, 495 U.S. 919 (1990) (Gulkana River); *Alaska v. United States*, 201 F.3rd 1154 (9th Cir. 2000) (Kandik, Nation and Black Rivers); *Appeal of Doyon, Limited*, 4 ANCAB 50 (December 14, 1979) (Kandik and Nation Rivers); and *Appeal of Doyon, Limited*, 5 ANCAB 354 (July 24, 1981) (Grayling Fork and Bull Creek). Pertinent DOI Office of the Solicitor’s opinions include Associate Solicitor Hugh Garner’s memo of March 16, 1976 (“Title to submerged lands for purposes of administering ANCSA) and Regional Solicitor John Allen’s memo of February 25, 1980 (“Kandik, Nation Decision on Navigability”).

In considering the navigability of the water bodies identified in the State’s application, we have relied heavily upon the ANCAB’s decision of 1979 in the case of the navigability of the Nation and Kandik Rivers. The Board stated, “When the record shows that, historically, trapping was the primary reason for trade and travel in an area, and where the water body in question was commonly utilized by trappers as a route of trade and travel in boats of the period customarily used to freight supplies, such use will result in a finding that the water body has been used and is susceptible for use as a highway of commerce.” On the basis of the Board’s decision, the Ninth Circuit Court in 2000 quieted title to the beds of the Nation and Kandik Rivers in the State.

After reviewing the State’s application, the available facts about the rivers and streams, and legal guidance on title navigability, it is clear that Black River Slough, Black River from the

Porcupine River to the mouth of Grayling Fork, and Salmon Fork to the International Boundary were navigable for travel, trade, and commerce at the time of statehood. Although the evidence of navigability for the Grayling Fork is slim, indirect, and even contradictory in some instances, it is sufficient to support a finding that the stream was navigable to the mouth of Bull Creek if it is considered in light of the history of travel and transportation on the Upper Black and Salmon Fork. On the other hand, it is clear that the information is insufficient to support a finding that the following reaches are navigable: Black River from the mouth of Grayling Fork to the mouth of Wood River; Grayling Fork from the mouth of Bull Creek to the International Boundary; Bull Creek; and all interconnecting sloughs of the Black River and its tributaries.

It is noteworthy that the U.S. Fish and Wildlife Service, agrees—implicitly in some cases and expressly in others—with all but one of these findings. The exception is that part of the Grayling Fork that lies in the Yukon Flats National Wildlife Refuge. The Service concluded that “the quality, quantity and adequacy of evidence” presented for this stream was insufficient for a finding of “navigable” or “non-navigable.”⁹⁴

Black River

The Black River is navigable from the Porcupine River to the mouth of the Grayling Fork, a distance of 225 miles. There is a long history of travel and transportation between Chalkyitsik and Salmon Village and between Chalkyitsik and Fort Yukon. In addition, there is a well documented history of travel by fur trappers from Fort Yukon to various points on the Salmon Fork. The record also shows that the Thomas family of fur trappers lived on the Upper Black River during the same time period as John Roberts, Bill O’Brien, and the Berglund family on the Salmon Fork. The sons of Thomas still travel to the Upper Black each year during the fall hunting season and at least one still traps in the area. The Thomas family relied upon boats each spring to transport their furs to market in Fort Yukon and to return to their trapping headquarters on the Black River just below the Grayling Fork during the spring high waters. Jack Van Hatten also maintained a trapping headquarters at the mouth of Grayling Fork, using the Black River for travel and transportation in the same manner as the Thomas family. Unlike Evelyn Berglund Shore in the case of the Salmon Fork, no one in the Thomas family wrote a book about their experiences on the Upper Black. Nevertheless, the available records indicate that the Thomas family used boats similar to those used by trappers on the Salmon Fork. These boats were capable to carrying substantial loads (well over a thousand pounds) of food, dogs, equipment, and other material sufficient to carry a large family through a long winter.

The BLM’s determination in 1980 that the Black River is navigable from the Grayling Fork to the mouth of Wood River, a distance of forty-six miles, is suspect. Since that determination was made, information has surfaced suggesting that this reach is rarely suitable for navigation. Harry Thomas claimed that he was able to reach his allotment, located just below Wood River, only about six times in the years 1957 to 1971, because low water conditions prevented navigation. His brother, John Thomas, also indicated that it was possible to reach the Wood River only when there was a good stage of water. Even during these times of high water, it may not be possible to reach Wood River in a heavily loaded boat.

⁹⁴ Rowan W. Gould, Regional Director-Region 7, Fish and Wildlife Service, to State Director, Bureau of Land Management, August 27, 2003, file FF-93920, ASO, BLM.

Until additional information is obtained to support a finding of navigable or non-navigable, the BLM should suspend action on the State's application for this reach of the river. Additional historical use information and hydrological data are needed. Local residents may be able to provide more information about the history of the Black River above Grayling Fork. Hydrological data is needed to establish, for example, the periods of high and low water stages and the length of the periods.

Salmon Fork Black River

The BLM's determination in 1980 that the Salmon Fork is navigable from the Black River, a distance of seventy-four miles, to the International Highway still stands. As the BLM wrote in 1980: "From the 1920's to the 1940's, trappers on the rivers used poling boats, a scow, and a launch to transport supplies from Fort Yukon to their cabin near the mouth of Runt Creek. In the same period, one trapper who lived about 12 miles upriver from Runt Creek customarily used a poling boat to travel to and from Fort Yukon. The physical character of the river is such that trappers may have used poling boats to the International Boundary line whenever the water level was high. The historic records indicate that in 1928 a launch was in fact taken up the Salmon Fork for a distance of approximately 64 miles in high water." Local residents still travel up and down the river in large river boats. In addition, a commercial outfitter periodically flies in clients to the International Boundary, where they then raft down the river to the river's mouth.

Grayling Fork Black River

The BLM's former determination that the Grayling Fork is navigable from the Black River to the International Boundary, a distance of eighty-six miles, is also suspect. That determination was largely based upon evidence that the International Boundary Commission used a launch and poling boat on the river to transport supplies to men marking the boundary line. Since, several historians have cast doubt on BLM's interpretation of the evidence. They assert that the Salmon Fork was the more probable route. Given the fact that there is considerably more evidence of boat traffic on the Salmon Fork than on the Grayling Fork, it is highly probable that the historians' interpretation is the correct one.

Nevertheless, there is other evidence that the Grayling Fork is navigable from the Black River to Bull Creek, a distance of forty-six miles. The aerial photographs show a relatively wide river in this reach. Beyond, it narrows considerably. There are only three Native allotments on this reach, but they are the only ones along the entire river. An important hunting and trapping headquarters, maintained by the Thomas family for decades, is located at the mouth of the Grayling Fork. A two-story log cabin was located at the mouth of Bull Creek. The Stephen Henry family resided here on a year-round basis in the mid 1940s at least. His wife, who filed for an allotment on upper Bull Creek, indicated that she normally reached the area by riverboat. Several Thomas brothers indicated that they boated the river. Harry Thomas claimed to boat the Grayling Fork whenever the Black River above the Grayling Fork was too low for his boat. Fred Thomas observed that the Grayling Fork to Bull Creek was "not too bad if there is water." John Thomas claimed that that he and others "regularly traveled" this reach with twenty- to thirty-foot-long boats. All this evidence leads to the conclusion that the Grayling Fork was, and

continues to be, a practicable route of travel and transportation to the mouth of Bull Creek, where the trapping headquarters of Stephen Henry, Sr., was located. Accordingly, the BLM should approve the State's application for Black River-Bull Creek reach of the Grayling Fork.

Until sufficient information is obtained, the BLM should suspend action on the Bull Creek-International Boundary reach (40 miles) of the river. The records of the International Boundary Commission should be researched. These records will likely yield details regarding the use of boats on the Black River and its tributaries. The available information clearly show that the Commission used Black River-Salmon Fork route, but there is also evidence, albeit slim, that members may also have explored and even used the Grayling Fork route. In any case, additional historical use information is needed to properly assess the navigability of this reach. Certainly a stream survey needs to be conducted. Based on the few available records, this reach appears to be a marginal stream. However, little more is known about the physical character.

Bull Creek

There is no hard evidence to support the BLM's determination that Bull Creek is navigable. The aerial photographs show a very narrow, meandering creek with many bars along its course. There is one Native allotment along the creek. The owner, Sara Henry, reportedly traveled to the allotment by boat in summer, but the veracity of this report is highly questionable. During a field trip to the allotment, a BLM employee noted that the creek was not navigable. There is no suggestion anywhere in the available records that the creek is physically or historically navigable for any distance. Even a longtime resident in this area, John Thomas, was unaware that anyone boated the creek. Therefore, the BLM should suspend action on the State's application for this creek pending the discovery of information to support a finding that the creek is either navigable or not navigable.

Black River Slough

The Black River Slough is navigable in its entirety. The slough transports both Porcupine River water and Black River water. It is, therefore, likely that the slough falls within the ordinary high water marks of either the Porcupine River or the Black River (and possibly both rivers). In any case, the lower reach of the slough is the primary route of travel and transportation between Fort Yukon and Chalkyitsik. The upper reach of the slough is an alternative route to the Porcupine River. Reportedly five feet deep in mid-summer, this reach of the slough is suitable for the operation of large riverboats and barges with substantial loads.

Interconnecting Sloughs

Where it approves the State's application for the beds of the Black River Slough, Black River, Salmon Fork, and the Grayling Fork, the Bureau should identify the ordinary high water mark as the legal boundary. The term "ordinary high water mark" is customarily used to describe the lateral extent of a navigable waterway. The term "interconnecting sloughs" is not acceptable because there is no agreement on its definition. The term may include unique water bodies that extend beyond the ordinary high water mark of navigable waters. And the existence and location of these water bodies is not known because a survey has not been done. Therefore, the Bureau

should suspend or disallow the State's application for those "interconnecting sloughs" that extend beyond the ordinary high water mark of navigable rivers and streams.